
Newmark Hardware Trust Constitution

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Newmark Hardware Trust Constitution

Date

Party

Newmark Capital Limited ACN 126 526 690 of Como Centre, Level 17, 644 Chapel Street, South Yarra Victoria 3141 (**Responsible Entity**)

Recitals

A This Constitution is declared by the Responsible Entity to be the Constitution for a trust to be known as the Newmark Hardware Trust.

1 Definitions and interpretation

1.1 Definitions

In this Constitution the following terms, unless the context otherwise indicates, shall have the following meanings:

Acquisition Cost Adjustment means where the Trust acquires Property, such adjustment (if any) as the Responsible Entity determines in its discretion on account of any capital raising expenses, acquisition fees, legal fees, brokerage, stamp duty, Taxes and other costs that have been incurred in connection with such acquisition on the basis that such costs should be amortised over the period from the day of acquisition to the date which is the lesser of 5 years, the remaining term of the Trust, or such other period as the Responsible Entity reasonably determines. If the Responsible Entity considers it appropriate, it may determine the Acquisition Cost Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.

Adviser includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Responsible Entity or its related entities to provide advice or services in relation to the Trust.

Amendment Date means the date, on or following the approval of each of the Restructure Proposal Resolutions, on which this Constitution was amended in accordance with section 601GC of the Corporations Act under the supplemental deed poll dated on or about the date the Restructure Proposal Resolutions were approved, being on or about 15 February 2019.

AMIT means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Tax Act.

AMIT Choice means a choice made by the Responsible Entity pursuant to section 276-10(1)(e) of the Tax Act.

AMIT Regime means the regime for the taxation of AMITs and Unit Holders contained in the:

(a) Tax Act;

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- (b) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016;
 - (c) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016; and
 - (d) Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016.

AMMA Statement has the meaning given to that phrase in section 276-460 of the Tax Act.

Applicant means a person who has made an application which has been accepted by the Responsible Entity (whether or not that person has been issued Units) and pursuant to which the person has undertaken a Commitment.

Application Price of a Unit on any day means the amount determined under clause 7.

Approved Securities means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASX Settlement) in accordance with the ASX Settlement Operating Rules.

ASIC means the Australian Securities and Investments Commission.

ASIC Exemption includes:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Trust or the Responsible Entity.

Assets means real property, cash, investments, rights, income and other property of the Trust from time to time.

Associate has the meaning given in the Corporations Act.

ASX means the ASX Limited (or a successor organisation) or the financial market operated by that company (whichever the context requires).

ASX Business Day means a business day as defined in the Listing Rules.

ASX Settlement means ASX Settlement Pty Limited ACN 008 504 532.

ASX Settlement Operating Rules means the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while Units or Stapled Securities are Approved Securities, each as amended from time to time.

Attached Securities means any security or securities which are from time to time Stapled or to be Stapled to a Unit.

Attribution Income Tax Liability of a person in relation to a managed investment scheme means a tax liability of the person that results from the scheme being operated as a MIT.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;

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- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
 - (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b).

Business Day means a day that most trading banks are open for business in Melbourne excluding any weekend or public holiday.

Calendar Quarter means the three Month period ending on either 31 March, 30 June, 30 September or 31 December as the case may be.

Call means a call on a Unit Holder or Applicant by the Responsible Entity to pay all or any part of:

- (a) the unpaid Application Price of a Partly Paid Unit; or
- (b) an Uncalled Commitment,

as the context requires.

Class means a class of Units as determined by the Responsible Entity under clause 4.5.

Class Expense means, in relation to a Class, an Expense or tax or a proportion of an Expense or tax determined by the Responsible Entity to be referable to a Class in accordance with clause 16.9.

Clearly Defined Rights means where the rights to income and capital arising from each of the Units in the Trust are “clearly defined” at all times when the Trust is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

Complaint has the same meaning as in Australian Standard ISO 10002-2006 (or such other instrument which replaces it) and includes a dispute.

Commencement Date means the date of commencement of the Trust, being the date on which Units are first issued.

Commitment means, in respect of:

- (a) an Applicant, the dollar amount the Applicant has agreed to subscribe for Units; and
- (b) the transferee of Units that is not an Applicant, the dollar amount the transferee has agreed to subscribe for Units pursuant to an agreement as contemplated by clause 10.1(h).

Committed Equity means the sum of:

- (a) Application Prices for all issued Partly Paid Units and Fully Paid Units; and
- (b) Uncalled Commitments.

Constitution means this Constitution as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth), as amended from time to time.

CS Facility has the meaning given to the term, 'clearing and settlement facility' in the Corporations Act.

Deemed Withdrawal Request has the meaning given to it in clause 8.4(c)(ii)(B).

Designated Foreign Investor means a Foreign Investor in respect of whom the Responsible Entity has made a determination in accordance with clause 22.4.

Determined Member Component has the meaning given to that term in the Tax Act.

Determined Member Component Choice means a choice made by a Unit Holder under section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that term in the Tax Act.

Distribution Calculation Date means the last Business Day of each month or any other dates the Responsible Entity nominates. For the avoidance of doubt, subject to the *Corporation Act*, the Responsible Entity may nominate different Distribution Calculation Dates for different Classes.

Distribution Date means 10 Business Days after the Distribution Calculation Date for the relevant Distribution Period.

Distribution Entitlement means the entitlement of a Unit Holder to the Net income determined in accordance with clause 13.7.

Distribution Period means the period commencing on:

- (a) the Commencement Date and ending on the following Distribution Calculation Date; and
- (b) each subsequent period commencing on the day after a Distribution Calculation Date; and ending on the next Distribution Calculation Date or on termination of the Trust.

Divestment Notice means a notice given under clause 23.3 to a Small Holder.

EDR Service means the Australian Financial Complaints Authority or such other ASIC-approved external dispute resolution service which replaces it.

Expenses includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these including but not limited to the example expenses set out in Schedule 1.

Financial Year means:

- (a) the period beginning on the Commencement Date and ending on the following 30 June; and
- (b) each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Trust.

Foreign Investor means a Unit Holder whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Responsible Entity may determine.

Fully Paid Unit means a Unit for which the Application Price is fully paid.

Gross Asset Value means the sum of:

- (a) the value of all Assets; and
- (b) any other amounts which, in the opinion of the Responsible Entity, should be included for the purpose of making a fair and reasonable determination of the value of the Trust having regard to ordinary accounting principles.

GST has the meaning given to that expression in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

IDPS means an investor directed portfolio service.

Initial Contribution means an amount which represents an initial contribution to the payment of an Applicant's Commitment which may be required by the Responsible Entity.

Initial Public Offering means:

- (a) an initial public offering of Units or Stapled Securities which involves the raising of capital for subscription under an offer document; or
- (b) a sell down of a substantial portion of the Units or Stapled Securities by the Unit Holders; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking Listing and quotation of the Units or Stapled Securities or other economically equivalent securities.

Interest Rate means the rate set pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time plus 2% per annum, calculated and accrued daily.

Interim Distribution means a distribution of the Net Income accruing during a Distribution Period (other than the last Distribution Period in a Financial Year).

Internal Rate of Return is calculated based on total distributions received (including the repayment of equity subscribed), in the hands of the Unit Holder (excluding any tax credits) on the time weighted equity utilized basis over the period commencing on the initial issue of Units under the initial product disclosure statement for the Trust and ending on:

- (a) the date that a Property is sold;
- (b) the earlier of the date that:
 - (i) Responsible Entity is removed as the responsible entity of the Trust;

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- (ii) the Trust is merged with another trust or trusts;
 - (iii) the Trust is stapled with another entity or entities;
 - (iv) the term of the Trust is extended beyond the term set out in the initial product disclosure statement for the Trust (including, for the avoidance of doubt, upon approval of the Restructure Proposal Resolutions); or
 - (v) the Trust is listed on an exchange,

as applicable.

Issuer Sponsored Holding has the meaning given in the ASX Settlement Operating Rules.

Liabilities means the aggregate of the following at that time, as calculated by the Responsible Entity:

- (a) each liability of the Responsible Entity in respect of the Trust or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (b) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (c) other appropriate provisions in accordance with Australian Accounting Standards;

but does not include liabilities:

- (d) attached to application money or property in respect of which Units have not yet been issued; or
- (e) representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

For the avoidance of doubt, this definition of "Liabilities" applies to the operation of the Trust under this Constitution only and is not intended to affect any other meaning of "liabilities" of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes.

Liquid has the meaning given in section 601KA(4) of the Corporations Act.

Listed means:

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of securities, the Units or the Stapled Securities being Officially Quoted,

and **Listing** has a corresponding meaning.

Listing Rules means the listing rules of ASX as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

Managed Investment Trust has the meaning given by section 995-1 of the Tax Act.

Management Fee means a management fee to be charged by the Responsible Entity determined in accordance with clause 16.1.

Market Price for a Unit of a Class or for Stapled Securities in respect of any ASX Business Day means:

- (a) where a sale on ASX is recorded on that ASX Business Day, the average of the intra-day prices of the Units on ASX, weighted by volume;
- (b) if the Responsible Entity believes that the calculations in paragraph (a) does not provide a fair reflection of the market price of the Unit or Stapled Security on that ASX Business Day, or there is no sale on ASX recorded on that ASX Business Day or it is impracticable to calculate the price under paragraph (a), the mid point of the bid and offer prices per Unit or Stapled Security on ASX at the close of trading on that ASX Business Day (whether or not a sale on ASX is recorded on that ASX Business Day);
- (c) if the Responsible Entity believes that the calculation in paragraphs (a) or (b) does not provide a fair reflection of the market price of the Unit or Stapled Security on that ASX Business Day, the mid-point of the bid and offer prices on ASX such that:
 - (i) time; or
 - (ii) times, with such weightings,as the Responsible Entity determines; or
- (d) if the Responsible Entity believes that the calculation in paragraphs (a) or (b) does not provide a fair reflection of the market price of the Unit or Stapled Security on that ASX Business Day, or the Responsible Entity does not determine the price of a Unit or Stapled Security under paragraph (c) the price determined by a Valuer,

plus, where the Unit is a Partly Paid Unit, an amount equal to the Uncalled Amount in respect of that Unit.

Member Component has the meaning given to that term in the Tax Act.

MIT includes a trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust or a Withholding MIT.

Month means a calendar month.

Monthly Withdrawal Amount has the meaning given to it in clause 8.4(c)(i).

Net Asset Value means the Gross Asset Value less the following:

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Responsible Entity determines should be made); and

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- (b) following any Distribution Calculation Date, the amount of any Net income payable but not paid to Unit Holders on the day which the Net Asset Value is determined.

Net Income means the net income of the Trust determined by the Responsible Entity as determined in clauses 13.4 and 13.5.

Official List means the official list of ASX.

Officially Quoted means quotation on the Official List and includes the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

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

Paid Proportion means in respect of a Unit Holder, the fraction calculated by dividing:

- (a) the amount that the Unit Holder has subscribed for the issue of Units pursuant to a Commitment plus the Application Price of any Units issued pursuant to a Commitment transferred to the Unit Holder, minus the Application Price of any Units issued pursuant to a Commitment transferred by the Unit Holder; by
- (b) the Unit Holder's Commitment.

Partly Paid Proportion means the amount determined in accordance with the following formula:

$$A \times (B/C)$$

Where:

- A is the total number of Partly Paid Units on issue;
- B is the total of all amounts paid or due but unpaid in respect of the Application Price of all Partly Paid Units on issue; and
- C is the total of all Application Prices for Partly Paid Units on issue.

Partly Paid Unit means a Unit which has an Application Price which is payable by instalments and in respect of which all instalments have not been paid.

Performance Fee means the fee paid or payable to the Responsible Entity under clause 16.1(d).

Prescribed Time means 2.00 pm Melbourne time, or such other time or times as the Responsible Entity determines.

Project means the acquisition, subdivision, development, construction of any building on or sale of any Property (in whole or part).

Property means any real property purchased by the Responsible Entity as trustee for the Trust or by a controlled sub-trust of the Trust.

Register means each of the registers established and kept by the Responsible Entity under clause 24.

Registered Scheme means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) of the Corporations Act.

Relevant Period means the period specified in a Divestment Notice under clauses 23.3 and 23.4.

Relevant Person means a person who at any time was, is, or shall become a Unit Holder and that person's executors, administrators, successors and assigns.

Relevant Units means the Units specified in a Divestment Notice.

Restructure Proposal means the arrangement by which the term of the Trust is extended beyond the term set out in the initial product disclosure statement for the Trust as provided in clause 20A, including changes to the Trust's name and the investment strategy, fees and costs payable to the Responsible Entity and other aspects of the Trust, as set out in an explanatory memorandum to Unit Holders.

Restructure Proposal Meeting means the meeting of Unit Holders convened to consider the Restructure Proposal Resolutions, which was held on 15 February 2019.

Restructure Proposal Resolutions means the resolutions of Unit Holders to approve the Restructure Proposal.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Small Holder is a Unit Holder who is a holder or a joint holder of a Small Holding.

Small Holding is a holding of Units created by the transfer of a parcel of Units the aggregate market value of which at the time a proper transfer was initiated or a proper based transfer was lodged, was less than a marketable parcel of Units as provided under the Listing Rules.

Special Resolution has the meaning given to that expression in the Corporations Act.

Stapled means the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which are quoted on the ASX jointly as a 'stapled security' or such other term as the ASX permits.

Stapled Entity means any trust or company Stapled to the Trust.

Stapled Security means a Unit and each Attached Security which are Stapled together and registered in the name of the Unit Holder.

Stapled Security Holder means the Unit Holder under this Constitution and the holder of Attached Securities.

Stapling means the process that results in Units and Attached Securities being and remaining Stapled to each other.

Stapling Commencement Date means the date upon which Stapling of the Units is to commence as determined by the Responsible Entity.

Tax means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Income Tax (Transitional Provisions) Act 1997* (Cth) or the *Tax Administration Act 1953* (Cth) (as the case requires).

Transaction Charge means, in relation to a Unit, an amount determined by the Responsible Entity which reflects a fair estimate of Expenses incurred or that would be incurred:

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the withdrawal of Units;
- (c) for the transfer of Units or Assets to a Unit Holder; or
- (d) where the issue or redemption of a Unit is in connection with a restructure of the Trust, recapitalisation of the Trust, or other significant change in ownership of the Trust, the amount determined by the Responsible Entity which reflects a fair estimate of Expenses incurred or that will be incurred in relation to that proposal, recapitalisation or other transaction,

as the case requires.

Transferee Subscription Agreement means a subscription agreement in the form required by the Responsible Entity in its absolute discretion which requires the transferee to be bound by the terms of this Constitution and any other term as determined by the Responsible Entity.

Trust means the trust constituted by this Constitution and known as the Newmark Hardware Trust.

Trust Component has the meaning given to that term in the Tax Act.

Responsible Entity means Newmark Capital Limited ACN 126 526 690 or any other person acting as the trustee or responsible entity of the Trust in accordance with the provisions of this Constitution and, where appropriate, includes any agent or Adviser appointed by the Responsible Entity.

Uncalled Commitment means in respect of:

- (a) an Applicant, the Commitment of the Applicant less the dollar amount of Calls paid by the Applicant and any Initial Contribution; and

(b) the Trust, the sum of Uncalled Commitments for all Applicants.

Unders and Overs Rule means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Trust level are to be carried-forward and dealt with in future income years.

Unit means a unit in the Trust created under this Constitution.

Unit Holder means a person registered as the holder of a Unit (including any person jointly registered).

Unit Holding means the total Units held by a Unit Holder.

Unstapled means not being Stapled.

Unstapled Unit means a Unit that is Unstapled.

Unstapling means the process that results in Units and Attached Securities no longer being Stapled to each other.

Valuation Time means any time the Net Asset Value is determined.

Valuer means an independent expert of at least 10 years standing experienced in the valuation of assets of a similar type as the Property, such expert to be appointed by the Responsible Entity. The valuer so appointed shall act as expert and not as arbitrator and his or her decision shall be final and binding. Such valuer shall be instructed to consider any written representations made reasonably promptly on behalf of the Responsible Entity or any of its subsidiaries.

Wholesale Client has the meaning set out in the Corporations Act.

Withdrawal Date means the last Business Day of each Month unless otherwise determined by the Responsible Entity.

Withdrawal Facility means the facility described in clause 8.4(c).

Withdrawal Offer means an offer made by the Responsible Entity in respect of the Trust in accordance with section 60IKB of the Corporations Act.

Withdrawal Price means the amount determined under clause 9.

