

## Charter Hall Property Trust ASX/Media Release

### Supplemental Deed to the Constitution 29 June 2018

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As previously notified to ASX by Charter Hall Funds Management Limited (**RE**) as responsible entity of Charter Hall Property Trust (**CHPT**), the RE confirms that it has amended the constitution for CHPT (**Constitution**) to allow CHPT to be operated as an attribution managed investment trust under the new **AMIT Regime**. Attached is the Supplemental Deed effecting the constitutional amendments.

#### About Charter Hall

Charter Hall Group (ASX:CHC) is one of Australia's leading fully integrated property groups, with 27 years' experience managing and investing in high quality property on behalf of institutional, wholesale and retail clients. Charter Hall has \$22.5 billion of funds under management across the office, retail and industrial sectors. The Group has offices in Sydney, Melbourne, Brisbane, Adelaide and Perth.

The Group's success is underpinned by a highly skilled and motivated team with diverse expertise across property sectors and risk-return profiles. Sustainability is a key element of its business approach and by ensuring its actions are commercially sound and make a difference to its people, customers and the environment, Charter Hall can make a positive impact for its investors, the community and the Group.

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CLAYTON UTZ

## Supplemental Deed

Charter Hall Property Trust  
ARSN 113 339 147

Charter Hall Funds Management Limited  
ACN 082 991 786  
Responsible Entity

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Our reference 15387/15435

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## Supplemental Deed made on 28 June 2018

**Party** Charter Hall Funds Management Limited ACN 082 991 786 of Level 20, 1 Martin Place, Sydney NSW 2000 ("**Responsible Entity**")

### Background

- A. By a deed poll, the managed investment scheme now known as the Charter Hall Property Trust was established (the "**Scheme**").
- B. The constitution for the Scheme referred to in Background A, as amended from time to time, is referred to in this Deed as the "**Constitution**".
- C. The Scheme is registered by the Australian Securities and Investments Commission ("**ASIC**") as a managed investment scheme and the Responsible Entity is appointed as the responsible entity of the Scheme.
- D. Pursuant to section 601GCA of the *Corporations Act 2001* (Cth), introduced by ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489, the Constitution may be modified by the Responsible Entity to the extent it reasonably considers the change is necessary for or incidental to the Scheme being able to be operated in a manner permitted by the *Income Tax Assessment Act 1997* (Cth) as an attribution managed investment trust.
- E. The Responsible Entity reasonably considers that the modifications to the Constitution proposed to be made by this Deed are necessary for or incidental to the Scheme being able to be operated in a manner permitted by the *Income Tax Assessment Act 1997* (Cth) as an attribution managed investment trust.
- F. The Responsible Entity amends the Constitution as set out in this Deed.

### Operative provisions

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## 1. Operative provisions

### 1.1 Specific modifications

Subject to clause 4, and in exercise of the power contained in clause 25 of the Constitution, the Constitution is modified by:

- (a) inserting the following definitions in clause 1.1 in alphabetical order:

**AMIT** means, for an income year, a trust which is an attribution managed investment trust for the purposes of section 276-10 of the Tax Act.

**AMIT Legislation** means all or any of the:

- (a) the Tax Act;
- (b) *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth);
- (c) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth);
- (d) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth); and

- (e) *Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016* (Cth);

as appropriate and as the context requires.

**AMIT Regime** means the regime for the taxation of AMITs, as set out in the AMIT Legislation.

**Capital Gains** means so much of the Distributable Income of the Trust as the RE determines represents:

- (a) the amount which the RE determines to be the net capital gain of the Trust under section 102-5 of the Tax Act, disregarding steps 3 and 4 in that section, including any amounts which are of the same character; less
- (b) any deductions which the RE determines would arise in the determination of the Distributable Income of the Trust and should be applied by the RE to reduce the amount arising under paragraph (a).

**Maximum Redemption Gains Amount** has the meaning given to it in clause 16.12(b).

**Redemption Gains Entitlement** means, in respect of a Unit Holder who redeems Units under a Significant Redemption, the entitlement of the Unit Holder to the Capital Gains of the Trust in respect of the redemption of those Units, as determined in accordance with clause 16.12(c).

