



HERBERT  
SMITH  
FREEHILLS

## Constitution

# 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 resolution dated 23 November 2016.



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## Constitution

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Date ► 25 May 2006

### Parties

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**Responsible Entity**      **Growthpoint Properties Australia Limited**  
ACN 124 093 901 of Level 10, 379 Collins Street, Melbourne, Victoria  
3000

<b>Introduction</b>	<ol style="list-style-type: none"><li>1 By deed poll dated 25 May 2006, as amended by supplementary deeds dated 6 June 2006, 5 August 2009, 16 August 2010, 20 June 2011, 19 December 2011, 22 May 2012 and 29 October 2013, the Responsible Entity constituted the Trust for the benefit of all Unitholders. Those Unitholders are bound by this Constitution.</li><li>2 The Responsible Entity has agreed to manage the Trust for the benefit of Unitholders and at the end of the term wind up the Trust.</li><li>3 The terms of this Constitution follow.</li></ol>
<b>Schedules</b>	The following Schedules form part of this Constitution: <ol style="list-style-type: none"><li>1 Schedule 1 – Dictionary.</li><li>2 Schedule 2 – Rules for interpretation.</li></ol>
The parties agree as follows:	



## 1 Constitution of the Trust

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### 1.1 Constitution binding on the parties

This Constitution operates as a deed and is binding on:

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

### 1.2 Confirmation of appointment

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

### 1.3 Benefits and obligations

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

## 2 Trust property

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### 2.1 Responsible Entity to hold the Assets for Unitholders

The Responsible Entity declares it will hold the Assets on trust for the Unitholders on the terms contained in this Constitution.

### 2.2 Appointment of a custodian

The Responsible Entity may enter into an agreement (on terms and conditions as it considers appropriate) with a company or firm to carry out the duties of the custodian of the Assets on behalf of the Responsible Entity as required by the terms of this Constitution.

## 3 Purpose and term of the Trust

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### 3.1 Name of the Trust

The Trust will be known as the Growthpoint Properties Australia Trust. However, the Responsible Entity may designate another name at any time in its complete discretion.





### **3.2 Purpose of the Trust**

This Trust is established for the purpose of inviting persons to acquire a beneficial interest in the Assets for the term of the Trust and therefore participate in the benefits of such interest.

### **3.3 Establishment of the Trust**

Immediately after this Constitution is signed the Responsible Entity's nominee will subscribe \$100 to establish the Trust. The Responsible Entity's nominee will receive 100 Units in return for its payment.

### **3.4 Term of the Trust**

The Trust commences from the time it is established and ends on the earlier of:

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

## **3A Retirement or Removal of Responsible Entity**

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- (a) While the Trust is registered with the Australian Securities and Investments Commission under section 601EB of the Corporations Act, the Responsible Entity may only retire as Responsible Entity of the Trust in accordance with section 601FL of the Corporations Act.
- (b) On retirement or removal the Responsible Entity must give the new responsible entity all books, documents and records relating to the Trust.

## **4 Creation and sale of Units**

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### **4.1 Units – division of beneficial interest**

The beneficial interest in the Trust is divided into Units. Subject to the terms of issue, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the liabilities, but not an interest in any particular Asset.

### **4.2 Further issues of Units**

- (a) Subject to the Act, the Responsible Entity may determine to create and issue further Units of the same class or of a different class to those already on issue.
- (b) The Responsible Entity may make the issue of further Units in different classes at an Issue Price determined in accordance with this Constitution but otherwise subject to rights, obligations and restrictions the Responsible Entity determines.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions attaching to a Unit of a class which they hold.



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

#### **4.3 Fractions of Units**

- (a) Fractions of a Unit may be issued by the Responsible Entity.
- (b) If fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.
- (c) The Responsible Entity may consolidate or divide Units or fractions of Units on terms it determines.

#### **4.4 Consolidation and splitting**

The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:

- (a) immediately amend the Register to record the consolidation or split;
- (b) notify the Unitholder within 30 days of the consolidation or split; and
- (c) ensure that each Unit is consolidated or split on the same basis as each other Unit.

#### **4.5 Classes of Units**

- (a) The Responsible Entity may at any time issue Units in two or more classes with rights, obligations and restrictions as it determines.
- (b) The Responsible Entity may convert any Units from one class to another class or reclassify Units from one class to another.
- (c) The Responsible Entity must enter on the Register the class or Terms of Issue of Units held by a Unitholder.

#### **4.6 Issue of Partly Paid Units**

- (a) The Responsible Entity 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 Responsible Entity 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 Constitution.



#### 4.7 Failure to pay instalment on Partly Paid Unit

- (a) The Responsible Entity must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Responsible Entity or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment on the due date, the Unitholder must pay:
  - (1) so much of the Instalment as is unpaid;
  - (2) interest, which accrues daily and may be capitalised monthly or at such other intervals as the Responsible Entity determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment at the rate determined pursuant to clause; and
  - (3) any costs, expenses or damages incurred by the Trust in relation to the non-payment or late payment of the Instalment.
- (c) For the purposes of clause 4.7(b)(2) the interest rate is:
  - (1) if the Responsible Entity has fixed a rate, at the rate so fixed; or
  - (2) in any other case, at the rate prescribed in respect of unpaid judgments in the Supreme Court of Victoria.

#### 4.8 Forfeiture of Units

- (a) If a Unitholder fails to pay the whole of an Instalment when it falls due, the Responsible Entity may serve a notice on that Unitholder:
  - (1) requiring payment of the amount payable under clause 4.7(b);
  - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under clause 4.7(b) is to be paid; and
  - (3) stating that in the event of non-payment of the whole of the amount payable under clause 4.7(b) by the time and at the place named, the Unit in respect of which the Instalment was due will be liable to be forfeited.
- (b) A Partly Paid Unit is forfeited and the Responsible Entity may offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 4.8(a)(3).
- (c) A forfeiture under clause 4.8(b) will include all distributions, interest and other money payable in respect of a Forfeited Unit and not actually paid before the forfeiture.
- (d) 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.
- (e) Failure to give the notice or make the entry required under clause 4.8(d) does not invalidate the forfeiture.



#### **4.9 Sale of Forfeited Unit**

- (a) The Responsible Entity may offer a Forfeited Unit for sale as agent for the Holder of the Forfeited Unit.
- (b) If the Responsible Entity sells the Forfeited Unit it must sell it by public auction in a manner determined by the Responsible Entity.
- (c) The Responsible Entity must ensure that the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Responsible Entity was the directors of the company.
- (d) Responsible Entity is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (e) A person whose Units have been forfeited ceases to be the Holder of those Units, but remains liable to pay, and must immediately pay, to the Responsible Entity all Instalments, interests, costs, expenses and damages owing in respect of the Units at the time of the forfeiture.
- (f) Where permitted by the Listing Rules (while the Trust is Listed) the Responsible Entity may:
  - (1) exempt a Unit from all or any part of this clause 4.9(f);
  - (2) waive or compromise all or any part of any payment due to the Responsible Entity (as trustee of the Trust); and
  - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

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

Distribution of income and capital under clause 14:

- (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 4.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

#### **4.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 4.9(b) the Responsible Entity must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

#### **4.12 Cancellation Of Forfeiture**

The Responsible Entity must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Responsible Entity the full amount of the Instalment due together with interest on that Instalment calculated under clause 4.7(b) and any other amount payable in respect of the forfeiture.



