
GTH Resorts No 2 Pty Ltd (ACN 606 879 010)

Constitution of the GTH Resorts No 2 Trust

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Details

Responsible Entity	Name	GTH Resorts No 2 Pty Ltd
	ACN	606 879 010
	Address	C/-WMS Chartered Accountants Pty Ltd, Suite 1401, Level 14, 203 Robina Town Centre Dr, Robina QLD 4226
Governing law	Victoria	

This deed poll is declared by the Responsible Entity to be the constitution of the GTH Resorts No 2 Trust.

2 Interpretation

2.1 Definitions

In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Accept means:

- (a) in respect of an application for Units, the doing of any act by the Responsible Entity or its agent that constitutes an acceptance of the application or evidence that the application has been accepted, including recording a determination or notifying the applicant that the application is accepted or recording in the Register the issue of Units in response to the application;
- (b) in respect of a request for redemption of Units by a Member, the doing of any act by the Responsible Entity or its agent that constitutes an acceptance of the request or evidence that the request has been accepted, including notifying the Member or recording a determination that the request will be met in whole or in part, recording the redemption of Units in the Register or paying the redemption proceeds to or at the direction of the Member or former Member;

and **Acceptance** and **Accepted** have corresponding meanings.

Administrator means the administrator of the Trust appointed by the Responsible Entity from time to time.

AMIT has the meaning given to that word in the Tax Act.

AMIT Income Year means a year of income for the purposes of the Tax Act that the Trust is an AMIT.

AMIT Regime means the regime for the taxation of AMITs, as set out in the following legislation:

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

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

Application Price means the Unit price calculated in accordance with clause 11.

Applications Account means an account in which the Responsible Entity or, if permitted, its agent holds money on trust for applicants for Units in accordance with section 1017E of the Corporations Act or otherwise.

Assets means all the property, rights and Income of the Trust, but not application money or property in respect of which Units have not yet been issued.²

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

ASX means ASX Limited ABN 98 008 624 691 or the market operated by it, as the context requires.

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

ASX Settlement Operating Rules means the ASX Settlement Operating Rules issued by ASX Settlement from time to time.

Attached Security means a Security which is from time to time Stapled, or to be Stapled, to a Unit or Option (as applicable).

Auditor means the auditor for the time being of the Trust.

Bonus Unit means a Unit in respect of the Trust described in clause 5.8.

Bonus Unit Issue Day means the day determined by the Responsible Entity for the purposes of clause 5.8.

Business Day means:

- (a) while Units are not Officially Quoted, a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne or if the administrator of the Trust primarily performs its administrative functions in respect of the Trust in a city other than Melbourne, the city in which the administrator performs such functions; or
- (b) while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

Change of Control Event occurs when:

- (a) a takeover bid is made for Ordinary Units:
 - (i) acceptance of which is recommended by the Responsible Entity and which is or has become unconditional; or
 - (ii) which is or has become unconditional and the voting power of the offeror in the Trust is or has become greater than 50%; or
- (b) a trust scheme, to be implemented in accordance with the Takeover Panel: Guidance Note 15 and facilitated by amendments to this constitution, for the acquisition of all Ordinary Units comes into effect.

CHESS means the clearing house electronic sub-register system as defined in the ASX Settlement Operating Rules.

² See Clause 11.7 for the time at which Units are issued, and clause 13.13 for the times when Units are redeemed.

CHESS Approved Securities means securities approved under the ASX Settlement Operating Rules to participate in CHESS.

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 during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

Complaint³ means an expression of dissatisfaction made to or about an organization, related to its products, services, staff or to the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

Compliance Committee Member means a member of a compliance committee established by the Responsible Entity in connection with the Trust.

Constituent Documents has the same meaning as the phrase “constituent documents” in section 276-210(3) of the Tax Act.

Corporations Act means the Corporations Act 2001 (Cwlth) and a reference to the Corporations Act or a provision of it includes a reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

Corresponding Number means, in relation to an Attached Security, at any time the number of those Attached Securities that are stapled to an issued Unit at that time.

CS Facility has the same meaning as clearing and settlement facility in the Corporations Act.

CS Facility Operator means the operator of the CS Facility.

Custodian means a person holding or appointed to hold Assets as custodian for the Responsible Entity.

Cut-off Time means 2:00 pm on each Business Day or such other time as determined by the Responsible Entity from time to time for the purposes of processing applications and redemption requests.

Determined Member Component has the meaning given to that phrase in section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that phrase in section 276-255 of the Tax Act.

Distribution Calculation Date means:

- (a) the last day of each Financial Year; or
- (b) such other days as the Responsible Entity designates from time to time.

Distribution Period means:

- (a) for the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date;

³ This definition is sourced from ASIC Regulatory Guide 271 paragraph 27, and is based on AS/NZS 10002:2014.

- (b) 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; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Divestment Notice means a notice given under clause 34.2 to a Small Holder or a New Small Holder.

Eligible Person means any person:

- (a) other than a U.S. Person (unless otherwise determined by the Responsible Entity);
- (b) other than an ERISA Investor (unless otherwise determined by the Responsible Entity); or
- (c) other than a person that the Responsible Entity has determined is not eligible to hold Units from time to time.

Eligible Person Statement means a statement in writing, in the form determined by the Responsible Entity from time to time, in relation to whether a person is an Eligible Person.

ERISA means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the applicable regulations thereunder.

ERISA Investor means:

- (a) an investor using assets of:
 - (i) an "employee benefit plan" as defined in Section 3(3) of ERISA that is subject to Part 4 of Subtitle B of Title 1 of ERISA;
 - (ii) a "plan" as defined in Section 4975 of the U.S. Tax Code, including an individual retirement account or other arrangement that is subject to Section 4975 of the U.S. Tax Code; or
 - (iii) an entity which is deemed to hold the assets of any of the foregoing types of plans, accounts or arrangements that is subject to Part 4 of Subtitle B of Title 1 of ERISA or Section 4975 of the U.S. Tax Code; or
- (b) a governmental, church, non-U.S. or other employee benefit plan that is subject to any federal, state, local or non U.S. law that is substantially similar to the provisions of Part 4 of Subtitle B of Title 1 of ERISA or Section 4975 of the U.S. Tax Code, unless its purchase, holding and disposition of Units will not constitute or result in a non-exempt violation of any such substantially similar law.

Escrow Period has the same meaning as in the Listing Rules.

Final Distribution Period means a Distribution Period that ends on a Financial Year Termination Date.

Financial Instrument means an interest, right or instrument relating to the Trust (including a derivative, debenture, convertible note or other instrument of a debt, equity, quasi-debt, quasi-equity or hybrid nature) other than a Unit or Option.

Financial Instrument Holder means the person Registered as the holder of a Financial Instrument (including persons registered jointly).

Financial Year means:

- (a) for the first financial year, the period from the date the Trust commences to the next Financial Year Termination Date;
- (b) for the last financial year, the period from the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date,

but the application of this definition for the purposes of calculating distributions from the Trust and preparing the income tax return of the Trust does not affect the Responsible Entity's determination as to the financial year of the Trust for the purposes of preparing accounts and lodging returns required for registered schemes under the Corporations Act.

Financial Year Termination Date means any of the following as the context requires:

- (a) 30 June; and
- (b) if applicable, the day on which the Trust becomes a "subsidiary member" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a "subsidiary member" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (d) for the purposes of determining Income Entitlements in respect of Units, where the Responsible Entity has made a determination to redeem all Units, the Distribution Calculation Date determined by the Responsible Entity in respect of those Units.

Foreign Tax Credit Amount means for a Distribution Period, the amount (if any) of withholding tax (or any similar or equivalent Tax) which has been withheld from any income or distributions paid to the Trust during the Distribution Period.

Foreign Tax Credit Entitlement means an amount determined for a Distribution Period in accordance with clause 16.5.

Fractional Unit means a Unit designated upon issue as a Fractional Unit.

Fund means:

- (a) the application money
- (b) all amounts paid by any person for or in respect of Units
- (c) all other property held by the Trustee as trustee of the Trust excluding any Net Income derived from that property

Gross Asset Value means in relation to the Trust at a Valuation Time, the sum of the value of the Assets.

GST means a goods and services tax or similar tax imposed in Australia.

Income means an amount determined for a Distribution Period or a Financial Year in accordance with clause 16.1.

Income Component has the meaning given in clause 14.17(a).

Income Entitlement means, in respect of a Member or former Member and a Distribution Period, the amount calculated in respect of the Member or former Member in accordance with clause 16.4.

Initial Public Offer means:

- (a) a public offer of Units for the purpose of raising substantial capital;
- (b) a sell down of a substantial portion of the Units by the Members; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking Listing and Official Quotation of the Units.

Instalment in relation to a Partly Paid Relevant Security, means each instalment of the Application Price of that Relevant Security which is not paid on application for the Relevant Security and must be paid at the time specified in the terms of issue.

Interim Distribution Period means a Distribution Period that does not end on a Financial Year Termination Date.

Liabilities means all present liabilities of the Trust including:

- (a) any provision taken into account in determining the liabilities of the Trust;
- (b) any liability to any Member or former Member in respect of proceeds of redemption of Units which have not been paid; and
- (c) any liability to any Member or former Member in respect of distributions;

but not liabilities:

- (d) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued;⁴ or
- (e) to Members, arising by virtue of the right of Members to request redemption of their Units (where the Units have not yet been redeemed) or to participate in the distribution of the Assets on winding up of the Trust.

Liquid has the same meaning as in the Corporations Act.⁵

Listed means admitted to the Official List and Listing has a corresponding meaning.

⁴ See clause 11.7 for the time at which Units are issued.

⁵ Refer to the Corporations Act Part 5C.6. In this constitution, section references and references to Parts are to the Corporations Act unless otherwise specified.

Listing Rules means the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

Management Services Agreement means an agreement entered into between the Responsible Entity as responsible entity of the Trust and the Manager relating to management services provided by the Manager for the benefit of the Trust.