Withholding MIT has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;

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- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
 - (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (f) a reference to an agreement or document (including, without limitation, a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document;
 - (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
 - (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
 - (i) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
 - (j) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

1.3 General compliance provision

- (a) This clause 1.3 only applies if the Trust is a Registered Scheme.
- (b) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (c) This clause 1.3 is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this Constitution.
- (d) This clause 1.3 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

2 The Trust

2.1 Responsible Entity

As from the Commencement Date, Newmark Capital Limited is and has agreed to act as trustee of the Trust.

2.2 Declaration of Trust

- (a) The Assets shall vest in the Responsible Entity on the Commencement Date and the Responsible Entity declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Constitution.
- (b) The Responsible Entity shall clearly identify the Assets as property of the Trust and hold the Assets separately from the assets of the Responsible Entity and any other trust or managed investment scheme for which the Responsible Entity is the trustee or responsible entity.

2.3 Name of Trust

- (a) The name of the Trust is the 'Newmark Hardware Trust' or such other name as the Responsible Entity may from time to time determine.
- (b) Subject to clause 2.3(c) and clause 2.3(d), if Newmark Capital Limited retires or is removed as responsible entity or trustee of the Trust (a **'Name Change Event'**), and the name of the Trust contains the word 'Newmark', then the name of the Trust must be changed by deleting the word 'Newmark' and the Responsible Entity must not use that word (or a substantially or deceptively similar expression or letters) in connection with the Trust. The Responsible Entity must amend this Constitution to reflect the change in the name of the Trust within 20 Business Days of the Name Change Event occurring. The new Responsible Entity or new trustee covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.
- (c) The Responsible Entity may use the word 'Newmark' for the purpose of advertising the change of name of the Trust for 20 Business Days after the Name Change Event or in the case of the Responsible Entity retiring or being removed, such longer period as the Responsible Entity agrees. In the case of the Responsible Entity retiring or being removed, any advertisement must be approved by the Responsible Entity. That approval will not be unreasonably withheld.
- (d) Clause 2.3(b) does not apply if Newmark Capital Limited agrees otherwise prior to the Name Change Event subject to any conditions it may specify (in its absolute discretion).

3 Application of the AMIT Regime to the Trust

- (a) The Responsible Entity may make an AMIT Choice.
- (b) If an AMIT Choice is made then, subject to clause 3(c), the provisions in Schedule 2 will prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (c) If the Trust ceases to be an AMIT for any reason, including but not limited to the Trust ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 2, except those in clause 1 of Schedule 2 which will continue to be applied by the Responsible Entity, will cease to apply to

the extent that they are not permitted to operate or are not relevant to the Trust when it is not an AMIT; and

- (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Trust.
- (d) Nothing in this clause 3 imposes an obligation on the Responsible Entity to:
 - (i) enter into or facilitate the entry of the Trust into the AMIT Regime;
 - (ii) make any changes to this Constitution; or
 - (iii) make an AMIT Choice.

4 Units and Unit Holders

4.1 Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Each Unit confers on the Unit Holder a beneficial interest in the Trust as an entirety and does not confer an interest in a particular part of the Trust or the Assets.

4.2 Fractional Units

- (a) The Responsible Entity may issue fractions of a Unit calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines.
- (b) This Constitution applies to fractions of Units in proportion to which the fraction bears to one Unit.

4.3 Founding Unit

On the date of this Constitution, Newmark Developments Pty Ltd ACN 152 477 195 will be issued with 100 founding class Units in the Trust for \$1. The founding class Units entitles Newmark Developments Pty Ltd ACN 152 477 195 to:

- (a) voting rights on a proportional basis;
- (b) a return of capital of \$1 per founding class Unit on winding up of the Trust;
- (c) no entitlements to the income of the Trust,

and in all other respects the terms of the foundation unit is the same as other Units in the Trust.

4.4 Consolidation, subdivision and conversion of Units

- (a) Subject to clause 4.4(b), the Responsible Entity may consolidate, divide or convert the number of Units on issue into any number of Units other than the number into which the Assets is for the time being divided.

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- (b) A division, consolidation or conversion of a kind referred to in clause 4.4(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on issue in that Class.
 - (c) The Responsible Entity must amend the Register to record any consolidation, division or conversion of Units.

4.5 Classes of Units

Subject to section 601FC(1)(d) of the Corporations Act (if the Trust is a Registered Scheme and where the Trust is not a Registered Scheme, section 601FC(1)(d) of the Corporations Act is to apply with modifications as if the Responsible Entity were a responsible entity and the Trust were a Registered Scheme), the Responsible Entity may create different Classes with such rights, obligations and restrictions attaching to the Units of such Classes as it determines. If the Responsible Entity so determines in relation to a particular Class, the terms of issue of those Units in that Class may:

- (a) eliminate, reduce, create or enhance any of the rights or obligations which would otherwise be carried by such Units; and
- (b) provide for conversion of Units from one Class to another Class and, if the Responsible Entity so determines, change the number of Units on such a conversion.

4.6 Equal value

At any time, all the Units of a Class are of equal value and rank equally.

4.7 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with or question the rights, powers, authority, discretion or obligations of the Responsible Entity under this Constitution;
 - (ii) exercise any right, power or privilege in respect of an Asset;
 - (iii) lodge a caveat in respect of any Asset; or
 - (iv) require that any Asset be transferred to the Unit Holder or any other person.
- (c) A Unit Holder may not create any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other Security Interest over a Unit without the consent of the Responsible Entity.

4.8 Directions

Unit Holders cannot give any direction to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which:

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- (a) may result in the Responsible Entity acting contrary to the law; or
 - (b) would otherwise be within the scope of any discretion or power expressly conferred on the Responsible Entity by this Constitution.

4.9 Joint holders of Units

Where two or more persons are registered as the holders of a Unit they are, for the purpose of the administration of the Trust and not otherwise, deemed to hold the Unit as joint tenants and not tenants in common, on the following conditions:

- (a) the Responsible Entity shall not be bound to register more than three persons as joint Unit Holders of the Unit;
- (b) the joint Unit Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Unit Holder, the survivor or survivors shall be the only person or persons whom the Responsible Entity will recognise as having any title to the Unit, subject to the production of any evidence of death that the Responsible Entity requires;
- (d) any one of the joint Unit Holders may give an effective receipt that discharges the Responsible Entity in respect of any payment **or** distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Unit Holders of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Responsible Entity and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unit Holders,

unless the Responsible Entity determines otherwise.

4.10 Stapling provisions

- (a) The provisions of this Constitution relating to Stapling will only take effect on and from the Stapling Commencement Date and will apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling. While Stapling applies, where the context requires, a reference to a Unit in this Constitution is taken to be a reference to a Stapled Security.
- (b) Notwithstanding the provisions of clause 21, the Responsible Entity may at any time and from time to time, subject to any necessary approval, waiver or consent from ASX, issue Unstapled Units.

4.11 Options

- (a) The Responsible Entity may create and issue Options on such terms and conditions as the Responsible Entity determines. Options may be issued with Units or separately.
- (b) On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of the issue of the Option contemplate.

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- (c) Subject to this Constitution, the Corporations Act (and the conditions of any applicable ASIC Exemption) and, if relevant, the Listing Rules, the Responsible Entity may determine that Options will be issued:
 - (i) for consideration or no consideration;
 - (ii) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Responsible Entity, provided that the exercise price is less than the price that would otherwise apply under this Constitution by a percentage not exceeding 50%; and
 - (iii) conferring on the Option Holder such other entitlements under this Constitution as the Responsible Entity determines, and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity. The terms of issue of the Option may allow the Responsible Entity to buy back the Options.
 - (d) Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC Exemption), if the Responsible Entity is making an offer of Options to Unit Holders holding Units which is otherwise in proportion to their existing holdings of Units, the Responsible Entity is not required to offer Options under this clause to any person who is a Foreign Investor.

4.12 Exercise of Options

- (a) On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.
- (c) A Unit Holder holds a Unit subject to the rights, restrictions and obligations attaching to that Unit or that Class of Unit. An Option Holder holds the Option subject to the terms and conditions attaching to that Option.
- (d) Reorganisation and division of Units and Options
- (e) Subject to the Listing Rules and the Corporations Act, Units and Options may be consolidated, divided or converted in a ratio as determined by the Responsible Entity (**Reorganisation**). If any Unit is a Partly Paid Unit at the time of Reorganisation the unpaid amount of the Application Price and any instalment payable in respect thereof will be amended in the same ratio.
- (f) Each Unit Holder, by subscribing for or taking a transfer or, or otherwise acquiring, a Unit or Option will be taken to have consented to Reorganisations.
- (g) To effect any Reorganisation of a Unit or Option of a Unit Holder, the Unit Holder appoints the Responsible Entity as the Unit Holder's attorney in the Unit Holder's name and on the Unit Holder's behalf to do all acts and things which the Responsible Entity considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Unit or Option.

4.13 Reorganisation while Stapling applies

While Stapling applies, Units may be subject to Reorganisation only if the related Attached Securities are also subject to Reorganisation at the same time and to the same extent.

4.14 Stapled Security Certificate

The Responsible Entity may issue a single Stapled Security certificate representing the Units and the Attached Securities. Where the Responsible Entity issues a Stapled Security certificate it need not issue a separate unit certificate in relation to the relevant Units.

4.15 Number of Units

While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category but disregarding any Attached Securities held by or on behalf of a Stapled Entity or a subsidiary of a Stapled Entity.

4.16 Joint holders of Units

Where two or more persons are registered as the holders of a Unit or Stapled Securities (**joint Unit Holders**) they are, for the purpose of the administration of the Trust and not otherwise, deemed to hold the Unit or Stapled Securities as joint tenants, on the following conditions:

- (a) the Responsible Entity shall not be bound to register more than three persons as joint holders of the Unit or Stapled Securities;
- (b) the joint Unit Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit or Stapled Securities;
- (c) on the death of a joint Unit Holders, the survivor or survivors shall be the only person or persons whom the Responsible Entity will recognise as having any title to the Unit or Stapled Securities, subject to the production of any evidence of death that the Responsible Entity requires;
- (d) any one of the joint Unit Holders may give an effective receipt that discharges the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Unit Holders in respect of a Unit or Stapled Securities shall be entitled to delivery of any notices, cheques or other communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unit Holders.

4.17 Benefits and obligations of Unit Holders

Except where expressly provided in this Constitution to the contrary, all benefits and obligations contained in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.

4.18 Perpetuities

The Responsible Entity cannot issue any Units after the 80th anniversary from the day before the Commencement Date if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. The preceding sentence prevails over all provisions of this Constitution.

5 Application procedure

5.1 Offers

The Responsible Entity may at any time offer Units for subscription or sale and may invite persons to make offers to apply for or buy Units. While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Attached Securities.

5.2 Minimum amounts

The Responsible Entity may specify a minimum initial application amount, minimum Commitment amount, minimum further application amount, minimum holding amount in respect of Units for the Trust as a whole or a Class and vary those amounts at its discretion.

5.3 Form of application

- (a) Each application for Units will, unless the Responsible Entity approves otherwise:
 - (i) conform with the form and content requirements of any relevant disclosure document;
 - (ii) if there is no relevant disclosure document, be made in such manner as the Responsible Entity approves; and
 - (iii) be accompanied by application monies as required by any relevant disclosure document.
- (b) The Responsible Entity may authorise an application to be transmitted electronically.

5.4 Reinvestment

The Responsible Entity may, at its absolute discretion, allow a Unit Holder to reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units in the Trust under a distribution reinvestment plan on terms and conditions prescribed by the Responsible Entity.

5.5 Acceptance or rejection

The Responsible Entity may, without being bound to give any reason:

- (a) accept an application;

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- (b) reject an application; or
 - (c) reject part of an application.

5.6 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not cleared within 5 Business Days of being presented for payment.

5.7 Payment of application money

- (a) Payment of the application money must be in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if required by the Responsible Entity).
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets, or if required by the Responsible Entity, by the Unit Holder.

5.8 Receipt of application

The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

5.9 Issue of Units

Unless otherwise determined by the Responsible Entity, Units are taken to be issued:

- (a) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clauses 5.4 and 13.16, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated; or
- (b) in all other cases, without limiting clause 5.5, on the later of the day on which:
 - (i) the Responsible Entity accepts the application for Units and the applicant is registered as the Unit Holder of the Unit on the Register; or
 - (ii) the Responsible Entity receives the application money, or the property (which is acceptable to the Responsible Entity) against which the Units are to be issued is vested in the Responsible Entity.

5.10 Number of Units issued

Subject to clause 5.11 and the terms of issue of a Unit, the number of Units issued at any time in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be determined in accordance with the following formula:

- (a) for a Unit other than a Partly Paid Unit, the number determined in accordance with the following formula:

$$N = \frac{A}{B}$$

Where:

N is the number of Units issued;

A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement); and

B is the Application Price for the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines from time to time.

- (b) for a Partly Paid Unit, the number determined in accordance with the following formula:

$$N = \frac{A}{B}$$

Where:

N is the number of Units issued;

A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement); and

B is that amount of the Application Price which is payable at the time of issue of the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines from time to time.

5.11 Units as consideration

Where an investment is acquired (on behalf of the Trust) for consideration which includes the issue of Units by the Responsible Entity, the number of Units created and issued by the Responsible Entity is determined in accordance with the following formula:

$$N = \frac{A-B}{C}$$

Where:

N is the number of Units issued;

A is the value of the investment being acquired as determined in accordance with clause 12;

B is the amount of the cash consideration paid in respect of the investment (if any); and

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- C is determined as:
- (i) for a Unit other than a Partly Paid Unit - the Application Price of the Units being issued (as determined in accordance with clause 7.2); and
 - (ii) for a Unit that is a Party Paid Units - the amount of the Application Price which is payable at the time of issue of the Unit.

5.12 No certificates

No certificates will be issued for Units, unless determined otherwise by the Responsible Entity.

5.13 Defective applications

Where, within 10 Business Days (or such other period as the Responsible Entity determines) of the creation and issue of Units in the Trust, the Responsible Entity determines that:

- (a) the applicant was not entitled to hold the Units issued;
- (b) the application was incorrectly executed or executed without power or authority; or
- (c) the application form was defective and was accepted in error,

then the Responsible Entity may in its sole discretion cancel those Units, make an appropriate entry in the Register of the Trust and repay the application money to the applicant out of the Assets. If Units are cancelled under this clause, the Responsible Entity is not required to adjust any Application Price or Withdrawal Price determined before the cancellation of the Units in the Trust.

5.14 Suspension of Unit issues

- (a) The Responsible Entity may suspend the issue of Units in the Trust at any time if:
 - (i) it is impracticable for the Responsible Entity to calculate the Net Asset Value, for example because of closure of, or trading restrictions on, financial markets (whether in Australia or elsewhere), an emergency or other state of affairs, or on declaration of a moratorium in a country where the Trust invests, or is exposed through the Assets, or under the Corporations Act;
 - (ii) the Responsible Entity reasonably considers that it is in the best interests of the Unit Holders to do so; or
 - (iii) it is otherwise legally permitted.
- (b) If determined by the Responsible Entity, an application for Units in the Trust received by the Responsible Entity during any suspension period in accordance with clause 5.14(a) is deemed to be lodged by the Unit Holder immediately after the end of the suspension period.

6 Partly Paid Units and Commitments

6.1 Partly Paid Units

Subject to the Corporations Act (if the Trust is a Registered Scheme), the Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines including, without limitation, terms and conditions regarding the number of instalments and the terms on which instalments are payable.

6.2 Must also issue partly paid Attached Securities

While Stapling applies Units may not be issued on the basis that they are Partly Paid Units unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid. While Stapling applies any issue of Partly Paid Units shall be on the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

6.3 Commitments

A person may agree to make a Commitment to subscribe for Units and must:

- (a) complete and execute an application in respect of the Commitment on such terms and conditions and in such form as the Responsible Entity determines; and
- (b) undertake to pay Calls as and when required by the Responsible Entity.

6.4 Calls

- (a) Subject to the rights, obligations and restrictions attaching to any Class, the Responsible Entity may make a Call on:
 - (i) the holder of a Partly Paid Unit and the holder must pay the Call in accordance with the terms of issue of that Unit; and
 - (ii) an Applicant and the Applicant must pay the Call in accordance with the Commitment.
- (b) The Responsible Entity may only make a Call if the Call is made on all Unit Holders of that Class or on all Applicants (as applicable).
- (c) The Responsible Entity must make Calls pro rata to:
 - (i) the number of Partly Paid Units held by a Unit Holder; and
 - (ii) the Commitment of each Applicant.
- (d) If an Applicant makes an application to make a Commitment after a Call has been made, subsequent Calls must be made so that no Call is made on any Applicant if, following the payment of that Call, the Paid Proportion of that Applicant would be greater than the Paid Proportion of any other Applicant, assuming that all Calls made are paid in full.
- (e) The Responsible Entity may at any time postpone a Call or extend the time for payment of a Call.