#### 4.13 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the Unitholder of that Unit but remains liable to the Responsible Entity for the total amount payable under clause 4.7(b).
- (b) The Unitholder's liability under this clause ceases as soon as the Responsible Entity receives:
  - (1) payment in full of the amount payable pursuant to clause 4.7(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 4.16);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Responsible Entity setting out:
  - (1) that a Partly Paid Unit has been forfeited; and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Responsible Entity must apply the consideration paid for a Forfeited Unit in accordance with clause 4.14.
- (e) If the Responsible Entity executes a transfer of a Forfeited Unit, the Responsible Entity must register the transferee as the Holder of the Forfeited Unit.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Responsible Entity is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

#### 4.14 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 4.8(b), the Responsible Entity must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Responsible Entity in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Responsible Entity in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit;
  - (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 4.7(b);
  - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and



- (5) by paying any balance (subject to any lien that exists under clause 4.15 in respect of money not presently payable) to the former Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Responsible Entity must pay the Costs listed in clauses 4.14(a)(1) and (a)(2) pro rata to the number of Forfeited Units being sold.
- (c) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

#### **4.15 Lien for Amounts Owing**

The Responsible Entity has a first and paramount lien over Units for any amounts owing to the Responsible Entity in respect of Units registered in the name of a Unitholder, including any fees or unpaid calls which are payable to the Responsible Entity in respect of those Units and also for such amounts as the Responsible Entity may be called upon by law to pay and has paid in respect of the Units of such Unitholders. The lien extends to distributions from time to time payable in respect of such Units but if the Responsible Entity registers any transfer of any Unit upon which it has a lien, those Units are freed and discharged from the lien.

#### **4.16 Issue Price of Stapled Securities, 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, 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 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 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, Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.

#### **4.17 Underwriting of Issue**

- (a) The Responsible Entity 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 Responsible Entity.
- (b) The underwriter may:
  - (1) be the Responsible Entity or a related body corporate of the Responsible Entity;
  - (2) take up any Units or Options not subscribed for; and
  - (3) purchase Forfeited Units sold under clause 4.8(b).
- (c) The Responsible Entity may issue Units and Options under this clause 4.16 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.

#### **4.18 Issues of Options**

The Responsible Entity may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

#### **4.19 Issue of Units pursuant to Options**

The Responsible Entity may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

#### **4.20 Deleted**

#### **4.20A Deleted**

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

The Responsible Entity may issue Units or Options at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 4.16 and 4.17, in any circumstance where the Corporations Act (as modified by any applicable ASIC Class Order) permits the Responsible Entity to set such Issue Price in such a manner.



#### 4.21A Allocation of issue price of Stapled Securities

- (a) If a Unit is to be issued as part of a Stapled Security and this Constitution contains a provision for the calculation or determination of the issue price for a Stapled Security but not for the Unit, the Responsible Entity must agree from time to time with each Stapled Entity what part of the amount payable for the issue of a Stapled Security is to represent the issue price of each component Security. In the absence of such agreement, the allocation of this amount to each component Security of an entity or trust is to be in the ratio that the net assets (adjusted for the net market value of its investments) of the relevant entity or trust at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the total net assets (adjusted for the net market value of its investments) of all the entities and trusts at the end of the same period.
- (b) If any Stapled Security is to be issued on a partly paid basis, the Responsible Entity and each Stapled Entity must agree to the terms of issue of that partly paid Stapled Security.
- (c) The proportion determined under clause 4.21A(a) or clause 4.21A(b) (as the case requires) must be consistent for each Security issued to each Stapled Security holder at the same time.

#### 4.22 Deleted

#### 4.23 Foreign Unitholders

- (a) The Responsible Entity 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:
  - (1) be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unitholders.
- (b) If the Responsible Entity makes a determination under clause 4.23(a) and it is practicable to do so, the Responsible Entity 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:
  - A. the Costs of the sale;
  - B. the amounts (if any) payable to the Responsible Entity by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
  - C. any amounts the Responsible Entity 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 Responsible Entity 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 4.23(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Unitholder under clause 4.23(b).

#### **4.24 Deleted**

#### **4.25 Net Asset Value**

The Responsible Entity may determine the Net Asset Value at a Valuation Date. Nothing in this clause 4 requires the Responsible Entity to determine Net Asset Value more often than at a Valuation Date.

#### **4.26 Satisfaction of Application Money**

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

#### **4.27 Perpetuity period and restriction on issue and redemption of Units**

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

#### **4.28 Certificates**

If it is not contrary to the Listing Rules, the Responsible Entity 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 Application for Units**

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### **5.1 Form of application**

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



## 5.2 Application payment

- (a) Each Applicant must, at the time of lodging an application for Units or at such later time as the Responsible Entity allows, pay to the Responsible Entity (or its agent) their Application Money.
- (b) If the application for Units arises as part of a reinvestment under clause 15, then the Application Money is paid at the time the reinvestment is made.

## 5.3 Holding Application Money

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

## 5.4 Interest on Application Money

Interest earned on Application Money will form part of the Assets.

## 5.5 Responsible Entity may refuse application form

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

## 5.6 Investment of the Application Money

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

## 5.7 Minimum application

The Responsible Entity may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of different classes), and alter those amounts at any time.

## 5.8 Deleted

## 5.9 Number of Units issued

- (a) The number of Units issued to an Applicant is calculated as follows:

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

- (b) At the Responsible Entity's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.



## 5A Buy-Back of Units

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- (a) While the Trust is Listed, the Trustee may buy-back Units, subject to and in accordance with the Corporations Act (including any modification of the Corporations Act) and any requirements under the Listing Rules.
- (b) Immediately following the buy-back of a Unit or a Stapled Security (as applicable), the Responsible Entity must immediately cancel the Unit purchased under the buy-back.
- (c) If a Unit forms part of a Stapled Security, the Responsible Entity may only buy-back and cancel the Units if each Attached Security to which the Unit is Stapled is also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable under this clause 5A for a Unit or Stapled Security (as applicable) will be determined by the Responsible Entity (or its nominee) as follows:
  - (1) during any period in which a purchase may be made, the Responsible Entity (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 ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess, if any, to be determined by the Responsible Entity (or its nominee); and
  - (2) the purchase price must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

## 6 Withdrawal Price for Units

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### 6.1 Application of this clause 6

This clause 6 applies only while and for so long as the Trust is not Listed.

### 6.2 Withdrawal price

A Unit may only be redeemed at a Withdrawal Price calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Accrued Income}}{\text{Units in Issue}}$$

### 6.3 Time to calculate Withdrawal Price

For clause 6.2, the Withdrawal Price must be calculated:

- (a) while the Trust is Liquid, at the next Valuation Date after the Responsible Entity receives the redemption request; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

## 7 Withdrawal procedures

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### 7.1 Application of withdrawal provisions

- (a) This clause 7 applies only while and for so long as the Trust is not Listed.
- (b) Clauses 7.2 to 7.6 apply whether or not the Trust is Liquid.
- (c) Clause 7.7 applies while the Trust is Liquid.
- (d) Clause 7.8 applies while the Trust is not Liquid.

### 7.2 Requests for withdrawal

A Unitholder may make a request for the withdrawal of some or all of their Units:

- (a) if the Trust is Liquid, in a manner approved by the Responsible Entity and the Responsible Entity may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 7; or
- (b) if the Trust is not Liquid, in response to a withdrawal offer made by the Responsible Entity in accordance with the Act.

### 7.3 Compulsory withdrawal

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

- (a) The Trust is not a registered managed investment scheme.
- (b) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Responsible Entity or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time-to-time by the Responsible Entity.
- (c) The redemption is required by operation of:
  - (1) legislation where the mechanism for redemption is contained in that legislation;
  - (2) a provision in this Constitution which has been included in mandatory compliance with Australian legislation;
  - (3) the order of a court of competent jurisdiction; or
  - (4) a lien, the exercise of which results in a redemption.

### 7.4 Withdrawal Fee and money owed

- (a) The Responsible Entity may deduct and pay to itself the Withdrawal Fee payable by a Unitholder out of the proceeds due to the Unitholder on completion of the redemption of the Units.
- (b) If a Unitholder owes any money to the Responsible Entity, then the Responsible Entity may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.



## 7.5 Transfer of Assets to satisfy withdrawal

The Responsible Entity may, at its discretion, transfer Assets to a Unitholder, rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Unitholder pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

## 7.6 Suspension of withdrawals

The Responsible Entity need not give effect to a withdrawal request or it may suspend withdrawals for a period of time:

- (a) where the withdrawals are received between the date the Trust is terminated and the date the Trust is wound up;
- (b) if it is not in the best interests of Unitholders for withdrawals to be made;
- (c) due to circumstances beyond the Responsible Entity's reasonable control it cannot calculate or pay the Withdrawal Price; or
- (d) it is not able to realise Assets needed to satisfy the withdrawal requests within the time required.