Manager means GemLife Funds Limited (ACN 658 464 478) or any other entity appointed by the Responsible Entity under a Management Services Agreement to provide management services.

Market Price of a Unit on a particular day is:

- (a) the weighted average VWAP for the Unit for each of the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market;
- (c) if:
 - (i) in the case of paragraph (a), Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
 - (ii) in the case of paragraph (a) or (b), in the Responsible Entity's opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Units having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit determined by an adviser who:

- (iii) is independent of the Responsible Entity; and
- (iv) has relevant market experience in determining the issue or application price of securities in circumstances similar to those in which the determination of the Market Price of a Unit is being made,

to be the fair market price of the Unit, having regard to:

- (v) the nature of the proposed offer of Units for which purpose the Market Price of a Unit is being calculated;
- (vi) the circumstances in which the proposed offer of Units will be made; and
- (vii) the interests of Members generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

Market Value of an Asset means (other than in clause 34):

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, its face value plus any accrued interest;

- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Responsible Entity, unless:
 - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
 - (ii) the Responsible Entity reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by a Valuer at the expense of the Trust;
- (c) in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any financial market, the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund plus any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity; or
- (d) in the case of any other Asset, the value of the Asset determined in accordance with relevant accounting standards or, if the Responsible Entity is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer at the expense of the Trust.

Market Value, in relation to a Unit for the purposes of clause 34 and relevant definitions, means the closing price on ASX of the Unit.

Member means a person Registered as the holder of a Unit that has not been redeemed⁶ (including persons jointly Registered) or otherwise stated to be a Member in accordance with clause 12.7 or any other provision of this constitution.

Member Component has the meaning given to that phrase in section 276-210 of the Tax Act.

Member Objection Choice means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.

Net Asset Value means the value of the Assets of the Trust calculated in accordance with clause 15 less the Liabilities of the Trust.

Net Income means:

- (a) for a Financial Year, the aggregate of:
 - (i) the amount which the Responsible Entity determines to be the "net income of the trust estate" for the Trust for the purposes of section 95 of the Tax Act for the Financial Year, but disregarding:
 - (A) any amounts the Responsible Entity determines are included in the "net income of the trust estate" of the Trust for the Financial Year other than notional amounts that are not represented by cash (for example, franking credits and foreign tax offsets); and

⁶ See clause 13.17 for the time at which Units are redeemed.

- (B) any reduction in the net capital gain for the Trust for the Financial Year which the Responsible Entity determines arises as a result of the discount capital gains concession; and
 - (ii) any additional amount that the Responsible Entity considers on or before the end of each Financial Year termination date as being appropriate for distribution for the Financial Year; and
- (b) for a Distribution Period, an estimate of the Net Income for the Distribution Period determined as if the Distribution Period is a Financial Year and a "income year" for the purposes of the Tax Act.

New Small Holder is a Member who is the holder or a joint holder of a New Small Holding.

New Small Holding means a holding of Units created after the date on which clause 34 came into effect by the transfer of a parcel of Units the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Units as provided under the Listing Rules.

Non-AMIT Income Year means a Financial Year which is not an AMIT Income Year.

Offer Document means a product disclosure statement or other offering document pursuant to which Units are offered for subscription, as amended, supplemented or replaced from time to time.

Official List means the official list of ASX as defined in the Listing Rules.

Officially Quoted means admitted to quotation by ASX under the Listing Rules and **Official Quotation** has a corresponding meaning.

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

Option means an option on any terms granted under this constitution to subscribe for unissued Units.

Option Holder means the person Registered in the Register of option holders.

Ordinary Unit means a unit in the Trust, issued on any terms granted under this constitution.

Over has the meaning given to that phrase in section 276-345 of the Tax Act.

Partly Paid Relevant Security means a Relevant Security in respect of which any portion of its Application Price remains unpaid.

PPSA means Personal Property Securities Act 2009 (Cth).

Proper ASTC Transfer has the meaning given to that term in the *Corporations Regulations 2001* (Cth).

Redemption Payment has the meaning given in clause 14.17(a).

Redemption Price means the redemption price of a Unit.

Register means the register of Members and, if relevant, Option Holders and Financial Instrument Holders kept by or on behalf of the Responsible Entity.

Registered means recorded in the Register and **Registration** has a corresponding meaning.

Registered Scheme means a trust which is registered with ASIC as a managed investment scheme under Chapter 5C of the Corporations Act.

Registrar means the body responsible for keeping the Register.

Relevant Security means a Unit, an Option or a Financial Instrument as appropriate.

Relevant Security Holder means a Member, an Option Holder or the person registered in the Register as the holder of a Financial Instrument as applicable.

Relevant Units are the Units specified in a Divestment Notice.

Resolution and required majority means:

- (a) a resolution passed at a meeting of Members (or, if applicable a meeting of Option Holders or Financial Instrument Holders) in the Trust:
 - (i) on a show of hands, by the required majority of Members (or, if applicable Option Holders or Financial Instrument Holders) present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members (or, if applicable Option Holders or Financial Instrument Holders) present in person or by proxy and voting on the poll; or
- (b) unless the law requires otherwise, a resolution in writing signed by Members holding the required majority of the Units in the Trust (or, if applicable Option Holders or Financial Instrument Holders).

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority of votes validly cast.⁷

Responsible Entity or Trustee means the company which is registered with ASIC as the single responsible entity of the Trust under the Corporations Act.

Restricted Securities has the same meaning as in the Listing Rules.

Retail Client has the same meaning that it has in the Corporations Act.⁸

Security means a security, as that term is defined in section 92(1) of the Corporations Act and an option to acquire (by way of issue) such a security.

Small Holder is a Member who is the holder or a joint holder of a Small Holding.

⁷ Circumstances where a special resolution is required while the Trust is a Registered Scheme include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

⁸ See sections 761A, 761G and 761GA.

Small Holding means a holding of Units the aggregate Market Value of which at the relevant date is less than a marketable parcel of Units as provided under the Listing Rules.

Staple, Stapled or Stapling means 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.

Stapled Company means the Stapled Entity that is a corporation.

Stapled Entity means a managed investment scheme, corporation or other entity, the Securities in which are Stapled to Units.

Stapled Group means the Trust and the Stapled Entity (or Stapled Entities, as applicable).

Stapled Security means a Unit or Option (as applicable) and the Corresponding Number of each Attached Security that are Stapled together.

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with clause 37.8.

Stapling Date means 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.

Stapling Proposal means a proposal to Staple any Security to Units, Options or Stapled Securities.

Tax means all kinds of taxes, duties, imposts, deductions and charges imposed by a government (including GST), together with interest and penalties.

Tax Act means the Income Tax Assessment Act 1936 ("**1936 Act**"), the Income Tax Assessment Act 1997 ("**1997 Act**") or both the 1936 Act and the 1997 Act, as appropriate.

Taxation Amount means, for a Relevant Security Holder or a former Relevant Security Holder ("**Relevant Person**"), an amount of Tax which is payable or which is anticipated to become payable by the Responsible Entity on its own account or out of the Trust and which is referable to the Relevant Person. A Taxation Amount includes an amount of Tax imposed on account of or in respect of:

- (a) the Relevant Person;
- (b) an amount paid or payable to the Relevant Person; or
- (c) a Unit held by the Relevant Person.

Trading Day has the same meaning as in the Listing Rules.

Transaction Costs means a percentage equal to the percentage of the Net Asset Value of a Unit that the Responsible Entity considers represents a fair allowance for brokerage, stamp duty and other costs of acquisition (where calculating Application Price) or disposal (where calculating Redemption Price) of investments, and, subject to the Corporations Act, the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust means the trust which is the subject of this constitution.

Trust Component has the meaning given to that phrase in section 276-260 of the Tax Act.

Under has the meaning given to that phrase in section 276-345 of the Tax Act.

Unit means an Ordinary Unit in the Trust.

Unstaple or **Unstapled** means a Unit or Option (as applicable) and an Attached Security or Attached Securities being detached from each other so that one may be dealt with without the other or others.

Unstapling Date means the date determined by the Responsible Entity to be the Unstapling Date pursuant to clause 37.5(a).

U.S. Person means a "U.S. Person" as defined in Rule 902 in Regulation S under the Securities Act of 1933, of the United States of America. **U.S. Tax Code** means the U.S. Internal Revenue Code of 1986, as amended.

User Pays Fees means any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) anything a Member asks the Responsible Entity to do or omit to do,

which the Responsible Entity considers should be borne by that Member.

Valuation Time means a time at which the Responsible Entity calculates the Net Asset Value.

Valuer means an independent qualified value appointed by the Responsible Entity.

VWAP in respect of a Unit for a Trading Day, means the volume weighted average of the Unit prices for that Trading Day for all sales of Units recorded on ASX for that day. The Responsible Entity may include, or may substitute, in VWAP calculations trading on another financial market on which trading in Units is permitted. The Responsible Entity may exclude sales that occur otherwise than in the ordinary course of trading on ASX or other financial market (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the afterhours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Responsible Entity reasonably considers may not be fairly reflective of natural supply and demand.

2.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) the word "law" includes common law, principles of equity and legislation and a reference to legislation includes regulations as modified by applicable instruments under them and any variation or replacement of any of them;
- (c) the singular includes the plural and vice versa;

- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (e) amend includes vary, delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association and an authority;
- (g) the cover page, contents, headings, footnotes and finding lists are for convenience only and do not affect interpretation;
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar half-year, calendar quarter or calendar month respectively;
- (i) a reference to a monetary amount is a reference to the currency of Australia unless otherwise specified;
- (j) a reference to a document (including this constitution) includes any variation or replacement of it; and
- (k) the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Responsible Entity for the purposes of the meeting.

2.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

2.4 Constitution legally binding⁹

This constitution binds the Responsible Entity, each present and future Member or other Relevant Security Holder and any person claiming through any of them in accordance with its terms as if they were a party to this constitution.

