

## Constitution

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Growthpoint Properties Australia Trust

Growthpoint Properties Australia Limited

This document is a consolidated copy of the trust deed dated 25 May 2006 for Growthpoint Properties Australia Trust (**Original Constitution**) as amended by Supplemental Deeds dated 6 June 2006, 5 August 2009, 16 August 2010, 20 June 2011, 19 December 2011, 22 May 2012, 29 October 2013, and 11 August 2016 and by special resolutions dated 23 November 2016 and 22 November 2017.



## Table of contents

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	<b>Operative part</b>	<b>5</b>
<b>1</b>	<b>Definitions and interpretations</b>	<b>5</b>
	1.1 Definitions .....	5
	1.2 Interpretations .....	13
	1.3 General compliance provision .....	14
	1.4 Inconsistency with the Listing Rules .....	14
	1.5 Additional Listing Rule requirements .....	15
	1.6 Compliance with Act when not registered .....	16
	1.7 Interpretation of inclusive expressions .....	16
<b>2</b>	<b>The Trust</b>	<b>16</b>
	2.1 Trustee to hold the Fund for Unitholders .....	16
	2.2 Trustee.....	16
	2.3 Name of Trust .....	16
<b>3</b>	<b>Interest of Unitholder</b>	<b>16</b>
	3.1 Division into Units .....	16
	3.2 Fractions and splitting.....	17
	3.3 Issue of Partly Paid Units.....	17
	3.4 Joint Holders .....	17
	3.5 Benefits and obligations of Unitholders and Optionholders.....	18
	3.6 Capital reallocation .....	18
	3.7 No further liability .....	18
<b>4</b>	<b>Calls, forfeiture, indemnities, lien and surrender</b>	<b>19</b>
	4.1 Calls .....	19
	4.2 Effect of Stapling.....	20
	4.3 Proceedings to recover calls.....	20
	4.4 Payments in advance of calls .....	20
	4.5 Forfeiture Partly Paid Units.....	20
	4.6 Members' indemnity.....	22
	4.7 Lien on Units .....	22
	4.8 Surrender of Units.....	23
	4.9 Sale, reissue or other disposal of Units .....	23
	4.10 Interest payable by Unitholder .....	24
	4.11 Deemed full payment.....	25
	4.12 Income and Capital of a Forfeited Unit .....	25
<b>5</b>	<b>Issue of Units and Options</b>	<b>25</b>
	5.1 Number of Units issued .....	25
	5.2 Application for Units or Options .....	25
	5.3 Payments to the Trustee.....	26
	5.4 Allotment .....	26
	5.5 Trustee's discretion on Application .....	26
	5.6 Certificates .....	26
	5.7 Foreign Unitholders.....	26



## Contents

<b>6</b>	<b>Power to issue Units and Options</b>	<b>27</b>
6.1	Powers Cumulative .....	27
6.2	Underwriting of Issue .....	27
6.3	Issues of Units and Options .....	28
6.4	Issues of Units pursuant to a bookbuild .....	28
6.5	Other issues of Units and Options .....	29
<b>7</b>	<b>Trustee's Powers</b>	<b>29</b>
7.1	General powers of Trustee .....	29
7.2	Delegation by Trustee .....	29
7.3	Buy-back of Units .....	30
<b>8</b>	<b>Trustee's responsibilities and indemnities</b>	<b>30</b>
8.1	No limitation of other undertakings .....	30
8.2	Limitation of liability .....	30
8.3	Indemnities .....	30
8.4	Trustee may rely on advice .....	31
8.5	Interested dealings by Trustee .....	31
8.6	Trustee cannot be a Unitholder .....	32
<b>9</b>	<b>Valuation of the Fund</b>	<b>32</b>
9.1	Valuation of assets of the Fund .....	32
9.2	Currency Conversion .....	32
9.3	Trustee to determine Current Unit Value .....	32
<b>10</b>	<b>Income and Distributions</b>	<b>32</b>
10.1	Determination of income and reserves .....	32
10.2	Distribution of income .....	33
10.3	Trustee discretion .....	33
10.4	Distribution Entitlement .....	33
10.5	Distribution of Entitlement .....	34
10.6	Distribution Reinvestment Arrangements .....	34
10.7	Discharge of Trustee's obligation .....	34
10.8	Trust taxed as a company .....	34
10.9	Distributions in specie .....	35
<b>11</b>	<b>Remuneration of Trustee</b>	<b>35</b>
11.1	Cost recovery while stapled .....	35
11.2	Foreign Asset acquisition fee .....	36
11.3	Ongoing management fee .....	36
11.4	Performance Fee .....	36
11.5	Debt placement fee .....	39
11.6	Custodial fee .....	39
11.7	Waiver or deferral of remuneration .....	39
11.8	Priority of Trustee's remuneration .....	39
11.9	Indemnity .....	39
11.10	Proper performance of duties .....	39
11.11	Act or omission of a delegate .....	39
11.12	Indemnity unaffected by an unrelated breach .....	40
11.13	Reimbursement of GST .....	40



## Contents

<b>12</b>	<b>Indemnity and insurance</b>	<b>40</b>
	12.1 Persons to whom clauses 12.2 and 12.4 apply .....	40
	12.2 Indemnity .....	41
	12.3 Extent of indemnity .....	41
	12.4 Insurance .....	41
	12.5 Savings .....	41
<b>13</b>	<b>Transfer and transmission of Units and Options</b>	<b>42</b>
	13.1 Transferring Units and Options.....	42
	13.2 Power to decline to register transfers .....	43
	13.3 Power to suspend the registration of transfers .....	43
	13.4 Selling or redeeming non marketable parcels .....	43
	13.5 Transmission of Units and Options.....	44
	13.6 Restricted Securities.....	45
<b>14</b>	<b>Options</b>	<b>46</b>
	14.1 Terms and Subscription.....	46
	14.2 Nominees.....	46
	14.3 Exercise .....	46
	14.4 Optionholder's Rights and Interest .....	46
	14.5 Redemption or Repurchase.....	46
<b>15</b>	<b>Retirement or Removal of Trustee</b>	<b>47</b>
	15.1 Retirement and removal of Trustee .....	47
<b>16</b>	<b>Alterations to Trust</b>	<b>48</b>
<b>17</b>	<b>Term of Trust and termination of Trust</b>	<b>48</b>
	17.1 Term of Trust .....	48
	17.2 When the trust is to be wound up .....	48
	17.3 Procedure on winding up of Trust.....	48
	17.4 Audit of accounts of Trust.....	49
<b>18</b>	<b>Meetings</b>	<b>49</b>
	18.1 Meetings .....	49
	18.2 Passing of resolution .....	50
<b>19</b>	<b>Complaints</b>	<b>50</b>
<b>20</b>	<b>Plebiscite to approve proportional takeover bids</b>	<b>50</b>
	20.1 Definitions .....	50
	20.2 Transfers not to be registered.....	51
	20.3 Approving Resolution.....	51
	20.4 Sunset.....	51
<b>21</b>	<b>Proposal approved by Holders</b>	<b>52</b>
	21.1 Power to implement a Proposal and limitation of liability .....	52
	21.2 Appointment of Trustee as agent and attorney .....	52
	21.3 Paramourncy.....	52
<b>22</b>	<b>Stapling</b>	<b>53</b>
	22.1 Power to staple Securities .....	53
	22.2 Applications, transfers and distributions in specie.....	53



## Contents

22.3	Operation of Stapling provisions.....	53
22.4	Units to be Stapled.....	54
22.5	Unstapling Date .....	54
22.6	Transfer of Stapled Securities .....	55
22.7	Stapled Security Register .....	55
22.8	Unitholder meetings.....	56
22.9	Variation of Stapling provisions .....	56
22.10	Restricted issue of Units of different class.....	56
<b>23</b>	<b>Notices</b>	<b>56</b>
23.1	Notices by the Trustee to Holders .....	56
23.2	Notices to the Trustee.....	57
23.3	Time of service.....	58
23.4	Other communications and documents .....	58
23.5	Written notices .....	58
23.6	Tax returns.....	58
23.7	Electronic annual financial report to Unitholders .....	58
<b>24</b>	<b>General</b>	<b>59</b>
24.1	Method of payment or repayment.....	59
24.2	Binding conditions.....	59
24.3	Governing law .....	59
24.4	Severability .....	59
	<b>Schedules</b>	
	<b>Meetings</b>	<b>61</b>



## Operative part

### 1 Definitions and interpretations

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#### 1.1 Definitions

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Act</b>	the <i>Corporations Act</i> 2001 as modified by any applicable ASIC class order or instrument.
<b>AMIT</b>	means, in respect of a Distribution Period in a Financial Year, an attribution managed investment trust in respect of that year as that term is defined in section 276-10 of the Tax Act where the choice to be an attribution managed investment trust was made before the end of the Financial Year.
<b>Application</b>	any of the following, as the case requires: <ol style="list-style-type: none"><li>1 an application for Units;</li><li>2 a notification of the exercise of, or application to exercise, Options; or</li><li>3 an application for Options.</li></ol>
<b>Application Money</b>	the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application.
<b>Approved Valuer</b>	a valuer appointed by the Trustee who: <ol style="list-style-type: none"><li>1 is independent of the Trustee; and</li><li>2 has relevant market experience in determining market price in circumstances similar to those in which the determination of the market price of Stapled Securities is being made.</li></ol>
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX Market Rules</b>	the Market Rules published by ASX, as amended from time to time.
<b>ASX Settlement</b>	ASX Settlement Pty Limited ACN 008 504 532.



<b>Term</b>	<b>Meaning</b>
<b>ASX Settlement Operating Rules</b>	the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time.
<b>ASX</b>	ASX Limited ACN 008 624 691 or the market operated by it as the context requires.
<b>Attached Security</b>	a Security which is from time to time Stapled, or to be Stapled, to a Unit or Option (as applicable).
<b>Auditor</b>	the auditor from time to time appointed by the Trustee to audit the Trust.
<b>Business Day</b>	has the meaning given to that term in the Listing Rules.
<b>CHESS Approved Securities</b>	securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Act, namely, ASX Settlement) in accordance with the ASX Settlement Operating Rules.
<b>Compliance Committee</b>	any compliance committee for the Trust if required by section 601JA of the Act.
<b>Compliance Plan</b>	the compliance plan for the Trust as required by section 601HA of the Act.
<b>Corresponding Number</b>	in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Unit at that time.
<b>Costs</b>	includes costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.
<b>Current Unit Value</b>	the amount calculated as follows: $CUV = \frac{NAV}{NU}$ where: CUV is Current Unit Value NAV is Net Asset Value NU is the number of Units on Issue.



<b>Term</b>	<b>Meaning</b>
<b>Distributable Amount</b>	the amount (if any) determined in accordance with clause 10.4(a).
<b>Distribution Calculation Date</b>	the last day of each Financial Year and such other days as designated by the Trustee.
<b>Distribution Date</b>	a day not more than three calendar months after the Distribution Calculation Date for the relevant Distribution Period
<b>Distribution Entitlement</b>	the entitlement to any Distributable Amount determined in accordance with clause 10.4(b).
<b>Distributable Income</b>	the amount determined in accordance with clause 10.2.
<b>Distribution Period</b>	the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.
<b>Distribution Reinvestment Arrangement</b>	an arrangement of the kind described in clause 10.6.
<b>Exchange</b>	the Australian Securities Exchange or such other body corporate that is declared by the Trustee to be the Trust's primary stock exchange for the purposes of this definition.
<b>Exercise Price</b>	in relation to a Unit issued on the exercise of an Option, the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 6.
<b>Financial Year</b>	<ol style="list-style-type: none"><li>1 the 12 month period ending on 30 June in each year; and</li><li>2 for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates.</li></ol>
<b>Foreign Interests</b>	the Units or Options to which a Foreign Unitholder would have been entitled but for clause 5.7(a).
<b>Foreign Unitholder</b>	a Unitholder whose address appearing in the Register is in a country outside Australia.





<b>Term</b>	<b>Meaning</b>
<b>Forfeited Unit</b>	a Partly Paid Unit which is forfeited under clause 4.5(b) by non-payment of an Instalment.
<b>Fully Paid Unit</b>	a Unit on which the whole of the Issue Price has been paid.
<b>Fund or Trust Property</b>	<p>all the cash, investments, rights and other property of the Trust (including, but not limited to, each unpaid Instalment in respect of each Partly Paid Unit), but excludes:</p> <ol style="list-style-type: none"><li>1 Application Money or property paid in respect of which Units have not been issued;</li><li>2 proceeds from withdrawal which have not yet been paid; and</li><li>3 Distributable Income awaiting payment to Unitholders..</li></ol>
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world.
<b>Gross Asset Value</b>	the value of the Fund not including assets of the Fund that relate to derivative instruments used for hedging.
<b>Holder</b>	a Unitholder or Optionholder (as the context may require).
<b>Indicative Buy Back Price</b>	<ol style="list-style-type: none"><li>1 where a Unit does not form part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or</li><li>2 where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day.</li></ol>
<b>Instalment</b>	in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue.
<b>Issue Price</b>	in relation to a Unit or an Option, the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in clause 6 pursuant to which the Unit or Option was issued, and in respect of a Unit issued on the exercise of an Option, means the Exercise Price.