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- (f) Upon payment of a Call in respect of a Commitment, the Responsible Entity must issue to the Applicant the number of fully paid Units calculated in accordance with clause 5.10(a).

6.5 Default on Calls

- (a) If all or part of a Call is not paid on or before the date on which payment under the Call is due, the Applicant or the holder of a Partly Paid Unit (as applicable) must pay interest on the unpaid portion of the Call from that day to the time of actual payment.
- (b) Interest which accrues on an unpaid Call will become an Asset.
- (c) Unless the terms of the Partly Paid Unit or the Commitment provide otherwise, interest will be payable at the Interest Rate.

6.6 Non-receipt of notice of Call

A Call is not invalidated as a result of the non-receipt of any notice of a Call by a Unit Holder or Applicant or the accidental omission to give notice of a Call to any Unit Holder or Applicant.

6.7 Deductions for unpaid Calls

If all or any part of a Call is not paid by the date on which payment under the Call is due, the Responsible Entity may apply any amount payable to the relevant Unit Holder under this Constitution to pay amounts unpaid under the Call, together with accrued interest and all costs and expenses incurred by the Responsible Entity in relation to the unpaid Call.

6.8 Forfeiture

- (a) If all or part of a Call is not paid by the date on which payment under the Call is due, any Partly Paid Units that are the subject of the Call or Units held by a Unit Holder that has made a Commitment may be forfeited to the Responsible Entity.
- (b) Forfeiture may be effective by a notice from the Responsible Entity, with effect from the date of such notice.
- (c) The non-receipt of any notice by any Unit Holder, or the accidental omission to give notice of forfeiture to any Unit, shall not invalidate the forfeiture.
- (d) The forfeiture of Units under this clause 6 includes forfeiture of all distributions and other money payable to the Unit Holder relating to the forfeited Units not actually paid to the Unit Holder before the forfeiture (except to the extent to which such amounts have already been applied to reduce the Call amount under clause 6.6).
- (e) Unless the Responsible Entity determines otherwise, the rights attaching to forfeited Units which have not yet been sold or otherwise disposed of are suspended for the period from the date of the forfeiture to the date of sale or disposal.
- (f) Subject to clause 6.10, a Unit Holder whose Units have been forfeited under this clause ceases to be a Unit Holder in respect of the forfeited Units from the date the Responsible Entity gives a notice under clause 6.8(b).

6.9 Entry on Register

Where any Unit has been forfeited in accordance with this clause, the Responsible Entity will enter the forfeiture and the date of forfeiture in the Register.

6.10 Disposal of forfeited Units

Subject to the Corporations Act and any applicable ASIC Exemption (where the Trust is a Registered Scheme), the Responsible Entity may sell or otherwise dispose of a forfeited Unit in the manner and at such prices as the Responsible Entity determines, including on the basis that the purchaser of such forfeited Units is not obliged to pay any unpaid Call in respect of that Unit.

6.11 Cancellation of Forfeiture

At any time before a forfeited Unit is sold or otherwise disposed of:

- (a) the Responsible Entity may cancel the forfeiture upon such conditions as it determines; and
- (b) if the Unit Holder pays to the Responsible Entity the full amount of all unpaid Calls (including accrued interest and all costs and expenses incurred by the Responsible Entity in the relation to the unpaid Call), the forfeiture must be cancelled.

6.12 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of forfeited Units, receive the selling price in respect of those Units and effect a transfer of those Units in the name of the Unit Holder whose Units have been sold. The Unit Holder authorises the Responsible Entity to take these steps and appoints the Responsible Entity as its agent and attorney to do so. The Unit Holder indemnifies the Responsible Entity against any claim or liability incurred by the Responsible Entity in doing so.
- (b) Upon effecting a transfer under clause 6.11(a), the Responsible Entity shall register the transferee as the holder of the Units in the Register. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

6.13 Remaining liability

Despite the forfeiture of Units pursuant to clause 6.7, the Unit Holder whose Unit has been forfeited remains liable to pay to the Responsible Entity the amounts listed in clauses 6.16(a)(i) to 6.16(a)(iv). That liability ceases if and when the Responsible Entity receives payment in full of those amounts and amounts owing by that Unit Holder.

6.14 Lien

Subject to the Corporations Act, the Responsible Entity has a first and paramount lien upon every Unit for unpaid Calls and other moneys payable to the Responsible Entity by a Unit Holder. That lien extends to all distributions and other money payable in relation to a Unit from time to time.

6.15 Sale of Units to enforce lien

For the purposes of enforcing a lien, the Responsible Entity may sell the Units subject to the lien, in accordance with this clause 6 as if the Units had been forfeited for non-payment of a Call.

6.16 Proceeds of sale

- (a) The net proceeds of any sale of forfeited Units to enforce a lien (including all distribution and other money from time to time payable to the Unit Holder in relation to those Units) must be applied by the Responsible Entity in the following order:
 - (i) in payment of all costs which have been or will be incurred in relation to the forfeiture or enforcement of the lien (as the case may be) and the sale;
 - (ii) in payment of the amount of the unpaid Call;
 - (iii) in payment of the:
 - (A) unpaid portion of the Application Price in respect of the forfeited Unit;
 - (B) Uncalled Commitment of an Applicant;
 - (iv) in payment of the amount of any accrued interest on the Call and any other moneys payable to the Responsible Entity; and
 - (v) in payment of the surplus (if any) to the Unit Holder whose Units have been sold.
- (b) If the net proceeds of any sale are insufficient to pay the amounts in clauses 6.16(a)(i) to 6.16(a)(iv), the Unit Holder whose Units have been sold remains liable for the difference between the net proceeds of sale and the sum of those amounts.

6.17 Joint Holders

- (a) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due on the Partly Paid Units held by them.
- (b) Joint Applicants in respect of a Commitment are jointly and severally liable for all amounts due in respect of a Commitment.

6.18 Termination

Upon termination of the Trust an Applicant has no liability to subscribe for Units except to the extent of Calls made prior to the termination.

6.19 Actions not limited

For the avoidance of doubt, nothing in this clause 6 limits an action, remedy or right that the Responsible Entity may take or pursue at law (whether pursuant to a breach of this Constitution, any contract or otherwise) in order to enforce the non payment of a Call.

7 Application Price

7.1 Application Price for Units

Subject to any rights, obligations and restrictions attaching to any particular Units, a Unit must only be issued at an Application Price:

- (a) in the case of the issue of Units pursuant to the initial product disclosure statement for the Trust, equal to \$1.00;
- (b) while Units are Officially Quoted, subject to paragraphs (c), (d), (e) and (f), equal to the Market Price of the Units or, where Stapling applies, the Market Price of the Stapled Securities minus the application price of each Attached Security or the amount determined by the Responsible Entity in accordance with clause 7.8 during the 10 ASX Business Days immediately prior to the date upon which the Application Price is to be calculated;
- (c) in the case of a rights issue while Units are Officially Quoted, in accordance with clause 7.5;
- (d) in the case of a placement or other issue of Units while Units are Officially Quoted, in accordance with clause 7.6;
- (e) in the case of a reinvestment of income while Units are Officially Quoted, in accordance with clause 7.7;
- (f) in the case of Units issued on the exercise of an Option calculated in accordance with the terms and conditions of that Option;
- (g) in any other case - calculated as:

$$AP = \frac{A+B+C}{D+E}$$

Where:

- AP is the Application Price;
- A is the Net Asset Value;
- B is any relevant Transaction Charge;
- C is the Acquisition Cost Adjustment;
- D is the number of Fully Paid Units on issue; and
- E is Partly Paid Proportion.

For the purposes of the formula in this clause 7.1(g), where there is more than one Class on issue, "Net Asset Value", "Transaction Charge", "Acquisition Cost Adjustment" and the "number of Units on issue" are variables determined by the Responsible Entity in respect of the relevant Class in accordance with clause 4.5.

Each of the variables in this clause 7.1(g) must be determined, subject to the other provisions of this clause 7:

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- (i) as at the first Valuation Time after the later of the day on which the Responsible Entity:
 - (A) receives the completed application for Units; or
 - (B) receives the application money or the property against which the Units are to be issued is vested in the Responsible Entity; or
 - (ii) in the case of a Unit issued under a distribution reinvestment plan, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.
 - (h) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Trust is a Registered Scheme it is permitted to do so by the Corporations Act and any applicable ASIC Exemption and in such case, subject to the terms of that ASIC Exemption (or, where the Trust is not a Registered Scheme, subject to applying the Corporations Act and any relevant ASIC Exemption with appropriate modifications as if the Responsible Entity were a responsible entity and the Trust were a Registered Scheme).

7.2 Rounding

While Units are not Officially Quoted the Application Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Application Price.

7.3 Receipt of application

For the purposes of clause 7.1(g) the day and time of receipt of an application for Units is:

- (a) the time of actual receipt if the application is received before the Prescribed Time on a Business Day; or
- (b) the time of deemed receipt if the application is deemed to be received before the Prescribed Time on a Business Day; or
- (c) the commencement of business on the next following Business Day if the application is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

7.4 Initial Public Offering

- (a) The Responsible Entity may at any time issue Units to any person under an Initial Public Offering or to effect Stapling at a price and on terms determined by it provided that:
 - (i) the Responsible Entity complies with any Listing Rules applicable to the issue and any applicable ASIC Exemption;
 - (ii) while Stapling applies, the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered; and

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- (iii) at an Issue Price which is not less than 90% of the Net Asset Value per Unit.
 - (b) While Stapling applies an offer of Units under this clause 7.4 may only be accepted if the offeree at the same time accepts that offer of Units and the offer of Attached Securities referred to above.

7.5 Rights issues

- (a) The following provisions apply to rights issues:
 - (b) while Units are Officially Quoted, the Responsible Entity may (subject to the terms of any applicable ASIC Exemption) offer further Units for subscription at a price determined by the Responsible Entity to those persons who were holders of Units on a date determined by the Responsible Entity not being more than 30 days immediately prior to the date of the offer, provided that:
 - (i) all holders of Units are offered Units at the same Application Price on a *pari passu* basis (whether or not the right of entitlement is renounceable);
 - (ii) all the Units so offered are in the same Class; and
 - (iii) where it is proposed to issue Units at an Application Price less than the price which would otherwise apply under clauses 7.1(a), the relevant Application Price is not less than 50% of that price which would otherwise apply to the Units, or where Stapling applies, the Market Price of Stapled Securities minus the application price of each Attached Security (as determined under clause 7.8),but, subject to the Listing Rules, the Responsible Entity is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia and New Zealand.
- (c) The Responsible Entity may adjust any entitlement to accord with the Listing Rules and in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Unit Holder holding Units may, unless the terms of issue provide otherwise, renounce its entitlement in favour of some other person.
- (d) Any Units offered under this clause 7.5 which are not subscribed for within the period during which the offer is capable of acceptance may be offered for subscription by the Responsible Entity to any person, provided that the Application Price is not less than that at which Units were originally offered to Unit Holders. If an underwriter has underwritten any offer for subscription under this clause, the underwriter may take up any Units not subscribed for by the Unit Holders at the Application Price referred to in this clause 7.5(d).
- (e) The Responsible Entity may make a priority offer in respect of any rights issue in accordance with the terms of any ASIC Exemption.

While Stapling applies, an offer of Units under this clause 7.5 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Attached Securities referred to in this clause 7.5.

7.6 Placements and other issues

While Units are Officially Quoted, the Responsible Entity may at any time issue Units to any person, whether by way of a placement or otherwise, at a price and on terms determined by it, provided that:

- (a) the Responsible Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Exemption; and
- (b) in the case of Units issued subsequent to the exercise of an Option, the price will be calculated in accordance with the terms and conditions of the Option,

provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the terms of any applicable ASIC Exemption.

While Stapling applies, an offer of Units under this clause 7.6 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Attached Securities referred to in this clause 7.6.

7.7 Reinvestment

- (a) If reinvestment applies while the Units are Officially Quoted, the Application Price for each additional Unit (or the aggregate of the Application Price of each additional Unit and the application price for the Attached Securities if Stapling applies) is the weighted average of all sales of Units (or, while Stapling applies Stapled Securities) recorded on the ASX during the first 5 Trading Days following the end of the period to which the distribution relates (unless the Responsible Entity believes that this calculation does not provide a fair reflection of the Market Price of the Units or the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the Market Price of the Units or the Stapled Securities as determined by an expert independent of the Responsible Entity whose identity and instructions will be determined by the Responsible Entity) less such discount, if any, not exceeding 10% as the Responsible Entity may determine.
- (b) While Stapling applies the allocation of the application price for a Stapled Security between the Application Price for each Unit and the application price for the Attached Securities is to be determined in accordance with clause 7.8.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Unit or Stapled Security the money representing the fraction will be held for future reinvestment in the Trust and, if applicable, the Stapled Entities at the next time that reinvestment is to occur (where Stapling applies in such proportions as the Responsible Entity and the Stapled Entities may determine on behalf of the relevant Stapled Security Holder).

7.8 Determination of Application Price where Stapled Securities are issued

- (a) Where:
 - (i) Stapling applies;
 - (ii) as a consequence, a Unit is to be issued as part of a Stapled Security; and

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- (iii) this Constitution contains a provision for the calculation or determination of the application price for the Stapled Security but not for the Unit,

the Responsible Entity must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this Constitution.

- (b) Unless otherwise agreed between the Responsible Entity and:
 - (i) in relation to any Stapled Entity that is a company, the Stapled Entity; and
 - (ii) in relation to any Stapled Entity that is a managed investment scheme, the responsible entity of the Stapled Entity,

the application price of a Stapled Security will be allocated between the Application Price of the Unit and the application price of the Attached Securities in the ratio that the net assets (adjusted for the net market value of their investments) of each of the Trust and each of the Stapled Entities at the end of the relevant period immediately prior to the issue bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of the Trust and the Stapled Entities at that time.

7.9 Issue of Units to acquire an Asset

Subject to clause 7.9(b), where Units are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Trust):

- (a) the Application Price for those Units must be calculated in accordance with clause 7.1(g) on the date of the agreement under which there will be an issue of Units; and
- (b) the Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Trust is a Registered Scheme it is permitted to do so under the Corporations Act and any applicable ASIC Exemption.

7.10 Rounding

The Application Price may be rounded as the Responsible Entity determines.

7.11 Satisfaction of Application Price

The Application Price may be satisfied by payment in cash or by transfer to the Responsible Entity of property acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts payment other than cash, it may determine that some or all of the costs associated with the valuation or transfer of such property are payable or reimbursable out of the Assets or by the applicant.

8 Withdrawal procedures

8.1 While Units are Officially Quoted

While Units are Officially Quoted, clauses 8.2 to 8.5 do not apply.

8.2 Right to withdraw

A Unit Holder has no right to withdraw from the Trust other than:

- (a) where the Trust is not a Registered Scheme, as determined by the trustee at its absolute discretion and otherwise in accordance with the remainder of this clause 8; or
- (b) where the Trust is a Registered Scheme, in accordance with the remainder of this clause 8 and as contemplated in clause 20A.2(c).

8.3 Withdrawal request

Subject to this clause 8 and the Corporations Act (where the Trust is a Registered Scheme), a Unit Holder may make a request for the withdrawal of some or all of its Units, or to realise a specified amount, in any manner or form approved or required by the Responsible Entity and lodge or cause to be lodged, with the Responsible Entity at such place nominated by the Responsible Entity and:

- (a) while the Trust is a Registered Scheme and not Liquid, or if clause 20A.2(c) applies, the Responsible Entity must only give effect to that withdrawal request in the circumstances set out in clause 8.5; and
- (b) at any other time, the Responsible Entity may give effect to that request at the time and in the manner set out in clause 8.4, provided that the withdrawal request has been given to the Responsible Entity prior to the Withdrawal Date to which the request relates, unless otherwise agreed by the Responsible Entity.