2.5 Corporations Act prevails to the extent of inconsistency

Despite anything in this constitution, to the extent that a clause of this constitution is inconsistent with the provisions of the Corporations Act applicable to registered managed investment schemes, that provision is of no effect to the extent of the inconsistency, but not otherwise.¹⁰

2.6 Other restrictions and obligations excluded

To the maximum extent permitted by law, all restrictions on the exercise of the Responsible Entity's powers or obligations which might otherwise be implied or imposed by law are expressly excluded, including any restriction or obligation of the Responsible Entity in its capacity as responsible entity of the Trust arising under any legislation other than the Corporations Act.

⁹ Refer Section 601GB

¹⁰ ASIC RG 134.142

2.7 Severance

If all or part of any provision of this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid in a jurisdiction for any reason, then it is severed for that jurisdiction. This does not affect the validity or operation of any other provision of this constitution or of that provision in any other jurisdiction.

2.8 Governing law

This constitution is governed by the law in force in the place set out in the Details. Each party and each present and future Member or other Relevant Security Holder and any person claiming through them in accordance with the terms of this constitution, irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and courts entitled to hear appeals from those courts.

3 Name of Trust

3.1 Name

The Trust is called the GTH Resorts No 2 Trust or any other name as the Responsible Entity determines.¹¹

3.2 Change of Responsible Entity

If a Responsible Entity retires or is removed, its successor as Responsible Entity must, unless otherwise approved by the former Responsible Entity, change the name of the Trust to a name that does not imply an association with the former Responsible Entity or its business.

4 Identification of Assets held on trust

4.1 Identification

Any Assets held by the Responsible Entity as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.¹² Subject to the law, the Responsible Entity may have Assets held by a custodian.

5 Units

5.1 Nature of Units

The beneficial interest in the Trust is divided into Units.

¹¹ See Corporations Regulation 5C.1.02

¹² See section 601FC(1)(i)

5.2 Interest in Assets

- (a) Subject to paragraph (b) and to any rights, obligations or restrictions attaching to any particular Unit which are specified in this constitution, each Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (b) Where Units are taken to be issued under clause 12.7 and the issue has not yet been recorded in the Register, the person to whom the Units are taken to have been issued has an interest of the kind referred to in paragraph (a) based on the net amount of application money that person has contributed to acquire the Units, divided by the relevant Application Price, whether or not the Application Price has been ascertained at that time.

5.3 Rights attaching to Units

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit which are specified in this constitution.

5.4 Fractions of Units

- (a) Fractions of a Unit (calculated to two decimal places or other number of decimal places as determined by the Responsible Entity) may be issued by the Responsible Entity but while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) While Units are Officially Quoted, where any calculation or action performed under this constitution or the terms of a withdrawal offer would result in the issue or redemption of a fraction of a Unit or would otherwise result in fractions of Units being on issue, the number of Units is, subject to this constitution, to be rounded up to the nearest whole Unit.
- (c) Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

5.5 Consolidation and division

Units may be consolidated or divided as determined by the Responsible Entity provided that all units of a class are treated equally.

5.6 Treatment of fractions

The provisions of this constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

5.7 Certificates

Subject to the Listing Rules, the Responsible Entity may determine not to issue certificates in respect of Units in the Trust.

5.8 Bonus Units

- (a) The Responsible Entity may determine on a Bonus Unit Issue Day to issue Bonus Units in the Trust to the Members.
- (b) The number of Bonus Units issued in the Trust:
 - (i) must be such that the Application Price for a Unit is, after the issue of the Bonus Units, equal to the Application Price for a Unit, calculated as if the Transaction Costs are nil; and
 - (ii) to each Member must be proportionate to the number of Units held by the Member,

calculated to two decimal places or such other number of decimal places as the Responsible Entity determines.
- (c) If the Responsible Entity makes a determination in accordance with clause 5.8(a) the Responsible Entity must apply the whole or any part of the capital of the Trust in or towards paying up in full the Bonus Units to be issued to Members under clause 5.8(a).

6 Issue of Partly Paid Relevant Securities

- (a) The Responsible Entity may offer any Relevant Securities which are offered for subscription as Partly Paid Relevant Securities, the Application 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 Relevant Securities in the document offering those Relevant Securities for subscription, which must include the amount and time for payment of the Instalments.
- (c) The terms of issue of any Partly Paid Relevant Securities may provide that the whole of the unpaid Application Price of each Partly Paid Relevant Security is payable immediately upon termination of the Trust.
- (d) A holder of a Partly Paid Relevant Security must pay the Instalments of the Application Price in accordance with the terms of issue of the Partly Paid Relevant Security and in accordance with this deed.

7 Options

7.1 Options

- (a) Subject to clause 7.2, the Responsible Entity may create and issue Options on such terms and to any persons as the Responsible Entity determines, provided that the Responsible Entity may not attach rights, obligations or restrictions to Options to the extent that section 601GA of the Corporations Act requires those matters to be set out in this constitution.
- (b) An Option:
 - (i) may be issued with Units or separately; and

- (ii) does not confer any interest in, or any rights to participate in, the income or capital of the Trust.
- (c) A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders. An Option Holder holds an Option subject to the terms attaching to that Option.
- (d) An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue may allow the Responsible Entity to buy back the Options.

7.2 Terms of Options while a Registered Scheme

Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, the Responsible Entity may issue Options to any person (including to a related body corporate or associate of the Responsible Entity):

- (a) for a price (which may be zero) determined by the Responsible Entity if permitted under the Corporations Act (including the conditions of any applicable ASIC Relief) or, if that determination may not be made under the Corporations Act (including the conditions of any applicable ASIC Relief), for a price of zero; and
- (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is the price determined by the Responsible Entity:
 - (i) while the Units are Officially Quoted, in accordance with the terms of any applicable ASIC Relief for a rights issue or a placement of Units, or otherwise in accordance with clause 11.1(h); and
 - (ii) while the Units are not Officially Quoted, in accordance with the terms of any applicable ASIC Relief for a rights issue, or otherwise in accordance with clause 11.1(c).

7.3 Other jurisdictions

If the Trust is a Registered Scheme and the Responsible Entity is making an offer of Options to Members which complies with the principles set out in clause 11.7, the Responsible Entity is not required to offer Options to persons whose address on the Register is outside Australia or New Zealand (or who holds Units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

7.4 Exercise of Options

To exercise an Option, the Option Holder must give notice to the Responsible Entity in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

7.5 Lapse of Options

An Option lapses on the earliest of:

- (a) the date stipulated in the terms of issue of the Option; or
- (b) the termination of the Trust; or
- (c) the winding up of the Trust,

and the liability of the Responsible Entity and the Trust ceases in respect of the Option when the Option lapses.

8 Financial Instruments

8.1 Issue of Financial Instruments

Subject to the Corporations Act, the Responsible Entity may issue Financial Instruments:

- (a) at an application price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$2.00 per Financial Instrument; and
- (b) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemptions, conversions or otherwise) as the Responsible Entity determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

8.2 Rights of Financial Instrument Holders

A Financial Instrument Holder holds a Financial Instrument subject to the terms attaching to that Financial Instrument. Subject to those terms and the Corporation Act:

- (a) a Financial Instrument will not confer any interest in, or any right to participate in, the income or capital of the Trust and does not entitle the Financial Instrument Holder to any other rights of a Member; and
- (b) a Financial Instrument Holder who is not a Member may, with the Responsible Entity's consent, attend any meeting of Members but is not entitled to receive notice of or speak (unless the Responsible Entity otherwise agrees that the Financial Instrument Holder may receive notice of or speak) or vote at the meeting.

9 Calls, forfeiture, indemnities, lien and surrender

9.1 Calls

- (a) Subject to the terms on which any Relevant Securities are issued, the Responsible Entity may:

- (i) make calls on Relevant Security Holders for any amount unpaid on their Relevant Securities which is not by the terms of issue of those Relevant Securities made payable at fixed times; and
 - (ii) on the issue of Relevant Securities, differentiate between Relevant Security Holders as to the amount of calls to be paid and the time for payment, so long as, on and from the Stapling Date and prior to the Unstapling Date, the same differentiation is made in respect of each Attached Security to which those Relevant Securities are Stapled.
- (b) The Responsible Entity may require a call to be paid by Instalments.
- (c) The Responsible Entity must send Relevant Security Holders notice of a call at least 14 days (or such longer period required by the Listing Rules) before the amount called is due, specifying the amount of the call, the time for payment and the manner in which payment must be made.
- (d) Each Relevant Security Holder must pay the amount called to the Responsible Entity by the time and in the manner specified for payment.
- (e) A call is taken to have been made when the Responsible Entity authorises the call.
- (f) The Responsible Entity may revoke a call or extend the time for payment.
- (g) A call is valid even if a Relevant Security holder for any reason does not receive notice of the call.
- (h) If an amount called on a Relevant Security is not paid in full by the time specified for payment, the person who owes the amount must pay:
 - (i) interest on the unpaid part of the amount from the date payment is due to the date payment is made, at a rate determined under clause 9.10; and
 - (ii) if the Relevant Security was issued after the date this deed is adopted, any costs, expenses or damages the Responsible Entity incurs due to the failure to pay or late payment.
- (i) Any amount unpaid on a Relevant Security that, by the terms of issue of the Relevant Security, becomes payable on issue or at a fixed date:
 - (i) is treated for the purposes of this deed as if that amount were payable under a call duly made and notified; and
 - (ii) must be paid on the date on which it is payable under the terms of issue of the Relevant Security.
- (j) The Responsible Entity may, to the extent the law permits, waive or compromise all or part of any payment due under the terms of issue of a Relevant Security or under this clause 9.1.

9.2 Effect of Stapling

On and from the Stapling Date and prior to the Unstapling Date, any call in respect of a Relevant Security must be in respect of a pro rata amount due in respect of the Attached Securities to which the Relevant Security is Stapled,

unless the Responsible Entity and the board of directors of the Stapled Entity decide otherwise.