<b>Term</b>	<b>Meaning</b>
<b>Liabilities</b>	<p>the liabilities in respect of the Trust, including:</p> <ol style="list-style-type: none"><li>1 unpaid administrative costs and expenses including fees of the Trustee;</li><li>2 accrued charges in respect of or owing in relation to any asset of the Fund;</li><li>3 amounts of all borrowings; and</li><li>4 any provision for Tax which in the opinion of the Trustee should be taken into account.</li></ol> <p>To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for this Trust, Unitholders' funds are not to be treated as a liability.</p>
<b>Listed</b>	<p>admitted to the Official List.</p>
<b>Listing Rules</b>	<p>the Listing Rules of the Exchange and any other rules of the Exchange which are applicable while the Trust is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by the Exchange.</p>
<b>Market Price</b>	<p>In this definition, "Interest" means:</p> <ul style="list-style-type: none"><li>• where a Unit does not form part of a Stapled Security, a Unit;</li><li>• where a Unit does form part of a Stapled Security, a Stapled Security;</li></ul> <ol style="list-style-type: none"><li>1 Subject to paragraphs 2 and 4 of this definition, the Market Price for an Interest on any Business Day is the average traded price for an Interest for all sales on the Exchange (excluding transactions referred to in paragraph 4 of this definition) for the period of 10 Business Days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day).</li><li>2 If in respect of paragraph 1 of this definition, the Trustee considers the period of 10 Business Days to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.</li><li>3 For the purposes of paragraph 1 of this definition, the following transactions are excluded when calculating Market Price:<ul style="list-style-type: none"><li>• any transaction defined in the ASX Market Rules as a "Special Crossing";</li><li>• any transaction defined in the ASX Market Rules as a "Crossing" that occurs prior to the commencement of normal trading or during the closing phase or after-hours adjust phase;</li><li>• any transaction pursuant to the exercise of Options over Interests; or</li><li>• any transaction which the Trustee considers is not reflective of natural supply and demand.</li></ul></li><li>4 If the Trustee believes that the calculations in paragraph 1 of this definition do not provide an appropriate reflection of the market price of</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>an Interest, the Market Price on any Business Day is an amount determined by an Approved Valuer, to be the fair market price of the Interest, having regard to:</p> <ul style="list-style-type: none"><li>• the nature of the proposed offer of Interests for which purpose the market price of an Interest is being calculated; and</li><li>• the circumstances in which the proposed offer of Interests will be made.</li></ul> <p>The Market Price of an Option on any Business Day must be determined in the same manner as the Market Price for an Interest is determined.</p>
<b>Meeting</b>	a meeting of Holders convened in accordance with this deed.
<b>month</b>	calendar month.
<b>Net Asset Value</b>	<p>Gross Asset Value less the following:</p> <ol style="list-style-type: none"><li>1 all amounts required to repay borrowings and to meet all Costs (including the amount of any provisions the Trustee determines, in consultation with the Auditor (if any), should be made) but excluding Liabilities (if any):<ul style="list-style-type: none"><li>• to Unitholders in respect of Units; and</li><li>• relating to derivative instruments used for hedging;</li></ul></li><li>2 following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unitholders on the day on which the Net Asset Value is determined; and</li><li>3 any amount paid in advance of a call on a Partly Paid Unit.</li></ol>
<b>Net Income of the Trust</b>	the net income of the Trust for the Distribution Period as calculated under the Tax Act as reduced by any non-cash amounts included in that net amount (including but not limited to franking credits, foreign income tax offsets and any amount included as assessable under Division 230 for which no cash payment is received) .
<b>Official List</b>	the official list of the Exchange.
<b>Official Quotation or Officially Quoted</b>	official quotation by the Exchange of Units, Options or Stapled Securities, as the case requires.
<b>Operating Income</b>	the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less costs, expenses or outgoings (whether cash or not) arising in deriving that income including, but not limited to:



<b>Term</b>	<b>Meaning</b>
	<ol style="list-style-type: none"><li>1 property and other outgoings;</li><li>5 repairs and maintenance;</li><li>6 interest and other borrowing costs; and</li><li>4 fees paid to the Trustee;</li></ol>
<b>Option</b>	an option granted by the Trustee in respect of unissued Units.
<b>Optionholder</b>	the person for the time being registered as a holder of an Option, including any persons jointly registered.
<b>Paid-up Proportion</b>	in relation to a Unit, the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit.
<b>Partly Paid Unit</b>	a Unit in respect of which any portion of its Issue Price remains unpaid.
<b>Proposal</b>	a proposal approved by Holders: <ol style="list-style-type: none"><li>1 unanimously in writing; or</li><li>2 at a Meeting approved by special resolution.</li></ol>
<b>Proper ASTC Transfer</b>	has the meaning given to that term in the <i>Corporations Regulations 2001</i> (Cth).
<b>Record Time</b>	<ol style="list-style-type: none"><li>1 in the case of a Meeting for which the caller of the Meeting has decided, under the Act, that Units are to be taken to be held by the persons who held them at a specified time before the Meeting, that time; and</li><li>2 in any other case, 48 hours before the relevant Meeting, or, if this time would fall on a trading day, 7.00pm (Sydney time) on that day.</li></ol>
<b>Register</b>	the register of Unitholders or Optionholders maintained by the Trustee pursuant to clause 1.6(a) or Chapter 2C of the Act, as the context requires.
<b>Representative</b>	in relation to a member that is a body corporate means a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the Meeting.
<b>Restricted Security</b>	has the meaning given to that term in the Listing Rules.



<b>Term</b>	<b>Meaning</b>
<b>Security</b>	a security, as that term is defined in section 92(1) of the Act and an option to acquire (by way of issue) such a security.
<b>Staple, Stapled or Stapling</b>	in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others.
<b>Stapled Entity</b>	any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units.
<b>Stapled Security</b>	a Unit or Option (as applicable) and the Corresponding Number of each Attached Security that are Stapled together.
<b>Stapled Security Register</b>	the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 22.7.
<b>Stapling Date</b>	the date determined by the Trustee to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities.
<b>Stapling Proposal</b>	the proposal to Staple any Security to Units, Options or Stapled Securities.
<b>Tax</b>	any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above.
<b>Tax Act</b>	the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997.
<b>Terms of Issue</b>	in relation to a Stapled Security, Unit or Option, the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed).
<b>Terms of Offer</b>	in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option.
<b>Transmission Event</b>	1 in respect of a Holder who is an individual – the Holder's death, the Holder's bankruptcy, or a Holder becoming of unsound mind or a person



<b>Term</b>	<b>Meaning</b>
	who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
	2 in respect of a Holder which is a body corporate – the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder.
<b>Trust</b>	the trust constituted under this deed.
<b>Trustee</b>	Growthpoint Properties Australia Limited (ACN 124 093 901) or any other company that replaces it as trustee (including any company named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust).
<b>Unit</b>	an undivided interest in the Trust as provided for in this deed.
<b>Unitholder</b>	1 a person registered as the holder of a Unit, including any persons jointly registered; or 2 a person whose Application and Application Money has been accepted by the Trustee, but who is not yet registered as the holder of a Unit.
<b>Unit Holding</b>	the total number of Units held by a Unitholder.
<b>Units on Issue</b>	the number of Units created under this deed and not cancelled.
<b>Unstaple or Unstapled</b>	in relation to a Unit or Option (as applicable) and an Attached Security or Attached Securities, being detached from each other so that one may be dealt with without the other or others.
<b>Unstapling Date</b>	the date determined by the Trustee to be the Unstapling Date pursuant to clause 22.5.

## 1.2 Interpretations

In this deed:

- (a) terms defined for the purposes of the Act are used in this deed with the same meaning;
- (b) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (c) the singular includes the plural and the plural includes the singular;



- (d) words of any gender include all genders;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (f) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (g) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (h) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (k) a reference to cash includes cheques and bank cheques;
- (l) references to sums of money are to amounts in Australian dollars;
- (m) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (n) a reference in this deed to a member for the purposes of a Meeting of members is a reference to a member as defined in the Act as at the relevant Record Time; and
- (o) a reference to a body, other than the Trustee (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### **1.3 General compliance provision**

While the Trust is a registered scheme:

- (a) a provision of this deed which is inconsistent with a provision of the Act does not operate to the extent of the inconsistency;
- (b) clause 1.3(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed; and
- (c) this clause 1.3 prevails over all other provisions of this deed including any that are expressed to prevail over it.

### **1.4 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.4, this clause 1.4 has effect subject to clause 1.3.
- (b) If the Trust is admitted to the Official List, the following clauses apply:



- (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
- (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;
- (3) 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);
- (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
- (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
- (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of the inconsistency.

## 1.5 Additional Listing Rule requirements

If the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under clause 4.1 has not been paid;
  - (2) in the case of voting rights, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with Schedule 1;
  - (3) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (4) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (5) the right is removed or changed under a court order;
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
  - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
  - (4) the divestment is under a court order; or
  - (5) the divestment is under clause 4.5(e);





- (c) the Trustee must not divest a Unitholder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in rule 2.13 of the ASX Settlement Operating Rules. Without limitation to clause 1.4, at all times that the Trust is admitted to the Official List the Trustee must comply with rule 5.12 of the ASX Settlement Operating Rules.

## **1.6 Compliance with Act when not registered**

While the Trust is not a registered scheme, the Trustee must comply with the following provisions of the Act as far as the circumstances admit as if the Trust was a registered scheme and the Trustee was the Trustee of that scheme, namely:

- (a) Chapter 2C (Registers);
- (b) Part 2G.4 (Meetings of Members of Registered Managed Investment Schemes), provided that the Trustee may call a meeting on shorter notice than is required by section 252F with the unanimous consent of Unitholders and section 253E shall not apply; and
- (c) Chapter 2M (Financial Reports and Audit).

## **1.7 Interpretation of inclusive expressions**

Specifying anything in this deed after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

# **2 The Trust**

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## **2.1 Trustee to hold the Fund for Unitholders**

The Trustee declares it will hold each asset of the Fund on trust for the Unitholders on the terms contained in this Constitution.

## **2.2 Trustee**

Growthpoint Properties Australia Limited is appointed and agrees to act as trustee of the Trust.

## **2.3 Name of Trust**

The name of the Trust is the Growthpoint Properties Australia Trust. The Trustee may change the name of the Trust.

# **3 Interest of Unitholder**

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## **3.1 Division into Units**

- (a) The beneficial interest in the Fund is divided into Units. No Unit confers an interest in a particular part of the Trust or the Fund.
- (b) A Holder may not:



- (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
- (2) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
- (3) require that any asset of the Fund be transferred to a Holder.

### 3.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unitholder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit in a class is consolidated or split on the same basis as each other Unit in that class.

### 3.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units, the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The Terms of Issue of any Partly Paid Units may provide that the whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this deed.

### 3.4 Joint Holders

Where two or more persons are registered as the Holders of a Unit or an Option (**joint Holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) except where otherwise required under the Listing Rules or the ASX Settlement Operating Rules, the Trustee may, but is not bound to, register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) subject to clause 3.4(b), on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;



- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution;
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices or other communications from the Trustee, and any notice or other communication given to that person is deemed to be given to all the joint holders; and
- (f) any cheque be sent to the address shown in the Register of any of the joint holders, or to such other address as the any of the joint holders in writing direct.

### **3.5 Benefits and obligations of Unitholders and Optionholders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unitholder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Optionholder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Optionholders where expressly provided in this deed.
- (c) Subject to the Act, where the interests of Optionholders and Unitholders conflict, the Trustee must prefer the interests of Unitholders.

### **3.6 Capital reallocation**

- (a) Subject to the Act and the Listing Rules, if at any time, a Stapled Entity makes a capital payment to the Trustee as a capital reallocation amount:
  - (1) each Unitholder is taken to have directed the Trustee to accept that capital reallocation amount; and
  - (2) the Trustee must apply that amount as an additional capital payment in respect of each Unit which is Stapled to a Security of the Stapled Entity making the capital payment equally in respect of each Unit.
- (b) The Trustee may at any time make a capital payment to a Stapled Entity as a capital reallocation amount if:
  - (1) the constitution of the Stapled Entity contains provisions to the effect of those in clause 3.6(a); and
  - (2) the Trustee is satisfied that the capital payment will be applied as an additional capital payment in respect of each Attached Security to which a Unit is Stapled equally.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unitholder and the Trustee and to any Instalments on Partly Paid Units payable under clauses 3.3 and 4.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the assets of the Fund.



- (e) Except as provided in clauses 4, 10.5(e), 13.4, 21.2, 22.2(e) and 22.6, nothing in or under this deed:
  - (1) makes the Trustee the agent of a Holder; or
  - (2) creates any relationship other than (as between a Holder and the Trustee) that of beneficiary and trustee.