8.4 Withdrawal while Trust is Liquid or not a Registered Scheme

- (a) This clause 8.4 shall apply in respect of the withdrawal of Units unless clause 8.5 applies.
- (b) By no later than 7 Business Days following the Withdrawal Date immediately after the withdrawal request is received under clause 8.3, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:
 - (i) deny the request and notify the Unit Holder accordingly;
 - (ii) effect the withdrawal request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Withdrawal Price out of the Assets within 12 Months of the Withdrawal Date to which the withdrawal request relates;
 - (iii) subject to the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the withdrawal request;
 - (iv) partially effect the withdrawal in the manner described in clause 8.4(b)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 8.4(b)(iii); or

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- (v) effect the withdrawal request under the Withdrawal Facility pursuant to clause 8.4(c), which the Responsible Entity may offer in its absolute discretion from time to time on a Monthly basis.
- (c) If the Responsible Entity elects to offer a Withdrawal Facility in respect of all withdrawal requests received before the Withdrawal Date of a Month then, despite anything expressed or implied to the contrary in this Constitution, the following provisions apply in respect of withdrawal requests received before the Withdrawal Date of that Month:
- (i) the Responsible Entity will make an amount equal to a minimum of 0.5% of the Net Asset Value of the Trust (calculated as at the Business Day immediately prior the date of payment of the withdrawal requests) available in order to satisfy withdrawal requests received for the Month (**Monthly Withdrawal Amount**);
- (ii) where in respect of that Month, the Responsible Entity has received withdrawal requests which in aggregate represent more than the Monthly Withdrawal Amount:
- (A) all withdrawal requests received that Month (**Original Withdrawal Request**) will be partially accepted by the Responsible Entity on a pro rata basis (with all withdrawal requests being scaled back in proportion to the amount requested by each Unit Holder); and
- (B) any unfulfilled part of the Original Withdrawal Request of a Unit Holder will be automatically carried forward to the following Month, and deemed to be a withdrawal request received before the next Withdrawal Date in the following Month. This carry forward procedure will continue until such time as the Unit Holder's withdrawal request is able to be satisfied in full, applying the scale back procedures referred to in paragraph (A). Each time a Unit Holder's withdrawal request is carried forward to the following Month, it will be deemed to be a withdrawal request received before the Withdrawal Date of that Month (**Deemed Withdrawal Request**).
- (iii) In the event that the Responsible Entity receives any withdrawal requests while Deemed Withdrawal Requests are still to be satisfied by the Responsible Entity, the outstanding Deemed Withdrawal Requests will take priority over such withdrawal requests received by the Responsible Entity, and the subsequent withdrawal requests will also be subject to the procedures described in paragraph (ii) as if they were Deemed Withdrawal Requests, to the extent that the subsequent withdrawal requests cannot be satisfied in that Month.
- (iv) Subject to the pro rata reduction contemplated in clauses 8.4(c)(ii) and (iii), the Responsible Entity will give effect to each withdrawal request received under the Withdrawal Facility in respect of the relevant Month by causing the number (or value) of Units held by the Unit Holder that are subject of the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Assets within 12 Months of the Withdrawal Date immediately after that withdrawal request was received.

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- (d) If the Unit Holder has made a withdrawal request which complies with this Constitution and the Responsible Entity accepts the withdrawal request, in part or in full, the Responsible Entity must satisfy the withdrawal request in respect of a Unit by payment from the Assets the Withdrawal Price calculated in accordance with clause 9.
- (e) The Responsible Entity may suspend the right to make a withdrawal request under this clause 8.4 at any time if:
- (i) it is impracticable for the Responsible Entity to calculate the Net Asset Value, for example because of closure of, or trading restrictions on, financial markets (whether in Australia or elsewhere), an emergency or other state of affairs, or on declaration of a moratorium in a country where the Trust invests, or is exposed through the Assets, or under the Corporations Act;
 - (ii) the Responsible Entity reasonably considers that it is in the best interests of the Unit Holders to do so; or
 - (iii) it is otherwise legally permitted.

The suspension may be immediate or take effect at a specified time and may be indefinite or for a specified time.

- (f) The Responsible Entity may specify a minimum withdrawal amount for the Trust or a Class and vary that amount at its discretion.
- (g) Unless otherwise determined by the Responsible Entity, the Responsible Entity need not give effect to a withdrawal request if:
- (i) the aggregate Withdrawal Price of the Units to be redeemed is less than any minimum withdrawal amount determined by the Responsible Entity; or
 - (ii) the withdrawal would result in the aggregate Withdrawal Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 5.2.
- (h) If compliance with a withdrawal request would result in the aggregate Withdrawal Price of a Unit Holder's remaining Unit Holding being Less than any minimum holding amount determined by the Responsible Entity under clause 5.2, the Responsible Entity may treat the withdrawal request as relating to the Unit Holder's entire Unit Holding.
- (i) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Withdrawal Price of that Unit Holding is less than the then current minimum holding amount, without the need for a withdrawal request.
- (j) The Responsible Entity may redeem the Unit Holding of a Unit Holder without the need for a withdrawal request after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount.

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- (k) Any balance realised representing a fraction of the proceeds of withdrawal of a Unit will be retained by the Responsible Entity to be added to any further application money received from the Unit Holder or to the proceeds of withdrawal of any other Units of the Unit Holder as the Responsible Entity may determine.
 - (l) If the application money for the Units which are the subject of a withdrawal request is paid by cheque, the Responsible Entity may refuse to act on that request until the cheque has cleared.

8.5 Withdrawal while Trust is a Registered Scheme and not Liquid, or if clause 20A applies

- (a) This clause 8.5 shall apply when the Trust is a Registered Scheme and not Liquid, or if clause 20A.2(c) applies.
- (b) While the Trust is not Liquid, or if clause 20A.2(c) applies, a Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act.
- (c) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust while the Trust is a Registered Scheme and not Liquid.
- (d) The Responsible Entity is not at any time obliged to make a Withdrawal Offer.

8.6 Clauses applicable whether or not the Trust is Liquid

The following clauses 8.7 to 8.14 are applicable in respect of withdrawals of Units regardless of whether or not the Trust is Liquid.

8.7 The Responsible Entity may deny a request for withdrawal

Subject to the Corporations Act (where the Trust is a Registered Scheme) and clause 8.5 and irrespective of anything in clause 8.4, the Responsible Entity may deny a request for withdrawal of Units where:

- (a) the Trust has been terminated under clause 27;
- (b) accepting the request would constitute a breach of this Constitution, the compliance plan, the Corporations Act, or the disclosure document;
- (c) accepting the request would cause the Trust to cease to be Liquid;
- (d) accepting the request would unfairly prejudice another Unit Holder; or
- (e) the Responsible Entity does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request.

8.8 Restrictions on Unit Holder

- (a) Upon making a withdrawal request under clause 8.2, the Unit Holder will have no right to deal with the Units that are subject of the request (unless and until the request is denied by the Responsible Entity).

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- (b) A Unit Holder may not withdraw a withdrawal request unless the Responsible Entity agrees.

8.9 Responsible Entity discretion to redeem

Subject to the Corporations Act (where the Trust is a Registered Scheme) and clause 8.5, the Responsible Entity may at any time in its absolute discretion redeem some or all of the Units held by a Unit Holder without being requested to do so at the Withdrawal Price by giving at least 30 days notice to the Unit Holder of its intention to redeem such Units.

8.10 No obligation to pay out of own funds

The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.

8.11 Sums owed to the Responsible Entity

Subject to the Corporations Act (where the Trust is a Registered Scheme), the Responsible Entity may deduct from the proceeds of withdrawal or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

8.12 Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Withdrawal Price due to Unit Holder pursuant to a withdrawal request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 8.12(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal request or Withdrawal Offer (based on a valuation of the Assets carried out within one Month before the date of the proposed transfer). If the Responsible Entity requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.
- (c) The Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder, who shall be taken to have a present entitlement in that amount, if the Unit Holder withdraws one or more of their Units and the direction is made to fund the withdrawal request.

8.13 Order of withdrawal

Unless the Responsible Entity determines otherwise, the first Units issued to a Unit Holder are the first to be redeemed.

8.14 Liquid or not Liquid

The Responsible Entity will determine whether the Scheme is Liquid. Such a determination is binding on Unit Holders and no Unit Holder will challenge it.

8.15 Determination of income and capital

Unless the Responsible Entity otherwise determines, the proceeds of withdrawal paid to a Unit Holder will comprise of capital only. Subject to the law, the Responsible Entity may

however determine at its absolute discretion that the proceeds of withdrawal comprises part capital and part income of the Trust in the Financial Year in which the withdrawal occurs.

8.16 Cooling off

Where the Trust is a Registered Scheme, nothing in this clause 8 prevents the Responsible Entity from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the trustee of the Trust.

8.17 Buy-back of Units

While the Trust is Listed the Responsible Entity may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules purchase Units and cause the Units to be cancelled. No redemption price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Responsible Entity may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Responsible Entity must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust on the same basis as set out in clause 7.8 for the Application Price of Units.

8.18 Withdrawal while Stapling applies

While Stapling applies the Responsible Entity may not withdraw a Unit unless each Stapled Entity also redeems or buys back and cancels the corresponding Attached Securities or the Attached Securities are unstapled from the Unit to be withdrawn.

9 Withdrawal Price of Units

9.1 Withdrawal Price

A Unit must only be redeemed at a Withdrawal Price calculated in accordance with the following formula:

$$WP = (A/B) \times (C/D)$$

Where:

WP is the Withdrawal Price;

A is Net Asset Value less any relevant Transaction Charge plus the Acquisition Cost Adjustment;

B is the number of Fully Paid Units on issue plus the Partly Paid Proportion;

C is the amount paid up on that Unit; and

D is the Application Price of that Unit.

For the purposes of the above formula in, where there is more than one Class on issue, "Net Asset Value", "Transaction Charge", "Acquisition Cost Adjustment" and the "number of Units on issue" are variables determined by the Responsible Entity in respect of the relevant Class in accordance with clause 4.5.

9.2 Determination of Withdrawal Price

Each of the variables in clause 9.1 must be determined:

- (a) while the Trust is a Registered Scheme and not Liquid, or where clause 20A.2(c) applies, as at the day on which the Withdrawal Offer closes; and
- (b) at any other time, as at the next Withdrawal Date after the Responsible Entity received (or is taken to have received) a withdrawal request or Deemed Withdrawal Request (as applicable).

9.3 Receipt of withdrawal request

The Responsible Entity may determine that a withdrawal request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

9.4 Rounding

The Withdrawal Price may be rounded as the Responsible Entity determines.

10 Transfers

10.1 Transferability while interests are not Officially Quoted

- (a) Clauses 10.1 to 10.3 apply to Units or Options that are not Officially Quoted.
- (b) Unit Holders may not transfer or assign their interest in the Trust other than with the prior written consent of the Responsible Entity.
- (c) A transfer of Units is not effective until it has been recorded in the Register.
- (d) All transfers of Units will be effected by an instrument of transfer in writing in a form and in a manner approved by the Responsible Entity provided that, where the Trust is a Registered Scheme, the form of transfer must not be prohibited by the Corporations Act.
- (e) The Responsible Entity may refuse to register a transfer (whether voluntarily or by operation of law) of Units without being bound to provide any reason for any refusal.
- (f) A transferor of Units remains the holder of the Units until the transfer is registered and the name of the transferee is entered in the Register in respect of those Units.
- (g) The Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

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- (h) The Responsible Entity may require a transferee of Units to execute a Transferee Subscription Agreement before allowing the transfer of Units to the transferee.
 - (i) The Responsible Entity may make distributions payable under clause 13 in respect of a Unit for a Distribution Period to a transferor and transferee in proportion to the number of days in the Distribution Period that each held the Unit.

10.2 Refusal to register a transfer

Without limiting the generality of clause 10.1, subject to the Corporations Act (where the Trust is a Registered Scheme), the Responsible Entity may refuse to register any transfer of Units without being bound to provide a reason for such refusal and the Responsible Entity may refuse to register a transfer of Units if:

- (a) the Responsible Entity is not satisfied that the transferee has the financial resources and intention to pay all:
 - (i) unpaid amounts in respect of Partly Paid Units; and
 - (ii) Uncalled Commitments;
- (b) the transferee has not undertaken:
 - (i) to pay the unpaid amounts in respect of Partly Paid Units; and
 - (ii) a Commitment,in a form acceptable to the Responsible Entity;
- (c) the transferee is not a Wholesale Client;
- (d) the Responsible Entity would or may be required to prepare a product disclosure statement in respect of the transfer of the Units; or
- (e) the transfer is required to be, but is not, duly stamped.

10.3 Registration of transfers

- (a) Unless the Responsible Entity determines otherwise, where Units are transferred, the following documents must be lodged for registration with the Responsible Entity:
 - (i) a proper instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units; and
 - (iii) any other information that the Responsible Entity may require to establish the transferor's right to transfer the Units.
- (b) The Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

10.4 Transfer of Units if Officially Quoted

Despite anything else set out in this clause 10, if the Units and/or Options are Officially Quoted, those Units and/or Options may be transferred in any manner permitted by the Operating Rules of a CS Facility. The Responsible Entity may require before registration of any such transfer that there be provided to the Responsible Entity any documents which the rules of the uncertificated system require or permit the Responsible Entity to require be provided to it to authorise registration. This clause 10.4 prevails over any other provision of this Constitution that may be inconsistent with it but it does not permit the Responsible Entity to refuse to register a proper transfer made in accordance with the Operating Rules of a CS Facility.

11 Transmission of Units

11.1 Entitlement on death

- (a) Subject to clause 11.1(b), if a Unit Holder dies:
- (i) the survivor (or survivors, where the Unit Holder was a joint Unit Holder); and
 - (ii) the legal personal representatives of the deceased, where the Unit Holder was a sole Unit Holder,
- will be the only persons recognised by the Responsible Entity as having any title to the Unit Holder's interest in the Units.
- (b) The Responsible Entity may refuse to recognise any person referred to in clause 11.1(a) or to recognise any claim without providing any reason. The Responsible Entity may require evidence of a Unit Holder's death as it thinks fit.
- (c) This clause 11 does not release:
- (i) the estate of a deceased joint Unit Holder from any liability in respect of a Unit that had been jointly held by the Unit Holder with other persons; or
 - (ii) where the Unit Holder was a sole Unit Holder, the legal personal representative or the trustee of the Unit Holder's estate from any liability in respect of Units held by the deceased Unit Holder.

11.2 Registration of persons entitled

- (a) Subject to the Corporations Act, the *Bankruptcy Act 1966* (Cth) and the production of any information that is properly required by the Responsible Entity, a person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Unit Holder may elect to:
- (i) by written notice to the Responsible Entity, be registered as the Unit Holder in respect of that Unit; or
 - (ii) to nominate some other person to be registered as the Unit Holder of the Unit.

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- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.

11.3 Distributions and other rights

- (a) If a Unit Holder dies or suffers a legal disability, the Unit Holder's legal personal representative or the trustee of the Unit Holder's estate (as the case may be) is, on the production of all information as is properly required by the Responsible Entity, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Unit Holder would have been entitled to if the Unit Holder had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit as a result of the death or legal disability of a Unit Holder, they will, for the purposes of this Constitution, be taken to be joint Unit Holders of the Unit.

12 Valuation of Assets

12.1 Valuation of Assets

- (a) The Responsible Entity may, at any time, cause the valuation of any Asset and (if the Trust is a Registered Scheme) shall do so as and when required by the Corporations Act.
- (b) The Responsible Entity must cause an Asset to be valued if and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with those requirements.

12.2 Determination of Net Asset Value

- (a) The Responsible Entity may determine the Net Asset Value at any time including more than once each day.
- (b) The Responsible Entity must determine the Net Asset Value:
 - (i) if and when required by ASIC or the Corporations Act (if the Trust is a Registered Scheme);
 - (ii) on each day on which Units in the Trust are issued; and
 - (iii) on each Withdrawal Date or other day on which Units are withdrawn.

12.3 Method of valuation

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time.
- (b) Unless the Responsible Entity decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be based on the ordinary commercial practice for valuing the relevant type of asset that is reasonably current at the time of the issue or withdrawal of Units.

13 Income and distributions

13.1 Collection of income

The Responsible Entity shall receive and collect all dividends, interest, rents and all other income of the Trust.

13.2 Payment of expenses

The Responsible Entity shall pay out of the gross income of the Trust all costs and disbursements, commissions, fees, tax (including any goods and services tax, land tax or income tax), management charges and other proper outgoings in respect of the Assets and administration of the Trust.

13.3 Nature of receipts

The Responsible Entity may determine whether any receipt, profit, gain (whether realised or unrealised) payment, loss, outgoing, provision or reserve or any sum of money or investment in a Financial Year is or is not to be treated as being on income or capital account and whether and the extent to which any provisions or reserves need to be made for the Financial Year on a fair and reasonable basis to ensure that the Unit Holder pays the tax and not the Responsible Entity.

13.4 Responsible Entity must determine Net Income

The Responsible Entity must determine the Net Income of the Trust for each Financial Year.