9.3 Proceedings to recover calls

- (a) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
 - (i) the name of the defendant is entered in the register as the Relevant Security Holder or one of the Relevant Security Holders of the Relevant Securities on which the call is claimed; and
 - (ii) notice of the call was given to the defendant complying with this deed,

is conclusive evidence of the obligation to pay the call and it is not necessary to prove the appointment of the Responsible Entity who made the call or any other matter.
- (b) In clause 9.3(a), **defendant** includes a person against whom the Responsible Entity alleges a set-off or counterclaim, and a **proceeding** to recover a call or an amount is to be interpreted accordingly.

9.4 Payments in advance of calls

- (a) The Responsible Entity may accept from a Relevant Security Holder the whole or a part of the amount unpaid on Relevant Securities even though no part of that amount has been called.
- (b) The Relevant Entity may authorise payment from the Trust of interest on an amount accepted under clause 9.4(a), until the amount becomes payable, at a rate agreed between the Responsible Entity and the Relevant Security Holder paying the amount.
- (c) On and from the Stapling Date and prior to the Unstapling Date, any advance in respect of any Relevant Securities must be in respect of a pro rata amount due in respect of the Attached Securities which are Stapled to that Relevant Security, unless the Responsible Entity and the board of directors of the Stapled Entity decided otherwise.
- (d) The Responsible Entity may repay to a Relevant Security Holder any amount accepted under clause 9.4(a).

9.5 Forfeiture Partly Paid Relevant Securities

- (a) If a Relevant Security Holder fails to pay the whole of a call or an Instalment of a call by the time specified for payment, the Responsible Entity may serve a notice on that Relevant Security Holder:
 - (i) requiring payment of the unpaid part of the call or Instalment, together with any interest that has accrued and all costs, expenses or damages that the Responsible Entity has incurred due to the failure to pay;
 - (ii) naming a further day (at least 14 days after the date of service of the notice) by which, and the manner in which, the amount payable under clause 9.5(a)(i) must be paid; and

- (iii) stating that if the whole of the amount payable under clause 9.5(a)(i) is not paid by the time and in the manner specified, the Relevant Securities in respect of which the call was due will be liable to be forfeited.
- (b) If a Relevant Security Holder does not comply with a notice served under clause 9.5(a), the Responsible Entity may determine to forfeit any Relevant Securities concerning which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) The Responsible Entity may determine to forfeit a Relevant Security which is part of Stapled Security at any time after any Attached Security forming part of such Stapled Security is forfeited under the relevant Stapled Entity's constitution because of non-payment of a call on that Attached Security.
- (d) A forfeiture under clause 9.5(b) includes forfeiture of all distributions, interest and other amounts payable by the Responsible Entity on a forfeited Relevant Security and not actually paid before the forfeiture.
- (e) On and from the Stapling Date and prior to the Unstapling Date:
 - (i) if a Relevant Security Holder fails to pay the whole of a call or an instalment of a call on an Attached Security forming part of a Stapled Security when it falls due; and
 - (ii) the payment default giving rise to such forfeiture procedures has not been remedied,

the Responsible Entity may apply clauses 9.5 to 9.12 in respect of the Relevant Security in order to ensure that the Relevant Security and each Attached Security are simultaneously subject to forfeiture pursuant to substantially identical procedures.
- (f) On and from the Stapling Date and prior to the Unstapling Date, any forfeiture of a Relevant Security must be on the basis that each Attached Security to which the Unit is Stapled is also forfeited at the same time and in the same manner.
- (g) Where a Relevant Security has been forfeited:
 - (i) notice of the forfeiture must be given to the Relevant Security Holder who owned the forfeited Relevant Security immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the Register.
- (h) Failure to give the notice or make the entry required under clause 9.5(g) does not invalidate the forfeiture.
- (i) A forfeited Relevant Security becomes the property of the Trust and the Responsible Entity may sell, reissue or otherwise dispose of the Relevant Security as it thinks fit and, in the case of reissue or other disposal, with or without crediting as paid up any amount paid on the Relevant Security by any former Relevant Security Holder.
- (j) While Relevant Securities are Officially Quoted, the Responsible Entity may determine the amount of consideration payable to acquire Relevant Securities that have been forfeited if the sale of the forfeited Relevant

Securities is in accordance with section 254Q of the Corporations Act, other than subsections (1), (9), (10) and (13), as if the Relevant Securities were shares, the Trust was a company and the Responsible Entity was the director of the company.

- (k) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must ensure that any sale, reissue or other disposal of a Relevant Security is held in consultation with each Stapled Entity and contemporaneously with any sale, reissue or disposal of each Attached Security to which the Relevant Security is Stapled.
- (l) A person whose Relevant Securities have been forfeited ceases to be a Relevant Security Holder as to the forfeited Relevant Security, but must, unless the Responsible Entity decides otherwise, pay to the Responsible Entity:
 - (i) all calls, instalments, interest, costs, expenses and damages owing on the Relevant Security at the time of the forfeiture; and
 - (ii) interest on the unpaid part of the amount payable under clause 9.5(l)(i), from the date of the forfeiture to the date of payment, at a rate determined under clause 9.10.
- (m) The forfeiture of a Relevant Security extinguishes all interest in, and all claims and demands against the Responsible Entity relating to, the forfeited Relevant Security and, subject to clause 9.9(i), all other rights attached to the Relevant Security.
- (n) The Responsible Entity may:
 - (i) exempt a Relevant Security from all or part of this clause 9.5;
 - (ii) waive or compromise all or part of any payment due to the Responsible Entity under this clause 9.5; and
 - (iii) before a forfeited Relevant Security has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions it decides.

9.6 Members' indemnity

- (a) If the Responsible Entity becomes liable for any reason under a law to make a payment:
 - (i) in respect of Relevant Security held solely or jointly by a Relevant Security Holder;
 - (ii) in respect of a transfer or transmission of Relevant Security by a Relevant Security Holder;
 - (iii) in respect of distributions, bonuses or other amounts due or payable or which may become due and payable to a Relevant Security Holder; or
 - (iv) in any other way for, on account of or relating to a Relevant Security Holder,

clauses 9.6(b) and 9.6(c) apply, in addition to any right or remedy the Responsible Entity may otherwise have.

- (b) The Relevant Security Holder (or if the Relevant Security Holder is dead, the Relevant Security Holder's legal personal representative) must:
 - (i) fully indemnify the Responsible Entity against that liability;
 - (ii) on demand, reimburse the Responsible Entity for any payment made; and
 - (iii) pay interest on the unpaid part of the amount payable to the Responsible Entity under clause 9.6(b)(ii), from the date of demand until the date the Responsible Entity is reimbursed in full for that payment, at a rate determined under clause 9.10.
- (c) The Responsible Entity may:
 - (i) exempt a Relevant Security from all or part of this clause 9.6; and
 - (ii) waive or compromise all or part of any payment due under this clause 9.6.

9.7 Lien on Relevant Securities

- (a) The Responsible Entity has a first lien on:
 - (i) each partly paid Relevant Security for all unpaid calls and Instalments due on that Relevant Security; and
 - (ii) each Relevant Security for any amounts the Responsible Entity is required by law to pay and has paid in respect of that Relevant Security.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.
- (b) The Responsible Entity's lien on a Relevant Security extends to all distributions payable on the Relevant Security and to the proceeds of sale of the Relevant Security.
- (c) The Responsible Entity may sell a Relevant Security on which the Responsible Entity has a lien as it thinks fit where:
 - (i) an amount for which a lien exists under this clause 9.7 is presently payable; and
 - (ii) the Responsible Entity has given the registered Relevant Security Holder a written notice, at least 14 days before the date of the sale, stating and demanding payment of that amount.
- (d) On and from the Stapling Date and prior to the Unstapling Date, any such sale of Relevant Securities must also be in respect of each Attached Security to which the Relevant Securities are Stapled.
- (e) The Responsible Entity may do anything necessary or desirable under the ASX Settlement Operating Rules to protect any lien, charge or other right to which the Responsible Entity is entitled under this deed or a law.
- (f) The proceeds of the sale must be received by the Responsible Entity and the money remaining after deducting the expenses of sale must be applied in payment of that part of the amount in respect of which the lien

exists as is presently payable. The residue, if any, must (subject to any amounts due in respect of Attached Securities and to a like lien for sums not presently payable as existed upon the Relevant Security before the sale) be paid to the person entitled to the Relevant Securities at the date of the sale.

- (g) When the Responsible Entity registers a transfer of Relevant Securities on which the Responsible Entity has a lien without giving the transferee notice of its claim, the Relevant Entity's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (h) The Responsible Entity may:
 - (i) exempt a Relevant Security from all or part of this clause 9.7; and
 - (ii) waive or compromise all or part of any payment due to the Responsible Entity under this clause 9.7.

9.8 Surrender of Relevant Securities

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

9.9 Sale, reissue or other disposal of Relevant Securities

- (a) A reference in this clause 9.9 to a sale of a Relevant Security by the Responsible Entity is a reference to any sale, reissue or other disposal of a Relevant Security under clauses 9.5(i), 9.7(c) or 34.
- (b) When the Responsible Entity sells a Relevant Security, the Responsible Entity may:
 - (i) receive the purchase money or consideration given for the Relevant Security;
 - (ii) effect a transfer of the Relevant Security or execute or appoint a person to execute, on behalf of the former Relevant Security Holder, a transfer of the Relevant Security; and
 - (iii) register as the Relevant Security Holder of the Relevant Security the person to whom the Relevant Security is sold.
- (c) A person to whom the Responsible Entity sells the Relevant Security need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied. That person's title to the Relevant Security is not affected by any irregularity by the Responsible Entity in relation to the sale. A sale of the Relevant Security by the Responsible Entity is valid even if an event

described in clause 10.5 occurs to the Relevant Security Holder before the sale.