## 4 Calls, forfeiture, indemnities, lien and surrender

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### 4.1 Calls

- (a) Subject to the terms on which any Units are issued and the Stapling rules, the Trustee may:
  - (1) make calls on the Unitholders for any amount unpaid on their Units which is not by the terms of issue of those Units made payable at fixed times; and
  - (2) on the issue of Units, differentiate between Unitholders as to the amount of calls to be paid and the time for payment, so long as, on and from the Stapling Date and prior to the Unstapling Date, the same differentiation is made in respect of each Attached Security to which those Units are Stapled.
- (b) The Trustee may require a call to be paid by Instalments.
- (c) The Trustee must send Unitholders notice of a call at least 14 days (or such longer period required by the Listing Rules) before the amount called is due, specifying the amount of the call, the time for payment and the manner in which payment must be made.
- (d) Each Unitholder must pay the amount called to the Trustee by the time and in the manner specified for payment.
- (e) A call is taken to have been made when the Trustee authorises the call.
- (f) The Trustee may revoke a call or extend the time for payment.
- (g) A call is valid even if a Unitholder for any reason does not receive notice of the call.
- (h) If an amount called on a Unit is not paid in full by the time specified for payment, the person who owes the amount must pay:
  - (1) interest on the unpaid part of the amount from the date payment is due to the date payment is made, at a rate determined under clause 4.10; and
  - (2) if the Unit was issued after the date this deed is adopted, any costs, expenses or damages the Trustee incurs due to the failure to pay or late payment.
- (i) Any amount unpaid on a Unit that, by the terms of issue of the Unit, becomes payable on issue or at a fixed date:
  - (1) is treated for the purposes of this deed as if that amount were payable under a call duly made and notified; and
  - (2) must be paid on the date on which it is payable under the terms of issue of the Unit.



- (j) The Trustee may, to the extent the law permits, waive or compromise all or part of any payment due under the terms of issue of a Unit or under this clause 4.1.

## 4.2 Effect of Stapling

On and from the Stapling Date and prior to the Unstapling Date, any call in respect of a Unit must be in respect of a pro rata amount due in respect of the Attached Securities to which the Unit is Stapled, unless the Trustee and the board of directors of the Stapled Entity decide otherwise.

## 4.3 Proceedings to recover calls

- (a) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
- (1) the name of the defendant is entered in the register as the Unitholder or one of the Unitholders of the Unit on which the call is claimed;
  - (2) the resolution making the call is recorded in the minute book; and
  - (3) notice of the call was given to the defendant complying with this deed,
- is conclusive evidence of the obligation to pay the call and it is not necessary to prove the appointment of the Trustee who made the call or any other matter.
- (b) In clause 4.3(a), **defendant** includes a person against whom the Trustee alleges a set-off or counterclaim, and a **proceeding** to recover a call or an amount is to be interpreted accordingly.

## 4.4 Payments in advance of calls

- (a) The Trustee may accept from a Unitholder the whole or a part of the amount unpaid on a Unit even though no part of that amount has been called.
- (b) The Trustee may authorise payment by the Trust of interest on an amount accepted under clause 4.4(a), until the amount becomes payable, at a rate agreed between the Trustee and the Unitholder paying the amount.
- (c) On and from the Stapling Date and prior to the Unstapling Date, any advance in respect of any Unit must be in respect of a pro rata amount due in respect of the Attached Securities which are Stapled to that Unit, unless the Trustee and the board of directors of the Stapled Entity decided otherwise.
- (d) The Board may repay to a Unitholder any amount accepted under clause 4.4(a).

## 4.5 Forfeiture Partly Paid Units

- (a) If a Unitholder fails to pay the whole of a call or an Instalment of a call by the time specified for payment, the Trustee may serve a notice on that Unitholder:
- (1) requiring payment of the unpaid part of the call or Instalment, together with any interest that has accrued and all costs, expenses or damages that the Trustee has incurred due to the failure to pay;
  - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and the manner in which, the amount payable under clause 4.5(a)(1) must be paid; and
  - (3) stating that if the whole of the amount payable under clause 4.5(a)(1) is not paid by the time and in the manner specified, the Units in respect of which the call was due will be liable to be forfeited.



- (b) If a Unitholder does not comply with a notice served under clause 4.5(a), the Trustee may determine to forfeit any Unit concerning which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) The Trustee may determine to forfeit a Unit which is part of Stapled Security at any time after any Attached Security forming part of such Stapled Security is forfeited under the relevant Stapled Entity's constitution because of non-payment of a call on that Attached Security.
- (d) A forfeiture under clause 4.5(b) or 4.5(c) includes forfeiture of all distributions, interest and other amounts payable by the Trustee on a Forfeited Unit and not actually paid before the forfeiture.
- (e) On and from the Stapling Date and prior to the Unstapling Date:
  - (1) if a Unitholder fails to pay the whole of a call or an instalment of a call on an Attached Security forming part of a Stapled Security when it falls due; and
  - (2) the payment default giving rise to such forfeiture procedures has not been remedied,the Trustee may apply clauses 4.5 to 4.12 in respect of the Unit in order to ensure that the Unit and each Attached Security are simultaneously subject to forfeiture pursuant to substantially identical procedures.
- (f) On and from the Stapling Date and prior to the Unstapling Date, any forfeiture of a Unit must be on the basis that each Attached Security to which the Unit is Stapled is also forfeited at the same time and in the same manner.
- (g) Where a Unit has been forfeited:
  - (1) notice of the forfeiture must be given to the Unitholder who owned the Forfeited Unit immediately before the forfeiture; and
  - (2) an entry of the forfeiture, with the date, must be made in the Register.
- (h) Failure to give the notice or make the entry required under clause 4.5(g) does not invalidate the forfeiture.
- (i) A Forfeited Unit becomes the property of the Trust and the Trustee may sell, reissue or otherwise dispose of the Unit as it thinks fit and, in the case of reissue or other disposal, with or without crediting as paid up any amount paid on the Unit by any former Unitholder.
- (j) While Units are Officially Quoted, the Trustee may determine the amount of consideration payable to acquire Units that have been forfeited if the sale of the Forfeited Units is in accordance with section 254Q of the Act, other than subsections (1), (9), (10) and (13), as if the Units were shares, the Trust was a company and the Trustee was each director of the company.
- (k) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must ensure that any sale, reissue or other disposal of a Unit is held in consultation with each Stapled Entity and contemporaneously with any sale, reissue or disposal of each Attached Security to which the Unit is Stapled.
- (l) A person whose Units have been forfeited ceases to be a Unitholder as to the Forfeited Units, but must, unless the Trustee decides otherwise, pay to the Trustee:
  - (1) all calls, instalments, interest, costs, expenses and damages owing on the Units at the time of the forfeiture; and



- (2) interest on the unpaid part of the amount payable under clause 4.5(l)(1), from the date of the forfeiture to the date of payment, at a rate determined under clause 4.10.
- (m) The forfeiture of a Unit extinguishes all interest in, and all claims and demands against the Trustee relating to, the Forfeited Unit and, subject to clause 4.9(i), all other rights attached to the Unit.
- (n) The Trustee may:
  - (1) exempt a Unit from all or part of this clause 4.5;
  - (2) waive or compromise all or part of any payment due to the Trustee under this clause 4.5; and
  - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions it decides.

#### **4.6 Unitholders' indemnity**

- (a) If the Trustee becomes liable for any reason under a law to make a payment:
  - (1) in respect of Units held solely or jointly by a Unitholder;
  - (2) in respect of a transfer or transmission of Units by a Unitholder;
  - (3) in respect of distributions, bonuses or other amounts due or payable or which may become due and payable to a Unitholder; or
  - (4) in any other way for, on account of or relating to a Unitholder,clauses 4.6(b) and 4.6(c) apply, in addition to any right or remedy the Trustee may otherwise have.
- (b) The Unitholder (or if the Unitholder is dead, the Unitholder's legal personal representative) must:
  - (1) fully indemnify the Trustee against that liability;
  - (2) on demand, reimburse the Trustee for any payment made; and
  - (3) pay interest on the unpaid part of the amount payable to the Trustee under clause 4.6(b)(2), from the date of demand until the date the Trustee is reimbursed in full for that payment, at a rate determined under clause 4.10.
- (c) The Trustee may:
  - (1) exempt a Unit from all or part of this clause 4.6; and
  - (2) waive or compromise all or part of any payment due under this clause 4.6.

#### **4.7 Lien on Units**

- (a) The Trustee has a first lien on:
  - (1) each partly paid Unit for all unpaid calls and Instalments due on that Unit; and
  - (2) each Unit for any amounts the Trustee is required by law to pay and has paid in respect of that Unit.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.



- (b) The Trustee's lien on a Unit extends to all distributions payable on the Unit and to the proceeds of sale of the Unit.
- (c) The Trustee may sell a Unit on which the Trustee has a lien as it thinks fit where:
  - (1) an amount for which a lien exists under this clause 4.7 is presently payable; and
  - (2) the Trustee has given the registered Unitholder a written notice, at least 14 days before the date of the sale, stating and demanding payment of that amount.
- (d) On and from the Stapling Date and prior to the Unstapling Date, any such sale of Units must also be in respect of each Attached Security to which the Units are Stapled.
- (e) The Trustee may do anything necessary or desirable under the ASX Settlement Operating Rules to protect any lien, charge or other right to which the Trustee is entitled under this deed or a law.
- (f) The proceeds of the sale must be received by the Trustee and the money remaining after deducting the expenses of sale must be applied in payment of that part of the amount in respect of which the lien exists as is presently payable. The residue, if any, must (subject to any amounts due in respect of Attached Securities and to a like lien for sums not presently payable as existed upon the Units before the sale) be paid to the person entitled to the Units at the date of the sale.
- (g) When the Trustee registers a transfer of Units on which the Trustee has a lien without giving the transferee notice of its claim, the Trustee's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (h) The Trustee may:
  - (1) exempt a Unit from all or part of this clause 4.7; and
  - (2) waive or compromise all or part of any payment due to the Trustee under this clause 4.7,provided that, on and from the Stapling Date and prior to the Unstapling Date, the Attached Securities (to which the Units are Stapled) are exempted, waived or compromised at the same time and to the same extent.

#### **4.8 Surrender of Units**

- (a) The Trustee may accept a surrender of a Unit by way of compromise of a claim.
- (b) Any Unit so surrendered may be sold, reissued or otherwise disposed in the same manner as a Forfeited Unit.
- (c) On and from the Stapling Date and prior to the Unstapling Date, any surrender, sale, reissue or other disposal of a Unit must be only on the basis that each Attached Security to which the Unit is Stapled will be similarly and contemporaneously sold, reissued or otherwise disposed of.

#### **4.9 Sale, reissue or other disposal of Units**

- (a) A reference in this clause 4.9 to a sale of a Unit by the Trustee is a reference to any sale, reissue or other disposal of a Unit under clauses 4.5(i), 4.7(c) or 13.4.
- (b) When the Trustee sells a Unit, the Trustee may:





- (1) receive the purchase money or consideration given for the Unit;
  - (2) effect a transfer of the Unit or execute or appoint a person to execute, on behalf of the former Unitholder, a transfer of the Unit; and
  - (3) register as the Unitholder of the Unit the person to whom the Unit is sold.
- (c) A person to whom the Trustee sells Units need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied. That person's title to the Units is not affected by any irregularity by the Trustee in relation to the sale. A sale of the Units by the Trustee is valid even if a Transmission Event occurs to the Unitholder before the sale.
- (d) The only remedy of a person who suffers a loss because of a sale of a Unit by the Trustee is a claim for damages against the Trustee.
- (e) Subject to clause 4.9(f), the proceeds of a sale of Units by the Trustee must be applied in paying:
- (1) first, the Costs of the sale;
  - (2) secondly, all amounts payable (whether presently or not) by the former Unitholder to the Trustee,
- and any balance must be paid to the former Unitholder on the former Unitholder delivering to the Trustee proof of title to the Units acceptable to the Trustee.
- (f) The proceeds of sale arising from a notice under clause 13.4(b) must not be applied in payment of the expenses of the sale and must be paid to the former Unitholder on the former Unitholder delivering to the Trustee proof of title to the Unit's acceptable to the Trustee.
- (g) Until the proceeds of a sale of a Unit sold by the Trustee are claimed or otherwise disposed of according to law, the Trustee may invest or use the proceeds in any other way for the benefit of the Trust.
- (h) The Trustee is not required to pay interest on money payable to a former Unitholder under this clause 4.9.
- (i) On completion of a sale, reissue or other disposal of a Unit under clause 4.5(i), the rights which attach to the Unit which were extinguished under clause 4.5(m) revive.
- (j) A written statement by the Trustee that a Unit has been:
- (1) duly forfeited under clause 4.5(b);
  - (2) duly sold, reissued or otherwise disposed of under clause 4.5(i); or
  - (3) duly sold under clause 4.7(c) or clause 13.4,
- on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the Unit, and of the right of the Trustee to forfeit, sell, reissue or otherwise dispose of the Unit.

#### **4.10 Interest payable by Unitholder**

- (a) For the purposes of clauses 4.1(h)(1), 4.5(l)(2) and 4.6(b)(3), the rate of interest payable to the Trustee is:
- (1) if the Trustee has fixed a rate, that rate; or



- (2) in any other case, the rate per annum 2% higher than the rate prescribed in respect of unpaid judgements in the Supreme Court of Victoria.
- (b) Interest accrues daily and may be capitalised monthly or at such other intervals the Trustee decides.