13.5 Net Income

If no determination is made or to the extent to which no determination is made under clause 13.4 prior to the end of a Financial Year, then the Net Income for that Financial Year is calculated in the same manner as net income is calculated under Division 6 of Part III of the Tax Act, assuming that the Division applies to the Trust, for that Financial Year provided that where in calculating the net income under the Tax Acts it is necessary to:

- (a) gross up any amount of income (for example tax offsets such as foreign tax credits or franking credits);

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- (b) include any amount of deemed assessable income; or
 - (c) make any deemed deduction,

then the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deduction must not be included in calculating the Net Income of the Trust for the Financial Year unless the Responsible Entity determines otherwise before the end of the Financial Year.

13.6 Present entitlement

- (a) Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the persons who are Unit Holders at 5 p.m. on the last day of the Financial Year will be presently entitled in the proportions specified in clause 13.7(c) to the Net Income for that Financial Year (less any part of the Net Income which has been previously distributed in that Financial Year in accordance with this clause 13.7(a)) together with any additional amount which the Responsible Entity determines in accordance with clause 13.12 to distribute to Unit Holders in respect of that Financial Year.
- (b) Unit Holders that have been paid, or had applied for their benefit, any part of the Net Income during the Financial Year in accordance with clause 13.7(a) shall be deemed to be presently entitled to the amount paid to them or applied for their benefit.

13.7 Distribution of the Net Income

- (a) The Responsible Entity may make an Interim Distribution of the Net Income accruing during any Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) and taking into account any adjustments required as a result of any direction made by the Responsible Entity under clause 8.12(c). The Interim Distribution cannot exceed, but can be less than, the amount of the Net Income which has accrued during the relevant Financial Year up to the date of the calculation of the Interim Distribution.
- (b) For the last Distribution Period of the Financial Year, the Responsible Entity must distribute the Net Income of the Trust for the Financial Year less any amount previously distributed during the Financial Year pursuant to clause 13.7(a) and taking into account any adjustments required as a result of any direction made by the Responsible Entity under clause 8.12(c).
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Financial Year shall be determined in accordance with the following formula:

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

Where:

- A is the amount determined by the Responsible Entity in accordance with clauses 13.4 and 13.5 to be distributable for the relevant Financial Year;
- B is the aggregate of the number of Units held by the Unit Holder at 5.00 p.m. on the Distribution Calculation Date; and

C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date.

13.8 Distribution Entitlement

- (a) The Responsible Entity shall pay to each Unit Holder its Distribution Entitlement for a Financial Year on or before the Distribution Date for that Financial Year.
- (b) The Responsible Entity shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Responsible Entity determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as income for the next following Financial Year.
- (c) The Responsible Entity may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Responsible Entity under this Constitution or that is required to be deducted by law.

13.9 Separate Trust

Where any Unit Holder becomes entitled to any Distribution Entitlement pursuant to the foregoing provisions of this clause, that Distribution Entitlement shall not form part of the Assets but shall be held by the Responsible Entity in a separate trust fund on trust for the absolute use and benefit of that Unit Holder and:

- (a) where that Unit Holder is sui juris, with power and capacity to the Responsible Entity pending payment thereof to invest and otherwise deal with, manage and administer the same in the manner and to the same extent as the Responsible Entity may invest and otherwise deal with, manage and administer the Trust; or
- (b) where the Unit Holder is not sui juris, with power to the Responsible Entity pending the Unit Holder becoming sui juris to pay and transfer to or to apply for the benefit of that Unit Holder the whole or such part, if any, as the Responsible Entity deems fit of the Unit Holder's separate trust fund, notwithstanding that the Unit Holder is not sui juris and with like powers and capacities of investments, dealing, management and administration in respect thereof to those which the Responsible Entity has in respect of the Trust itself and, on that Unit Holder becoming sui juris, the Responsible Entity shall forthwith pay and transfer to that Unit Holder such separate trust fund for the Unit Holder's own use and benefit absolutely, but should that Unit Holder while not being sui juris die before payment or transfer of the whole of then to the extent to which the Unit Holder's separate trust fund has not been paid or transferred to the Unit Holder or applied for the Unit Holder's benefit at the date of the Unit Holder's death, the same shall notwithstanding anything to the contrary or otherwise in this Constitution contain, be held by the Responsible Entity for the Unit Holder's legal personal representatives and shall go as an accretion to and form part of the Unit Holder's estate.

13.10 Minimum distribution

The Responsible Entity may transfer capital to enable distribution to Unit Holders of the minimum amount necessary to avoid the Responsible Entity as trustee of the Trust being assessable to pay Tax.

13.11 Discharge of Responsible Entity's obligation

It is acknowledged by Unit Holders that payments of the Distribution Entitlements in accordance with clause 13.8 shall be a good and complete discharge of any liability owed by the Responsible Entity to any person in respect of an entitlement to their Distribution Entitlements.

13.12 Capital distributions

The Responsible Entity may, at any time, distribute the capital of the Trust to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on issue on that date. A distribution under this clause may be in cash or of Assets.

13.13 Excess distribution

If at the end of a Financial Year the auditor or Responsible Entity of the Trust determines that the amount distributed as the Net Income under this clause 13 exceeds the aggregate of the Net Income for the Financial Year, the excess will be taken to be a distribution of capital.

13.14 Categories and source of income

The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Unit Holders.

13.15 Receipt

- (a) For the purposes of this clause 13, the Responsible Entity is entitled to treat any amount which the Responsible Entity is entitled to receive but has not actually received before the Distribution Calculation Date as actually received:
 - (i) before the Distribution Calculation Date; or
 - (ii) after the Distribution Calculation Date.
- (b) If any amount included in the amounts determined to be distributed in accordance with clauses 13.4 and 13.5 but is not subsequently received by the Responsible Entity, the Responsible Entity shall be entitled to recover any amount that has been over distributed. However, the Responsible Entity shall not be bound to pursue that right of recovery. The Responsible Entity may determine that any amount so distributed is to be treated as a distribution of the capital of the Trust. No claim will lie against the Responsible Entity at the suit of any Unit Holder or any other person by reason of that distribution or any resultant loss to the Trust.

13.16 Reinvestment

- (a) A Unit Holder may, if the Responsible Entity approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application

to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 7.

- (b) Subject to the Unit Holder's expressed or implied consent, the Responsible Entity may, at its discretion, reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units and that amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 7.
- (c) The procedure for reinvestment of distribution is to be determined by the Responsible Entity and notified to Unit Holders from time to time.

13.17 Other rights or restrictions

For the removal of doubt and despite anything else contained in this clause 13, the rights of a Unit Holder under this clause 13, are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Responsible Entity is entitled to do so under the Corporations Act, the Responsible Entity may issue:

- (a) Partly Paid Units which for the purposes of determining the Holder's Distribution Entitlement, are to be treated according to:
 - (i) that proportion of a whole Unit as the amount paid up bears to the total Application Price for that Unit rounded to the nearest two decimal places; and
 - (ii) the length of time during the Financial Year for which the proportion or different proportions of the Application Price were paid up;
- (b) Units on terms which entitle the Unit Holder to a distribution of the amounts determined for distribution pursuant to this clause 13 based on the period that the Unit Holder has held their Units.
- (c) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distribution Entitlement in respect of a Financial Year in which such Units are issued; or
- (d) Partly Paid Units on any other terms and conditions it determines.

13.18 Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this clause 13 any Tax that it is required by law to deduct from such amount.
- (b) The Responsible Entity may recover from the Unit Holder an amount that the Responsible Entity has paid in Tax on behalf of or in respect of a Unit Holder (including in respect of a distribution or an amount attributed to a Unit Holder) as a debt.

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- (c) The Responsible Entity is entitled to set off an amount that the Responsible Entity can recover from the Unit holder under clause 13.18(b) against debts due, or owed, by the Responsible Entity to the Unit Holder.

13.19 Allocation of Net Income

To the extent permitted by law the Responsible Entity must allocate the net taxable income of the trust as defined under section 95 of the 1936 Tax Act (amended or substituted from time to time) to Unit Holders on a fair and reasonable basis having regard to their entitlements to Net Income and capital of the Trust as determined under this Constitution.

14 Powers and reporting obligations of the Responsible Entity

14.1 General powers of Responsible Entity

- (a) Subject to this Constitution, the Responsible Entity has all the powers in respect of the Trust that it is possible under law to confer on a trustee as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.
- (b) The generality of this clause 14.1 is not limited by anything in the remainder of this clause 14.
- (c) To the maximum extent permitted by law:
 - (i) any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment are hereby excluded; and
 - (ii) without limiting the generality of clause 14.1(c)(i), section 6 of the *Trustee Act 1958 (Vic)* is hereby expressly excluded from operation in relation to this Constitution and the Trust.

14.2 Specific powers of the Responsible Entity

Without limiting the generality of clause 14.1, the Responsible Entity in its capacity as trustee of the Trust may:

- (a) carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and for that purpose employ in that trade or business the whole or any part of the capital or income of the Trust and for this purpose acquire property, borrow money on security of the Assets, with or without security incur liabilities binding on the Trust or give any guarantee or indemnity for payment of moneys or the performance of any obligation or undertaking with or without security as the Responsible Entity shall deem fit;
- (b) advance and lend moneys to, and to borrow and raise money from any persons, firms, corporations, bodies, associations or government or municipal bodies whether alone or jointly with any other company or person upon such terms whether or not with security or interest as the Responsible Entity shall see fit and to secure the repayment of those moneys by mortgaging or charging (by fixed or floating charge or otherwise) any undertaking of the Responsible Entity or all or any part of the Assets including any property which may subsequently be acquired by the Responsible Entity so that it will form part of the Assets and any mortgage or charge created or purporting to be created under this clause shall be

valid in all respects irrespective of the actual application of the moneys and the rights of the mortgagee or chargee shall take priority in all respects over the rights of the Unit Holders and all other persons;

- (c) create Security Interests over all or any part the Assets;
 - (d) create different Classes with different rights and entitlements;
 - (e) apply to ASIC for registration of the Trust as a Registered Scheme under the Corporations Act;
 - (f) apply for listing of the Trust and quotation of the Units (or any other financial product relating to the Trust) on any stock exchange (including but not limited to the ASX) and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Unit Holder as the Unit Holder's agent or attorney to do all things necessary to effect a listing or quotation;
 - (g) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
 - (i) purchasing or disposing of Assets for cash or other consideration; and
 - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction (for speculative purposes or otherwise);
 - (h) share risk and returns with any other person or trust;
 - (i) vary, replace or deal with the Assets in any way;
 - (j) buy-back Units;
 - (k) fetter future discretions, such as by the granting of options;
 - (l) enter into any arrangement or agreement with underwriters in relation to the Trust;
 - (m) exercise all voting rights conferred by the Assets as it thinks fit; and
 - (n) give guarantees and/or indemnities to any person,
- as if it were dealing with its own assets.

14.3 Delegation

- (a) Without limiting clause 14.1, the Responsible Entity may appoint any person as its delegate, attorney or agent to:
 - (i) perform any act;
 - (ii) carry out any obligation; or
 - (iii) exercise any power (including the appointment of its own delegate, attorney or agent),

that the Responsible Entity has under this Constitution.

- (b) The Responsible Entity may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Responsible Entity, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Responsible Entity and perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.
- (c) Any person appointed under clauses 14.3(a) or 14.3(b) may be an Associate or employee of the Responsible Entity.
- (d) An appointment under clauses 14.3(a) or 14.3(b) may be joint.
- (e) Subject to section 601FB of the Corporations Act (if the Trust is a Registered Scheme), the Responsible Entity will not be liable for the acts or omissions of any delegate. The Responsible Entity may include provisions to protect and assist those dealing with the delegate as the Responsible Entity thinks fit.
- (f) If the Responsible Entity delegates any of its responsibilities under this Constitution to a third party, including, but not limited to, administration of the Trust, management of the Project or development management of the Project, the Responsible Entity may pay to the person to whom it has delegated that role:
 - (i) all or part of the fees that the Responsible Entity would otherwise have been entitled to receive under this Constitution for undertaking that role; or
 - (ii) the amount of that person's fees from Assets.

14.4 Advisers

Without limiting this clause, the Responsible Entity may engage an Adviser to assist with its duties and functions under this Constitution. An Adviser may be an Associate or employee of the Responsible Entity.

14.5 Exercise of discretion

The Responsible Entity shall in its absolute discretion decide how and when to exercise its powers.

14.6 Exercise of powers

In exercising its powers under this Constitution, the Responsible Entity must:

- (a) act in the best interests of Unit Holders, and if there is a conflict between the Unit Holders' interests and its own interests, give priority to the Unit Holders' interests; and
- (b) treat the Unit Holders who hold interests of the same class equally and Unit Holders who hold interests of different classes fairly, except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in circumstances described in clause 8.12(c).

14.7 Reporting obligations of the Responsible Entity

Subject to the Corporations Act, the Responsible Entity must provide or make available to Unit Holders the following communications:

- (a) a confirmation within 20 Business Days of a Unit Holder being issued with Units in the Trust;
- (b) annual audited financial reports within 3 Months of the end of each financial year;
- (c) distribution statements with each distribution; and
- (d) annual tax statements.

15 Holding of Assets

15.1 How held

Subject to clauses 15.2 and 15.3, all Assets will be held in the name of the Responsible Entity.

15.2 Custodian

If the Responsible Entity considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Responsible Entity and acting as agent for the Responsible Entity.

15.3 Holding of Assets

A custodian appointed by the Responsible Entity in respect of a particular Asset must hold that Asset:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Responsible Entity (and while the Trust is a Registered Scheme, to the extent permitted by Corporations Act and any applicable ASIC Exemption).

16 Remuneration and Expenses of Responsible Entity

16.1 Responsible Entity's Fees

Subject to the Corporations Act (where the Trust is a Registered Scheme) and clause 16.10, the Responsible Entity will be entitled to the following fees, inclusive of GST less input tax credits, in respect of the Trust:

- (a) an acquisition fee of up to 1.50% of the purchase price (excluding acquisition costs) of each Property acquired by the Trust (directly or indirectly) or any controlled sub-trust. The purchase price is based on 'as if complete' valuation if a property is under construction at the time of valuation. This fee is payable on

completion of the acquisition of each Property and is payable out of the Assets of the Trust;

- (b) the Responsible Entity may deduct from the Assets of the Trust, a management fee determined by the Responsible Entity and notified to Unit Holders of up to 0.6% per annum of the Gross Asset Value of the Trust calculated and accrued daily (or as otherwise determined by the Responsible Entity) and payable in arrears within seven days of the end of each Month. For the purposes of calculating the monthly management fee, the value of each Property is determined using the average of the months opening and closing Property value, as set out in the Trust's monthly financial accounts;
- (c) a finance facility fee of 0.2% of the amount of the facility in respect of any finance arranged for the Trust by the Responsible Entity or its Associates payable from the finance facility upon entering into any finance facility; and
- (d) a Performance Fee calculated in accordance with Schedule 3 to this Constitution.

16.2 Waiver of remuneration

The Responsible Entity may accept a lower fee than it is entitled to receive under this Constitution, or may defer payment for a period on such terms as the Responsible Entity determines at its sole discretion.

16.3 Priority of Responsible Entity's remuneration

The remuneration of the Responsible Entity shall have priority over the payment of all other amounts payable from the Assets of the Trust.

16.4 Establishment costs

- (a) Without limiting clause 16.8, the Responsible Entity, or an Associate of the Responsible Entity, may pay, on behalf of the Trust, any or all costs and expenses incurred in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first disclosure document (**Establishment Costs**).
- (b) In such a case, the Responsible Entity or the Associate (as the case may be) will be entitled to be reimbursed out of the Assets for all Establishment Costs that were reasonably and properly incurred.
- (c) The Responsible Entity or the Associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Assets in a year or years later than the year in which the Establishment Cost was incurred.

16.5 Differential fee arrangements

Subject to the Corporations Act and any applicable ASIC Exemption (where the Trust is a Registered Scheme), the Responsible Entity may agree with any Unit Holder any fee arrangements with that Unit Holder which are different to those provided for under this Constitution or which apply to other Unit Holders.

16.6 Units as payment for fees

Subject to the Corporations Act, the Responsible Entity, the Responsible Entity may elect to be issued Units instead of cash in payment of its fees or reimbursement of its expenses under this Constitution.

16.7 Fees paid to the Responsible Entity in a different capacity

Subject to the Corporations Act where the Trust is a Registered Scheme, the Responsible Entity may be paid a fee for work performed in connection with the Trust in its personal capacity and not in its capacity as the responsible entity or trustee of the Trust. The Responsible Entity may retain any such fee for its own purposes and is not required to account for the fee to the Trust or to Unit Holders.