- (d) The only remedy of a person who suffers a loss because of a sale of a Relevant Security by the Responsible Entity is a claim for damages against the Responsible Entity.
- (e) The proceeds of a sale of Relevant Securities by the Responsible Entity must be applied in paying:
 - (i) first, the costs of the sale; and
 - (ii) secondly, all amounts payable (whether presently or not) by the former Relevant Security Holder to the Responsible Entity,

and any balance must be paid to the former Relevant Security holder on the former Relevant Security Holder delivering to the Responsible Entity proof of title to the Relevant Securities acceptable to the Responsible Entity.
- (f) The proceeds of sale arising from a notice under clause 34 must not be applied in payment of the expenses of the sale and must be paid to the former Relevant Security Holder on the former Relevant Security Holder delivering to the Responsible Entity proof of title to the Relevant Securities acceptable to the Responsible Entity.
- (g) Until the proceeds of a sale of a Relevant Security sold by the Responsible Entity are claimed or otherwise disposed of according to law, the Responsible Entity may invest or use the proceeds in any other way for the benefit of the Trust.
- (h) The Responsible Entity is not required to pay interest on money payable to a former Relevant Security Holder under this clause 9.9.
- (i) On completion of a sale, reissue or other disposal of a Relevant Security under clause 9.5(i), the rights which attach to the Relevant Security which were extinguished under clause 9.5(m) revive.
- (j) A written statement by the Responsible Entity that a Relevant Security has been:
 - (i) duly forfeited under clause 9.5(b);
 - (ii) duly sold, reissued or otherwise disposed of under clause 9.5(i); or
 - (iii) duly sold under clause 9.7(c) or clause 34,

on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the Relevant Security, and of the right of the Responsible Entity to forfeit, sell, reissue or otherwise dispose of the Relevant Security.

9.10 Interest payable by Member

- (a) For the purposes of clauses 9.1(h)(i), 9.5(l)(ii) and 9.6(b)(iii), the rate of interest payable to the Responsible Entity is:
 - (i) if the Responsible Entity has fixed a rate, that rate; or

- (ii) in any other case, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of the state or territory in which the Responsible Entity is registered.
- (b) Interest accrues daily and may be capitalised monthly or at such other intervals the Responsible Entity decides.

9.11 Deemed full payment

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

9.12 Income and Capital of a Forfeited Unit

Distributions of income and capital under clause 16:

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

must be applied in accordance with clause 9.9 as if they formed part of the proceeds of sale of a forfeited Relevant Security.

10 Transfer, transmission and joint holders

10.1 Transfer of Relevant Securities

- (a) Relevant Securities may be transferred subject to their terms, this clause 10 and clause 33. A Member may transfer any of the Member's Relevant Securities by:
 - (i) a Proper ASTC Transfer; or
 - (ii) a written transfer in a usual form or in any other format approved by the Responsible Entity.
- (b) If Relevant Securities are not Officially Quoted, transfers must be:
 - (i) signed by or on behalf of the transferor and the transferee, unless the transfer is related only to fully paid Relevant Securities and the Responsible Entity has dispensed with a signature by the transferee or the transfer of the Relevant Securities is effected by a document which is, or documents which together are, a sufficient transfer for those Relevant Securities under the Corporations Act;
 - (ii) left for registration at the Responsible Entity's registered office, or at any other place the Responsible Entity decides, with such evidence the Responsible Entity reasonably requires to prove the transferor's title or right to the Relevant Securities and the

transferee's right to be registered as the owner of the Relevant Securities; and

- (iii) if required by law, duly stamped.
- (c) Subject to clauses 10.2(a) and 10.3, where the Responsible Entity received a transfer complying with clause 10.1 the Responsible Entity must register the transferee named in the transfer as the holder of the Relevant Securities to which it relates.
- (d) A transferor of Relevant Securities remains the holder of the Relevant Securities until a Proper ASTC Transfer has been effected or the transferee's name is entered in the register of members as the holder of the Relevant Securities.
- (e) The Responsible Entity must not charge a fee for registering a transfer of Relevant Securities unless:
 - (i) the Trust is not Officially Quoted; or
 - (ii) the fee is permitted by the Listing Rules.
- (f) The Responsible Entity (or the Registrar) may put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.
- (g) The Responsible Entity may retain a registered transfer for any period the Responsible Entity decides.
- (h) The Responsible Entity may do anything that is necessary or desirable for the Trust to participate in any computerised, electronic or other system for facilitating the transfer of Relevant Securities or operation of the Register that may be owned, operated or sponsored by the ASX or its related bodies corporate.
- (i) The Responsible Entity may, to the extent the law permits, waive any of the requirements of this clause 10.1 and prescribe alternative requirements instead, to give effect to clause 10.1(h).

10.2 Power to decline to register transfers

- (a) The Responsible Entity may decline to register, or prevent registration of, a transfer of Relevant Securities or apply a holding lock to prevent a transfer in accordance with the Corporations Act or the ASX Listing Rules where:
 - (i) the transfer is not in registrable form;
 - (ii) the Responsible Entity has a lien on any of the Relevant Securities transferred;
 - (iii) registration of the transfer may be a breach of a law in Australia;
 - (iv) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;

- (v) the transfer is not permitted under the terms of an employee securities incentive plan; or
 - (vi) the Responsible Entity is otherwise permitted or required to do so under the Listing Rules, or except for a Proper ASTC Transfer, under the terms of issue of the Relevant Securities.
- (b) If the Responsible Entity declines to register a transfer, the Responsible Entity must give notice of the refusal as required by the Corporations Act and Listing Rules. Failure to give that notice will not invalidate the decision of the Responsible Entity to decline to register the Relevant Securities.
- (c) The Responsible Entity may delegate its authority under this clause 10.2 to any person.

10.3 Power to suspend registration of transfers

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

persons.

10.4 Joint tenancy

Persons Registered jointly as holders of a Unit hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

10.5 Death or legal disability of Member

- (a) If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.
- (b) A person who becomes entitled to a Unit because of the death, bankruptcy, insanity or other disability of a Member is entitled to receive and may give a discharge for all money payable in respect of the Unit, but, subject to the Corporations Act, is not entitled to receive notices of or to attend or vote at any meetings of Members until that person is registered as the holder of the Unit.
- (c) The Responsible Entity may register a transfer of Units signed by a Member before their death, bankruptcy, insanity or other disability even though the Responsible Entity has notice of the death, bankruptcy, insanity or other disability.

10.6 Equitable and other claims

The Responsible Entity may treat the registered holder of a Unit as the absolute owner of that Unit and need not:

- (a) recognise a person as holding a Unit on trust, even if the Responsible Entity has notice of a trust; or

- (b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a Unit by any other person, except an absolute right of ownership in a registered holder, even if the Responsible Entity has notice of that claim or interest.

11 Application Price for Units¹³

11.1 Application Price

Subject to this clause 11 and subject to any rights, obligations and restrictions attaching to any particular Units, the application price for a Unit must be calculated as follows:

- (a) in the case of Units initially issued, at a price of \$1.00;
- (b) in the case of Units issued pursuant to an Initial Public Offer, either:
 - (i) at a price determined by the Manager and notified to the Responsible Entity prior to the commencement of the Initial Public Offer; or
 - (ii) at a price determined by the Manager based on the price of Units (or where Units are part of a Stapled Security, the price of Stapled Securities) determined pursuant to a bookbuild conducted as follows:
 - (A) the bookbuild is conducted by a bookrunner who holds appropriate qualifications and experience and who is not an associate of the Responsible Entity;
 - (B) the Responsible Entity gives the bookrunner a written notice setting out the amount to be raised;
 - (C) in determining the price, the bookrunner takes into account the nature and size of the offer and circumstances in which the offer would be made; and
 - (D) once the bookbuild has been conducted, the bookrunner confirms in writing to the Manager and the Responsible Entity that the bookbuild has been conducted in accordance with ordinary commercial practice,

and notified by the Manager to the Responsible Entity;
- (c) subject to paragraph 11.1(a), while Units are not Officially Quoted (including in the case of a reinvestment of distributions while Units are not Officially Quoted), in accordance with clauses 11.2 to 11.4;
- (d) in the case of a proportionate offer (including a rights issue), in accordance with clause 11.6;

¹³ Required to be included by section 601GA(1)(a)

- (e) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 11.9;
- (f) in the case of reinvestment of distributions while Units are Officially Quoted, in accordance with clauses 11.10;
- (g) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 7; and
- (h) subject to paragraphs 11.1(a) to 11.1(g), in all other cases for Units that are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the application price is to be calculated.

11.2 Application Price formula

- (a) While Units in are not Officially Quoted, a Unit must only be issued at an Application Price calculated as:

$$\frac{\text{Net Asset Value}}{\text{number of Units in issue}} \times (1 + \text{Transaction Costs})$$

or the appropriate proportion of that amount in the case of a Fractional Unit. For example, half of that amount for a 0.50 Fractional Unit.

11.3 Time for Calculation

- (a) Each of the variables in clause 11.2 must be determined as at the next Valuation Time after:
 - (i) the application for Units has been, or is taken to have been, received and Accepted by the Responsible Entity; or
 - (ii) the Responsible Entity receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.
- (b) For the purposes of determining the application price for Units to be issued on the reinvestment of Income for a Distribution Period (**"Relevant Distribution Period"**), the Responsible Entity must calculate the Net Asset Value, and a Valuation Time is taken to have occurred, as at the time immediately after the end of the last day of the Relevant Distribution Period.
- (c) For the purposes of the calculation under clause 11.2, if at the relevant Valuation Time Units have been issued under clause 12.7 but the Application Price of those Units has not yet been ascertained, the application money or property relating to those Units and the Units are to be excluded from the calculation.