#### **4.11 Deemed full payment**

A Unit which forms part of a Stapled Security will not be deemed to be fully paid until the Trustee and the Stapled Entity have received all amounts outstanding in relation to each Attached Security held by the Unitholder and forming part of the Stapled Security.

#### **4.12 Income and Capital of a Forfeited Unit**

Distributions of income and capital under clause 10:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 4.9 as if they formed part of the proceeds of sale of a Forfeited Unit.

## **5 Issue of Units and Options**

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### **5.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units (other than Partly Paid Units) in whole or in part, the number of Units issued is the number (rounded down to the nearest whole number) determined by the Trustee by dividing the relevant Application Money by the Issue Price.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Money by that part of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Option's Terms of Issue and Terms of Offer.

### **5.2 Application for Units or Options**

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee; and
- (c) include with the Application:
  - (1) the Application Money in the form or manner specified by the Trustee; or
  - (2) if the person is to transfer property to the Trustee, all things required under clause 5.3(a).



### 5.3 Payments to the Trustee

- (a) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
- (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (b) If Units or Options are issued and:
- (1) the Trustee has not received the Application Money in accordance with the Terms of Issue; or
  - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,
- the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Money for the Units or Options.
- (c) All income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Fund.

### 5.4 Allotment

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or an Option until it is granted.

### 5.5 Trustee's discretion on Application

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

### 5.6 Certificates

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

### 5.7 Foreign Unitholders

- (a) The Trustee may determine that Foreign Unitholders are not to be offered Units or Options which are otherwise offered to Unitholders in that capacity where it reasonably considers that it would be in the best interests of the Holders.
- (b) If the Trustee makes a determination under clause 5.7(a) and it is practicable to do so, the Trustee must sell the Foreign Interests and pay to each Foreign Unitholder the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$



where:

- AF is the amount to be paid to that Foreign Unitholder;
- NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:
- (1) the Costs of the sale;
  - (2) the amounts (if any) payable by the Trustee to any nominee appointed under clause 5.7(c) in respect of the Foreign Interest; and
  - (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;
- N is the aggregate number of Foreign Interests; and
- NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unitholder the amount calculated in accordance with the formula in, clause 5.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unitholder under clause 5.7(b).

## 6 Power to issue Units and Options

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### 6.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this clause 6 and subject to this deed.
- (b) No clause of this clause 6 (other than this clause 6.1) limits any other clause.

### 6.2 Underwriting of Issue

- (a) The Trustee may arrange for:
- (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units; or
  - (3) the exercise of Options,
- to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may:
- (1) be the Trustee or a related body corporate of the Trustee;
  - (2) take up any Units or Options not subscribed for; and
  - (3) purchase Forfeited Units sold under clause 4.5(b).
- (c) The Trustee may issue Units and Options under to this clause 6.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.



### 6.3 Issues of Units and Options

In addition to any other power the Trustee has to issue Units or Options under this deed and subject always to compliance with the Act:

- (a) the Trustee may issue Units or Options at any time to any person by way of issue, placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
  - (1) where the Trust is Listed, Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Trustee;
  - (2) where the Trust is Listed, Units are not part of the Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Trustee; or
  - (3) where Units or Stapled Securities (as the case may be) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 5.1(a) and 6.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made; and
- (b) the Trustee may issue Units at any time to any person otherwise than by way of placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
  - (1) where the Trust is Listed, Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Trustee based on the reasonably current market price of the Stapled Securities;
  - (2) where the Trust is Listed, Units are not part of the Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Trustee based on the reasonably current market price of the Units; or
  - (3) where Units or Stapled Securities (as the case may be) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 5.1(a) and 6.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.

### 6.4 Issues of Units pursuant to a bookbuild

In addition to any other power the Trustee has to issue Units or Options under this deed, and subject always to compliance with the Act, the Trustee may issue Units at an Issue Price determined by the Trustee based on the price of Units or (where Units are part of a Stapled Security, the price of Stapled Securities) determined pursuant to a bookbuild conducted as follows:

- (a) the bookbuild is conducted by one or more bookrunners who hold appropriate qualifications and experience and who are independent, and are not an associate of the Trustee;



- (b) the Trustee gives the bookrunner or bookrunners a written notice setting out the amount to be raised and why the Trustee considers it is in the best interests of Unitholders;
- (c) in determining the price, the bookrunner takes, or bookrunners take, into account the nature and size of the offer and circumstances in which the offer would be made (including any potential dilutionary effect) and whether participation in the offer would be extended to Unitholders; and
- (d) once the bookbuild has been conducted, the bookrunner confirms, or each bookrunner confirms, in writing to (including by way of email) the Trustee that the bookbuild has been conducted in accordance with ordinary commercial practice and that the price has been determined having regard to matters including, but not limited to, the nature and size of the offer and circumstances in which the offer would be made (including any potential dilutionary effect) and whether participation in the offer would be extended to Unitholders.

For purposes of clause 6.4(a), a bookrunner is not to be taken to be an associate of the Trustee, and does not cease to be independent of the Trustee, in relation to the conduct of a bookbuild in connection with the initial public offer of Stapled Securities merely because they temporarily become a related body corporate of the Trustee as part of the Pre-Listing Stapling Proposal described in clause 6.5.

## **6.5 Other issues of Units and Options**

In addition to any other power the Trustee has to issue Units or Options under this deed, the Trustee may issue Units or Options at an Issue Price determined by the Trustee, in any circumstances where the Trustee may do so consistently with the requirements of the Act.

## **7 Trustee's Powers**

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### **7.1 General powers of Trustee**

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee, and has all the powers that are incidental to ownership of the Fund as though it were the absolute and beneficial owner of the Fund.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property, borrow or raise money, encumber any asset of the Fund, incur any liability, guarantee any obligations of any person, enter into joint venture arrangements, grant any lease (including long term leases) or fetter any power.

### **7.2 Delegation by Trustee**

- (a) The Trustee may appoint a person, including an Associate of the Trustee, as its delegate, attorney or agent to exercise its powers and perform its obligations.
- (b) The Trustee may appoint an agent, custodian or other person, including an Associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.



### **7.3 Buy-back of Units**

- (a) While the Trust is Listed, the Trustee may buy-back Units, subject to and in accordance with the Act (as modified from time to time) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this clause 7.3 the Units purchased are cancelled.
- (c) Where a Unit forms part of a Stapled Security, the Trustee may only buy-back and cancel Units if the Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this clause 7.3 will be determined by the Trustee (or its nominee) as follows:
  - (1) any period in which a purchase may be made, the Trustee (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5%; and
  - (2) the purchase must otherwise satisfy the conditions of any relief from or modification of the Act.
- (e) The Trustee may determine that part of the purchase price payable for a Unit or Stapled Security purchased under this clause 7.3 includes an amount which represents a distribution of Distributable Income.

## **8 Trustee's responsibilities and indemnities**

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### **8.1 No limitation of other undertakings**

This clause 8 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

### **8.2 Limitation of liability**

Except where the Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of Trustee or director or officer of the Trustee; and
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Fund actually vested in the Trustee in respect of the Trust.

### **8.3 Indemnities**

- (a) The Trustee is not responsible for:



- (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,
- except where the Act provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (1) any provision of any present or future law or statute of Australia or any State or Territory;
  - (2) of any decree, order or judgement of any competent court; or
  - (3) any document or agreement binding on the Trustee,
- the Trustee is prevented, forbidden or hindered from doing or performing.

#### **8.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

#### **8.5 Interested dealings by Trustee**

The Trustee or an officer or employee or Associate of the Trustee may:

- (a) act in any fiduciary, vicarious or professional capacity, including as a banker, accountant, auditor, valuer, solicitor, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
  - (b) have an interest in or enter into a contract or transaction with:
    - (1) the Trustee or an Associate of the Trustee;
    - (2) any Holder; or
    - (3) any other person, including one whose Securities form an asset of the Fund; or
  - (c) hold or deal in or have any other interest in an asset of the Fund,
- and may retain and is not required to account for any benefit derived by doing so.





## **8.6 Trustee cannot be a Unitholder**

- (a) Despite any other provision of this deed, the Trustee is not and cannot become a Unitholder or otherwise become a beneficiary under the Trust.
- (b) Clause 8.6(a) of this clause is irrevocable and may not be amended by any subsequent variation or alteration to this deed.

## **9 Valuation of the Fund**

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### **9.1 Valuation of assets of the Fund**

- (a) The Trustee may at any time cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the value of an asset of the Fund, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of the assets of the Fund.
- (c) Each asset of the Fund must be valued at its reasonably current market value unless the Trustee determines:
  - (1) there is no market in respect of the asset of the Fund; or
  - (2) the reasonably current market value does not represent the fair value of the asset of the Fund.
- (d) Where the Trustee makes a determination under clause 9.1(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund consistent with ordinary commercial practice for valuing that type of asset.
- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.

### **9.2 Currency Conversion**

Where it is necessary for any purposes to convert one currency to another, the conversion will be made:

- (a) at a time; and
- (b) at such rates quoted by a bank or other financial institution, nominated by the Trustee in its absolute discretion.

### **9.3 Trustee to determine Current Unit Value**

The Trustee may determine the Current Unit Value at any time.

## **10 Income and Distributions**

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### **10.1 Determination of income and reserves**

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.



## 10.2 Distribution of income

- (a) The Trustee may at any time distribute to Unitholders income or capital out of the Fund.
- (b) For each Distribution Period the Trustee must:
  - (1) determine the Distributable Income for the Distribution Period; and
  - (2) calculate and distribute each Unitholder's Distribution Entitlement.
- (c) If no determination is made or to the extent to which no determination is made under clause 10.2(b)(1) and the Trust is not an AMIT for the Financial Year in which the Distribution Period occurs, the Distributable Income for that Distribution Period is equal to the Net Income of the Trust for that Distribution Period.

## 10.3 Trustee discretion

In making a determination under clauses 10.1 or 10.2 the Trustee does not have to take into account accounting standards or generally accepted accounting principles and practices which apply to trusts. The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination that an item is income or capital or that a reserve or provision is needed, or as a determination of the method for calculating the Distributable Income of the Trust.

## 10.4 Distribution Entitlement

- (a) Distributable Amount for a period is to be determined in accordance with the following formula:

$$DA = I + C - R$$

where:

DA is the Distributable Amount for the period.

I is the Distributable Income of the Fund for the period.

C is any additional amount (including capital) that the Trustee has determined is to be distributable to Unitholders in the period.

R is:

(1) that part (if any) of the Distributable Income of the Fund for the period which has been distributed during the period; and

(2) any amount of Distributable Income which has been included in the purchase price of Units bought back in accordance with clause 7.3 during the period.

- (b) Subject to the Terms of Issue for any Unit, each Unitholder's Distribution Entitlement is to be determined in accordance with the following formula:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement.

DA is the Distributable Amount.



- UH is the aggregate of the Paid-up Proportion of each Unit Holding of the Unitholder at the close of business on the Distribution Calculation Date.
- UI is the aggregate Paid-up Proportion of all Units on issue at the close of business on the Distribution Calculation Date.

## 10.5 Distribution of Entitlement

- (a) The Trustee must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date.
- (b) If the Trust is not an AMIT in respect of a Financial Year at the end of the last Distribution Period in the Financial Year, for the purpose of determining the entitlement to the Distribution Entitlement for a Distribution, the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount for the Distribution Period.
- (c) The Trustee may retain from each Unitholder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unitholder an amount in or towards satisfaction of any amount payable by the Unitholder to the Trustee under this deed or required to be deducted by law.
- (e) The Trustee may at any time determine to satisfy its obligation to pay the whole or any part of a Unitholder's Distribution Entitlement which comprises capital by applying for and paying up as agent of the Unitholder an issue of Securities in a Stapled Entity which are issued pursuant to provisions in the constitution of that Stapled Entity substantially similar to those contained in clause 3.6 of this deed.

## 10.6 Distribution Reinvestment Arrangements

The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units.

## 10.7 Discharge of Trustee's obligation

The Distributable Amount shall be distributed to persons who are Unitholders on the record date for that Distribution Period. It is acknowledged by Unitholders that such payments of Distributable Amounts shall be good and complete discharge to the Trustee in respect of any liability to any person in respect of an entitlement to such Distributable Amount.

## 10.8 Trust taxed as a company

Notwithstanding clauses 10.4 and 10.5, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or



- (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years, is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 10.4(a)) is to be determined in accordance with clause 10.4(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 10.8(b)) to the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period.
- (d) The Trustee may take all steps necessary or desirable in relation to distributions, including the franking of distributions.

## 10.9 Distributions in specie

- (a) Any reference in this clause 10.9 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) If the Trustee exercises a power to transfer any asset of the Fund to a Holder as a distribution, the Trustee may as it sees fit in its absolute discretion either:
- (1) require the Holder receiving the asset as a distribution (**First Holder**) or a Holder which is an associate of the First Holder to pay some or all of any GST on any supply arising from the distribution and any Holder so required must then indemnify the Trustee against that GST, and pay to the Trustee on demand an amount equal to that GST; or
- (2) itself pay some or all of that GST and recover the amount of that GST out of the Fund.
- (c) The right of a party to recover any amount in respect of GST under this clause 10.9 on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient except where the recipient is required to issue the Tax Invoice or Adjustment Note.