In cases where withdrawals are suspended for a period of time, the Responsible Entity may extend the period for so long as the circumstances which caused the suspension continue to apply.

## 7.7 Provisions which apply when the Trust is Liquid

- (a) If the Responsible Entity gives effect to a withdrawal request, then the withdrawal request must be satisfied in respect of a Unit by payment from, or transfer of, the Assets. The payment must be made within 365 days of receipt of the request.
- (b) The Responsible Entity need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Responsible Entity from time to time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding in the Trust.
- (c) The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Responsible Entity, then the Responsible Entity may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding in the Trust.
- (e) If the Responsible Entity is not obliged to give effect to a withdrawal request, then it may redeem some or all of the Units which are the subject of the request.



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

- (a) When the Trust is not Liquid, a Unitholder has no right to withdraw from the Trust unless there is a withdrawal offer which complies with the Act currently open for acceptance by Unitholders.
- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (c) If the Responsible Entity receives a withdrawal request before it makes a withdrawal offer, then it may treat the request as an acceptance of the offer effective as at the time the offer is made.

## **8 Register of Unitholders**

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

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

### **8.2 Removing information from the Register**

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

### **8.3 Register is evidence of who are Unitholders**

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

### **8.4 Change of details**

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

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

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

## **9 Interests of Unitholders**

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### **9.1 Joint holders**

If the same Units are held by more than one Unitholder, then these Unitholders hold them as joint tenants.



## 9.2 Restrictions on Unitholders

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

- (a) interfere with any rights, powers, authorities or discretions of the Responsible Entity under this Constitution;
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets;
- (c) require any Assets to be transferred to that Unitholder; or
- (d) give any directions to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which requires the approval of the Responsible Entity under this Constitution.

## 10 Valuation of Assets

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### 10.1 Periodic valuations

The Responsible Entity may cause an Asset to be valued at any time, however the Responsible Entity must do so as and when required by the Act.

### 10.2 Net Asset Value

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

### 10.3 Valuation methodology

- (a) The Responsible Entity may determine valuation methods and policies for each category of Assets and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its historical cost.
- (b) If the Responsible Entity values an Asset at other than its historical cost, then the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Issue Price or Withdrawal Price that is independently verifiable.

## 11 Responsible Entity's powers and duties

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### 11.1 General powers

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

## 11.2 Specific powers

Without limiting clause 11.1, the Responsible Entity's powers include the power to do the following:

- (a) Acquire and invest in any property (whether real or personal) or assets.
- (b) Dispose of or otherwise deal with the Assets.
- (c) Manage and administer the Assets.
- (d) Borrow or raise money, grant security, enter into ISDA master agreements and derivative transactions (including but not limited to foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to:
  - (1) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Responsible Entity in its personal capacity or as trustee or responsible entity of any other trust); and
  - (2) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (e) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion with the Responsible Entity's power, including the power to appoint in turn its own agent or delegate. If the Responsible Entity does appoint an agent or delegate, then:
  - (1) it may do so on terms the Responsible Entity thinks fit; and
  - (2) the agent or delegate may be an Associate of the Responsible Entity.
- (f) Act as underwriter for the offer of any securities or other interests in the Trust.

## 11.3 Interested dealings by Responsible Entity

- (a) Subject to the Act, the Responsible Entity may:
  - (1) be interested in any contract or transaction with itself (as Responsible Entity of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust;
  - (2) act in the same or similar capacity in relation to any other managed investment scheme;
  - (3) hold Units in the Trust in any capacity;
  - (4) hold or deal in or have any other interest in an Asset; or
  - (5) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause, the Responsible Entity includes an officer, employee, shareholder or Associate of the Responsible Entity.
- (c) Where the Responsible Entity acts in accordance with clause 11.3(a):
  - (1) it may retain and need not account for any benefit derived by it; and
  - (2) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.





#### **11.4 Retirement benefit**

The Responsible Entity is entitled, subject to any approval required by law, to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders, and nominating to the Unitholders the incoming responsible entity as its replacement; or
- (b) its retirement as Responsible Entity.

The Responsible Entity is not required to account to Unitholders for such remuneration or benefit

#### **11.5 Exercise of discretion**

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

#### **11.6 Holding Units**

The Responsible Entity or its Associates may hold Units in the Trust in any capacity.

#### **11.7 Duties in relation to Stapling**

Notwithstanding any other provision of this Constitution, or any rule of law or equity to the contrary, in exercising any power or discretion each the Responsible Entity may, and subject to the Corporations Act, on and from the Stapling Date and prior to the Unstapling Date, have regard to the interests of the holders of Stapled Securities as a whole and not only to the interests of Unitholders.

## **12 Financial reports and tax returns**

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

The Responsible Entity must comply with the requirements of Chapter 2M of the Act to the extent applicable to the Trust.

### **12.2 Tax returns**

- (a) The Responsible Entity will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Responsible Entity will for each Financial Year forward to each 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 Responsible Entity will do this as soon as practicable after the end of the Financial Year, but by no later than three months after the last day of the Financial Year.



### 12.3 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.

## 13 Fees and expenses

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### 13.1 Foreign Asset acquisition fee

The Responsible Entity is entitled to an acquisition fee of up to 1% of the value of any Asset 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 Assets of the Trust.

### 13.2 Ongoing management fee

In respect of the Trust, the Responsible Entity 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 Assets; 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 Assets; and

The management fee is accrued daily and is payable six monthly in arrears out of the Assets 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 Assets of the Trust will be determined as at the most recent Valuation Date.

### 13.3 Performance Fee

- (a) Amount and payment of Performance Fee

The Responsible Entity is entitled to a Performance Fee out of the Assets 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.

- (b) 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 13.3 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.

- (c) Performance Fee payable on termination of the Trust or management
- (1) On termination of the Trust or if the first Responsible Entity or an Associate of the first Responsible Entity ceases to hold office as responsible entity of the Trust for any reason, the Responsible Entity (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 Responsible Entity'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 Responsible Entity or an Associate of the first Responsible Entity 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 Responsible Entity or an Associate of the first Responsible Entity ceases to hold office as responsible entity of the Trust for any reason, no Performance Fee is payable to the person replacing the first Responsible Entity 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.

(d) Definitions

In this clause 13.3:

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>



Term	Meaning
<b>Cap</b>	the amount which would result in fees to which the Responsible Entity is entitled to receive pursuant to clauses 13.2 and this clause 13.3 together in respect of a Financial Year being equal to 1.00% per annum of the gross value of the Assets 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 13.3(a)(2).
<b>Return</b>	<p>in respect of a Financial Year:</p> <ol style="list-style-type: none"> <li>1 the Deficit or Excess (as the case may be) from the previous Financial Year, plus or minus (as the case may be)</li> <li>2 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 Responsible Entity 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>



### **13.4 Debt placement fee**

If the Responsible Entity enters into a new debt facility, or refinances an existing debt facility, on behalf of the Trust, the Responsible Entity is entitled to be paid out of the Assets 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.

### **13.5 Custodial fee**

If the Responsible Entity 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 Assets held by the Responsible Entity calculated at the end of each month. This fee is payable within seven days of the end of each month out of the Assets 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 Assets of the Trust will be determined as at the most recent Valuation Date.

### **13.6 Payment of fees in Units**

Subject to the Act, the Responsible Entity may elect to be paid either or both of its base management fee and its Performance Fee in Units or in cash. It may also nominate an Associate to receive all or part of any such Units. If the Responsible Entity elects to be paid all or part of such fees in Units, the Issue Price of such Units is the greater of:

- (a) the Market Price of Units, determined in accordance with paragraph 1 of the definition of Market Price except that the relevant calculation period is the 20 Business Days immediately preceding the last day of the relevant Financial Year or half year (as the case may be); and
- (b) Current Unit Value on the last day of the relevant Financial Year or half year (as the case may be).