16.8 Reimbursement of Expenses

Subject to the Corporations Act where the Trust is a Registered Scheme, all Expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Trust shall be payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act, including, without limitation, Expenses arising in connection with the matters listed in item 1 of Schedule 1.

16.9 Class Expenses

Subject to the Corporations Act, where a Class is on issue and the Responsible Entity may make a determination that an Expense, or part of an Expense, is to be a Class Expense in relation to a Class, but if no determination is made under this clause, then:

- (a) in respect of fees of the Responsible Entity which are charged to a particular Class, the GST on those fees and the corresponding reduced input credit or input credit (as the case may be) that arises in connection with a fee payable or supply in respect of a Class, is to be referable to that Class; and
- (b) any other Expenses under this clause 16 is to be referable to all Units on an equal basis.

16.10 Proper performance of duties

Where the Trust is a Registered Scheme, the rights of the Responsible Entity to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Responsible Entity, are only available in relation to the proper performance of those duties.

16.11 GST

- (a) Expressions that have defined meanings under the GST Act bear the same meaning for the purpose of this clause 16.11 as those expressions in the GST Act.
- (b) Unless otherwise expressly stated to include GST, any amount payable or any consideration provided or to be provided under or in connection with this Constitution does not include an amount for GST.

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- (c) If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including the performance of any of its obligations) then:
- (i) the Responsible Entity shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that supply in addition to any amount or consideration to which the Responsible Entity is entitled; or
 - (ii) the recipient of the supply must pay to the Responsible Entity, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that supply,
- at the Responsible Entity's discretion.
- (d) If the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Responsible Entity to the Trust treated as separate entities for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Assets for other purposes of this Constitution and the Corporations Act. Where an expense is paid from the Trust to the Responsible Entity, the payment shall comprise part of the consideration for the supply by the Responsible Entity to the Trust treated as separate entities for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Assets for other purposes of this Constitution and the Corporations Act.

16.12 Sums owed to the Responsible Entity

The Responsible Entity may redeem such number of a Unit Holder's Units (including a fraction, if necessary) as have a value (based on the Net Asset Value at that time) equal to any amount of money due to it by the Unit Holder and deduct such amounts from the Withdrawal Price of the Units.

17 Change in Responsible Entity

17.1 Voluntary retirement while the Trust is a Registered Scheme

- (a) While the Trust is a Registered Scheme, the Responsible Entity may retire as the trustee of the Trust as permitted by section 601FL of the Corporations Act.
- (b) If permitted by law or by any relief from the Corporations Act granted by ASIC, the Responsible Entity may appoint its successor by deed.

17.2 Voluntary retirement while the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the Responsible Entity may retire as the trustee of the Trust by giving at least 3 Months notice to Unit Holders (or such shorter period as they agree). On retirement, the Responsible Entity may appoint in writing another person to be the trustee of the Trust.

17.3 Compulsory retirement

The Responsible Entity shall retire as the responsible entity and/or trustee of the Trust on the passing of a resolution to remove the Responsible Entity at a meeting of the Unit Holders where:

- (a) the Trust is a registered Scheme the Responsible Entity shall retire as the responsible entity of the Trust when required by law;
- (b) the Trust is not a Registered Scheme:
 - (i) Unit Holders holding at least 75% of the Units vote on the resolution (in person or by proxy) to remove the Responsible Entity; and
 - (ii) more than 50% of the Unit Holders that vote on the resolution (in person or by proxy) vote in favor of the Responsible Entity being removed as the trustee.

17.4 New trustee or responsible entity

- (a) Any proposed replacement trustee or responsible entity shall execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) On retirement or removal, the Responsible Entity shall give the new trustee or responsible entity all books, documents and records relating to the Trust.
- (c) On retirement or removal the Responsible Entity shall be released from all obligations in relation to the Trust arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Responsible Entity, all fees and other amounts owing to the Responsible Entity and all amounts deferred by the Responsible Entity pursuant to clause 16.2 become due and payable to the Responsible Entity from the Assets and the new Responsible Entity must take such action as is necessary to promptly effect all such payments.

17.5 Retirement benefit

Subject to the Corporations Act (where the Trust is a Registered Scheme), the Responsible Entity may agree to be paid a benefit by another entity who proposes to be the trustee of the Responsible Entity (**Proposed Responsible Entity**) in consideration for:

- (a) retiring as responsible entity and/or trustee; or

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- (b) agreeing to submit to a proposal for its retirement to a meeting of Unit Holders and nominating to the Unit Holders the Proposed Responsible Entity the replacement responsible entity,

and the Responsible Entity is not required to account to Unit Holders for the benefit received.

18 Limitation of liability

18.1 Limitation of Responsible Entity's liability

- (a) Subject to the Corporations Act where the Trust is a Registered Scheme, neither the Responsible Entity nor its Associates are liable for any loss or damage to any person (including any Unit Holder) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Constitution; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Constitution,

in any case, subject to the law, the liability of the Responsible Entity in relation to the Trust is limited to the Assets, from which the Responsible Entity is entitled to be, and is in fact, indemnified.

- (b) In particular, subject to the Corporations Act, (where the Trust is a Registered Scheme) the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
 - (ii) it acted as required by law; or
 - (iii) it relied in good faith upon any signature, marking or documents.

18.2 Limitation of Unit Holders' liability

- (a) Subject to clauses 18.2(c) and 18.2(e), the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Trust.
- (b) A Unit Holder shall not be required to indemnify the Responsible Entity if there is a deficiency in the Assets or to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity, on its own account and on account of the Trust, shall be entitled to be indemnified by each Relevant Person for any Tax, bank fees or charges of the Relevant Person paid out of the Trust, except to the extent to which the Responsible Entity is reimbursed out of the Trust.

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- (d) Joint Unit Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 18.2(c) applies.
 - (e) In the absence of separate agreement with a Unit Holder, the recourse of the Responsible Entity and any creditor shall be limited to the Assets.

19 Indemnity

19.1 Responsible Entity's indemnity

In addition to any indemnity available to the Responsible Entity under the law or this Constitution, but subject to the Corporations Act, if the Trust is a Registered Scheme the Responsible Entity has a right to be fully indemnified out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Trust and against all actions, proceedings, costs, claims and demands brought against the Responsible Entity in its capacity as trustee of the Trust in respect of any matter or thing done or omitted (**Indemnified Matter**) except:

- (a) in the case of the Responsible Entity's own fraud, negligence or wilful default; and
- (b) in respect of the overhead expenses of the Responsible Entity.

19.2 Responsible Entity's indemnity continuing

- (a) The right of indemnity of the Responsible Entity in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 19.1 will continue in favour of the Responsible Entity after it has ceased to be the Responsible Entity and will apply even if at any time the Liabilities exceed the Net Asset Value.
- (c) For the avoidance of doubt, the Responsible Entity may be entitled to an indemnity under clause 19.1 in respect of any act or omission of a delegate or agent appointed by the Responsible Entity for which the delegate or agent is not obliged to fully indemnify the Trust.

19.3 Payment

The Responsible Entity may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 19.1.

19.4 Responsible Entity not to incur liability

The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

20 Responsible Entity's indemnity against Tax liability

20.1 Indemnity

- (a) The Responsible Entity is entitled to be indemnified by a Unit Holder, a former Unit Holder or an Applicant to the extent that it incurs a liability for Tax as a result of the Unit Holder's, former Unit Holder's or Applicant's action or inaction or as a result of an act or omission requested by the Unit Holder, former Unit Holder or Applicant.
- (b) For the avoidance of doubt, clause 20.1(a) includes an indemnity by a Unit Holder, former Unit Holder or Applicant in favour of the Responsible Entity in respect of any Tax that may arise as a result of:
 - (i) the Responsible Entity issuing Units to the Unit Holder or a former Unit Holder;
 - (ii) the Responsible Entity redeeming any Unit or cancelling any Commitment;
 - (iii) the Responsible Entity making a Call in respect of Partly Paid Units or a Commitment;
 - (iv) the transfer of Units by a Unit Holder or a former Unit Holder;
 - (v) the transfer of a Commitment by an Applicant; and
 - (vi) any person acquiring an interest in a Unit or a Commitment from a Unit Holder, a former Unit Holder or an Applicant (as the case may be).

20.2 Joint Holders

Joint holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 20.1 applies.

20A. Restructure Proposal

20A.1 Implementation of Restructure Proposal

- (a) Without limiting clause 14, the Responsible Entity may implement the Restructure Proposal if all of the Restructure Proposal Resolutions are approved.
- (b) This clause 20A:
 - (i) binds the Responsible Entity and all of the Unit Holders from time to time (including those who did not attend the Restructure Proposal Meeting, those who did not vote at the Restructure Proposal Meeting and those who voted against the Restructure Proposal Resolutions); and
 - (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (excluding clause 1.3).

20A.2 Power to give effect to Restructure Proposal

If all of the Restructure Proposal Resolutions are approved:

- (a) without limiting the Responsible Entity's other powers under this clause 20A, the Responsible Entity has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Restructure Proposal;
- (b) subject to the Corporations Act, the Responsible Entity or any of its directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 20A even if they have an interest (financial or otherwise) in the outcome of such exercise; and
- (c) the Responsible Entity may make and implement a withdrawal offer to existing Unit Holders for the purposes of the Restructure Proposal in accordance with the procedures that apply to Withdrawal Offers under clause 8.4 and the Corporations Act.

20A.3 Covenants by Unit Holders

Each Unit Holder:

- (a) irrevocably acknowledges that this clause 20A binds all of the Unit Holders from time to time (including those who did not attend the Restructure Proposal Meeting, those who did not vote at the Restructure Proposal Meeting and those who voted against the Restructure Proposal Resolutions) without the need for any further act by that Unit Holder; and
- (b) irrevocably consents to the Responsible Entity doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Restructure Proposal and the transactions contemplated by it.

20A.4 Limitation of liability

Without limiting clause 18, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to the Unit Holders, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Restructure Proposal.

21 Stapling

21.1 Provisions applicable only while Stapling applies

Clauses 21.2 to 21.5 only apply while Stapling applies.

21.2 Paramountcy of Stapling provisions

The provisions of this Constitution relating to Stapling prevail over all other provisions of this Constitution including any that are expressed to prevail over others, except where this

would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

21.3 Maintenance of Listing and Consistency with Constitutions of the Stapled Entities

The Responsible Entity must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

21.4 Stapling - general information

Units are intended to be stapled to the Attached Securities in the ratio of one Unit to one of each category of the Attached Securities as from the Stapling Commencement Date. The intention is that, so far as the law permits, a Unit and one of each category of the Attached Securities which are Stapled together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Units, or if Attached Securities are Unstapled from the Units, the intention is that, so far as the law permits, a Unit and one of each category of the Attached Securities which are Stapled together shall be treated as one Stapled Security.

21.5 Power to Unstaple Units

- (a) If Units comprise part of Stapled Securities, then subject to the Corporations Act (and, while the Units are Officially Quoted, the Listing Rules), the Responsible Entity may at any time take action to have the Units Unstapled from the other Attached Securities or the Stapled Securities Unstapled and, if the Stapled Securities are Officially Quoted, removed from quotation.
- (b) After Unstapling, references to Stapled Securities will be removed from the Register.

22 Restructure proposals

22.1 Power to enter into proposal

- (a) The Responsible Entity may enter into any scheme of arrangement, merger arrangement or similar proposal in relation to the Trust whether involving Units or the property of the Trust (**Proposal**). If in the Responsible Entity's opinion the Proposal might adversely affect the rights of Unit Holders, the Proposal may only be implemented with the approval of a Resolution.
- (b) If the Proposal involves Stapling:
 - (i) the Unit Holders will be taken to have consented, and accordingly no Resolution will be required, in relation to Stapling, provided that each Stapled Security issued to a Unit Holder has a Market Price equal to or greater than the price a price calculated determined in accordance with the equivalent provision of clause 7.1(g) in the constitution of the Stapled Entity immediately prior to the Stapling;

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- (ii) the Unit Holders will be taken to have consented to each provision in the Constituent Documents.

22.2 General

If a Proposal is entered into, and if necessary, approved by Unit Holders in accordance with clause 22.1, then from the date of such approval:

- (a) the Proposal binds the Responsible Entity and all present and future Unit Holders notwithstanding that particular Unit Holders may not have approved the Proposal;
- (b) the Responsible Entity and so far as is relevant the Unit Holders must give effect to the Proposal in accordance with its terms;
- (c) the Responsible Entity will have power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and those powers apply notwithstanding any other provisions of this Constitution other than clause 25.3;
- (d) the terms of the Proposal prevail to the extent necessary in the event of any inconsistency with the other terms of this Constitution other than clauses 25.3 and this clause 22.2;
- (e) subject to the Corporations Act, the Responsible Entity shall not have any liability of any nature whatsoever to Unit Holders beyond the Assets of the Trust out of which the Responsible Entity is actually indemnified arising directly or indirectly from the Responsible Entity doing or refraining from any act pursuant to or in connection with the Proposal; and
- (f) the Responsible Entity may amend the terms of the Proposal if such amendment is not inconsistent with the approval given by Unit Holders or such amendment does not adversely affect the rights of the Unit Holders and this clause 22.2 shall apply to the Proposal as amended.

22.3 Terms of Proposal

A Proposal may provide for anything not contrary to law and it may without limitation:

- (a) be subject to conditions;
- (b) involve the withdrawal, cancellation or transfer of Units;
- (c) provide for the Responsible Entity to execute any documents including any application for securities as agent on behalf of all or any Unit Holders;
- (d) authorise the Responsible Entity as agent on behalf of all or any Unit Holders to pay the subscription money for new securities from the Assets of the Trust;
- (e) allow the Responsible Entity to arrange the issue of further Units;
- (f) amend the time and procedures for the withdrawal, cancellation, transfer or issue of Units;
- (g) allow the Responsible Entity to suspend the registration of transfers of Units;

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- (h) provide for borrowings, the raising of money or the incurring of liabilities by the Responsible Entity; or
 - (i) provide for suspension of reinvestment of income entitlements.

22.4 Designated Foreign Investors

- (a) Without limiting the foregoing provisions of this clause 22, to enable the Responsible Entity to give effect to the Stapling of Attached Securities to the Units, the provisions of this clause 22.4 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Exemption, the Responsible Entity may determine that a Foreign Investor is a Designated Foreign Investor where the Responsible Entity reasonably considers that it would be unreasonable to issue or transfer an Attached Security to a Foreign Investor, having regard to each of the following:
 - (i) the number of Foreign Investors in the foreign place;
 - (ii) the number and the value of Attached Securities that may be issued or transferred to Foreign Investors in the foreign place; and
 - (iii) the cost of determining, and complying with, the legal requirements and the requirements of any relevant regulatory authority applicable to the issue or transfer of the Attached Securities in the foreign place.
- (c) Each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
 - (i) the Responsible Entity to pay any distributions, withdrawal proceeds or other payments in respect of its Unit or Stapled Security, which are to be used to obtain an Attached Security (**Amounts**), to a sale nominee (**Sale Nominee**);
 - (ii) the Sale Nominee to apply the Amount to obtain an Attached Security;
 - (iii) subject to clause 22.4(d) below, the Sale Nominee to then sell any Stapled Security to which the Attached Security is Stapled:
 - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If an Attached Security is to be Stapled to an Unit or Stapled Security, the Designated Foreign Investor agrees to transfer each existing Unit or Stapled Security they hold free of any encumbrance to the Sale Nominee on or prior to the record date for that stapling (**Sale Record Date**) so that the Sale Nominee:
 - (i) is entered in the Register in respect of that Unit or Stapled Security as at the Sale Record Date; and
 - (ii) will receive the Attached Security pursuant to the Stapling of the Attached Security; and

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- (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
 - (e) The Responsible Entity:
 - (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
 - (ii) may take all steps to ensure that the Unit or Stapled Security held by the Designated Foreign Investor and to which an Attached Security is to be Stapled is transferred to the Sale Nominee prior to the Sale Record Date;
 - (iii) need not receive a transfer, instrument or certificate (if any) for existing Units or Stapled Securities in order for the Responsible Entity to register the transfer of the existing Units or Stapled Securities to the Sale Nominee. Such transfer shall be evidenced by, and shall have full effect from, its registration by the Responsible Entity in the Register.
 - (f) The amount received for an Unit upon sale of a Stapled Security under clause 22.4(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Attached Securities as determined by the Responsible Entity.

22.5 Modification or variation of Proposal

- (a) Where modifications or variations to the terms of this Constitution are not expressly provided for in the terms of the Proposal but are necessary for or consequential to the implementation of the Proposal, those modifications or variations are deemed to have been made to this Constitution. The Unit Holders:
- (b) authorise the Responsible Entity to make these amendments in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (c) agree that, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 22.5.