11.4 Time of receipt

Unless the Responsible Entity determines otherwise, for the purposes of clause 11.3 the time of receipt of an application or money or property is taken to be:

- (a) immediately before the Cut-off Time for the Business Day of receipt, if the application, money or property (as applicable) is received before the Cut-off Time on that Business Day; and
- (b) immediately before the Cut-off Time on the next following Business Day if the application, money or property (as applicable) is received on a day which is not a Business Day or is received on or after the Cut-off Time on a Business Day.

11.5 Rounding

Subject to the Listing Rules, the Application Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset.¹⁴

11.6 Pro rata rights issues¹⁵

Subject to the terms of any applicable ASIC Relief and the Listing Rules (while the Listing Rules apply), the Responsible Entity may offer Units for subscription at a price determined by the Responsible Entity to those persons who were Members on a date determined by the Responsible Entity:

- (a) provided that, subject to paragraph (b) of this clause 11.6, all Members are offered Units in proportion to the value of the Member's Units at the relevant date; but
- (b) the Responsible Entity may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief,

whether or not the right of entitlement is renounceable.

11.7 Other jurisdictions

If the Responsible Entity is making an offer of Units to Members which is otherwise in compliance with clause 11.6, the Responsible Entity is not required to offer Units to persons whose address on the Register is outside Australia or New Zealand (or who holds Units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable ASIC Relief and the Listing Rules¹⁶.

¹⁴ See ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693.

¹⁵ See notional section 601GAD(3)(a) in ASIC Instrument 2023/693.

¹⁶ See Listing Rule 7.7.

11.8 Terms of pro rata issues

- (a) Any offer made under clause 11.6 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under clause 11.6. The Responsible Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 11.6 which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 11.6, the underwriter may take up any Units not subscribed for by Members.

11.9 Placements and security purchase plan while Officially Quoted

While Units are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units by way of a placement or under a security purchase plan:

- (a) at the Market Price of Units during the 10 Trading Days immediately before the date on which the Units are offered; or
- (b) at a price and on the terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.

11.10 Application Price while Officially Quoted if reinvestment applies

- (a) If reinvestment applies while the Units are Officially Quoted, subject to the Listing Rules, the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which units are to be issued upon reinvestment, the price will be the weighted average of the VWAP for Units for each of the 10 Trading Days from and including the third Trading Day after the Record Date for the relevant distribution ("**DRP VWAP Price**").
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

11.11 Issues of Units pursuant to a bookbuild

In addition to any other power the Responsible Entity has to issue Units or Options under this constitution and subject always to compliance with the Corporations Act, the Responsible Entity may issue Units at an application price

determined jointly by the Responsible Entity and the Manager based on the price of Units (or where Units are part of a Stapled Security, the price of Stapled Securities) determined pursuant to a bookbuild conducted as follows:

- (a) the bookbuild is conducted by a bookrunner who holds appropriate qualifications and experience and who is not an associate of the Responsible Entity;
- (b) the Responsible Entity gives the bookrunner a written notice setting out the amount to be raised and why the Responsible Entity considers it is in the best interests of Members;
- (c) in determining the price, the bookrunner takes into account the nature and size of the offer and circumstances in which the offer would be made (including the dilutionary effect) and whether participation in the offer would be extended to Members; and
- (d) once the bookbuild has been conducted, the bookrunner confirms in writing to the Responsible Entity and the Manager that the bookbuild has been conducted in accordance with ordinary commercial practice.

12 Application procedure

12.1 Application form

An applicant for Units must complete a form approved by the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.

12.2 Payment

Payment in respect of an application in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a Custodian appointed by it must:

- (a) accompany the application;
- (b) be received by or made available to the Responsible Entity or the Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Unit contemplate; or
- (c) comprise a reinvestment of distribution in accordance with clause 16.12.

If the Responsible Entity accepts a transfer of property other than cash:

- (a) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires the applicant must provide a recent valuation of the property;¹⁷ and
- (b) any additional costs associated with the valuation or transfer of the property (beyond the amount of the Transaction Costs factor in the Application Price for the Units) must be paid by the applicant either

¹⁷ ASIC RG 134.122

directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

12.3 Responsible Entity may reject

Subject to the Listing Rules, the Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.

12.4 Eligible Person

- (a) Subject to the Listing Rules, no application will be Accepted from and no Units will be issued to any person other than an Eligible Person, unless otherwise determined by the Responsible Entity.
- (b) Subject to the Listing Rules, the Responsible Entity may determine that it will not permit a person:
 - (i) to become a Member; or
 - (ii) to acquire or be issued with further Units,

unless the Responsible Entity has received an Eligible Person Statement (or such other document as the Responsible Entity may require) from that person.

12.5 Less than whole Units

Subject to the Listing Rules, where an application, cancellation or redemption would result in the issue of less than a whole Unit to a Member, the Responsible Entity in its absolute discretion may:

- (a) issue a Fractional Unit;
- (b) contribute its own funds to round up the number of Units issued to a whole number;
- (c) round the Unit up or down; or
- (d) hold the residual amount free of interest and apply it to the next application, cancellation or redemption made by the Member or pay the amount to the Member when moneys are next paid by the Responsible Entity under this constitution.

12.6 Minimum amounts

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may set a minimum application amount, minimum additional application amount and a minimum holding amount for the Trust and alter or waive those amounts at any time or determine that a different minimum application amount or a different minimum holding will apply for one or more applicants or members (as the case may be).

12.7 Issue date

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued at the time which is the earlier of:
 - (i) the time the issue of Units is recorded in the Register; and
 - (ii) the time when both of the following occurred:
 - (A) the Responsible Entity Accepts the application for Units; and
 - (B) the Responsible Entity or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Responsible Entity.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
 - (i) the applicant becomes a Member in respect of the Units, which are taken to be issued¹⁸ even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
 - (ii) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

12.8 Uncleared funds

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Responsible Entity within one month of receipt of the application.

12.9 Currency

Where it is necessary for the purposes of an application for Units to convert one currency to another, the conversion is to be made at a rate determined by the Responsible Entity.

12.10 Defective Applications

Subject to the Listing Rules, where, within 10 Business Days (or such longer period as the Responsible Entity determines) of the creation and issue of Units in the Trust, the Responsible Entity determines that:

¹⁸ For the purposes of section 761E(2)

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

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

13 Redemption Price of Units¹⁹

13.1 Redemption Price formula

- (a) A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{Net Asset Value}}{\text{number of Units in issue}} \times (1 - \text{Transaction Costs})$$

or the appropriate proportion of that amount in the case of a Fractional Unit. For example, half of that amount for a 0.50 Fractional Unit.

13.2 Time for Calculation

- (a) Subject to clause 13.2(b), each of the variables in clause 13.1 (whichever is applicable) must be determined:
 - (i) while the Trust is Liquid, as at the next Valuation Time after the redemption request has been, or is taken to have been, received and Accepted by the Responsible Entity; or
 - (ii) while the Trust is not Liquid, at the last Valuation Time before the redemption offer is made.
- (b) Without limiting the Responsible Entity's discretion to determine a Valuation Time under this constitution, where:
 - (i) a redemption request for 5% or more of the Gross Asset Value of the Trust is received and Accepted on a day; or
 - (ii) the Responsible Entity receives and Accepts a redemption request on a day which in aggregate with all other redemption requests received and Accepted on that day represents 5% or more of the Gross Asset Value of the Trust,

the Responsible Entity may defer the date on which the variables in clause 13.1 are determined in respect of the redemption request (whichever is applicable) to the next Valuation Time following the expiry

¹⁹ Required to be included by Section 601GA(4).

of five Business Days after the Responsible Entity has received and Accepted the redemption request.

- (c) For the purposes of the calculation under clause 13.1, if at the relevant Valuation Time Units have been issued under clause 12.7 but the Application Price of those Units has not yet been ascertained, the application money or property relating to those Units and the Units are to be excluded from the calculation.

13.3 Time of receipt

Unless the Responsible Entity determines otherwise, for the purposes of clause 13.2 the day and time of receipt of a redemption request is taken to be:

- (a) immediately before the Cut-off Time for the Business Day of receipt, if the request is received before the Cut-off time on a Business Day; or
- (b) immediately before the Cut-off Time on the next following Business Day if the request is received on a day which is not a Business Day or is received on or after the Cut-off Time on a Business Day.

13.4 Rounding

Subject to the Listing Rules, the Redemption Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Trust.²⁰

14 Redemption procedures²¹

14.1 While the Trust is Listed

While the Trust is Listed:

- (a) clauses 14.9 to 14.11 apply only to the extent provided for in clause 14.16;
- (b) clauses 14.8, 14.12(a), 14.13 and 14.15 to 14.18(a) apply;
- (c) clause 14.14 does not apply to Units intended to be Officially Quoted; and
- (d) clauses 14.2 to 14.7, clauses 14.12(b), 14.18(b), 16.4(b) and 25.3(d)(ii) do not apply.

14.2 Request for redemption

A Member may make a request for the redemption of some or all of the Units in respect of which they are Registered as the holder by giving the Responsible Entity notice in writing²² of the request, specifying the number or value of Units to

²⁰ See ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693.

²¹ These procedures must be fair to all Members: Section 601GA(4)

²² See clause 20.

be redeemed and sufficient details to identify the Member, or in any other manner approved by the Responsible Entity. The Responsible Entity is not obliged to satisfy any such request.

14.3 Redemption of request

A Member may not withdraw a redemption request unless the Responsible Entity agrees.

14.4 When Trust is Liquid²³

Clauses 14.2, 14.4, 14.5 and 14.7 apply only while the Trust is Liquid²⁴; and also in circumstances where the redemption request was received and Accepted by the Responsible Entity²⁵ and the Redemption Price in respect of that redemption request was calculated at a time when the Trust was Liquid (even if it is no longer Liquid at the time the Responsible Entity exercises its powers and discretions under those clauses).