### **13.7 Waiver of fees and expenses**

The Responsible Entity may accept lower fees and expenses than it is entitled to receive under this Constitution, or it may defer payment of those fees and expenses for any time. If payment is deferred, then the fee accrues daily until paid.

### **13.8 Fees and costs**

- (a) All costs, charges and expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Responsible Entity, or the performance of its duties under this Constitution will be paid out of the Assets. If the Responsible Entity pays such costs, charges and expenses, then the Responsible Entity will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such costs, charges and expenses, together with any GST payable in respect of those costs, charges and expenses.
- (b) Without limiting clause 13.8(a), this includes costs, charges and expenses connected with the following:
  - (1) The acquisition, custody, management, transfer, financing, disposal of or dealing with the Assets or Liabilities.



- (2) The proposed acquisition, custody, management, transfer, financing, disposal of or dealing with the Assets or Liabilities.
- (3) Costs of raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
- (4) The appointment of any consultant, agent, broker, underwriter or delegate by the Responsible Entity, including a custodian.
- (5) The administration or management of the Trust or its Assets and Liabilities.
- (6) Bank charges on the operation of bank accounts.
- (7) Borrowing money, raising finance or granting security on behalf of the Unitholders under this Constitution.
- (8) Tax payable by or on account of the Unitholders or Responsible Entity in respect of the Trust, but not Tax of the Responsible Entity on income it earns as responsible entity of the Trust.
- (9) Fees and charges of any regulatory or statutory authority.
- (10) Convening and holding meetings of Unitholders.
- (11) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
- (12) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Responsible Entity in good faith in respect of the Trust.
- (13) Keeping and maintaining of the accounting records and registers of the Trust.
- (14) Retirement and the appointment of a substitute responsible entity.
- (15) The initiation, conduct and settlement of any court proceedings:
  - A. to enforce any provisions of this Constitution; or
  - B. in relation to the Trust or any of its Assets or Liabilities.
- (16) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan.
- (17) Acquiring, establishing, maintaining and developing computer software systems required for the administration of the Trust.
- (18) Reasonable travelling and accommodation expenses of the Responsible Entity.
- (19) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (20) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (21) The establishment, management and maintenance of any:
  - A. listing on any exchange or secondary market of the Trust or any Units; and
  - B. any rating of the Trust or any Units.



- (22) The performance of the functions and duties of the Responsible Entity under the Constitution.
- (23) Costs, charges and expenses related to:
  - A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust relating to or including the appropriate portion of a compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums for those members;
  - B. if there is no compliance committee and the Trust is a registered managed investment scheme, any costs and expenses of the board of the Responsible Entity associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of external directors appointed to satisfy the requirements of the Act; and
  - C. any variation of the Responsible Entity's Australian Financial Services Licence to the extent it reasonably relates to the Trust.
- (24) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the directors of the Responsible Entity.
- (d) The Responsible Entity may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

### **13.9 Performance of duties**

- (a) Despite anything else in this Constitution, the Responsible Entity is not entitled to any fees, recovery of costs or indemnity from the Assets in circumstances where the Responsible Entity has not properly performed its duties under the Constitution or the Act.
- (b) The lack of entitlement to these payments pursuant to clause 13.9(a) is only in respect of that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 13.9 means the Responsible Entity is not entitled to be paid fees and costs for work performed properly.

### **13.10 Goods and Services Tax**

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

- (a) In addition to any amount or consideration expressed as payable to the Responsible Entity elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Responsible Entity will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This



additional amount must be equal to the amount of the Responsible Entity's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.

- (b) The Responsible Entity and the Unitholders acknowledge and agree each supply made by the Responsible Entity under this Constitution is made:
- (1) on a progressive or periodic basis;
  - (2) such that the consideration is to be provided on a progressive or periodic basis; and
  - (3) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, then the Responsible Entity is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax.

## 14 Income of the Trust

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### 14.1 Responsible Entity will collect in all money

The Responsible Entity must collect or cause to be collected all Income generated from the Assets and pay this into an account in the name of the Responsible Entity (or if a custodian is appointed into an account in the name of the custodian) on behalf of the Trust. The Responsible Entity will make all payments relating to the Trust from this account.

### 14.2 Calculation of Distributable Income

The Distributable Income of the Trust for a Financial Year will be such amount as the Responsible Entity determines. If for a period ending on the last day of a Financial Year the Responsible Entity has not made a determination for the purpose of this clause 14.2, then the Distributable Income of the Trust will be the Net Income.

### 14.3 Persons who will receive Distributable Income

The Responsible Entity may determine the amount of Distributable Income for a Distribution Period and transfer that amount to a separate account to be held on trust, and after payment of all Tax, pay that amount to Unitholders and all persons who were Unitholders at any time during the period to which the distribution relates for any Distribution Period in accordance with their Income Entitlement.

### 14.4 Unitholders presently entitled to Distributable Income

Any person who is a Unitholder or was a Unitholder at any time during the Financial Year will be presently entitled (within the meaning of the Tax Act) to all Distributable Income payable to them during the relevant Financial Year in the proportion that the Distributable Income payable to them in respect of the Financial year bears to the sum of the





Distributable Income payable to all persons who have been Unitholders at any time during the Financial Year.

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

The Distributable Income for a Distribution Period must be paid by the Responsible Entity to those entitled to receive it within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to Distributable Income of the Trust is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

#### **14.6 Nature of distribution to Unitholders**

If any question arises as to whether distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Responsible Entity.

#### **14.7 Other distributions**

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

#### **14.8 Separate accounts**

The Responsible Entity may:

- (a) keep separate accounts of different categories or sources of Income, capital or deductions or credits for tax purposes; and
- (b) allocate Income, capital, deductions or credits from a particular category or source to particular Unitholders.

#### **14.9 Rights in respect of Partly Paid Units**

The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Responsible Entity and provided in the terms of issue of the relevant Units. The Responsible Entity may determine any one of the following applies:

- (a) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of Income for that Distribution Period, subject to the terms of issue of the Unit according to:
  - (1) the proportion or different proportions of the Issue Price paid upon the Unit; and
  - (2) the length of time during the Distribution Period for which the proportion or different proportions of the Issue Price were paid up.

For the purposes of these calculations, if an instalment of the Issue Price of a Partly Paid Unit is paid into the Trust, then that Unit may be eligible for increased participation in Income at a date determined by the Responsible Entity, but at the latest from the first day of the month immediately following the date set for payment of the instalment.

- (b) A Unit which is a Partly Paid Unit participates in the distribution of Income as if it were a Fully Paid Unit.
- (c) A Unit which is a Partly Paid Unit participates in the distribution of income as the terms of its issue provide.



However, if the Responsible Entity does not make such a determination, then clause 14.9(a) will apply.

## 15 Distribution reinvestment

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### 15.1 Reinvestment

The Responsible Entity may permit Unitholders to reinvest some or all of their Distributable Income by acquiring Units.

### 15.2 Notice to Unitholders

If the Responsible Entity permits reinvestment of Distributable Income, then it must notify all Unitholders of that fact, together with the terms on which the reinvestment may be made. The Responsible Entity may amend the terms of reinvestment or suspend reinvestments at its discretion.

## 16 Deductions from Distributions

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### 16.1 Deduction of Taxes

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

### 16.2 Indemnity

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

## 17 Money owing by Unitholders

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### 17.1 Interest payable

- (a) The Responsible Entity may charge interest on any amount of money owed to the Trust or to the Responsible Entity on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Responsible Entity, and interest is payable monthly. The rate of interest will be the rate charged by the ANZ Bank on overdrafts in excess of \$100,000. The Responsible Entity may waive payment of that interest in whole or in part.
- (b) Any interest received forms part of the Assets, except where the money is owed to the Responsible Entity on its own account, in which case the interest may be paid to the Responsible Entity.