**Significant Redemption** means a redemption of Units that qualifies as a Significant Redemption under clause 16.11.

- (b) inserting the following new clause 16.1A immediately prior to the existing clause 16.1:

**16.1A RE elections**

- (a) If the RE makes an election under clause 16.13 for the provisions contained in Schedule 4 to apply that is effective in respect of a particular Financial Year, then the provisions of this clause 16 will operate subject to, and be qualified by, the provisions of Schedule 4 for that Financial Year.
- (b) The provisions contained in clause 16.11 and clause 16.12 will not apply in respect of a particular Financial Year unless or until the RE makes an election under clause 16.13 that clause 16.11 and clause 16.12 are to apply.

- (c) replacing clause 16.2, with the following:

**16.2 Present entitlement**

- (a) Subject to paragraph (b), on and from the last day of each Financial Year, the Unit Holders on the Register at the end of the last day of the Financial Year have a vested and indefeasible interest in the Distributable Income of the Trust for that Financial Year (other than any part of the Distributable Income which has previously been distributed in

that Financial Year as permitted by this clause 16) in the proportion specified in clause 16.3(c).

- (b) For the avoidance of doubt, where the Trust is an AMIT for any income year, the Trust and the Unit Holders (as relevant) will be taxed in accordance with the AMIT Regime for that income year.
- (c) Without limiting clause 16.14, where the Trust is not an AMIT for an income year, the Trust and the Unit Holders (as relevant) will not be taxed under the AMIT Regime for that income year and the provisions of Schedule 4 will not apply.

(d) inserting the following new clauses 16.11, 16.12, 16.13 and 16.14:

**16.11 Significant Redemption**

The RE may determine that a redemption of Units in the Trust is a Significant Redemption.

**16.12 Redemption Gains Entitlement**

- (a) If there is a Significant Redemption of Units in the Trust, then the RE may determine that a Redemption Gains Entitlement arises for the Unit Holder whose Units are redeemed under the Significant Redemption. If the RE makes a determination that a Redemption Gains Entitlement arises, the RE must determine the Maximum Redemption Gains Amount for the Units redeemed under the Significant Redemption.
- (b) The Maximum Redemption Gains Amount for a Unit redeemed under a Significant Redemption is:
  - (i) so much of the Capital Gains which arise for the Trust that the RE reasonably determines are connected to a disposal of the Assets of the Trust, or of assets held indirectly by the Trust, undertaken to fund a payment, in whole or in part, of the redemption amount for the Units redeemed; divided by
  - (ii) the number of Units redeemed under the Significant Redemption.
- (c) The Redemption Gains Entitlement for a Unit redeemed under a Significant Redemption is the lesser of:
  - (i) the Maximum Redemption Gains Amount for the Unit; and
  - (ii) the amount determined in accordance with the following formula:

$$\frac{M}{AM} x CG$$

where:

- M is the Maximum Redemption Gains Amount for the Unit;
- AM is the aggregate of the Maximum Redemption Gains Amount for all Units redeemed under a Significant Redemption during the Financial Year; and
- CG is the Capital Gains of the Trust for the Financial Year.

For the avoidance of doubt, the Redemption Gains Entitlement for a Unit that is redeemed under a redemption that is not a Significant Redemption is nil.

### **16.13 RE elections**

- (a) The RE may elect in writing for:
  - (i) the provisions contained in Schedule 4 to apply on and from the date specified in the election. Any such election will continue to have effect subject to the provisions contained in Schedule 4; or
  - (ii) the provisions in clause 16.11 and clause 16.12 to apply on or from the date specified in the election. Any election will continue to have effect subject to the provisions contained in Schedule 4 should the RE make an election under clause 16.13(a)(i).
- (b) The RE may notify the Unit Holders of the making of an election under this clause 16.13.
- (c) Nothing in this clause 16.13 imposes an obligation on the RE to:
  - (i) elect to apply the AMIT Regime to the Trust;
  - (ii) facilitate the Trust being able to elect to apply the AMIT Regime to the Trust;
  - (iii) make any amendments to the Constitution; or
  - (iv) make any of the elections provided for under this clause 16.13.

### **16.14 Impact of Schedule 4 if the Trust is not an AMIT**

- (a) If the Trust is not an AMIT for a Financial Year but the RE purports to exercise a power under Schedule 4 on the basis that the RE believes that the Trust is or will be an AMIT for the financial year, then the following provisions apply in respect of the exercise of the relevant power.