22.6 Responsible Entity' s authorisation

- (a) Each Unit Holder irrevocably authorises and empowers the Responsible Entity or any officer of the Responsible Entity to, and the Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to, execute all transfer forms or withdrawal applications and other documents, and to do all things as the Responsible Entity may consider necessary or desirable for, or reasonably incidental to, the implementation of the provisions of any Proposal approved (if required) under this clause 22 and to receive on the Unit Holder's behalf any moneys payable to that Unit Holder. Each Unit Holder undertakes to ratify anything lawfully done by the Responsible Entity in accordance with this clause 22.6(a) (to the extent that the Unit Holder is entitled to vote to ratify such thing).
- (b) Without limiting clause 22.6(a) or any provision of a relevant Constituent Document, to effect the Stapling of an Attached Security, each Unit Holder irrevocably appoints the Responsible Entity as the Unit Holder's agent and attorney in the Unit Holder's name and on the Unit Holder's behalf to:

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- (i) agree to obtain any Attached Security;
 - (ii) apply any distributions, withdrawal proceeds or other payments to obtain an Attached Security;
 - (iii) where an Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
 - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Responsible Entity, in consultation with each other issuer of Stapled Securities, considers necessary, desirable or reasonably incidental to effect the acquisition of the Attached Security by the Unit Holder.
- (c) Without limiting clause 22.6(a) or any provision of a relevant Constituent Document, to effect the disposal of Units or Stapled Securities held by or on behalf of a Designated Foreign Investor, each Designated Foreign Investor irrevocably appoints the Responsible Entity as that Unit Holder's agent and attorney in the Unit Holder's name and on the Unit Holder's behalf to:
- (i) receive and apply the Amounts referred to in clause 22.4(c)(i) in the manner contemplated in clause 22.4;
 - (ii) execute applications or transfers in relation to the transfer of any Units or Stapled Securities;
 - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
 - (iv) do all acts and things and execute any other documents which the Responsible Entity, in consultation with each other issuer of Attached Securities, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor.

23 Small holdings

23.1 Application of this clause

This clause 23 applies while the Units are Officially Quoted. In this clause 23, market value is the price used to calculate a marketable parcel under the Listing Rules.

23.2 Responsible Entity's right to sell Small Holdings

Subject to the provisions of this clause 23, the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Unit Holder that is a Small Holder without request by the Small Holder.

23.3 Divestment Notice

If the Responsible Entity determines that a Unit Holder is a Small Holder, the Responsible Entity may give notice to the Unit Holder:

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- (a) that the Unit Holder is a Small Holder, the number of Units making up and the market value of the Small Holding, the date on which the market value was determined and the Relevant Period;
 - (b) that unless the Small Holder tells the Responsible Entity that the Small Holder wishes to retain the Relevant Units before the Relevant Period lapses, the Responsible Entity intends to sell the Relevant Units in accordance with this clause 23 after the end of the Relevant Period specified in the Divestment Notice;
 - (c) after the end of the Relevant Period, if the Small Holder has not informed the Responsible Entity that it wishes to retain the Units making up the Small Holding, the Responsible Entity may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

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

23.4 Relevant Period

The Relevant Period must be at least six weeks from the date the Divestment Notice was given.

23.5 Limitation on Responsible Entity's right to sell

The Responsible Entity will not sell or redeem the Relevant Units:

- (a) before the expiry of six weeks from the date of the Divestment Notice; or
- (b) if within the six weeks allowed by clause 23.4:
 - (i) the Small Holder advises the Responsible Entity that the Small Holder wishes to retain the Relevant Units; or
 - (ii) the market value of the Small Holding held by the Small Holder increases to at least a marketable parcel as provided in the Listing Rules.

23.6 Responsible Entity can sell Relevant Units

At the end of the Relevant Period, if the Small Holder has not advised the Responsible Entity that the Small Holder wishes to retain the Relevant Units, the Responsible Entity is entitled to sell on-market or in any other way determined by the Responsible Entity the Relevant Units of the Small Holder.

23.7 No obligation to sell

The Responsible Entity is not bound to sell any Relevant Units which it is entitled to sell under this clause 23 but unless the Relevant Units are sold within 10 weeks after the end of the Relevant Period, the Responsible Entity's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Unit Holder to whom the Divestment Notice was given accordingly.

23.8 Responsible Entity as Unit Holder's attorney

To effect the sale and transfer by the Responsible Entity of Relevant Units of a Unit Holder, the Unit Holder appoints the Responsible Entity and each director and secretary of the Responsible Entity jointly and severally as the Unit Holder's attorney in the Unit Holder's name and on the Unit Holder 's behalf to do all acts and things which the Responsible Entity considers necessary, desirable or reasonably incidental or appropriate to effect the sale or transfer of the Relevant Units and in particular:

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

23.9 Conclusive evidence

A statement in writing by or on behalf of the Responsible Entity under this clause 23 is binding on and conclusive against (in the absence of manifest error) a Unit Holder. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 23 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

23.10 Registering the purchaser

The Responsible Entity must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Responsible Entity under this clause 23.

23.11 Payment of proceeds

Subject to clause 23.12, where:

- (a) Relevant Units of a Unit Holder are sold by the Responsible Entity on behalf of the Unit Holder under this clause 23; and
- (b) the certificate for the Relevant Units (unless the Responsible Entity is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Responsible Entity,

the Responsible Entity must, within 60 days of the completion of the sale, send the net proceeds of sale to the Unit Holder entitled to those proceeds by sending a cheque payable to the Unit Holder through the post to the address of the Unit Holder shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Unit Holder whose name first appears in the Register. Payment of any money under this clause 23.11 is at the risk of the Unit Holder to whom it is sent.

23.12 Costs

The Trust or the purchaser of the Units making up the Small Holding must pay the costs of the sale as the Responsible Entity decides.

23.13 Remedy limited to damages

The remedy of a Unit Holder to whom this clause 23 applies, in respect of the sale of the Relevant Units of that Unit Holder, is expressly limited to a right of action in damages against the Responsible Entity to the exclusion of any other right, remedy or relief against any other person.

23.14 Distributions and voting suspended

Unless the Responsible Entity determines otherwise, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Unit Holder are suspended until the Relevant Units are transferred to a new holder. Any distributions that would, but for this clause 23.14, have been paid to that Unit Holder must be held by the Responsible Entity and paid to that Unit Holder within 60 days after the earlier of the date the Relevant Units of that Unit Holder are transferred and the date that the Relevant Units of that Unit Holder cease to be subject to a Divestment Notice.

23.15 12 Month limit

If it is a requirement of the Listing Rules, the Responsible Entity must not give a Small Holder more than one Divestment Notice in any 12 Month period (except as contemplated by clause 23.16).

23.16 Effect of takeover bid

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Responsible Entity's powers under this clause 23 to sell Relevant Units of a Unit Holder cease. After the close of the offers under the takeover bid, the Responsible Entity may give a Divestment Notice to a Unit Holder who is a Small Holder, despite clause 23.15 and the fact that it may be less than 12 Months since the Responsible Entity gave a Divestment Notice to that Unit Holder.

23.17 While Stapling applies

While Stapling applies, no sale under this clause 23 may occur unless, at the same time as Units are sold, an identical number of Attached Securities is also sold.

24 Register

24.1 Keeping Register

- (a) The Responsible Entity shall establish and keep, or cause to be kept, a register of Unit Holders at its registered office.
- (b) Where the Trust is a Registered Scheme the Register must be kept in a form which, to the extent applicable, complies with the requirements of section 169 of the Corporations Act.

24.2 Responsible Entity's powers

Where the Trust is a Registered Scheme, the Responsible Entity has the powers conferred under the Corporations Act in relation to the Register.

24.3 Inspection

The Responsible Entity will make the Register available for inspection without charge to Unit Holders at all times when the Responsible Entity's registered office is open for business to the public.

24.4 Changes

Every Unit Holder shall promptly notify the Responsible Entity of any change of name or address and the Responsible Entity must alter the Register accordingly.

24.5 Register conclusive

Except where this Constitution or the law requires otherwise, the Responsible Entity is entitled to treat the registered Unit Holder as absolute owner of the relevant Unit for all purposes. The entry in the Register shall be conclusive except where the Responsible Entity is satisfied of manifest error and the Responsible Entity is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit.

25 Amendments to this Constitution

25.1 Overriding provision

This clause 25 shall be read subject to clause 26.

25.2 Responsible Entity may amend

Where the Trust is a Registered Scheme, subject to the Corporations Act (and, where the Trust is not a Registered Scheme, subject to applying the Corporations Act and any relevant ASIC Exemption with modifications as if the Responsible Entity were a responsible entity and the Trust were a Registered Scheme) and subject to any other approval that may be required by law, this Constitution (including this clause) may be replaced or amended:

- (a) by Special Resolution of the Unit Holders of the Trust; or
- (b) by the Responsible Entity if:
 - (i) the Responsible Entity reasonably considers the change will not adversely affect Unit Holders' rights; or
 - (ii) the Responsible Entity determines (acting reasonably) that this Constitution contains an error that requires rectification or a matter which requires clarification.

25.3 Compliance with the AMIT Regime

For the avoidance of doubt, the Responsible Entity may modify this Constitution to the extent that the Responsible Entity reasonably considers that the modification is necessary for or incidental to the Trust being able to be operated in a manner permitted by the Tax Act as an AMIT with the Responsible Entity as its trustee and, where the Trust is a Registered Scheme, the Responsible Entity would not be precluded from making that modification.

25.4 Statutory requirements

Clause 25.2 does not apply to provisions deemed by clause 26 to be incorporated into this Constitution.

25.5 Listing Rules

While the Units are Officially Quoted:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

25.6 Class Order

In accordance with ASIC Instrument 2017/125 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 25.5 that is covered by such instrument is not a modification of, or the repeal and replacement of, the Constitution for the purposes of sub-sections 601GC(1) and (2) of the Corporations Act.

26 Corporations Act and ASIC Exemptions

26.1 Corporations Act

Notwithstanding any other provision of this Constitution, a provision of this Constitution which is expressed to apply subject to the Corporations Act, is only so subject while the Trust is a Registered Scheme (and the provision is to be read accordingly).

26.2 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of *the* Corporations Act or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the Responsible Entity determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Responsible Entity to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights,

26.3 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, notwithstanding any amendment to this Constitution effected under clause 25, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Responsible Entity declares in writing that this is the case. This declaration may be made at any time.

27 Termination of Trust

The Trust terminates on the earlier of:

- (a) unless otherwise permitted by law, the day eighty years less one day from the Commencement Date;
- (b) the date determined by the Responsible Entity as the date on which the Trust is to be terminated, being a date at least 3 Months after the date of the provision of notice of such termination to all Unit Holders;
- (c) the date determined by a resolution passed by 75% (by value of Units) of votes cast by Unit Holders present in person or by proxy at a meeting of the Unit Holders; or
- (d) the date on which the Trust is otherwise terminated by law.

28 Termination and winding up of the Trust

28.1 Realisation of Assets

On the termination and winding up of the Trust, the Responsible Entity shall:

- (a) not issue or redeem Units in the Trust;

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- (b) not convert, substitute or replace Units in the Trust with other Units or Classes of Units;
 - (c) not vary any rights attaching to the Units;
 - (d) not make a Call on the holder of a Partly Paid Unit; and
 - (e) sell and realise the Assets and, subject to clause 28.3, 28.4 and 28.5 distribute to the Unit Holders the amount calculated in accordance with clause 28.2(a).

28.2 Procedure on the winding up of the Trust

- (a) Subject to the terms of issue of any Unit or Class, the net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, shall be distributed pro rata to Unit Holders according to the number of Units they hold less the value of any Assets transferred to or to be transferred to that Unit Holder under clause 28.2(b). The Responsible Entity may distribute proceeds of realisation in instalments.
- (b) If the Unit Holder and the Responsible Entity agree, the Responsible Entity may transfer to the Unit Holder specified Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Trust, such specified Assets to be transferred at a value reasonably determined by the Responsible Entity to be the value of the relevant Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the Corporations Act, the provisions of this Constitution shall continue to apply from the date of termination of the Trust until the date of final distribution under clause 28.2(a), but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Unit Holder.

28.3 Responsible Entity may recover Expenses

The Responsible Entity shall be entitled to be indemnified out of the Trust for, and to be paid and retain from the proceeds all Expenses incurred or likely to be incurred:

- (a) by the Responsible Entity in connection with the winding up of the Trust;
- (b) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Responsible Entity in connection with the winding up of the Trust.

28.4 Retention of Assets

The Responsible Entity may retain under its control for so long as it thinks fit that part of the Assets which in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust. If any part of the Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 28.1 and 28.2.

28.5 Postponement of realisation

The Responsible Entity may postpone the realisation of any part of the Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Assets and will not be responsible for any loss attributable to that postponement.

28.6 Responsible Entity's obligation to make distributions

The Responsible Entity shall not be obliged to make a distribution to a Unit Holder under this clause 28 unless the Unit Holder delivers to the Responsible Entity any evidence of title required by the Responsible Entity together with any form of receipt and discharge required by the Responsible Entity.

28.7 Cancellation of Units

Unless the Responsible Entity determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Assets is made.

28.8 Continuation of powers

The powers, duties and rights of the Responsible Entity (including the rights to remuneration and to any indemnities under this Constitution or the law) continue following termination to the extent to which they are not inconsistent with this clause 28.

28.9 Audit of accounts of the Trust

If the Trust is a Registered Scheme, to the extent that the Corporations Act or ASIC policy requires, the Responsible Entity shall arrange for the final accounts of the Trust following the winding up to be audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Responsible Entity.

29 Meetings of Unit Holders

29.1 Convening meetings

The Responsible Entity may at any time convene a meeting of Unit Holders or a Class of Unit Holders and shall do so if required by the Corporations Act.

29.2 Calling and holding meetings while the Trust a Registered Scheme

While the Trust is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) despite section 252G(4) of the Corporations Act, a notice of meeting sent by post is taken to be given the Business Day after it is posted;
- (b) despite section 252R(2) of the Corporations Act, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;

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- (c) despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and
 - (d) despite section 252Y(2) of the Corporations Act, an appointment of a proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.

29.3 Calling and holding meetings while the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, meetings of Unit Holders must be called and held in accordance with this clause.

- (a) The Responsible Entity may convene a meeting of Unit Holders at any time and shall convene a meeting of Unit Holders on receiving a request in writing to do so signed by a Unit Holder or Unit Holders holding not less than 10% of the issued Units.
- (b) Not less than 14 days' notice shall be given of every such meeting (unless all the Unit Holders shall agree in writing to dispense with notice) and such notice shall specify the general nature of the business to be transacted thereat.
- (c) No business shall be transacted at any general meeting unless at the time when the meeting proceeds to business there are present (in person or by proxy) a quorum of at least two Unit Holders who between them hold at least 40% of the issued Units of the classes entitled to vote at the meeting.
- (d) If, within 15 minutes from the time appointed for the meeting, a quorum is not present:
 - (i) the meeting, if convened on the requisition of Unit Holders, shall be dissolved; and
 - (ii) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at an adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting, the meeting shall be dissolved.
- (e) A person nominated by the Responsible Entity shall preside as chairperson at each meeting.
- (f) The chairperson shall not have any casting vote (in the event of an equality of votes) in addition to any vote or votes to which he or she may be entitled as a Unit Holder.
- (g) Every question at any meeting shall be decided in the first instance by a show of hands, but a poll may be demanded before or immediately after any question is put to a show of hands by a Unit Holder or Unit Holders holding between them not less than 10% of the issued Units.

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- (h) Subject to any special rights or restrictions in relation to Units of any Class, each Unit Holder present shall on a show of hands have one vote and on a poll have one vote for every Unit held by that Unit Holder.
 - (i) Votes may be given either personally or by proxy.
 - (j) Without the consent of the Responsible Entity, no person shall be appointed a proxy who is not a Unit Holder provided that where a corporation is a Unit Holder, the proxy may be an officer of such corporation.
 - (k) In the case of joint Unit Holders, any one of such joint Unit Holders may vote either personally or by proxy as if that Unit Holder were solely entitled to the Units comprised in the Unit Holding, but if more than one of such joint Unit Holders be present at any meeting, either personally or by proxy, that one of the joint Unit Holders so present whose name stands first on the register in respect of the joint holding shall alone be entitled to vote in respect thereof.
 - (l) The accidental omission to give notice or sufficient notice to any Unit Holder shall not invalidate any meeting or any of the proceedings thereat, nor shall any irregularity which does not unfairly prejudice any person.
 - (m) The accidental omission to give notice or sufficient notice to any Unit Holder shall not invalidate any meeting or any of the proceedings thereat, nor shall any irregularity which does not unfairly prejudice any person.