## 11 Remuneration of Trustee

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### 11.1 Cost recovery while stapled

For so long as the Trustee and the Trust are Stapled, the Trustee's entitlement to fees and cost recovery is limited to the lesser of the amount specified in this clause 11.1 and the amounts set out in clauses 11.2, 11.3, 11.4, 11.5, 11.6 and 11.9 below.

The Trustee is entitled to recover from the Fund, on a quarterly basis, the Recovery Amount calculated as follows:

$$\text{Recovery Amount} = \text{Relevant Expenses} - \text{Relevant Income} + \text{Relevant Margin}$$

Where:

**Relevant Expenses** in respect of a quarter, include all Costs related to operating the Trustee and Costs related to operating the Trust incurred in that quarter other than:

1. company tax and accruals of the Trustee; and



2. long term incentives and employee share plan issuances and accruals of the Trustee.

**Relevant Income** in respect of a quarter, includes only interest income that the Company receives in that quarter.

**Relevant Margin** means the amount calculated as follows:

$$\text{Relevant Margin} = 2.5\% \times (\text{Relevant Expenses} - \text{Relevant Income})$$

## 11.2 Foreign Asset acquisition fee

The Trustee is entitled to an acquisition fee of up to 1% of the value of any asset of the Fund situated outside Australia which is acquired by the Trust or any controlled sub-trust (excluding cash deposits). This fee is payable upon the completion of the acquisition of that asset and is payable out of the Fund.

## 11.3 Ongoing management fee

In respect of the Trust, the Trustee is entitled to the following ongoing management fees:

- (a) for the first twelve months up to and including the first anniversary of the date of this Constitution, up to 0.1 percent per annum of the gross value of the Fund; and
- (b) at all times after the first anniversary of the date of this Constitution, up to 0.4 percent per annum of the gross value of the Fund; and

The management fee is accrued daily and is payable six monthly in arrears out of the Fund from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Fund of the Trust will be determined as at the most recent valuation date.

## 11.4 Performance Fee

- (a) Amount and payment of Performance Fee

The Trustee is entitled to a Performance Fee out of the Fund with respect to each Financial Year, calculated and paid in arrears within one month of the end of such Financial Year as follows:

- (1) if the Return is less than or equal to the Benchmark Return in the relevant Financial Year, the Performance Fee for that Financial Year is zero;
- (2) if the Return exceeds the Benchmark Return in the relevant Financial Year, the Notional Performance Fee for that Financial Year is 15% of such excess times the market capitalisation of the Trust on the last day of that Financial Year;
- (3) if the Notional Performance Fee for that Financial Year is greater than or equal to the Cap, the Performance Fee for that Financial Year is equal to the Cap; and
- (4) if the Notional Performance Fee for that Financial Year is less than the Cap, the Performance Fee for that Financial Year is equal to the Notional Performance Fee.

- (a) Deficit and Excess

There is no Deficit or Excess at the start of the Trust's first Financial Year. For the purposes of this clause 11.4 only, the Trust's first Financial Year



commences on the date of allotment of Units pursuant to the Trust's initial public offering of Units.

- (b) Performance Fee payable on termination of the Trust or management
- (1) On termination of the Trust or if the first Trustee or an Associate of the first Trustee ceases to hold office as responsible entity of the Trust for any reason, the Trustee (being, where a person ceases to hold office as responsible entity of the Trust, that person), is entitled to be paid all Performance Fees accrued to the date of termination or cessation (as the case may be) within 14 days of that date. The Trustee's Performance Fee entitlement in respect of the part-year in which termination or cessation occurs must be calculated as if the date of termination or cessation was the last day of a Financial Year, except that:
- A. the number of days in the Financial Year is the number of days between the first day of that Financial Year and the day on which the Trust is terminated or the first Trustee or an Associate of the first Trustee ceases to hold office as responsible entity of the Trust inclusive; and
  - B. there is no Cap and therefore if the Return in the relevant part-year exceeds the Benchmark Return, the Performance Fee is equal to the amount of the Notional Performance Fee.
- (2) If the first Trustee or an Associate of the first Trustee ceases to hold office as responsible entity of the Trust for any reason, no Performance Fee is payable to the person replacing the first Trustee or its associate as responsible entity of the Trust for the Financial Year in which such replacement occurs. At the commencement of the next Financial Year, there is no Deficit or Excess.

(c) Definitions

In this clause 11.4:

Term	Meaning
<b>Benchmark Index</b>	the S&P/ASX 300 Property Accumulation index.
<b>Benchmark Return</b>	$\frac{B_c - B_o}{B_o}$ <p>(expressed as a percentage)</p> <p>where:</p> <p><math>B_c</math> is the value of the Benchmark Index at the end of the last day of the relevant Financial Year; and</p> <p><math>B_o</math> is the value of the Benchmark Index at the beginning of the first day of the relevant Financial Year.</p>
<b>Cap</b>	the amount which would result in fees to which the Trustee is entitled to receive pursuant to clauses 11.3 and this clause 11.4 together in respect of a Financial Year being equal to 1.00% per



<b>Term</b>	<b>Meaning</b>
	annum of the gross value of the Fund of the last day of such Financial Year.
<b>Deficit</b>	where the Return for a Financial Year is less than the Benchmark Return for that Financial Year, the amount of such shortfall.
<b>Excess</b>	where the Notional Performance Fee for a Financial Year exceeds the Cap for that Financial Year, the amount of such excess divided by the product of 15% and the market capitalisation of the Trust on the last day of that Financial Year.
<b>Notional Performance Fee</b>	is defined in clause 11.4(a)(2).
<b>Return</b>	<p>in respect of a Financial Year:</p> <ol style="list-style-type: none"><li>7 the Deficit or Excess (as the case may be) from the previous Financial Year, plus or minus (as the case may be)</li><li>8 the Trust Return for the relevant Financial Year.</li></ol> <p>provided that for the purposes of calculating the Deficit or Excess from the previous Financial Year, no amount is to be carried forward for more than 3 years.</p>
<b>Trust Index</b>	the accumulation index for the Trust as calculated by Standard & Poor's, or other suitable body as determined by the Trustee from time to time and notified to Unitholders, using market price series data. The index commences on the first day of the Trust's first Financial Year. At that time, the value of the Trust Index is to be determined by reference to the amount paid for Units pursuant to the Trust's initial public offering.
<b>Trust Return</b>	<p>is</p> $\frac{T_c - T_o}{T_o}$ <p>where:</p> <p>T<sub>c</sub> is the value of the Trust Index at the end of the last day of the relevant Financial Year; and</p> <p>T<sub>o</sub> is the value of the Trust Index at the beginning of the first day of the relevant Financial Year.</p>



### **11.5 Debt placement fee**

If the Trustee enters into a new debt facility, or refinances an existing debt facility, on behalf of the Trust, the Trustee is entitled to be paid out of the Fund a fee of 1.0% of the debt drawn down by it on behalf of the Trust. If the debt is drawn down in stages, this fee is payable each time a drawdown occurs in respect of the amount drawn down.

### **11.6 Custodial fee**

If the Trustee performs the custodial function for the Trust, then it will be entitled to a custodial fee of up to 0.05 percent per annum of the value of the Fund's assets held by the Trustee calculated at the end of each month. This fee is payable within seven days of the end of each month out of the Fund from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this constitution. The value of the Fund's assets will be determined as at the most recent valuation date.

### **11.7 Waiver or deferral of remuneration**

The Trustee may waive or defer the whole or any part of the remuneration (if any) to which it would otherwise be entitled. Where payment is deferred, the deferred amount accrues daily until paid.

### **11.8 Priority of Trustee's remuneration**

The remuneration of the Trustee (if any) has priority over the payment of all other amounts payable from the Fund.

### **11.9 Indemnity**

Subject to clause 11.10:

- (a) In addition to any other right of indemnity the Trustee may have under this deed, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred at law or under this deed in the performance of its duties. This includes all expenses connected with this deed, the formation of the Trust and registration of the Trust as a registered scheme and the preparation, review, distribution and promotion of any product disclosure statement or offering memorandum in respect of Units or Stapled Securities and other promotion of the Trust or the Stapled Entities.
- (b) Without limiting the generality of clause 11.9(a), the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund all Costs associated with the raising of capital for the Fund including the payment of any fees payable to a broker in respect of an Application for Units.

### **11.10 Proper performance of duties**

The rights of the Trustee to be paid fees out of the Fund, or to be indemnified out of the Fund for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

### **11.11 Act or omission of a delegate**

The indemnity under clause 11.9 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.





## 11.12 Indemnity unaffected by an unrelated breach

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Fund to satisfy a liability to any creditor of the Trustee (as trustee of the Fund) notwithstanding that the Fund may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

## 11.13 Reimbursement of GST

- (a) Any reference in this clause 11.13 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this deed which is relevant in determining the amount of any payment to be made to or by the Trustee is exclusive of any GST unless indicated otherwise.
- (c) If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this deed (including the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid out of the Fund an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Trustee shall be entitled to be reimbursed or indemnified for such amount of GST out of the Fund.
- (d) If the Trust is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this deed, the Trustee 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 Trustee to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Fund for other purposes of this deed and the Act.
- (e) Where an expense is paid from the Fund to the Trustee, the payment shall comprise part of the consideration for a supply by the Trustee to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Fund for other purposes of this deed and the Act.

## 12 Indemnity and insurance

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### 12.1 Persons to whom clauses 12.2 and 12.4 apply

Clauses 12.2 and 12.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).



## 12.2 Indemnity

The Trustee must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 12.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Act.

## 12.3 Extent of indemnity

The indemnity in clause 12.2:

- (a) is enforceable without the person to whom clause 12.2 applies having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by a person to whom clause 12.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee;
- (c) applies to Costs (other than Taxes) incurred both before and after the adoption of this constitution; and
- (d) operates only to the extent that the loss or liability is not covered by insurance.

## 12.4 Insurance

The Trustee may, from the Fund and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 12.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

## 12.5 Savings

Nothing in clauses 12.2 or 12.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.



## 13 Transfer and transmission of Units and Options

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### 13.1 Transferring Units and Options

- (a) Subject to this deed and to any restrictions attached to a Holder's Units or Options, a Holder may transfer any of the Holder's Units or Options by:
  - (1) a Proper ASTC Transfer; or
  - (2) a written transfer in any usual form or in any other form approved by the Trustee.
- (b) A transfer referred to in clause 13.1(a)(2) must be:
  - (1) signed by or on behalf of both the transferor and the transferee, unless the transfer relates only to fully paid Units and the Trustee has dispensed with a signature by the transferee or the transfer of the Units or Options is effected by a document which is, or documents which together are, a sufficient transfer of those Units or Options under the Act;
  - (2) if required by law, duly stamped; and
  - (3) left for registration at the Trustee's registered office, or at any other place the Trustee decides, with such evidence the Trustee requires to prove the transferor's title or right to the Units or Options and the transferee's right to be registered as the owner of the Units or Options.
- (c) Subject to clauses 13.2(a) and 13.3, where the Trustee receives a transfer complying with clause 13.1, the Trustee must register the transferee named in the transfer as the Holder of the Units or Options to which it relates.
- (d) A transferor of Units or Options remains the Holder of the Units or Options until a Proper ASTC Transfer has been effected or the transferee's name is entered in the Register as the Holder of the Units or Options.
- (e) The Trustee must not charge a fee for registering a transfer of Units or Options unless:
  - (1) the Trust is not listed on the Exchange; or
  - (2) the fee is permitted by the Listing Rules.
- (f) The Trustee (or the Trust's securities registry) may put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.
- (g) The Trustee may retain a registered transfer for any period the Trustee decides.
- (h) The Trustee may do anything that is necessary or desirable for the Trust to participate in any computerised, electronic or other system for facilitating the transfer of Units or Options or operation of the Register or other registers of the Trust that may be owned, operated or sponsored by the Exchange or a related body corporate of the Exchange.
- (i) The Trustee may, to the extent the law permits, waive any of the requirements of this clause 13.1 and prescribe alternative requirements instead, to give effect to clause 13.1(h) or for another purpose.



### 13.2 Power to decline to register transfers

- (a) The Trustee may decline to register, or prevent registration of, a transfer of Units or Options or apply a holding lock to prevent a transfer in accordance with the Act or the Listing Rules where:
- (1) the transfer is not in registrable form;
  - (2) the Trustee has a lien on any of the Units transferred;
  - (3) registration of the transfer may breach a law of Australia;
  - (4) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;
  - (5) the transfer is not permitted under the terms of an employee Unit or Option plan; or
  - (6) the Trustee is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the Units or Options.
- (b) If the Trustee declines to register a transfer, the Trustee must give notice of the refusal as required by the Act and the Listing Rules. Failure to give that notice will not invalidate the decision of the Trustee to decline to register the transfer.
- (c) The Trustee may delegate its authority under this clause 13.2 to any person.