- (b) The exercise of the powers by the RE will, to the maximum extent possible but subject to the following provisions, be treated as a proper exercise of the RE's powers under this Constitution or at law.
  - (c) To the extent that the operation of any of these powers depends, for its operation, on the Trust being an AMIT for the financial year, the Trust will be treated as if it were an AMIT for the purposes of that power.
  - (d) Nothing in Schedule 4 or the terms of this clause will be taken to invalidate any action that is undertaken by the RE pursuant to its powers under clause 16 and those powers may be exercised by the RE despite any contrary powers provided under Schedule 4.
- (e) inserting the following new clause 25A immediately after the existing clause 25:

**25A Amendment - Attribution Managed Investment Trust**

Without limiting the RE's powers in clause 25 but subject to the Corporations Act, the RE may make any change to this Constitution or take any other action which the RE reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Trust;
  - (b) enable the RE to administer the Trust and issue Units in accordance with the AMIT Regime;
  - (c) facilitate compliance with the terms of the AMIT Regime in relation to the Trust, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the RE or Unit Holders;
  - (d) facilitate the proper administration and operation of the Trust under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the RE and Unit Holders that arise under the AMIT Regime; or
  - (e) comply with the conditions of any ASIC Exemption issued in relation to the AMIT Regime, or facilitate operation of the Trust in reliance on such ASIC Exemption.
- (f) inserting the following Schedule 4 to the Constitution:

## Schedule 4 - AMIT Provisions

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### 1. Definitions

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

- (a) **AMIT Income Year** means a year of income for the purposes of the Tax Act that the Trust is an AMIT.
- (b) **AMMA Statement** has the meaning given to that phrase in section 276-460 of the Tax Act.
- (c) **Clearly Defined Rights** means where the rights to income and capital arising from each of the Units in the Trust are "clearly defined" at all times when the Fund is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act
- (d) **Constituent Documents** mean the "constituent documents" referred to in section 276-210(3) of the Tax Act.
- (e) **Determined Unit Holder Component** has the meaning given to that phrase in section 276-205 of the Tax Act.
- (f) **Determined Trust Component** has the meaning given to that phrase in section 276-255 of the Tax Act.
- (g) **Discovery Year** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (h) **Unit Holder Component** has the meaning given to that phrase in section 276-210 of the Tax Act.
- (i) **Over** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (j) **Trust Component** has the meaning given to that phrase in section 276-260 of the Tax Act.
- (k) **Under** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (l) **Unit Holder Objection Choice** means a choice made by a Unit Holder under the AMIT Regime for the Unit Holder's Determined Unit Holder Component to be the Unit Holder's Unit Holder Component, including a choice made by a Unit Holder under section 276-205(5) of the Tax Act.

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### 2. Unit Holders' Clearly Defined Rights

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the rights to income and capital of each Unit held by a Unit Holder in the Trust continue to constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to continue to have Clearly Defined Rights:

- (i) the RE may not exercise any right or power, including under any statutory or general law rights or powers of a trustee which would result in the rights to the income and capital of the Trust arising from each Unit in each relevant AMIT for the Trust to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
- (ii) the RE will continue to treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly except to the extent that the RE directs an amount to a particular Unit Holder in the circumstances described in clause 16.12; and
- (iii) in addition to the requirements of clause 25, no amendment will be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under this Constitution) which would or may cause the requirements of this clause to not be met.

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### **3. RE's powers**

#### **3.1 AMIT election**

The RE may make an election under the AMIT Regime to determine the Trust to be an AMIT with effect from the commencement of any Financial Year of the Trust.

#### **3.2 General provisions**

The RE has, without limiting its other rights and powers provided for under the Constitution and this Schedule 4, all of the powers and rights which are necessary or desirable to enable:

- (a) the Trust to be eligible to apply the AMIT Regime;
- (b) the RE to comply with the requirements of the AMIT Regime;
- (c) the Trust to be properly administered and operated under the AMIT Regime; and
- (d) the RE to maintain equity among Unit Holders in the operation of the AMIT Regime.