14.5 Responsible Entity may redeem

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to Accept a request from a Member to redeem some or all of their Units, in whole or in part. The Responsible Entity is not required to Accept any such request.
- (b) If the Responsible Entity determines to Accept a redemption request in respect of a Unit, it must pay from the Assets the Redemption Price of that Unit calculated in accordance with clause 13. The payment must be made within 21 days of the date on which the Responsible Entity Accepts the request, or such longer period as allowed by clause 14.6.

14.6 Delayed payment

- (a) Subject to paragraph 14.6(c), the Responsible Entity may extend the period within which it must pay the Redemption Price in respect of a redemption request it has Accepted by up to 30 days if it considers that it is in the best interests of Members to do so.
- (b) Without limiting paragraph 14.6(a) and subject to paragraph 14.6(c), the Responsible Entity may at any time suspend consideration of redemption requests, or defer its obligation to pay the Redemption Price in respect of a redemption request it has Accepted if it is not possible, or not in the best interests of Members, for it to process redemption requests or make the payment (as applicable) due to one or more circumstances outside its control, (such as restricted or suspended trading or extreme price fluctuation or uncertainty in the market for an Asset). The period allowed under clause 14.5 for consideration of the redemption request or payment of the Redemption Price may be extended by the number of days during which such circumstances apply.
- (c) In relation to a redemption offer to which Part 5C.6 of the Corporations Act applies, the Responsible Entity must pay the redemption proceeds to

²³ Required to be included by Section 601GA(4)(b) and 601KA(1)

²⁴ For a definition of a liquid Trust see section 601KA.

²⁵ See clause 13.13.

the withdrawing Member or former Member within 21 days of the date on which the redemption offer closes.²⁶

- (d) If Acceptance of a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Member's holding.

14.7 Increased minimum

If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount, redeem that Member's holding without the need for a redemption request.

14.8 Payment from the Assets

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

14.9 While Trust is not Liquid²⁷

- (a) While the Trust is not Liquid,²⁸ a Member may withdraw from the Trust in accordance with the terms of any current redemption offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind.²⁹ If there is no redemption offer currently open for acceptance by Members, a Member has no right to request redemption from the Trust.
- (b) The Responsible Entity is not at any time obliged to make a redemption offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available.

14.10 Cancellation of redemption offer

- (a) The Responsible Entity may cancel a redemption offer at any time. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available.
- (b) The cancellation of a redemption offer by the Responsible Entity does not affect the rights of Members whose acceptance of the offer has been received by the Responsible Entity in accordance with clause 21 after the offer period has opened but before the date on which the offer is cancelled to withdraw from the Trust in accordance with the terms of the redemption offer.

²⁶ Section 601KD.

²⁷ Required to be included by section 601GA(4)(c) if Members are to have right to redeem while the Trust is a Registered Scheme.

²⁸ For a definition of a liquid Trust see section 601KA(1).

²⁹ Refer to sections 601KB to 601KE.

14.11 Treatment of request

If the Responsible Entity receives a redemption request, and the Trust subsequently ceases to be Liquid before that request has been Accepted or rejected, the request lapses.

14.12 Sums owed to Responsible Entity

- (a) The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a redemption offer any money due to it by the Member, including an entitlement to be indemnified by a Member under clause 18.9(b)(viii), 18.9(b)(ix) or 25.3 or under the AMIT Regime more generally.
- (b) While the Trust is Liquid, the Responsible Entity may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member under clauses 18.9(b)(viii), 18.9(b)(ix) or 25.3 or under the AMIT Regime more generally. In these circumstances the Responsible Entity will be taken to have received and Accepted a redemption request in respect of the Units for the purposes of this clause 14.

14.13 When Units are redeemed

Units are taken to be redeemed:

- (a) where the redemption is to occur in response to a redemption request from a Member, at the time as at which the Responsible Entity has:
 - (i) received and Accepted the redemption request in respect of the Units; and
 - (ii) calculated the Redemption Price of the Units;³⁰ or
- (b) if paragraph (a) does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

If Units are redeemed at the time referred to in paragraph (a), the Responsible Entity must as soon as is reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

14.14 Cooling Off

Nothing in this clause 14 prevents the Responsible Entity from complying with any requirement to return application money to Members in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the Responsible Entity.

³⁰ ASIC RG 134.168.

14.15 Buy backs

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, purchase Units on ASX or any other financial market on which the trading of Units is permitted, and also off-market, and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units.

14.16 While Officially Quoted

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, make a redemption offer under clause 14.9, in which case clauses 14.9 to 14.11 apply in relation to the redemption offer, and the Redemption Price is to be calculated in accordance with clause 13.2(a)(ii).

14.17 Distribution of Income

- (a) If, during a Distribution Period, the Responsible Entity redeems Units held by a Member and the redemption of Units is in respect of 5% or more of the Units on issue at the start of the Distribution Period or such other amount as may be determined by the Responsible Entity and notified to Members from time to time, ("**Unit Redemption**") then, subject to the Corporations Act, the Responsible Entity must determine at or before the end of the Distribution Period during which the relevant redemption occurs:
 - (i) what amount ("**Income Component**") of the payment in satisfaction of the Unit Redemption ("**Redemption Payment**") in respect of the Units represents a distribution of the Income for that Financial Year;
 - (ii) whether the Income Component of the Redemption Payment will comprise a distribution of Income for the Financial Year of any particular character for tax purposes; and
 - (iii) whether the Income Component will include a Foreign Tax Credit Entitlement, applying the principles in clause 16.5 on a reasonable basis.
- (b) Where the Responsible Entity makes a determination under clause 14.17(a) in respect of a Member or former Member, the Responsible Entity must:
 - (i) make the determination by reference to:
 - (A) that component of the Income for the Financial Year to date that has not been distributed at the time the Redemption Price in respect of the Unit Redemption is determined under clause 13 that the Responsible Entity determines is referable to:
 - (aa) capital gains; or
 - (ab) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and

- (B) the increase in the component of the Income referred to in clause 14.17(b)(i)(A) as a result of the Responsible Entity realising sufficient assets to satisfy the Unit Redemption; and
- (C) the number of Units subject to the Unit Redemption and the number of Units on issue at the time the Unit Redemption is made; and
- (ii) notify the Member or former Member of the composition of the Redemption Payment.

14.18 When Member ceases to be eligible to hold Units

- (a) Where:
 - (i) a Member advises the Responsible Entity that the Member is not an Eligible Person; or
 - (ii) the Responsible Entity forms the view that the Member is not an Eligible Person,

the Responsible Entity may request that the Member:

 - (iii) dispose of all Units held by the Member within 30 days (or such longer period as the Responsible Entity may determine from time to time) to a person who is an Eligible Person; or
 - (iv) if the Trust is Liquid at the relevant time, lodge a redemption request in respect of all of the Units held by the Member, within 30 days (or such longer period as the Responsible Entity may determine from time to time).
- (b) Where a Member fails to comply with a request under clause 14.18(a) and the Trust is Liquid at the relevant time, the Responsible Entity may compulsorily redeem all of the Units held by the Member. The Responsible Entity is deemed to have received and Accepted a redemption request from the Member immediately before the next Valuation Time after the Responsible Entity determined to compulsorily redeem all of the Units held by the Member.

15 Valuation and determination of pricing variables

15.1 Periodic valuations

The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.³¹

15.2 Net Asset Value and Value of Assets and Liabilities

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

³¹ See section 601FC(1)(j) for Scheme Operator's obligations concerning valuation

15.3 Valuation methods

The Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current.³² In the absence of any other determination by the Responsible Entity, the value of an Asset will be its Market Value.

15.4 Currency conversion

Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank or an independent pricing provider (such as Reuters) nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.³³

16 Income and distributions to Members

16.1 Income

- (a) The Responsible Entity must determine the Income of the Trust for each Distribution Period.
- (b) Unless the Responsible Entity determines otherwise prior to the end of the relevant Distribution Period, Income is the Net Income for that Distribution Period.
- (c) The preparation of the accounts of the Trust in accordance with any current or past Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Income of the Trust under this clause 15.

16.2 Classification of amounts

Without limiting clause 16.1(b), the Responsible Entity has the power to determine:

- (a) the classification of any item as being Income or capital; and
- (b) the extent to which reserves or provisions need to be made provided such determination is made on or before the Financial Year Termination Date.

16.3 Present entitlement

Subject to clause 16.18, for any Financial Year that is not an AMIT Income Year, a person who at any time during the Financial Year is or has been a Member, is presently entitled to the Income of the Trust for the Financial Year as at the last day of the Financial Year, in the proportion that the Income Entitlements of the person in respect of the Financial Year bear to the sum of the Income

³² ASIC RG 134.64 provides guidance on the meaning of "reasonably current".

³³ ASIC RG 134.230.

Entitlements of all persons who are or have been Members at any time during the Financial Year.

16.4 Income Entitlements

(a) The Income Entitlement for a Member or former Member for the Distribution Period is an amount calculated by the Responsible Entity as follows:

(i) in respect of an Interim Distribution Period, the aggregate of:

(A) where the Responsible Entity has made a determination under clause 14.17 at or before the end of the Distribution Period, the aggregate of the Income Components determined by the Responsible Entity, in respect of the Member or former Member, during the Distribution Period; and

(B) the amount calculated as follows:

$$\frac{A \times (C+D)}{B} - E$$

where:

A is the number of Units held by the Member at the end of the Distribution Period;

B is the total number of Units on issue at the end of the Distribution Period;

C is the Income for the Distribution Period, but only to the extent to which it has not already been distributed by the Responsible Entity during the Distribution Period as an Income Component;

D is the Foreign Tax Credit Amount for the Distribution Period but only to the extent that it has not already been taken into account by the Responsible Entity in determining an Income Component; and

E is the Foreign Tax Credit Entitlement for the Distribution Period but only to the extent that it has not already been taken into account by the Responsible Entity in determining an Income Component.