## 17.2 Non-payment of money

If a Unitholder does not pay an amount of money owing to the Responsible Entity or the Trust under this Constitution, then the Responsible Entity is entitled to be indemnified out of the Assets. In addition, the Responsible Entity may do either of the following:

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

## 17.3 Sale or redemption of Unitholder's Units to pay debt owing by Unitholder

- (a) For notices sent under clause 17.2(b), if the money is not paid within the specified time, then subject to the Act the Responsible Entity may do either or both the following:
  - (1) Sell the Units held by the relevant Unitholder at whatever price the Responsible Entity determines and the Responsible Entity is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.
  - (2) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied first on account of the amounts in respect of which the notice was sent under clause 17.2(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

## 17.4 Responsible Entity may require information from Unitholders

- (a) Any Unitholder who is asked by the Responsible Entity to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Responsible Entity.
- (b) If any particular information given to the Responsible Entity under clause 17.4(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Responsible Entity of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 17.4(a) or 17.4(b), then the Responsible Entity will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Responsible Entity or the Trust for any loss suffered as a result of the assumption being incorrect.



- (d) Any Unitholder who supplies incorrect information under clauses 17.4(a) or 17.4(b) indemnifies the Responsible Entity for any expense, liability, loss or damage incurred due to the incorrect information.

## 18 Transfer of Unitholder's Units

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### 18.1 Right to transfer Units

A Unitholder may transfer its Units in the Trust in accordance with this clause 18.

### 18.2 Form of transfer

- (a) Any transfer must be made by way of a form approved by the Responsible Entity and be stamped (if applicable).
- (b) While the Trust is Listed all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options or the transfer is effected in accordance with the ASTC Settlement Rules.

### 18.3 Responsible Entity's discretion to enter transfer

The Responsible Entity may refuse to enter a transfer in the Register if, in the Responsible Entity's opinion, it is not in the interests of the Trust to do so.

### 18.4 No General Restriction on Transfer

- (a) Whilst the Trust is Listed, there is no restriction on the transfer of Units and, subject to clauses 18.4(c) and 18.6, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 18.2(b).
- (b) Except as otherwise set out in this clause 18, there is no restriction on any other transfer of Units or Options.
- (c) In relation to Units which are CHESSE Approved Securities:
- (1) subject to clauses 18.4(c)(2) and 18.4(c)(3), the Responsible Entity must not prevent delay or in any way interfere with the registration of a proper ASTC transfer;
  - (2) the Responsible Entity may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules; and
  - (3) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

## 18.5 Power to suspend the registration of transfers

Subject to the Listing Rules and the ASTC Settlement Rules, whilst the Trust is Listed, the Responsible Entity may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

## 18.6 Restricted Securities

Notwithstanding any other provisions of this Constitution and whilst the Trust is Listed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during any applicable escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASTC Settlement Rules in respect of CHESSE Approved Securities, the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during any applicable escrow period except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules relating to restricted securities or a breach of any restriction agreement, the holder of restricted securities is not entitled to any distributions and to any voting rights in respect of the restricted securities.

## 18.7 Listing on a secondary market or exchange

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

## 18.8 Participation in Transfer Systems

The Responsible Entity may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 18.

## 18.9 Indemnity for transfer causing duty liability

- (a) If:
  - (1) the transfer of a Unit results in the Holder which is the transferee of such Unit (**Transferee**) being liable to pay duty on such transfer;
  - (2) the Transferee does not pay some or all of such duty and as a result the Responsible Entity or another Holder (Indemnified Party) is liable to pay some or all of such duty or any other amount resulting from the Transferee's non-payment of such duty,the Transferee must indemnify the Indemnified Party for any amount paid by the Indemnified Party under clause 18.9(a)(2).
- (b) If an Indemnified Party pays any amount under clause 18.9(a)(2) without having been indemnified for such payment in advance by the Transferee, until the Indemnified Party is repaid in full all amounts paid by it under clause 18.9(a)(2) the Responsible Entity may:

- (1) withhold all or part of any amount (including without limitation any distribution) payable to the Transferee under this deed and pay such amount to the Indemnified Party; or
  - (2) deem to be Forfeited Units such number of the Transferee's Units as the Responsible Entity reasonably determines are required repay to the Indemnified any amount paid by the Indemnified Party under clause 18.9(a)(2) and deal with such Units in accordance with clauses 4.8(b) to 4.14 inclusive, with all necessary changes, except that instead of applying the proceeds of sale of such Units in accordance with clause 4.14(a), the Responsible Entity must apply the proceeds of the sale in accordance with clause 18.9(c).
- (c) For the purposes of clause 18.9(b)(2), the order and manner of application of proceeds of sale is:
- (1) to pay any Costs incurred by the Responsible Entity in relation to the sale or disposal of the Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) to pay any Costs incurred by the Responsible Entity in relation to the forfeiture or any proceedings brought against the Transferee;
  - (3) to pay the Indemnified Party any amount paid by the Indemnified Party under clause 18.9(a)(2) for which the Indemnified Party has not previously been reimbursed;
  - (4) to pay the balance (subject to any lien that exists under clause 4.15 in respect of money not presently payable) to the Transferee.

## 19 Transmission of Unitholder's Units

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### 19.1 Death or legal disability—sole Unitholder

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

### 19.2 Death or legal disability—joint Unitholder

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

## 20 Winding up of the Trust

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### 20.1 Events which cause a winding up

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

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) The Trust is without a responsible entity.



- (c) If the Trust's purpose has been accomplished or cannot be accomplished and the Responsible Entity uses the mechanism provided for in Section 601NC.
- (d) A court orders the Trust be wound up pursuant to Section 601ND.
- (e) Any of the circumstances set out in Section 601NE apply such that the Responsible Entity is required to wind up the Trust.

## 20.2 Process of winding up

- (a) Unless otherwise required by the Act, the Responsible Entity is responsible for the winding up of the Trust.
- (b) Subject to clause 20.2(d), the Responsible Entity must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Unitholders according to the beneficial interest of each Unitholder in the Trust. The Responsible Entity may make interim distributions of Income or capital during the winding up process as it sees fit.
- (c) The Responsible Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Responsible Entity may postpone any part of the winding up for such time as it thinks desirable.
- (d) Despite clause 20.2(b), the Responsible Entity may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust.

## 20.3 Responsible Entity may withhold proceeds of realisation

The Responsible Entity may retain money from the proceeds of realisation of the Assets:

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

## 20.4 Auditor's certificate

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

# 21 Unvested interests

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- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust fund have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.





- (b) Nothing in this clause 21 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust fund have vested or may vest prior to the end of the Perpetuity Period.

## 22 Indemnity and liability

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### 22.1 Liability of the Responsible Entity

Subject and to the extent the Act imposes liability:

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

### 22.2 Indemnity from the Trust

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

### 22.3 Payment of taxes

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

### 22.4 Reliance on others

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

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





- (d) Any document provided to the Responsible Entity in connection with Trust upon which it is reasonable for the Responsible Entity to rely.

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

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

## **22.6 Limit of indemnity**

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

## **22.7 Limitation of liability of Unitholders**

The liability of Unitholders is limited to their Units and the Assets. The Responsible Entity, or any creditor or agent of the Responsible Entity do not have any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

# **23 Meetings of Unitholders**

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## **23.1 Responsible Entity calling a Unitholders' Meeting**

The Responsible Entity may call a meeting of the Unitholders at any time, and must do so if required by the Act.

## **23.2 Unitholders calling a Unitholders' meeting**

The provisions of the Act apply to determine the circumstances and requirements for a meeting requested by Unitholders.

## **23.3 Quorum**

- (a) The quorum for a meeting is two persons present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they will only be counted as one individual.
- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the state of the meeting, then:
- (1) if the meeting is convened on the requisition of Unitholders, it is dissolved; or



- (2) if the meeting is convened by the Responsible Entity, it is adjourned to the date, time and place the Responsible Entity specifies.
- (d) If the meeting is adjourned pursuant to clause 23.3(c)(2), then the Unitholders present in person or by proxy constitute a quorum.