#### **3.3 Specific powers**

The RE may under the AMIT Regime in respect of an AMIT Income Year:

- (a) determine the taxable income of the Trust for each Financial Year, including a determination of the taxable income of a particular category, source or character for tax purposes. This includes determining all of the Trust's Determined Trust Components and Trust Components under the AMIT Regime for any AMIT Income Year;
- (b) make an attribution of the taxable income of the Trust to Unit Holders under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes. This includes determining all of each Unit Holder's Determined Unit Holder Components and Unit Holder Components under the AMIT Regime for any AMIT Income Year;
- (c) make an alteration to the RE's determination of the taxable income of the Trust for a Financial Year, or the RE's attribution of the taxable income of the Trust to Unit Holders under the AMIT Regime, including a determination or attribution of

taxable income of a particular category, source or character for tax purposes. This includes making alterations to the Trust's Determined Trust Components and Trust Components and a Unit Holder's Determined Unit Holder Components and Unit Holder Components under the AMIT Regime for any AMIT Income Year as a result of any Unders or Overs;

- (d) determine whether to issue an AMMA Statement to any Unit Holder;
- (e) determine what information should be contained in any such AMMA Statement;
- (f) issue an AMMA Statement to any Unit Holder;
- (g) amend an AMMA Statement that has been issued to a Unit Holder, and determine the basis upon which the AMMA Statement is to be amended; and
- (h) for the avoidance of doubt, the rights of the RE set out in paragraphs (a) - (g) (inclusive) apply to determinations, attributions, alterations, issuances and amendments under the AMIT Regime which are attributable to amounts of assessable income, exempt income, non-assessable non-exempt income or tax offsets.

### **3.4 Units and Classes of Units**

- (a) Subject to paragraph 3.4(b) of Schedule 4, the RE may under the AMIT Regime issue Units of a single Class or different Classes. Each different Class of Units must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes of Units issued, but the rights to income and capital of a particular Class must be the same for every Unit in that Class. All Units in a Class rank equally. A separate Class does not constitute a separate trust however may, for the purposes of section 276-20 of the Tax Act, be treated as a separate AMIT in accordance with, and subject to, that section.
- (b) Paragraph 3.4(a) of Schedule 4 does not permit the RE to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Constitution.

### **3.5 Unit Holders' acknowledgement regarding choice for unders/overs**

Each Unit Holder acknowledges or is taken to acknowledge:

- (a) that the RE has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the RE is to address any amounts which may give rise to an Unders or Overs of a particular character for the Trust, including whether such amounts should be addressed by the RE by:
  - (i) issuing amended AMMA Statements to Unit Holders under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Trust to which the Under or Over relates; or
  - (ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time to time); and
- (b) choices made by the RE pursuant to paragraph 3.2(a) of this Schedule 4 may result in:

- (i) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Unit Holder in the Discovery Year; or
- (ii) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Unit Holder in an earlier income year,

than if the RE did not make that choice or made the choice in a different way.

### **3.6 RE's limitation of liability for AMIT Regime powers**

Without limiting any clause of the Constitution and to the maximum extent permitted by law but subject to the Corporations Act, while the Trust is a registered scheme, the RE does not incur any liability and it is not obliged to account to anyone (including any Unit Holder or former Unit Holder) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this paragraph 3 of Schedule 4, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

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## **4. Attribution of taxable income to Unit Holder**

### **4.1 RE must make "fair and reasonable" allocation**

- (a) Following the end of a Financial Year which is an AMIT Income Year, the RE must attribute the taxable income of the Trust for the Financial Year to Unit Holders under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Unit Holders.
- (b) The RE must perform the attribution under paragraph (a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
  - (i) the amount of each Unit Holder's Unit Holder Components and Determined Unit Holder Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Unit Holder;
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the Trust; and
  - (iii) the RE must not attribute any part of a Determined Trust Component of the Trust to a Unit Holder's Units because of the tax characteristics of the Unit Holder.

### **4.2 Attribution must be in accordance with existing distribution provisions**

Without limiting paragraph 4.1(b) of this Schedule 4, the RE must attribute in respect of an AMIT Income Year to each Unit Holder:

- (a) without duplication of amounts attributed in accordance with paragraph 4.2(b) of this Schedule 4, so much of any Determined Trust Components of the Trust for the Financial Year as the RE reasonably determines are reflected in the Unit Holder's present entitlement to the Income of the Trust of the Financial Year: and

- (b) so much of the Determined Trust Components for the Financial year as the RE reasonably determines are reflected in Redemption Gains Entitlements to which the Unit Holder has become entitled prior to the end of the Financial Year.

For the avoidance of doubt, this clause 4.2 also applies to determinations and attributions which are referable to amounts of assessable income, exempt income, non-assessable non-exempt income or tax offsets.