29.4 Clauses applying to meetings irrespective of whether or not the Trust is a Registered Scheme

Clauses 29.5 and 29.6 apply irrespective of whether or not the Trust is a Registered Scheme.

29.5 Resolution binding on Unit Holders

A resolution passed at:

- (a) a meeting of Unit Holders is binding on all Unit Holders; and
- (b) a meeting of Class of Unit Holders is binding on all Unit Holders in that Class.

29.6 Written resolution

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of Unit Holders or a Class of Unit Holders, a resolution in writing signed by Unit Holders, or, where relevant, Unit Holders of a Class, together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders, or Class of Unit Holders and is effective when signed by the last of Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by that Unit Holder.

29.7 Adjournments

The Responsible Entity may adjourn a meeting for any reason to such time and place as determined by the Responsible Entity.

29.8 Joint Unit Holders

For the purposes of this clause 29, joint Unit Holders are counted as a single Unit Holder.

30 Notices

30.1 Notices to Unit Holders

- (a) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Unit Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Unit Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
 - (iii) other means, is taken to be received at the time the Responsible Entity determines.

30.2 Notices to joint Unit Holders

The Responsible Entity may give a notice or other communication to joint Unit Holders by giving it to the Unit Holder first named in the Register for that holding.

30.3 Notice to successor

The Responsible Entity may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Unit Holder by sending it to the legal personal representatives of the Unit Holder or trustee of the deceased Unit Holder's estate at the address supplied for the purpose by the representative or trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Unit Holder's address as recorded in the Register.

30.4 Signature on notice

The signature on any notice or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of Responsible Entity or of any director, secretary or other authorised officer of the Responsible Entity.

30.5 Notices to the Responsible Entity

Notices to the Responsible Entity by Unit Holders must be given in writing or in any other manner the Responsible Entity determines. A notice is effective when it is received by the Responsible Entity. A notice must be signed by the Unit Holder or a duly authorised representative (unless the Responsible Entity waives this requirement).

31 Complaints

31.1 Handling of Complaints

If a Unit Holder submits to the Responsible Entity a Complaint, the Responsible Entity:

- (a) shall acknowledge receipt of the complaint immediately or, where immediate acknowledgement is not possible, as soon as practicable;
- (b) shall ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) shall act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (d) may, in its discretion, give any of the following remedies to the Unit Holder:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (e) shall communicate to the Unit Holder as soon as practicable and, in any event, not more than 45 days after receipt by the Responsible Entity of the Complaint (or 21 days for disputes involving default notices):
 - (i) the determination in relation to the Complaint;
 - (ii) the remedies (if any) available to the Unit Holder; and
 - (iii) information regarding any further avenue for Complaint,

except that the requirement to provide such a communication to the Unit Holder does not apply where the Complaint (except for a Complaint relating to hardship) is resolved to the Unit Holder's complete satisfaction by the end of the fifth Business Day after the Complaint is received and the Unit Holder has not requested a response in writing.

31.2 Time for final response not met

If the Responsible Entity cannot provide a final response to the Unit Holder within 45 days (or 21 days for disputes involving default notices) as required by clause 31.1(e), the Responsible Entity must:

- (a) inform the Unit Holder of:
 - (i) the status of the Complaint;
 - (ii) the reasons for the delay; and
 - (iii) the right to complain to the EDR Service; and
- (b) provide the name and contact details of the EDR Service to the Unit Holder.

32 Rights of the Responsible Entity

32.1 Right to hold Units

The Responsible Entity and/or any of its Associates may hold Units in any capacity.

32.2 Other capacities

Subject to the Corporations Act, nothing in this Constitution restricts the Responsible Entity (in its personal capacity or in any other capacity other than as responsible entity or trustee of the Trust) and/or any of its Associates:

- (a) dealing with the Responsible Entity (as responsible entity or trustee of the Trust or in another capacity), an Associate of the Responsible Entity or with any Unit Holder;
- (b) borrowing from the Responsible Entity in its personal capacity or in any other capacity other than as responsible entity or trustee of the Trust;
- (c) being interested in any contract or transaction or matter with the Responsible Entity (as responsible entity or trustee of the Trust or in another capacity), an Associate of the Responsible Entity or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction;
- (d) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (e) any dealing with any entity in which the Assets are invested,

and in each case the Responsible Entity (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

32.3 Responsible Entity may rely

The Responsible Entity may take and may act upon:

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

and the Responsible Entity shall not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or documents.

33 Constitution legally binding

This Constitution binds the Responsible Entity and each present and future Unit Holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

34 Other obligations excluded

Except as required by the Corporations Act, all obligations of the Responsible Entity which may otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including, without limitation, any obligation of the Responsible Entity in its capacity as trustee of the Trust arising under any statute.

35 Payment

- (a) Any money payable by the Responsible Entity to a Unit Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's address as supplied in the Register.
- (b) A Unit Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this Constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Unit Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Responsible Entity in respect of the payment.

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- (d) The Responsible Entity may determine that any cheque not presented within six Months or any electronic fund transfer which is unsuccessful at least twice times is cancelled. If the Responsible Entity so determines the amount of the cheque or electronic fund transfer may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 5.4. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled.
 - (e) The Responsible Entity is entitled to keep any interest accrued on money payable to a Unit Holder or former Unit Holder.
 - (f) Money payable to the Responsible Entity may from time to time be paid in a manner other than that described in this clause 35 with the Responsible Entity's consent.
 - (g) The Responsible Entity may deduct from any amount to be paid, or received from, a Unit Holder or a person who was previously a Unit Holder any amount the Responsible Entity is authorised or required to deduct by law, the Constitution or any product disclosure document for the Trust of which the terms are binding on the Unit Holder.

36 Severability

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable, so much hereof as is necessary to render it valid and enforceable shall be deemed to be severed but the remainder of this Constitution will remain in full force and effect.

37 Governing law

This Constitution is governed by the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

EXECUTED as a **deed**.

Newmark Hardware Trust Constitution

Schedule 1 - Expenses

The following are examples of Expenses for which the Responsible Entity may be reimbursed out of the Assets and are not intended to limit the Expenses which may be payable:

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Trust and any supplemental deed or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) the preparation, approval, implementation, audit and interpretation of a Compliance Plan;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any other interest in the Trust, marketing material or other documents whether required by law or otherwise to be prepared in respect of the Trust;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (f) the investigation, negotiation or acquisition of any proposed investment;
- (g) the administration, management, valuation or promotion of the Trust or its Assets and Liabilities, including without limitation:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) issuing Units by the Responsible Entity or any sales of Units by one or more Unit Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
 - (iii) computer operation and development and data processing;
 - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this Constitution;
 - (v) dealing with Unit Holder enquiries;
 - (vi) communications with Unit Holders (written or otherwise);
 - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;

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- (viii) leasing premises outside of Australia for the Responsible Entity in connection with the Trust; and
 - (ix) any travel expenses incurred in connection with the Trust;
 - (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;
 - (i) Taxes (provided they are not on the personal account of the Responsible Entity and including any GST charged to the Responsible Entity), stamp duty and financial institution fees;
 - (j) the inclusion of the Trust on any IDPS list;
 - (k) the engagement of delegates, agents, Advisers and Valuers;
 - (l) without limiting paragraph (k), the payment of management fees, performance fees or other fees associated with the engagement of any investment manager or other delegate;
 - (m) preparation and audit of the taxation returns and accounts of the Trust;
 - (n) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
 - (o) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent in which case any expenses paid or reimbursed under this paragraph (o) shall be repaid;
 - (p) the establishment and operation of a Compliance Committee in connection with the Trust, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of Compliance Committee Members;
 - (q) while there is no Compliance Committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a Compliance Committee, including (if the Trust is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (r) admission of the Trust to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Trust from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
 - (s) complying with any law or any request or requirement of the ASIC or any other regulatory authority in relation to the Trust;
 - (t) fees payable to ASIC or any other regulatory authority in relation to the Trust or Units;
 - (u) the assigning or maintaining of a credit rating to the Trust; and

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- (v) raising money or otherwise obtaining financial accommodation for the Trust, including a capital raising by the Trust, including fees payable to any underwriter or broker.

Newmark Hardware Trust Constitution

Schedule 2 - AMIT provisions

1 Unit Holders' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Unit Holder in the Trust constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to have Clearly Defined Rights:
 - (i) the Responsible Entity may not exercise any right or power, whether it is one provided to the Responsible Entity under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Trust arising from each Unit in each relevant AMIT for the Trust to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
 - (ii) the Responsible Entity must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly, except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 8.12(c); and
 - (iii) in addition to the requirements of clause 25 of this Constitution, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Responsible Entity powers in relation to AMIT Regime

- (a) The Responsible Entity has all of the powers and rights which are necessary and expedient to enable the Trust to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (b) Without limiting the Responsible Entity's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Responsible Entity has the power to:
 - (i) work out the Trust Component of each applicable character of the Trust, or each Class, for a Financial Year;
 - (ii) attribute all of the Trust Components and Determined Trust Components of the Trust, or each Class, to Unit Holders for the Financial Year under the AMIT Regime, including make an attribution of income of a particular category, source or character for tax purposes;
 - (iii) make an alteration to the Responsible Entity's attribution of the Trust Components and Determined Trust Components of the Trust, or each Class, to Unit Holders under the AMIT Regime including, without limitation,

making alterations as a result of the Responsible Entity applying the Unders and Overs Rules;

- (iv) issue (or reissue as the case may be) an AMMA Statement;
 - (v) where the Trust has more than one Class of Units on issue, to make a choice that each Class be treated as a separate AMIT. If the Responsible Entity has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;
 - (vi) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;
 - (vii) allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis; and
 - (viii) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.
- (c) Subject to the Corporations Act, the Responsible Entity is not liable to any Unit Holder or former Unit Holder with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Responsible Entity makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Responsible Entity results in a different attribution outcome for the Unit Holder than if the Responsible Entity had not made the choice, or had made the choice in a different way.

3 Attribution of trust components

- (a) The Responsible Entity must attribute all of the Trust Components and Determined Trust Components of:
- (i) the Trust; or
 - (ii) if the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class in the Trust,
- in respect of a Financial Year, to the Unit Holders or former Unit Holders under the AMIT Regime.
- (b) The Responsible Entity undertakes to perform attribution under clause 3(a) in accordance with the following principles:
- (i) the amount of each Unit Holder's or former Unit Holder's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units in the Trust held by the

Unit Holder or former Unit Holder, having regard to the provisions of this Constitution;

- (ii) subject to 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Trust;
 - (iii) subject to 3(b)(iv), the Responsible Entity must not attribute any part of a Determined Trust Component to a Unit Holder or former Unit Holder because of the tax characteristics of the Unit Holder or former Unit Holder;
 - (iv) the Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 8.12(c) of this Constitution,
 - (v) if there is more than one Class on issue in the Trust and the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Responsible Entity must only attribute Determined Trust Components of a particular Class to Unit Holders of that Class (and not any other Class); and
 - (vi) the Responsible Entity must attribute to each Unit Holder or former Unit Holder, so much of the Determined Trust Components of the Trust or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Unit Holder or former Unit Holder has become entitled to during the Financial Year.
- (c) Where the Responsible Entity exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Responsible Entity make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement provisions or amount payable to a Unit Holder under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital contemplated in the existing Distribution Entitlement provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Trust ceases to be an AMIT in respect of any Financial Year, then in determining the Net Income of the Trust for that or any subsequent Financial Year and to the extent required by the AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Trust was an AMIT.

5 Determined Member Component Choice

- (a) If a Unit Holder makes or intends to make a Determined Member Component Choice (in this clause, a **Choice**) for the purposes of the AMIT Regime, the Unit Holder must:
 - (i) before providing notice of such Choice to the Commissioner of Taxation, provide the Responsible Entity not less than seven days' notice of its intention to do so and a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
 - (ii) provide to the Responsible Entity all information the Responsible Entity reasonably requests in relation to any act, matter or thing relating to any Choice; and
 - (iii) consent to the Responsible Entity becoming a party to any proceedings with the Commissioner of Taxation relating to the Choice.
- (b) The Unit Holder acknowledges that if a Unit Holder makes a Choice it may be necessary or desirable for the Responsible Entity to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Unit Holders for the purposes of the AMIT Regime.
- (c) The Responsible Entity shall have no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to a Choice.
- (d) The Responsible Entity has the right to issue or reissue any AMMA Statement to the Unit Holder or other Unit Holders if a Unit Holder makes a Choice.

6 Debt-like AMIT instruments

The Unit Holders and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.

7 AMIT indemnity

Pursuant to this clause 7, the Responsible Entity is entitled to be indemnified out of the Assets for any liability that:

- (a) is incurred by the Responsible Entity in relation to the proper performance of its duties; and
- (b) either:
 - (i) is an Attribution Income Tax Liability of the Responsible Entity; or
 - (ii) results from a Unit Holder or former Unit Holder making a claim against the Responsible Entity in relation to an Attribution Income Tax Liability of the Unit Holder or former Unit Holder (as the case may be) that results from an attribution by the Responsible Entity under section 276-210 of the *Income*

Tax Assessment Act 1997 (Cth) to the interests held by the Unit Holder or former Unit Holder.

Newmark Hardware Trust Constitution

Schedule 3 - Performance Fee

1 Definitions

In addition to the definitions in clause 1.1 of this Constitution, the following additional definitions apply to this Schedule 3:

Calculation Date means the last day of the Calculation Period.

Calculation Period means each period which begins on the first day following the end of the previous Calculation Period and ends on the following 30 June, except that:

- (a) the first Calculation Period is the period commencing on the day after the Amendment Date and ending on the next 30 June that occurs after a period of at least 12 Months from the Amendment Date; and
- (b) the last Calculation Period is the period ending on the date on which the final distribution is made to Unit Holders following the termination and winding up of the Trust, and commencing on the preceding 1 July; and
- (c) if a Trigger Event occurs, the Calculation Period is the period ending on the date on which the Trigger Event occurs and commencing on the preceding 1 July.

Closing Unit Price means, in respect of a Calculation Period, the Withdrawal Price calculated as at the Calculation Date (excluding any Performance Fee accruals and distributions factored into the Withdrawal Price).

Distributions means, in respect of a Calculation Period, the amount per Unit of all distributions of income or capital payable to Unit Holders under clause 13 during the Calculation Period.

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

$$\text{Closing Unit Price} - \text{Opening Unit Price} + \text{Distributions}$$

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

$$\text{Opening Unit Price} \times \text{Hurdle Rate}$$

Hurdle Rate means, in respect of a Calculation Period, the percentage calculated in accordance with the following formula:

$$10\% \times \frac{x}{y}$$

where:

x is the number of days in the relevant Calculation Period; and

y is the number of days in the Financial Year.

Opening Unit Price means, in respect of a Calculation Period, the Withdrawal Price calculated on the on the last day of the preceding Calculation Period (excluding any Performance Fee accruals and distributions factored into the Withdrawal Price).

Outperformance means the dollar amount (if any) calculated in respect of a Calculation Period, in accordance with the following formula:

$$(Fund\ Performance - Hurdle\ Performance) \times n$$

where:

n is the weighted average number of Units on issue at the end of the relevant Calculation Period.

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

$$Outperformance \times 15\%$$

Trigger Event means any of the following:

- (a) the Responsible Entity being removed, or being forced to retire, from office involuntarily;
- (b) the merging of the Trust with another trust or trusts;
- (c) the stapling of the Trust with another entity or entities; or
- (d) the listing of the Trust on an exchange.

2 Performance Fee

2.1 On each Calculation Date, the Responsible Entity is entitled to a Performance Fee as set out in this Schedule 3.

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

- (a) the Closing Unit Price;
- (b) the Opening Unit Price;
- (c) the Distributions;
- (d) Hurdle Performance;
- (e) Fund Performance;
- (f) Outperformance; and
- (g) the Performance Fee Amount.

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

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

2.4 On the date a Trigger Event occurs:

- (a) the Responsible Entity becomes entitled to immediate payment of all deferred Performance Fees; and
- (b) in respect of the Calculation Period in which the Trigger Event occurs, the Responsible Entity becomes entitled to payment of a Performance Fee as follows:
 - (i) the Performance Fee is payable on the day of the Trigger Event or as soon as it can be calculated; and
 - (ii) the day of the Trigger Event is taken to be the Calculation Date (as contemplated in the definition of 'Calculation Period').