#### **23.4 Chairing meetings of Unitholders**

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

#### **23.5 Proxies**

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

## **24 Complaints handling**

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### **24.1 Complaints handling officer**

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

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

- (a) Any Unitholder may make a complaint about any aspect of the Trust by contacting the Responsible Entity (in writing or otherwise) at any place where the Responsible Entity has an office from time to time.
- (b) The complaint must specify:
  - (1) the name and contact details of the Complainant making the complaint; and
  - (2) the details of the complaint in as much detail as is reasonably required to allow the Responsible Entity to deal with the complaint in accordance with this clause 24.
- (c) If the complaint does not meet the requirement in clause 24.2(b)(2), then the Responsible Entity must make reasonable inquiries to try to ascertain the required detail.



- (d) The Responsible Entity must provide reasonable assistance to any Unitholder:
  - (1) who has either attempted to make a complaint but has not done so in a manner which allows the Responsible Entity to handle the complaint; or
  - (2) who the Responsible Entity reasonably believes wants to make a complaint, but for some reason is unable to do so (eg, because of a physical disability).

### **24.3 Acknowledgment of a complaint**

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

### **24.4 Consideration of complaints**

- (a) The Responsible Entity must treat all complaints seriously and deal with them in a timely manner, having regard to the nature of the complaint.
- (b) The Responsible Entity must attempt to respond fully to the Complainant within 28 days after the acknowledgment of the complaint is made by the Responsible Entity.
- (c) In any event, the Responsible Entity (through the complaints handling officer) must contact the Complainant at least once in every calendar month for complaints which cannot be resolved within 28 days after the acknowledgment of the complaint is made by the Responsible Entity. When making contact the Responsible Entity must inform the Complainant of the progress of the complaint and provide a further estimate as to when the complaint may be resolved.

### **24.5 Resolving a complaint**

- (a) The Responsible Entity must act reasonably in attempting to resolve a complaint, however nothing in this clause 24 compels the Responsible Entity to resolve a complaint in favour of the Complainant.
- (b) If the Responsible Entity believes it has either resolved the complaint, or it has not resolved the complaint but can do nothing more to satisfy the Complainant, then the Responsible Entity must:
  - (1) inform the Complainant of the view the Responsible Entity has reached setting out clear and concise reasons; and



- (2) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Responsible Entity.

## **24.6 Further avenues open to Unitholders**

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

- (a) lodge a complaint with an external complaints resolution body of which the Responsible Entity is a member; or
- (b) take whatever other action is open to the Complainant under the general law.

## **24.7 Recording complaints**

The Responsible Entity must make a record of complaints.

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

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

# **25 Changing the constitution**

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## **25.1 Power to amend**

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

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

## **25.2 Lodgement of amendment**

If the Trust is registered as a managed investment scheme, then the Responsible Entity must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

## **25.3 Statutory requirements**

While the Trust is a registered scheme, if the Corporations Act or any modification to the provisions of the Corporations Act granted by ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution. To the extent there is any inconsistency, then the incorporated modifications will prevail over any provisions in this Constitution unless otherwise expressed. Any modifications pursuant to this clause 25.3 do not also have to be made by following the procedure in clauses 25.1 and 25.2.

## 25A Proposal approved by Holders

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### 25A.1 Power to implement a Proposal and limitation of liability

- (a) Having regard to the functions of the Responsible Entity and without limiting anything else in this clause 25A, the Responsible Entity has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Proposal and those powers apply notwithstanding, and are not limited by, any provision of this Constitution other than paragraphs 2, 3 and 4 of Schedule 2.
- (b) Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever beyond the assets of the Trust to Holders arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the implementation of a Proposal.
- (c) A reference in this Constitution to a Proposal includes, without limitation, and subject to the requisite approvals being obtained, the proposal set out in the Meeting Booklet to facilitate the Up-front Subscription, Management Internalisation, Top Up Placement and Renounceable Rights Issue.

### 25A.2 Appointment of Responsible Entity as agent and attorney

The Responsible Entity is irrevocably appointed the agent and attorney of each Unitholder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unitholder to effect a Proposal, including but without limiting the generality of the foregoing:

- (a) making a distribution to Unitholders;
- (b) applying any such distribution to acquire Securities in the name of the Unitholder;
- (c) accepting transfers of Securities for the Unitholder; and
- (d) Stapling each Unit held by the Unitholder on the Stapling Date to a Corresponding Number of Attached Securities.

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

### 25A.3 Paramountcy

Subject only to paragraphs 2, 3 and 4 of Schedule 2, this clause 25A has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with this clause 25A does not operate to the extent of any inconsistency.

## 25B Stapling

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### 25B.1 Power to staple Securities

In addition to any power the Responsible Entity has under clause 25A, the Responsible Entity may, subject to the Corporations 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.

## **25B.2 Applications, transfers and distributions in specie**

- (a) For the purposes of Stapling, the Responsible Entity 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 Responsible Entity applies for Securities in accordance with clause 25B.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 Responsible Entity effects a transfer made in accordance with clause 25B.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 14.5, if the Responsible Entity makes an in specie distribution under clause 25B.2(a)(4) the Responsible Entity:
  - (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 Responsible Entity in accordance with clause 25B.2(a), each Unitholder authorises the Responsible Entity 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.

## **25B.3 Operation of Stapling provisions**

Clauses 25B.4 to 25B.10 apply only, and for so long as, a Unit is a component of a Stapled Security.

## **25B.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 Responsible Entity 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 Responsible Entity 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 Responsible Entity 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 Responsible Entity 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 Responsible Entity 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 Responsible Entity must not register the transmission or transfer of Units pursuant to clause 18 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

## 25B.5 Unstapling Date

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Responsible Entity 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 Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 25B.5, this does not prevent the Responsible Entity from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

## 25B.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 18, 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 Responsible Entity 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 Responsible Entity as responsible entity of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity 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 Responsible Entity 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 Responsible Entity the transfer to the Responsible Entity (as responsible entity of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

### **25B.7 Stapled Security Register**

The Responsible Entity 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 Responsible Entity.

### **25B.8 Unitholder meetings**

- (a) Representatives of a Stapled Entity may attend and speak at any meeting or invite any other person to attend and speak.
- (b) Meetings of Unitholders may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of such meetings as the Responsible Entity determines.

### **25B.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.



## 25B.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 Responsible Entity 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.

## 26 Compliance plan and compliance committee

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### 26.1 Compliance plan

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

### 26.2 Compliance committee

- (a) This clause 26.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

## 27 Miscellaneous Provisions

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### 27.1 Form of notice

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

### 27.2 Address for service

- (a) The address for the Responsible Entity will be the address set out below or the address most recently given to the Unitholders.

Responsible Entity:	Growthpoint Properties Australia Limited
Address:	Level 10, 379 Collins Street, Melbourne, Victoria 3000
Facsimile:	+61 3 8681 2910

- (b) The addresses for Unitholders will be as they appear in the Register.



### **27.3 Deemed date of receipt**

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

### **27.4 Notice to joint Unitholders**

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

### **27.5 Payments**

Any money payable by the Responsible Entity to an Applicant or Unitholder under the provisions of this Constitution may be paid by:

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

### **27.6 Discharge of Responsible Entity**

The Responsible Entity will receive a good discharge on:

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

### **27.7 Retention of documents**

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

### **27.8 Relationship between Responsible Entity and Unitholders**

Each and every Unitholder and the Responsible Entity agree:

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and the Constitution are in every case several and not joint or joint and several;
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other;
- (c) each Unitholder does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder; and



- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

### **27.9 Rounding**

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

### **27.10 Applicable law**

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



## Schedules

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## Schedule 1

### Dictionary

<b>Term</b>	<b>Meaning</b>
<b>Accounting Standards</b>	has the meaning given to that term in Section 9 of the Act.
<b>Accrued Income</b>	for a Distribution Period, the amount the Responsible Entity calculates as the Net Income for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
<b>Act</b>	the Corporations Act 2001 (Commonwealth) for the time being in force, together with the regulations.
<b>Applicant</b>	a person who has applied to become a Unitholder or Option holder in the Trust by making an Application but who is not yet a Unitholder or Option holder.
<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>	any form of valuable consideration received by the Responsible Entity for a Unit or Option, but excluding any amount the Applicant directs the Responsible Entity to pay on account of commissions, service fees, application fees or other fees associated with the acquisition of Units or Options.
<b>Approved Valuer</b>	a valuer appointed by the Company who: <ol style="list-style-type: none"><li>1 is independent of the Company; 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.