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## **5. Unit Holder's objections**

### **5.1 Unit Holder must notify, provide information and indemnify RE in relation to objections**

If a Unit Holder objects to the basis of the attribution of the taxable income of the Trust for the purposes of the AMIT Regime, including by making a Unit Holder Objection Choice, the Unit Holder agrees to:

- (a) provide the RE with written notice of the Unit Holder's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
- (b) include, in the notice provided to the RE, a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
- (c) provide to the RE any information the RE reasonably requests in order to assess the Unit Holder's objection or proposed objection; and
- (d) indemnify the RE against all costs and liabilities incurred by the RE as a result of the objection or proposed objection.

### **5.2 Unit Holders acknowledge consequences if objection made**

Each Unit Holder is taken to agree that if any Unit Holder makes an objection to the basis of attributing the taxable income of the Trust under the AMIT Regime, including by making a Unit Holder Objection Choice:

- (a) it may be necessary or desirable for the RE to amend its attribution of the relevant taxable income to the Unit Holders and issue amended AMMA Statements to Unit Holders;
- (b) the RE may issue or reissue any AMMA Statement to a Unit Holder;
- (c) the Determined Unit Holder Components of the Unit Holder and any other Unit Holders in the Trust may, under the AMIT Regime, be equal to the Unit Holder Components of the Unit Holder and any other Unit Holders in the Trust; and
- (d) the Determined Trust Components of the Trust may, under the AMIT Regime, be equal to the Trust Components of the Trust.

### **5.3 Limitation of liability**

The RE has no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to an objection to the basis of attribution of the taxable income of the Trust under the AMIT Regime, including by the Unit Holder making a Unit Holder Objection Choice.

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## **6. RE indemnity**

### **6.1 RE has a right to be indemnified for Tax payable**

Each Unit Holder is required to indemnify the RE for:

- (a) any Tax payable by the RE as a result of the application of the AMIT Regime which the RE reasonably determines relates to the Unit Holder, Units held by the Unit Holder, or an attribution of taxable income made to the Unit Holder; and
- (b) any other costs, expenses or liabilities incurred by the RE as a result of being liable to such Tax, and claiming on the indemnity provided by the Unit Holder under paragraph 6.1 of this Schedule 4 or under the AMIT Regime.

### **6.2 RE may prescribe terms and conditions**

The RE may prescribe particular terms and conditions which apply in the event that the RE is entitled to be indemnified by a Unit Holder under paragraph 6.1 of this Schedule 4, or under the AMIT Regime.

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

The Unit Holders agree that the RE may, if it is entitled to be indemnified by a Unit Holder under paragraph 6.1 of this Schedule 4, or under the AMIT Regime undertake the following actions in order to satisfy that indemnity:

- (a) deduct from any amounts owing to the particular Unit Holder the aggregate of any amounts which the RE is entitled to be indemnified under paragraph 6.1 of this Schedule 4, or under the AMIT Regime; and
- (b) compulsorily redeem such number of units held by the Unit Holder which the RE reasonably determines is sufficient to cover the amounts for which the RE is entitled to be indemnified under paragraph 6.1 of this Schedule 4, or under the AMIT Regime.
- (c) of a particular category, source or character for tax purposes.

### **6.4 General indemnity for RE**

Without limiting any other clause in this Constitution, the RE is indemnified out of the Trust Fund on a full indemnity basis for any liability that:

- (a) is incurred by the RE in relation to the proper performance of its duties; and
- (b) either:
  - (i) is an attribution income tax liability of the RE; or
  - (ii) results from a Unit Holder or former Unit Holder making a claim against the RE in relation to an attribution income tax liability of the Unit Holder or former Unit Holder that results from an attribution by the RE to the Units held by the Unit Holder or former Unit Holder.

## 1.2 Provisions not affected

The provisions of the Constitution are not otherwise effected.

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## 2. No resettlement

The Responsible Entity confirms that it is not by this Deed intending to:

- (a) resettle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

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## 3. Governing law

This Deed is governed by and will be construed according to the laws of the State of New South Wales.

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## 4. Effective time

In accordance with section 601GC(2) of the *Corporations Act* 2001 (Cth), the modifications to the Constitution pursuant to clause 1.1 of this Deed take effect immediately upon a copy of this Deed being lodged with the ASIC.

**Executed** as a deed.

**Executed by Charter Hall Funds  
Management Limited**



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Signature of Director

DAVID WILLIAM HARRISON

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Name of Director



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Signature of Secretary

MARK ROBERT BRYANT

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Name of Secretary