### 13.3 Power to suspend the registration of transfers

The Trustee may suspend the registration of transfers at any time, and for any periods, permitted by the ASX Settlement Operating Rules that it decides.

### 13.4 Selling or redeeming non marketable parcels

- (a) Where Units are Officially Quoted, the Trustee may sell or redeem Units that constitute less than a marketable parcel by following the procedures in this clause 13.4.
- (b) The Trustee may send a notice to a Unitholder who holds less than a marketable parcel of Units in a class of Units, on a date decided by the Trustee, which:
- (1) explains the effect of the notice under this clause 13.4; and
  - (2) advises the Unitholder that he or she may choose to be exempt from the provisions of this clause. A form of election for that purpose must be sent with the notice.
- (c) If, before 5.00pm Sydney time on a date specified in the notice which is no earlier than 6 weeks after the notice is sent:
- (1) the Trustee has not received a notice from the Unitholder exempting them from this clause 13.4; and
  - (2) the Unitholder has not increased his or her Unit Holding to a marketable parcel,
- the Unitholder is taken to have irrevocably appointed the Trustee as his or her agent to do anything in clause 13.4(e).



- (d) In addition to initiating a sale or redemption by sending a notice under clause 13.4(b), the Trustee may also initiate a sale or redemption if a Unitholder holds less than a marketable parcel at the time that the transfer document was initiated or, in the case of a paper-based transfer document, was lodged with the Trustee. In that case:
- (1) the Unitholder is taken to have irrevocably appointed the Trustee as his or her agent to do anything in clause 13.4(e); and
  - (2) if the Unit Holding was created after the adoption of this clause, the Trustee may remove or change the Unitholder's rights to vote or receive distributions in respect of those Units. Any distributions withheld must be sent to the former Unitholder after the sale or redemption when the former Unitholder delivers to the Trustee such proof of title as the Trustee accepts.
- (e) The Trustee may:
- (1) sell or redeem the Units constituting less than a marketable parcel as soon as practicable;
  - (2) deal with the proceeds of sale or redemption under clause 4.9; and
  - (3) receive any disclosure document, including a financial services guide, as agent for the Unitholder.
- (f) The costs and expenses of any sale or redemption of Units arising from a notice under clause 13.4(b) (including brokerage and stamp duty) are payable by the purchaser or by the Trustee.
- (g) A notice under clause 13.4(b) may be given to a Unitholder only once in a 12 month period and may not be given during the offer period of a takeover bid for the Trust.
- (h) If a takeover bid is announced after a notice is given but before an agreement is entered into for the sale or redemption of Units, this clause ceases to operate for those Units. However, despite clause 13.4(g), a new notice under clause 13.4(b) may be given after the offer period of the takeover bid closes.
- (i) The Trustee may, before a sale or redemption is effected under this clause 13.4, revoke a notice given or suspend or terminate the operation of this clause either generally or in specific cases.
- (j) If a Unitholder is registered in respect of more than one parcel of Units, the Trustee may treat the Unitholder as a separate Unitholder in respect of each of those parcels so that this clause 13.4 will operate as if each parcel was held by different persons.
- (k) Where a Unit forms part of a Stapled Security, the Trustee may only sell or redeem Units under this clause 13.4 if the Securities to which those Units are Stapled are the subject of a contemporaneous sale or redemption.

### **13.5 Transmission of Units and Options**

- (a) Subject to clause 13.5(c), where a Holder dies, the only persons the Trustee will recognise as having any title to the Holder's Units or Options or any benefits accruing on those Units or Options are:
- (1) where the deceased was a sole Holder, the legal personal representative of the deceased; and
  - (2) where the Holder is a joint holder, the survivor or survivors.



- (b) Clause 13.5(a) does not release the estate of a deceased Holder from any liability on a Unit or Option whether that Unit or Option was held by the deceased solely or jointly with other persons.
- (c) The Trustee may register a transfer of Units or Options signed by a Holder before a Transmission Event even though the Trustee has notice of the Transmission Event.
- (d) A person who becomes entitled to a Unit or Option as a result of a Transmission Event may, on producing such evidence as the Trustee requires to prove that person's entitlement to the Unit or Option, choose:
  - (1) to be registered as the Holder of the Unit or Option by signing and giving the Trustee a notice in writing stating that choice; or
  - (2) to nominate some other person to be registered as the transferee of the Unit or Option by executing or effecting in some other way a transfer of the Unit or Option to that other person.
- (e) On and from the Stapling Date and prior to the Unstapling Date, any registration must be on the basis that the person must also be registered as the holder of the Attached Securities to which his or her Units are Stapled at the same time and in the same manner.
- (f) The provisions of this deed relating to the right to transfer Units or Options and registration of transfers of Units and Options apply, so far as they can and with such changes as are necessary, to a notice or transfer under clause 13.5(d) as if the relevant Transmission Event had not occurred and the notice or transfer were executed or effected by the registered Holder of the Unit or Option.
- (g) Where 2 or more persons are jointly entitled to a Unit or Option because of a Transmission Event, they will, on being registered as the Holders of the Unit or Option, be taken to hold the Unit or Option as joint tenants and clause 3.4 will apply to them.

### **13.6 Restricted Securities**

- (a) If, at any time, any Unit is, or on and from the Stapling Date and prior to the Unstapling Date, a Stapled Security is, classified by the Exchange as a 'Restricted Security', then despite any other provision of this deed:
  - (1) the Restricted Security must not be disposed of during the escrow except as permitted by the Listing Rules or the Exchange;
  - (2) the Trustee must refuse to acknowledge a disposal (including registering a transfer), of the Restricted Security during the escrow period except as permitted by the Listing Rules or the Exchange; and
  - (3) during a breach of the Listing Rules relating to Restricted Security or breach of any restriction agreement, the Holder of the Restricted Security is not entitled to any distributions or voting rights in respect of the Restricted Security.
- (b) On and from the Stapling Date and prior to the Unstapling Date, for the purposes of this clause 13.6, any restriction on an Attached Security also restricts the Units to which the attached Security is Stapled, or to be Stapled, to the same extent and in the same manner.



## 14 Options

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### 14.1 Terms and Subscription

- (a) This clause 14 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

### 14.2 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

### 14.3 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Optionholder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

### 14.4 Optionholder's Rights and Interest

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to,Unitholders.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

### 14.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Optionholder required under the Terms of Issue.



Options and rights may only be cancelled, redeemed or purchased under this clause 14.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).

- (b) Options and rights redeemed or purchased under clause 14.5(a) form part of the Fund and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

## 15 Retirement or Removal of Trustee

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### 15.1 Retirement and removal of Trustee

- (a) Whilst the Trust is not a registered scheme:
- (1) the Trustee may retire at any time if at that time by deed it appoints another person in writing to be the Trustee; and
  - (2) the Trustee must retire if directed to do so by a special resolution of Unitholders or a written notice of a Unitholder or Unitholders holding all of the Units on Issue and by the same resolution or notice the Unitholder or Unitholders appoint another qualified company as trustee.
- (b) Whilst the Trust is a registered scheme:
- (1) despite any other law, the Trustee may only retire as Trustee of the Trust in accordance with section 601FL of the Act; and
  - (2) the Trustee may only be removed as Trustee of the Trust in accordance with section 601FM of the Act.
- (c) On retirement or removal the Trustee must give the new Trustee all books, documents and records relating to the Trust.
- (d) If the Trust is not a registered scheme at the time the Trustee is to retire, any proposed replacement trustee must execute a deed by which it covenants to be bound by this deed as if it had originally been a party to it.
- (e) The Trustee is entitled to agree with an incoming trustee to be remunerated by, or receive a benefit from, the incoming trustee in relation to:
- (1) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating the incoming trustee as its replacement; or
  - (2) its retirement as Trustee.
- and is not required to account to Unitholders for such remuneration or benefit.





## 16 Alterations to Trust

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Subject to section 601GC of the Act (if the Trust is a registered scheme) and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

## 17 Term of Trust and termination of Trust

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### 17.1 Term of Trust

The term of the Trust ends on the earlier of:

- (a) the date on which the Trust is wound up; and
- (b) the date on which the Trust is terminated under this deed or by law.

### 17.2 When the trust is to be wound up

The Trustee must wind up the Trust on and from the earlier of:

- (a) on a date determined by the Trustee as the date on which the Trust is to be terminated and advised to Unitholders by notice in writing not less than 60 days before that termination date;
- (b) on a date determined by the Unitholders in general meeting; and
- (c) on a date ordered by the court.

### 17.3 Procedure on winding up of Trust

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Fund;
  - (2) pay any amount due to it under clause 17.3(e)(3) or 17.3(f);
  - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust otherwise than in their capacity as a Unitholder; and
  - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata in accordance with the Paid-Up Proportion of Units held by Unitholders.
- (b) The Trustee may distribute an asset of the Fund to a Unitholder in specie. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.
- (c) For the purpose of distributing an asset in accordance with clause 17.3(b), such asset of the Fund must be valued at its reasonably current market value unless the Trustee determines:
  - (1) there is no market in respect of the asset of the Fund; or
  - (2) the reasonably current market value does not represent the fair value of the asset of the Fund.



- (d) Where the Trustee makes a determination under clause 17.3(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund consistent with ordinary commercial practice for valuing that type of asset.
- (e) The Trustee is entitled to be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
  - (1) by it before the winding up of the Trust which it has not recouped;
  - (2) by it in connection with the winding up of the Trust and the realisation of the Fund;
  - (3) by or on behalf of any creditor of the Trustee in relation to the Trust; and
  - (4) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
- (f) The Trustee is entitled to:
  - (1) an indemnity against the amounts referred to in clause 17.3(e)(1) which may be satisfied out of those proceeds before any distribution under clause 17.3(a)(4) is made; and
  - (2) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 11.
- (g) The Trustee may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (h) The Trustee may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 17.3(e) or 17.3(f).
- (i) The Trustee must distribute among the Unitholders in accordance with clause 17.3(a)(4) anything retained under clause 17.3(h) which is subsequently not required.

## 17.4 Audit of accounts of Trust

The Trustee must ensure that the final accounts of the Trust following the winding-up are independently 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 Trustee. The Trustee must send a copy of any report made by the auditor to the Unitholders within 30 days after the Trustee receives the report from the auditor.

## 18 Meetings

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### 18.1 Meetings

- (a) A Meeting may only be called:
  - (1) by the Trustee (at any time); or
  - (2) as otherwise required by the Act.



- (b) The Trustee may, by notice to the Exchange, change the venue for, postpone or cancel a Meeting, but:
- (1) a Meeting that is called in accordance with a members' requisition under the Act; and
  - (2) any other Meeting that is not called by the Trustee,
- may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.
- (c) The provisions of Schedule 1 and the Act (if applicable) apply to a Meeting.

## 18.2 Passing of resolution

A resolution passed at a meeting of Holders held in accordance with this deed is binding on all Holders.

## 19 Complaints

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The Trustee must establish and maintain a procedure for dealing with complaints by Unitholders which meets the requirements of section 912A(2) of the Act.

## 20 Plebiscite to approve proportional takeover bids

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### 20.1 Definitions

The meanings of the terms used in this clause 20 are set out below.

Term	Meaning
<b>Approving Resolution</b>	in relation to a Proportional Takeover Bid, a resolution to approve the Proportional Takeover Bid passed in accordance with clause 20.3.
<b>Approving Resolution Deadline</b>	in relation to a Proportional Takeover Bid, the day that is 14 days before the last day of the bid period and during which the offers under the Proportional Takeover Bid remain open or a later day allowed by the ASIC.
<b>Proportional Takeover Bid</b>	a takeover bid that is made or purports to be made under section 618(1)(b) of the Act in respect of Securities included in a class of Securities of the Trust.
<b>Relevant Class</b>	in relation to a Proportional Takeover Bid, means the class of Securities of the Trust in respect of which offers are made under the Proportional Takeover Bid.



## 20.2 Transfers not to be registered

Despite clauses 13.1(c) and 13.3, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless an Approving Resolution has been passed or is taken to have been passed in accordance with clause 20.3.

## 20.3 Approving Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the Trustee must:
  - (1) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing a resolution to approve the Proportional Takeover Bid; and
  - (2) ensure that the resolution is voted on in accordance with this clause 20.3,  
before the Approving Resolution Deadline.
- (b) The provisions of this deed relating to general meetings apply (with any necessary changes) to a meeting that is convened under clause 20.3(a), as if that meeting were a general meeting of the Unitholders.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to clause 20.3(c), a person who held securities of the relevant class as at the end of the day on which the first offer under the Proportional Takeover Bid was made is entitled to vote on the Approving Resolution.
- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this clause 20.3 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this clause 20.3 on the Approving Resolution Deadline.

## 20.4 Sunset

Clauses 20.1, 20.2 and 20.3 cease to have effect at the end of 3 years beginning:

- (a) where those clauses have not been renewed in accordance with the Act, on the date those clauses were adopted by the Unitholders; or
- (b) where those clauses have been renewed in accordance with the Act, on the date those clauses were last renewed.