Term	Meaning
<b>ASIC Relief</b>	an exemption or declaration granted by ASIC giving relief from certain requirements of the Corporations Act.
<b>Assets</b>	this includes all property, rights and income of the Trust, but excludes— <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>Associate</b>	an associate as defined in Division 2 of Part 1.2 of the Act.
<b>ASTC</b>	ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532.
<b>ASTC Settlement Rules</b>	the ASTC Settlement Rules and any other rules of ASTC which apply while the Units are CHESS Approved Securities, each as amended from time to time.
<b>ASX</b>	ASX Limited or the racket operated by it, as the context requires.
<b>ASX Market Rules</b>	the Market Rules published by ASX, as amended from time to time.
<b>Attached Security</b>	a Security which is from time to time Stapled or to be Stapled to a Unit.
<b>Auditor</b>	an individual, firm or company appointed by the Responsible Entity as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or managed investment scheme registered under the Act.
<b>Business Day</b>	any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.
<b>Buy-Back Market Price</b>	<ol style="list-style-type: none"> <li>1 where a Unit does not form part of a Stapled Security, the Buy Back Market Price for a Unit on any Business Day is the average of the 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</li> </ol>



Term	Meaning
	<p>Day.</p> <p><sup>2</sup> where a Unit forms part of a Stapled Security, the Buy Back Market Price for a Stapled Security on any Business Day, is the average of the 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.</p>
<b>CHESSE Approved Securities</b>	in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act namely, ASTC) in accordance with the ASTC Settlement Rules.
<b>Company</b>	Growthpoint Properties Australia Limited (ABN 33 124 093 901) in its personal capacity and in its capacity as responsible entity of the Trust (as appropriate).
<b>Complainant</b>	a Unitholder who has complained to the Responsible Entity pursuant to clause 24.
<b>Constitution</b>	this document (including its schedules) as it may from time to time be amended and in force.
<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>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<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>	<p>the amount calculated as follows:</p> $CUV = \frac{NAV}{NU}$ <p>where:</p> <p>CUV is Current Unit Value</p> <p>NAV is Net Asset Value</p> <p>NU is the number of Units in Issue.</p>



<b>Term</b>	<b>Meaning</b>
<b>Disclosure Document</b>	a document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in respect of the disclosure document.
<b>Distributable Income</b>	any amount determined by the Responsible Entity from time to time to be distributed to Unitholders, including: <ol style="list-style-type: none"><li>1 the Net Income of the Trust;</li><li>2 other Income of the Trust; and</li><li>3 any amount of capital of the Trust.</li></ol>
<b>Distribution</b>	any dividend per Share and/or distribution per Unit (whether income or capital) announced by the Company and payable by the Company or from the Trust respectively.
<b>Distribution Calculation Date</b>	the last day of each Financial Year and such other days as designated by the Responsible Entity.
<b>Distribution Period</b>	<ol style="list-style-type: none"><li>1 For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date.</li><li>2 For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust.</li><li>3 In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</li></ol>
<b>Distribution Record Date</b>	the date and time, as determined by the Company, at which a person holds or is taken to hold Stapled Securities for the purpose of determining the entitlement of the holders of Stapled Securities to Distributions.
<b>Distribution Reinvestment Arrangement</b>	an arrangement of the kind described in clause 15.
<b>Financial Year</b>	the period of twelve months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.





Term	Meaning
<b>Foreign Interest</b>	the Units or Options to which a Foreign Unitholder would have been entitled to but for clause 4.23(a).
<b>Foreign Unitholder</b>	a Unitholder who has a registered address outside of Australia.
<b>Forfeited Unit</b>	a Partly Paid Unit which is forfeited under clause 4.8(b) by non-payment of an Instalment.
<b>Fully Paid Unit</b>	a Unit on which the Issue Price has been fully paid.
<b>Growthpoint</b>	Growthpoint Properties Limited (Registration No. 1987/004988/06).
<b>GST</b>	a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
<b>GST Act</b>	<i>A New Tax System (Goods &amp; Services Tax) Act 1999.</i>
<b>Holder</b>	a Unitholder or Optionholder (as the context may require).
<b>Income</b>	all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles.
<b>Income Entitlement</b>	<p>in respect of a Unit means the amount "IE" calculated by the following formula:</p> $IE = \frac{DI \times UD}{TUD}$ <p>where:</p> <p>DI = Distributable Income for the Distribution Period for which the calculation is being made.</p> <p>UD = The Unit Days for that Unit for the Distribution Period.</p> <p>TUD = The sum of the Unit Days for all Units for the Distribution Period.</p> <p>In this definition, Unit Days for a Unit for a Distribution Period is the number of days during the Distribution Period for which the Unit has an income entitlement according to the terms on which it was issued.</p>



Term	Meaning
<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 4 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>Legal Personal Representative</b>	an executor or administrator of the estate of a deceased Applicant or Unitholder or, the responsible entity of the estate of an Applicant or Unitholder under a legal disability or a person who holds a power of attorney granted by an Applicant or Unitholder.
<b>Liabilities</b>	all liabilities of the Trust, including any provisions the Responsible Entity considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for this Trust, Unitholders' funds are not to be treated as a liability.
<b>Liquid</b>	has the same meaning as in section 601KA of the Act.
<b>Listed</b>	admitted to the Official List.
<b>Listing Rules</b>	the Listing Rules of ASX and any other rules of ASX 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 ASX.
<b>Management Internalisation</b>	has the meaning given to that term in the Meeting Booklet.
<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> <p><sup>1</sup> Subject to paragraphs 2, 4 and 7 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 ASX (excluding transactions referred to in paragraph 5 of this definition) for the period of 10 Business Days immediately preceding the relevant Business Day</p>



Term	Meaning
	<p>(whether or not a sale was recorded on any particular day).</p> <p>2 Subject to paragraph 7 of this definition, where clause <b>Error! Reference source not found.</b> or 4.20A(1) apply, the Market Price for an Interest on any Business Day is the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that that merchant bank has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds.</p> <p>3 Subject to paragraphs 4 and 7 of this definition, the Market Price for a Stapled Security on any Business Day for the purposes of Distribution Reinvestment Arrangements is equal to the arithmetic average (rounded down to the nearest cent) of the VWAP during the Pricing Period.</p> <p>4 If in respect of paragraph 1 or 3 of this definition, the Responsible Entity 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.</p> <p>5 For the purposes of paragraphs 1 and 3 of this definition, the following transactions are excluded when calculating Market Price:</p> <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 Responsible Entity considers is not reflective of natural supply and demand.</li> </ul> <p>6 For the purposes of paragraph 3 of this definition, “relevant record date” means the date for determination of entitlements to the distribution which will be applied in paying up Interests to be issued pursuant to clause 15 at an issue price to be calculated by reference to the Market Price.</p> <p>7 If the Responsible Entity believes that the calculations in paragraphs 1, 2 or 3 of this definition do not provide an appropriate reflection of the market price of an Interest, the Market Price on any Business Day is, subject to paragraph 8 of this definition, 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>8 Where an Interest is issued pursuant to Distribution Reinvestment Arrangements and its Market Price is determined pursuant to paragraph 7 of this definition, that Market Price must</p>



<b>Term</b>	<b>Meaning</b>
	<p>not be less than 10% of the Market Price that would apply pursuant to paragraph 3 of this definition.</p> <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 Booklet</b>	the combined explanatory memorandum, notice of meeting and prospectus to be issued by Orchard Property Limited, as responsible entity of Orchard Industrial Property Fund and Orchard Management Limited, on or around 24 June 2009.
<b>Net Asset Value</b>	the total value of the Assets calculated in accordance with clause 10, less the Liabilities.
<b>Net Income</b>	in relation to the Trust, the net income determined in accordance with the Tax Act as calculated each Financial Year.
<b>Official List</b>	the official list of ASX.
<b>Official Quotation or Officially Quoted</b>	official quotation by ASX of the Units, Options or Stapled Securities, as the case requires.
<b>Option</b>	an option to subscribe for a Unit.
<b>Option Holder</b>	a person registered as the holder of an Option (including persons jointly registered).
<b>Partly Paid Unit</b>	a Unit on which the Issue Price has not been paid in full.
<b>PDS</b>	a Product Disclosure Statement lodged under Part 7.9 of the Corporations Act in respect of an issue of Units or Options.
<b>Performance Fee</b>	the fee (if any) to which the Responsible Entity is entitled pursuant to clause 13.3.
<b>Perpetuity Period</b>	the period specified in clause 4.27.