## 21 Proposal approved by Holders

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### 21.1 Power to implement a Proposal and limitation of liability

- (a) Having regard to the functions of the Trustee and without limiting anything else in this clause 21 the Trustee has power to and must do all things which it considers are necessary, incidental or desirable to effect a Proposal and those powers apply notwithstanding, and are not limited by, any provision of this deed other than clauses 1.3, 1.4 and 1.5.
- (b) The Trustee will not have any liability of any nature to Holders (which exceeds the extent to which it is actually indemnified out of the assets of the Fund) arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the proper implementation of the Proposal.

### 21.2 Appointment of Trustee as agent and attorney

The Trustee is irrevocably appointed the agent and attorney of each Holder to execute all documents and do all things which it reasonably considers are necessary, incidental or desirable to be executed or done on behalf of a Holder to effect a Proposal, including:

- (a) executing applications, withdrawals, transfers and other documents, and receiving, holding and paying money;
- (b) applying for and acquiring (whether by subscription, purchase or otherwise) Securities in the name of a Holder;
- (c) receiving and applying distributions or other payments to pay for the subscription for or purchase of Securities;
- (d) making or accepting transfers of Securities in the name of and for the Holder;
- (e) distributing any asset of the Fund to a Holder by way of an in specie distribution;
- (f) agreeing that the Holder will become a member of an entity and will be bound by its constitution; and
- (g) receiving and applying distributions or other payments (otherwise payable to a Holder) to pay for the subscription for or purchase of Securities, or to pay a contribution of capital in respect of Securities held by the Holder);
- (h) receiving and giving a good discharge for money to which a Holder or former Holder is entitled pursuant to the terms of a Proposal and paying to each person entitled to them or as that person directs; or
- (i) taking all necessary action to compulsorily transfer all Securities held by each Excluded Foreign Holder.

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

### 21.3 Paramountcy

Subject only to clauses 1.3, 1.4 and 1.5, this clause 21 has effect notwithstanding any other provision of this deed and any provision of this deed which is inconsistent with this clause 21 does not operate to the extent of any inconsistency.



## 22 Stapling

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### 22.1 Power to staple Securities

In addition to any power the Trustee has under clause 21, the Trustee may, subject to the Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to any Unit and may cause the Stapling of further Securities to Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit.

### 22.2 Applications, transfers and distributions in specie

- (a) For the purposes of Stapling, the Trustee may:
  - (1) make a distribution to Unitholders;
  - (2) apply any such distribution to acquire Securities in the name of the Unitholder;
  - (3) make a transfer of Securities to all Unitholders; or
  - (4) make a transfer of Securities by way of an in specie distribution of Securities to all Unitholders.
- (b) If the Trustee applies for Securities in accordance with clause 22.2(a)(2) it must apply for Securities for all Unitholders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.
- (c) If the Trustee effects a transfer made in accordance with clause 22.2(a)(3) it must effect the transfer to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 10.5(a), if the Trustee makes an in specie distribution under clause 22.2(a)(4) the Trustee:
  - (1) must transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution in specie and 10am the following day; and
  - (2) must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Trustee in accordance with clause 22.2(a)(2), each Unitholder authorises the Trustee to act as the Unitholder's agent to:
  - (1) apply for Securities in the name of that Unitholder;
  - (2) accept a transfer of Securities for that Unitholder; and
  - (3) agree to become a member of the relevant Stapled Entity.

### 22.3 Operation of Stapling provisions

Clauses 22.4 to 22.10 apply only, and for so long as, a Unit is a component of a Stapled Security.



## 22.4 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, each of the Trustee and the Unitholders must not do any act, matter or thing or refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
  - (1) the Trustee must not offer a Unit for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
  - (2) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
  - (3) the Trustee must not issue or sell a unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
  - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and
  - (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 13 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.
- (d) On and from the Stapling Date and prior to the Unstapling Date, no Options may be issued in respect of unissued Units unless there is a contemporaneous and corresponding issue of the same number of options over the Corresponding Number of unissued Attached Securities on the basis that the Options in respect of unissued Units are to be Stapled to the Options over the Attached Securities.
- (e) On and from the Stapling Date and prior to the Unstapling Date an Option in respect of unissued Units may only be exercised if at the same time as Units are acquired under the Option the same person contemporaneously acquires the Corresponding Number of Attached Securities on exercise of an option over Attached Securities to which the Option in respect of unissued ordinary Shares is Stapled.
- (f) In all other respects the same rules as apply to Units under this document apply to Units to be issued on the exercise of an Option.

## 22.5 Unstapling Date

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Trustee may determine that the Stapling



provisions of this Constitution will cease to apply and that a particular date is to be the Unstapling Date.

- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 22.5, this does not prevent the Trustee from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

## **22.6 Transfer of Stapled Securities**

- (a) Until the Unstapling Date:
  - (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 13, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee;
  - (2) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee; and
  - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as responsible entity of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.
- (b) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as responsible entity of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.
- (c) The same rules as for the transfer of Attached Securities and Units apply to Options in relation to unissued Units.

## **22.7 Stapled Security Register**

The Trustee must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Unitholders, the number of Units held, the number of Attached Securities held by the Unitholders to which each Unitholder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Trustee.





## 22.8 Unitholder meetings

On and from the Stapling Date and prior to the Unstapling Date:

- (a) Representatives of a Stapled Entity may attend and speak at any meeting of Unitholders or invite any other person to attend and speak.
- (b) If permitted by the Act, any meeting of Unitholders may be held with and as part of a meeting of the members of the Stapled Entities. . If such a joint meeting is permitted, both of the following apply:
  - (1) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of members of the Trust and the members of the Stapled Entities, with such modifications as the Trustee decides; and
  - (2) any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the members.

## 22.9 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this Constitution which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

## 22.10 Restricted issue of Units of different class

Whilst there is a similar restriction on the issue of Attached Securities of any new class pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities, notwithstanding any other provision of this Constitution, the Trustee must not issue any Units which are of a different class from any Units already issued without an ordinary resolution being passed at a meeting of Unitholders to that effect.

## 23 Notices

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### 23.1 Notices by the Trustee to Holders

- (a) Without limiting any other way in which notice may be given to a Holder under this deed, the Act or the Listing Rules, the Trustee may give a notice to a Holder by:
  - (1) delivering it personally to the Holder;
  - (2) sending it by prepaid post to the Holder's address in the Register or any other address the Holder supplies to the Trustee for giving notices; or
  - (3) sending it by fax or other electronic means (including providing a URL link to any document or attachment) to the fax number or electronic address the Holder has supplied to the Trustee for giving notices.



- (b) The Trustee may give a notice to the joint holders of a Unit or Option by giving the notice in the way authorised by clause 23.1(a) to the joint holder named first in the Register for the Unit or Option.
- (c) The Trustee may give a notice to a person entitled to a Unit or Option as a result of a Transmission Event by delivering it or sending it in the manner authorised by clause 23.1(a) addressed to the name or title of the person, to:
  - (1) the address, fax number or electronic address that person has supplied to the Trustee for giving notices to that person; or
  - (2) if that person has not supplied an address, fax number or electronic address, to the address, fax number or electronic address to which the notice might have been sent if that Transmission Event had not occurred.
- (d) A notice given to a Holder under clauses 23.1(a) or 23.1(b) is, even if a Transmission Event has occurred and whether or not the Trustee has notice of that occurrence:
  - (1) duly given for any Units or Options registered in that person's name, whether solely or jointly with another person; and
  - (2) sufficiently served on any person entitled to the Units or Options because of the Transmission Event.
- (e) A notice given to a person who is entitled to a Unit or Option because of a Transmission Event is sufficiently served on the Holder in whose name the Unit or Option is registered.
- (f) A person who, because of a transfer of Units or Options, becomes entitled to any Units or Options registered in the name of a Holder, is taken to have received every notice which, before that person's name and address is entered in the Register for those Units or Options, is given to the Holder complying with this clause 23.1.
- (g) A signature to any notice given by the Trustee to a Holder under this clause 23.1 may be printed or affixed by some mechanical, electronic or other means.
- (h) Where a Holder does not have a registered address or where the Trustee believes that Holder is not known at the Holder's registered address, all notices are taken to be:
  - (1) given to the Holder if the notice is exhibited in the Trustee's registered office for a period of 48 hours; and
  - (2) served at the commencement of that period,unless and until the Holder informs the Trustee of the Holder's address.

## 23.2 Notices to the Trustee

A Holder may give a notice to the Trustee by:

- (a) delivering it to the Trustee's registered office;
- (b) sending it by prepaid post to the Trustee's registered office;
- (c) sending it by fax or other electronic means to the principal fax number or electronic address at the Trustee's registered office; or
- (d) in such other manner as the Trustee may from time to time determine.



### **23.3 Time of service**

- (a) A notice from the Trustee properly addressed and posted is taken to be served at 10.00am (Melbourne time) on the Business Day after the date it is posted.
- (b) A certificate signed by a secretary or officer of the Trustee to the effect that a notice was duly posted under this deed is conclusive evidence of that fact.
- (c) Where the Trustee sends a notice by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the facsimile transmission report produced by the sender's fax machine.
- (d) Where the Trustee sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is sent.
- (e) Where the Trustee gives a notice to a Holder by any other means permitted by law relating to the giving of notices and electronic means of access to them, the notice is taken as given at 10.00am (Melbourne time) on the day after the date on which the Holder is notified that the notice is available.
- (f) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

### **23.4 Other communications and documents**

Clauses 23.1 to 23.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

### **23.5 Written notices**

A reference in this deed to a written notice includes a notice given by fax or other electronic means. A signature to a written notice need not be handwritten.

### **23.6 Tax returns**

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

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

Each Unitholder agrees and nominates pursuant to the Act to receive notification and access by electronic means to financial reports prepared for the Trust.



## 24 General

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### 24.1 Method of payment or repayment

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed “not negotiable” cheque made payable to the Holder and posted to the Holder’s registered address.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed 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 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 Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units or, if the Units are Stapled, in Stapled Securities. The reinvestment is taken to be made on the day the cheque is cancelled.

### 24.2 Binding conditions

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

### 24.3 Governing law

The rights, liabilities and obligations of the Trustee and the Holders are governed by the laws of Australia and Victoria.

### 24.4 Severability

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



## Schedules

### Table of contents

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**Meetings**

**61**



# Schedule 1

## Meetings

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(Clause 18)

### 1 Notice of Meetings

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- (a) Notice of a Meeting must be given to each person who at the time of giving the notice:
  - (1) is a Holder or auditor of the Trust or director of the Trustee; or
  - (2) is entitled to a Unit or Option because of a Transmission Event and has satisfied the Trustee of this.
- (b) The content of a notice of a Meeting called by the Trustee is to be decided by the Trustee, but it must state the general nature of the business to be transacted at the Meeting and any other matters required by the Act.
- (c) Unless the Act provides otherwise:
  - (1) no business may be transacted at a Meeting unless the general nature of the business is stated in the notice calling the Meeting; and
  - (2) except with the approval of the Trustee or the chairperson, no person may move any amendment to a proposed resolution or to a document that relates to such a resolution.
- (d) A person may waive notice of any Meeting by written notice to the Trustee.
- (e) Failure to give a Holder or any other person notice of a Meeting or a proxy form, does not invalidate anything done or any resolution passed at the general Meeting if:
  - (1) the failure occurred by accident or inadvertent error; or
  - (2) before or after the Meeting, the person notifies the Trustee of the person's agreement to that thing or resolution.
- (f) A person's attendance at a Meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the Meeting unless the person at the beginning of the Meeting objects to the holding of the Meeting; and
  - (2) the consideration of a particular matter at the Meeting which is not within the business referred to in the notice of the Meeting, unless the person objects to considering the matter when it is presented.

## 2 Who may attend and address Meetings

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- (a) The chairperson of a Meeting may take any action he or she considers appropriate for the safety of persons attending the Meeting and the orderly conduct of the Meeting and may refuse admission to, or require to leave and remain out of, the Meeting any person:
- (1) in possession of a pictorial-recording or sound-recording device;
  - (3) in possession of a placard or banner;
  - (4) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
  - (5) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
  - (6) who refuses to comply with a request to turn off a mobile telephone, personal communication device or similar device;
  - (7) who behaves or threatens to behave or who the chairperson has reasonable grounds to believe may behave in a dangerous, offensive or disruptive way; or
  - (8) who is not entitled to receive notice of the meeting.
- The chairperson may delegate the powers conferred by this rule to any person he or she thinks fit.
- (b) A person, whether a member or not, requested by the Trustee or the chairperson to attend a Meeting is entitled to be present and, at the request of the chairperson, to speak at the Meeting.
- (c) The Trustee, the directors of the Trustee, the Auditor, the auditor of a Trust's Compliance Plan, the members of the Trust's Compliance Committee and any person invited by any of them is entitled to attend and address a Meeting.
- (d) If the chairperson of a Meeting considers that there is not enough room for the members who wish to attend the Meeting, he or she may arrange for any person whom he or she considers cannot be seated in the main meeting room to observe or attend the Meeting in a separate room. Even if the members present in the separate room are not able to participate in the conduct of the Meeting, the Meeting will nevertheless be treated as validly held in the main room.
- (e) If a separate meeting place is linked to the main place of a Meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:
- (1) gives the general body of members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place;
  - (2) enables the chairperson to be aware of proceedings in the other place; and
  - (3) enables the members in the separate meeting place to vote on a show of hands or on a poll,
- a member present at the separate meeting place is taken to be present at the Meeting and entitled to exercise all rights as if he or she was present at the main place.
- (f) If, before or during the Meeting, any technical difficulty occurs where one or more of the matters set out in rule 2(e) is not satisfied, the chairperson may:



- (1) adjourn the Meeting until the difficulty is remedied; or
  - (2) continue to hold the Meeting in the main place (and any other place which is linked under rule 2(e) and transact business, and no member may object to the Meeting being held or continuing.
- (g) Nothing in this rule 2 or in rule 4 is to be taken to limit the powers conferred on the chairperson by law.
- (h) Wherever the term 'chairperson' is used in this Schedule, it is to be read as a reference to the chairperson of the Meeting, unless the context indicates otherwise.

### 3 Quorum

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- (a) No business may be transacted at any Meeting, except the adjournment of the Meeting, unless a quorum of Holders is present when the Meeting proceeds to business.
- (b) The quorum for any Meeting is 2 or more Holders present at the Meeting and entitled to vote on a resolution at the Meeting. For the avoidance of doubt, in determining whether a quorum is present:
  - (1) if more than one proxy or attorney is attending on behalf of a Unitholder, they will only count as one person; and
  - (2) if a person is attending both as an Unitholder and as a proxy, attorney or Representative for another Unitholder, they will only count as one person.
- (c) If there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum.
- (d) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on all resolutions at the Meeting.
- (e) If a quorum is not present within 30 minutes after the time appointed for the Meeting:
  - (1) where the Meeting was called at the request of members, the meeting must be dissolved; or
  - (2) in any other case, the Meeting stands adjourned to the day, time and place the directors of the Trustee decide or, if they do not make a decision, to the same day in the next week at the same time and place and if a quorum is not present at the adjourned Meeting within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 4 Conduct at Meetings

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- (a) Subject to the provisions of the Act, the chairperson is responsible for the general conduct of the Meeting and for the procedures to be adopted at the Meeting.
- (b) The chairperson may, at any time the chairperson considers it necessary or desirable for the efficient and orderly conduct of the Meeting:





- (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the Meeting and require the business, question, motion or resolution to be put to a vote of the members present;
  - (2) adopt any procedures for casting or recording votes at the Meeting whether on a show of hands or on a poll, including the appointment of scrutineers; and
  - (3) decide not to put to the Meeting any resolution proposed in the notice convening the Meeting (other than a resolution proposed by members under the Act or required by the Act to be put to the Meeting).
- (c) A decision by a chairperson under rules 4(a) or 4(b) is final.
- (d) Whether or not a quorum is present, the chairperson may postpone the Meeting before it has started if, at the time and place appointed for the Meeting, he or she considers that:
- (1) there is not enough room for the number of members who wish to attend the Meeting; or
  - (2) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the Meeting can be properly carried out.
- (e) A postponement under rule 4(d) will be to another time, which may be on the same day as the Meeting, and may be to another place (and the new time and place will be taken to be the time and place for the Meeting as if specified in the notice that called the Meeting originally).
- (f) The chairperson may at any time during the course of the Meeting:
- (1) adjourn the Meeting or any business, motion, question or resolution being considered or remaining to be considered by the Meeting either to a later time at the same Meeting or to an adjourned Meeting; and
  - (2) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the Meeting for such period or periods as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chairperson otherwise allows.
- (g) The chairperson's rights under rules 4(d) and 4(f) are exclusive and, unless the chairperson requires otherwise, no vote may be taken or demanded by the members present concerning any postponement, adjournment or suspension of proceedings.
- (h) Only unfinished business may be transacted at a Meeting resumed after an adjournment.
- (i) Where a Meeting is postponed or adjourned under this rule 4, notice of the postponed or adjourned Meeting must be given to the Exchange, but, except as provided by rule 4(k), need not be given to any other person.
- (j) Where a Meeting is postponed or adjourned, the board of the Trustee may, by notice to the Exchange, postpone, cancel or change the place of the postponed or adjourned Meeting.
- (k) Where a Meeting is postponed or adjourned for one month or more, notice of the postponed or adjourned Meeting must be given as in the case of the original Meeting.



## 5 Decisions at Meetings

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- (a) Except where a resolution requires a special or extraordinary majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the Meeting. A decision made in this way is for all purposes, a decision of the members.
- (b) Subject to rule 5(c), each question submitted to a Meeting is to be decided in the first instance by a show of hands of the members present and entitled to vote. However, all special and extraordinary resolutions must be decided on a poll.
- (c) The chairperson may determine that any question to be submitted to a Meeting will be determined by a poll without first submitting the question to a show of hands.
- (d) A poll may be demanded by members in accordance with the Act (and not otherwise) or by the chairperson. However, a poll may not be demanded on any resolution concerning:
  - (1) the election of the chairperson; or
  - (2) the adjournment of a Meeting.
- (e) A demand for a poll does not prevent a Meeting continuing to transact any business except the question on which the poll is demanded.
- (f) Unless a poll is duly demanded or a poll is required under the Act, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Unitholders is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (g) If a poll is duly demanded at a Meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairperson directs. The result of the poll as declared by the chairperson is the resolution of the Meeting at which the poll was demanded.
- (h) The demand for a poll may be withdrawn with the chairperson's consent.

## 6 Direct voting

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- (a) Despite anything to the contrary in this deed, the Trustee may decide that, at any Meeting or class Meeting, a member who is entitled to attend and vote on a resolution at that Meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Trustee by post, fax or other electronic means approved by the Trustee.
- (b) The Trustee may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a Meeting in order for the vote to be valid.



## 7 Voting rights

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- (a) Subject to this deed and the Act and to any rights or restrictions attached to any Units or a class of Units at a Meeting:
- (1) on a show of hands, every member present has one vote; and
  - (2) on a poll, every Unitholder present has one vote for each dollar of the value of the total interests they have in the Trust as determined in accordance with section 253F of the Act.
- (b) If a person present at a Meeting represents personally or by proxy, attorney or Representative more than one member, on a show of hands the person is, subject to the Act, entitled to one vote only even though he or she represents more than one member.
- (c) A joint holder may vote at a Meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant Units, the vote of the holder named first in the register who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.
- (d) The parent or guardian of an infant member may vote at any Meeting on such evidence being produced of the relationship or of the appointment of the guardian as the Trustee may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a Unit because of a Transmission Event may vote at a Meeting in respect of that Unit in the same way as if that person were the registered holder of the Unit if, at least 48 hours before the Meeting (or such shorter time as the Trustee determines), the Trustee:
- (1) admits that person's right to vote at that meeting in respect of the Unit; or
  - (2) was satisfied of that person's right to be registered as the holder of, or to transfer, the Unit.
- Any vote duly tendered by that person must be accepted and the vote of the registered holder of those Units must not be counted.
- (f) Where a member holds a Unit on which a call or other amount payable has not been duly paid:
- (1) that member is only entitled to be present at a Meeting and vote if that member holds, as at the Record Time, other Units on which no money is then due and payable; and
  - (2) on a poll, that member is not entitled to vote in respect of that Unit but may vote in respect of any Units that member holds, as at the Record Time, on which no money is then due and payable.
- (g) A member is not entitled to vote on a resolution if, under the Act or the Listing Rules:
- (1) the member must not vote or must abstain from voting on the resolution; or
  - (2) a vote on the resolution by the member must be disregarded for any purposes.



If the member or a person acting as proxy, attorney or Representative of the member does tender a vote on that resolution, their vote must not be counted.

- (h) An objection to the validity of a vote tendered at a Meeting must be:
  - (1) raised before or immediately after the result of the vote is declared; and
  - (2) referred to the chairperson, whose decision is final.
- (i) A vote tendered, but not disallowed by the chairperson under rule 7(h), is valid for all purposes, even if it would not otherwise have been valid.
- (j) The chairperson may decide any difficulty or dispute which arises as to the number of votes that may be cast by or on behalf of any member and the decision of the chairperson is final.

## 8 Representation at Meetings

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- (a) Subject to this deed, each member entitled to vote at a Meeting may vote:
  - (1) in person or, where a member is a body corporate, by its Representative;
  - (2) by not more than 2 proxies; or
  - (3) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a member.
- (c) An instrument appointing a proxy is valid if it is in accordance with the Act or in any form approved by the Trustee.
- (d) For the purposes of this rule 8, a proxy appointment received at an electronic address specified in the notice of Meeting for the receipt of proxy appointments or otherwise received by the Trustee in accordance with the Act is taken to have been signed or executed if the appointment:
  - (1) includes or is accompanied by a personal identification code allocated to the member making the appointment;
  - (2) has been authorised by the member in another manner approved by the Trustee and specified in or with the notice of Meeting; or
  - (3) is otherwise authenticated in accordance with the Act.
- (e) A vote given in accordance with an instrument appointing a proxy or attorney is valid despite the transfer of the Unit in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under 8(i).
- (f) Unless otherwise provided in the appointment of a proxy, attorney or Representative, an appointment will be taken to confer authority:
  - (1) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions, to do any of the acts specified in rule 8(g); and
  - (2) even though the appointment may refer to a specific Meeting to be held at a specified time or venue, where the Meeting is rescheduled, adjourned or postponed to another time or changed to another venue, to attend and vote at the rescheduled, adjourned or postponed Meeting or at the new venue.



- (g) The acts referred to in rule 8(f)(1) are:
- (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (2) to vote on any motion before the Meeting, whether or not the motion is referred to in the appointment; and
  - (3) to act generally at the Meeting (including to speak, demand a poll, join in demanding a poll and to move motions).
- (h) A proxy form issued by the Trustee must allow for the insertion of the name of the person to be primarily appointed as proxy and may provide that, in circumstances and on conditions specified in the form that are not inconsistent with this deed, the chairperson of the relevant Meeting (or another person specified in the form) is appointed as proxy.
- (i) A proxy or attorney may not vote at a Meeting or adjourned or postponed Meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received by the Trustee:
- (1) at least 48 hours, or such lesser time as specified by the Trustee in the notice of Meeting, (or in the case of an adjournment or postponement of a Meeting, any lesser time that the Trustee or the chairperson of the Meeting decides) before the time for holding the Meeting or adjourned or postponed Meeting or taking the poll, as applicable; or
  - (2) where rule 8(j)(2) applies, such shorter period before the time for holding the Meeting or adjourned or postponed Meeting or taking the poll, as applicable, as the Trustee determines in its discretion.
- A document is received by the Trustee under this rule 8(i) when it is received in accordance with the Act, and to the extent permitted by the Act, if the document is produced or the transmission of the document is otherwise verified to the Trustee in the way specified in the notice of Meeting.
- (j) Where the Trustee receives an instrument appointing a proxy or attorney in accordance with rule 8 within the time period specified in rule 8(i)(1), the Trustee is entitled to:
- (1) clarify with the appointing member any instruction in relation to that instrument by written or verbal communication and make any amendments to the instrument required to reflect any clarification; and
  - (2) where the Trustee considers that the instrument has not been duly executed, return the instrument to the appointing member and request that the member duly execute the instrument and return it to the Trustee within the period determined by the Trustee under rule 8(i)(2) and notified to the member.
- (k) The Trustee is not obliged to enquire whether a proxy has been validly given.
- (l) The member is taken to have appointed the Trustee as its attorney for the purpose of any amendments made to an instrument appointing a proxy in accordance with rule 8(j)(1). An instrument appointing a proxy or attorney which is received by the Trustee in accordance with rule 8(j) is taken to have been validly received by the Trustee.
- (m) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the Meeting, but if the appointor votes on a



resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.

- (n) Where a member appoints 2 proxies or attorneys to vote at the same Meeting:
- (1) if the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half the member's votes;
  - (2) on a show of hands, neither proxy or attorney may vote if more than one proxy or attorney attends; and
  - (3) on a poll, each proxy or attorney may only exercise votes in respect of those Units or voting rights the proxy or attorney represents.
- (o) Unless written notice of the matter has been received at the Trustee's registered office (or at another place specified by the Trustee for lodging an appointment of a proxy, attorney or Representative for the Meeting) within the time period specified under rule 8(i), a vote cast by a proxy, attorney or Representative is valid even if, before the vote is cast:
- (1) a Transmission Event occurs to the member; or
  - (2) the member revokes the appointment of the proxy, attorney or Representative or revokes the authority under which a third party appointed the proxy, attorney or Representative.
- (p) The chairperson may require a person acting as a proxy, attorney or Representative to establish to the chairperson's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy the requirement, the chairperson may:
- (1) exclude the person from attending or voting at the Meeting; or
  - (2) permit the person to exercise the powers of a proxy, attorney or Representative on the condition that, if required by the Trustee, he or she produce evidence of the appointment within the time set by the chairperson.
- (q) The chairperson may delegate his or her powers under rule 8(p) to any person.

## 9 Joint Unitholders

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Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a Meeting under section 252B(1) of the Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Act;
- (c) requested that a statement be distributed to members under section 252N of the Act; or
- (d) demanded a poll under section 253L of the Act.