<b>Term</b>	<b>Meaning</b>
<b>Pricing Period</b>	in respect of a Distribution, the period of 10 Trading Days up to and including the relevant Distribution Record Date (unless determined otherwise by the Company).
<b>Proposal</b>	a proposal approved by ordinary resolution at a meeting of Holders convened in accordance with this Constitution or, where the Corporations Act requires the proposal to be approved by special resolution, a proposal approved by special resolution at a meeting of Holders convened in accordance with this Constitution.
<b>Register</b>	the register of Unitholders required to be kept according to clause 8.
<b>Responsible Entity</b>	includes the Responsible Entity for the time being and any other responsible entity appointed on the retirement or removal of the Responsible Entity.
<b>Renounceable Rights Issue</b>	the pro rata renounceable rights issue (including any oversubscription facility) by the Responsible Entity to the Unitholders pursuant to an implementation agreement dated 18 May 2009 between Growthpoint, the Responsible Entity, Orchard Management Limited and Orchard Funds Limited.
<b>Rights Issue</b>	an issue of Units in a class which has been offered to all holders of Units in that class (or all holders of Units in that class other than Foreign Unitholders) on a pro rata basis.
<b>Security</b>	has the meaning given to that term in section 92(1) of the Corporations Act.
<b>Stapled</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 whose Securities are Stapled to Units.
<b>Stapled Security</b>	a Unit and corresponding number of each Attached Security which are Stapled together.
<b>Stapled Security Register</b>	the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with



Term	Meaning
	clause 27.7.
<b>Stapling Date</b>	the date determined by the Responsible Entity to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities.
<b>Tax</b>	<p>this term includes, but is not limited to—</p> <ol style="list-style-type: none"> <li>1 stamp duty, excise and penalties relating to these amounts which are imposed on the Responsible Entity in respect of any Assets or the Trust itself;</li> <li>2 taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Responsible Entity under this Constitution;</li> <li>3 taxes imposed or assessed upon: <ul style="list-style-type: none"> <li>• any Application Money or property;</li> <li>• the Assets, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself; or</li> <li>• the Responsible Entity in respect of its capacity as responsible entity of the Trust;</li> </ul> </li> <li>4 imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust; and</li> <li>5 every kind of tax, duty, rate, levy, deduction and charge including any GST.</li> </ol>
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1936</i> , <i>Income Tax Assessment Act 1997</i> , or both as appropriate.
<b>Terms of Issue</b>	in relation to a Unit or Option, the terms and conditions upon which that Unit or Option is issued (other than those in this Constitution).
<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>Top Up Placement</b>	the placement of Units with Growthpoint pursuant to an implementation agreement dated 18 May 2009 between Growthpoint, Orchard Property Limited as the responsible entity of the Trust, Orchard Management Limited and Orchard Funds Limited.



<b>Term</b>	<b>Meaning</b>
<b>Trading Day</b>	a full day on which Stapled Securities are quoted, and not suspended from quotation or made subject to a trading halt on ASX, provided that a day on which ASX is closed or on which trading on ASX is suspended generally is not a Trading Day.
<b>Trust</b>	the trust constituted by this Constitution.
<b>Unit</b>	an undivided share in the beneficial interest in the Assets as provided in this document.
<b>Unitholder</b>	a person for the time being registered under the provisions of this Constitution as a holder of Units and who holds a beneficial interest in the Assets.
<b>Units</b>	in respect of a Unitholder, an equal undivided interest in the Assets calculated in accordance with the terms of this Constitution.
<b>Units in Issue</b>	the number of Units that have been issued less the number that have been redeemed.
<b>Unstapled</b>	in relation to a Unit 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 Responsible Entity to be the Unstapling Date pursuant to clause 27.5(a).
<b>Up-Front Subscription</b>	the up-front subscription of Growthpoint in Units pursuant to an implementation agreement dated 18 May 2009 between Growthpoint, the Responsible Entity, Orchard Management Limited and Orchard Funds Limited.
<b>Valuation Date</b>	the date on which the Responsible Entity calculates the Net Asset Value.
<b>Vesting Day</b>	the day which is the later of: <ol style="list-style-type: none"><li>1 the day immediately prior to the 80th anniversary of the date of commencement of the Trust; or</li><li>2 any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any</li></ol>



<b>Term</b>	<b>Meaning</b>
	legislation relating to or affecting the operation of that rule.
<b>VWAP</b>	means the volume weighted average market price for all Stapled Securities sold on the ASX automated trading system, excluding Stapled Securities which are sold otherwise than in the ordinary course of trading (which include but are not limited to transactions defined in the ASX Operating Rules as special crossings, crossings prior to the commencement of the open session state, portfolio special crossings, combinations, crossings during overnight trading, overseas trades or trades pursuant to the exercise of options over Stapled Securities) and any other sales that the directors of the Company determine should be excluded on the basis that they are not fairly reflective of genuine supply and demand.
<b>Withdrawal Fee</b>	the fee calculated pursuant to clause 1.1.
<b>Withdrawal Price</b>	the price at which a Unit is redeemed and calculated in accordance with clause 6.2.





## Schedule 2

### Rules for interpretation

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#### 1 Interpretation

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In this Constitution unless the context indicates a contrary intention:

- (a) words denoting any gender include all genders;
- (b) the singular number includes the plural and vice versa;
- (c) references to any legislation includes any legislation which amends or replaces that legislation;
- (d) a person includes their executors, administrators, successors, substitutes (for example, persons taking by novation) and assigns;
- (e) a person includes companies and corporations and vice versa;
- (f) except in the dictionary, headings do not affect the interpretation of this Constitution;
- (g) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause;
- (h) amounts of money are expressed in Australian dollars unless otherwise expressly stated;
- (i) a reference to a document includes any variation or replacement of it;
- (j) a reference to any thing includes the whole or each part of it; and
- (k) the defined terms in Schedule 1 have the meaning given them in that schedule except where the context otherwise requires.

#### 2 General compliance provision

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On and from the date the Trust becomes a registered scheme:

- (a) a provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency;
- (b) paragraph (a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution;
- (c) this paragraph 2 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

### 3 Inconsistency with the Listing Rules

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- (a) Despite anything to the contrary in this paragraph 3, this paragraph 3 has effect subject to paragraph 2 of this Schedule 2.
- (b) If the Trust is admitted to the Official List, the following clauses apply:
  - (1) despite anything in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this Constitution 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 Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
  - (5) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
  - (6) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

### 4 Additional Listing Rule requirements

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If the Trust is admitted to the Official List:

- (a) the Responsible Entity 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 4.6(d) has not been paid;
  - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with clause 23.5(b);
  - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined under Regulation 7.11.38 of the Corporations Regulations as the "specified time" for deciding who held the Unit or Option for the purpose of the meeting;
  - (4) 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;
  - (5) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (6) 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 Responsible Entity 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 Constitution 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 4.8;
- (c) the Responsible Entity must not divest a Unitholder of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASTC Settlement Rules. Without limitation to paragraph 3, at all times that the Trust is admitted to the Official List the Responsible Entity must comply with ASTC Settlement Rule 5.12.