(ii) in respect of a Final Distribution Period, the aggregate of:

(A) where the Responsible Entity has made a determination under clause 14.17 at or before the end of the Distribution Period in respect of the Member or former Member, the aggregate of the Income Components determined by the Responsible Entity in respect of the Member or former Member during the Distribution Period; and

(B) the amount calculated as follows:

$$\frac{A \times (C+D)}{B} - E$$

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the total number of Units on issue at the end of the Distribution Period;
- C is the amount (if any) by which the Income for the Financial Year exceeds the aggregate of:
 - (1) all Income Entitlements that have arisen in the Trust for previous Distribution Periods in the Financial Year; and
 - (2) the aggregate of the Income Components determined by the Responsible Entity, in respect of all Members and former Members for the Distribution Period;
- D is the Foreign Tax Credit Amount for the Distribution Period but only to the extent that it has not already been taken into account by the Responsible Entity in determining an Income Component; and
- E is the Foreign Tax Credit Entitlement for the Distribution Period but only to the extent that it has not already been taken into account by the Responsible Entity in determining an Income Component.

- (b) If as a result of one or more withdrawal requests received by the Responsible Entity on a day, the Responsible Entity determines that all the Units will be redeemed, the Responsible Entity may determine a Distribution Calculation Date immediately prior to calculation of the Redemption Price for all the Units and the Responsible Entity may determine to treat that Distribution Period as a Final Distribution Period.

16.5 Foreign Tax Credit Entitlement

Each Member at the end of a Distribution Period will be attributed a portion of the Foreign Tax Credit Amount for the Distribution Period equal to its FTC Entitlement determined as follows:

$$\text{FTC Entitlement} = A+B$$

Where:

$$A = \frac{(FT \times UH)}{UI} + AT$$

$$B = \frac{C \times UH}{UI}$$

and

- FT is the amount of foreign tax credits which would be obtained for the Distribution Period, excluding any increase in the Foreign Tax Credit Amount attributable to the characteristic of any Member (including the number or percentage of Units held by the Member) and excluding any foreign tax credits allocated to a Member under clause 14.17(a);
- UH is the number of Units held by the Member at the end of the Distribution Period;
- UI is the total number of Units on issue at the end of the Distribution Period;
- AT is the amount of the increase of foreign tax credits obtained for the Distribution Period as a consequence of the characteristics of the Member (including the number or percentage of Units held by the Member); and
- C is the Foreign Tax Credit Amount for the Distribution Period minus the aggregate of all Members' entitlement to A,

in each case determined as if each Unitholder was a resident of Australia.

16.6 Satisfaction of present entitlement and Income Entitlements

The present entitlement of a person who at any time during the Financial Year is a Member to the Income of the Trust for a Financial Year under clause 16.3 is satisfied by the payment of the Income Entitlements to the person in respect of the Financial Year. Irrespective of whether present entitlement under clause 16.3 applies, Income Entitlements must be paid to a Member or former Member within three months after the relevant Distribution Calculation Date..

16.7 Other distributions

The Responsible Entity may at any time distribute any amount other than Income to Members of the Trust by the payment of cash of an amount determined in each case in accordance with the following formula:

$$CE = \frac{DA \times UV}{AUV}$$

where

- CE is the proportion of the distribution to which the Member is entitled;
- DA is the amount other than Income determined by the Responsible Entity to be distributed to Members;
- UV is the sum of the Redemption Price for all Units held by the Member in the Trust at the date of distribution calculated by:
 - (i) disregarding clause 13.2(a);
 - (ii) determining each of the variables in clause 13.1(a) at the date of distribution; and
 - (iii) assuming all Units held by the Member at the relevant time were to be redeemed at the date of distribution;

AUV is the aggregate of the Redemption Price for all Units on issue in the Trust at the date of distribution calculated by:

- (iv) disregarding clause 13.2(a);
- (v) determining each of the variables in clause 13.1(a) at the date of distribution; and
- (vi) assuming all Units held by the Member at the relevant time were to be redeemed at the date of distribution.

16.8 Separate accounts

Subject to clause 16.12, the Responsible Entity may keep separate accounts of different categories or sources of Income, or deductions or credits for tax purposes.

16.9 Attribution of income under AMIT Regime – basis for attribution

- (a) For any AMIT Income Year, the Responsible Entity must, following the end of the Financial Year, attribute all of the Trust Components and Determined Trust Components of the Trust to the Members or former Members under the AMIT Regime.
- (b) The Responsible Entity undertakes to perform attribution under clause 16.9(a) in accordance with the following principles:
 - (i) the amount of each Member's or former Member's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units in the Trust held by the Member or former Member, having regard to the provisions of this constitution;
 - (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 Responsible Entity must not attribute any part of a Determined Trust Component to a Member or former Member because of the tax characteristics of the Member or former Member.
- (c) Without limiting the generality of clause 16.9(b), the Responsible Entity must attribute in respect of an AMIT Income Year to each Member or former Member, so much of the Determined Trust Components of the Trust as are reflected in any Income Entitlements and Foreign Tax Credit Entitlements that the Member or former Member has become entitled to during the Financial Year, including any Income Components arising on the redemption of Units in the Trust.

16.10 Attribution of income under AMIT Regime – Member objections

If a Member or former Member makes an objection or proposed objection in relation to how the Responsible Entity attributes the Trust Components and Determined Trust Components of the Trust under the AMIT Regime for an AMIT Income Year:

- (a) the Member or former Member must:
 - (i) provide the Responsible Entity with written notice of the Member's or former Member's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
 - (ii) include, in the notice provided to the Responsible Entity, a summary of the reasons why the Member or former Member considers the attribution to be inappropriate;
 - (iii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection and proceeding in relation to the objection;
 - (iv) consent to the Responsible Entity becoming a party to any proceedings with the Commissioner of Taxation relating to the objection;
 - (v) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection or proposed objection; and
 - (vi) do, or omit to do, any other such acts, matters or things as the Responsible Entity reasonably requests in order to appropriately protect the interests or rights of other Members or former Members of the Trust in relation to the objection, proposed objection or any proceedings arising in relation to the objection;
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Trust to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of income for tax purposes to Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines is necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members.

16.11 Unders/Overs

The Responsible Entity must address any Unders or Overs that arise in respect of an AMIT Income Year in accordance with the AMIT Regime. Subject to the Corporations Act, the Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs provided that the Responsible Entity addresses them in accordance with the AMIT Regime and irrespective of whether any choices made by the Responsible Entity results in a different attribution outcome for the Member than if the Responsible Entity had not made the choice, or had made the choice in a different way.

16.12 Reinvestment

- (a) Subject to the Listing Rules the Responsible Entity may decide whether to permit the Members to reinvest some or all of any distribution to acquire Units.

- (b) If the Responsible Entity decides to permit reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) If reinvestment applies, the Responsible Entity is deemed to have received and Accepted an application to reinvest immediately before the next Valuation Time after the end of the relevant Distribution Period.

16.13 Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their share (if any) of the Income under clause 11.5 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

16.14 Indefeasibility

Despite any other provision of this constitution, a person cannot be defeated of any share of the Income to which the person is entitled under clause 16.4(a).

16.15 Fractions

If the share of Income for a Member determined under clause 16.4(a) includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated under clause 16.4(a) and the fraction of the cent becomes an Asset of the Trust.

16.16 Liability

The Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage:

- (a) as a result of the exercise of any discretion or power under this clause 16; or
- (b) provided the Responsible Entity was acting in the proper performance of its duties, as a result of the exercise of any discretion or power, to the extent that the exercise of the discretion or power is necessary for, or incidental to the Trust being operated in a manner permitted by the AMIT Regime, or is exercised under the AMIT Regime in respect of an AMIT Income Year; or
- (c) in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power covered by clause 16.16(a) despite any error or miscalculation in any provision made for Tax.

16.17 Member may direct

The Responsible Entity may act on a direction given by a Member in such form as the Responsible Entity requires to pay to a third party nominated in the direction all or part of the Member's entitlement to Income and distributions of other amounts under this clause 16 or under clause 28 on winding up.

16.18 Transitional AMIT

If the Responsible Entity purports to exercise a power under this constitution on the basis that the Responsible Entity believes that the Trust is or will be an AMIT for the Financial Year:

- (a) the exercise of the powers by the Responsible Entity must, to the maximum extent possible, be treated as a proper exercise of the Responsible Entity's powers under the constitution and at law, irrespective of whether the Trust is an AMIT or not;
- (b) 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 the exercise of that power; and
- (c) nothing in this constitution will be taken to invalidate any action that is undertaken by the Responsible Entity pursuant to its powers under this constitution and these powers may be exercised by the Responsible Entity despite any contrary powers provided under this constitution.

17 Payments

17.1 Payment method

- (a) The Responsible Entity may decide the method of payment of any distribution or other amount in respect of a Relevant Security. Different methods of payment may apply to different Relevant Security Holders or groups of Relevant Security Holders (such as overseas Relevant Security Holders). Without limiting any other method of payment which the Responsible Entity may adopt, payment in respect of a Relevant Security may be made:
 - (i) by such electronic or other means approved by the Responsible Entity directly to an account (of a type approved by the Responsible Entity) nominated in writing by the Relevant Security Holder or the joint holders; or
 - (ii) by cheque sent to the address of the Relevant Security Holder shown in the register of Relevant Security Holders or, in the case of joint holders, to the address shown in the register of Relevant Security Holders of any of the joint holders, or to such other address as the Relevant Security Holder or any of the joint holders in writing direct.
- (b) A cheque sent under clause 17.1(a):
 - (i) may be made payable to the bearer or to the order of the Relevant Security Holder to whom it is sent or any other person the c directs; and
 - (ii) is sent at the Relevant Security Holder's risk.
- (c) If the Responsible Entity decides that payments will be made by electronic transfer into an account (of a type approved by the Responsible Entity) nominated by a Relevant Security Holder, but no such account is nominated by the Relevant Security Holder or an electronic transfer into a nominated account is rejected or refunded, the Responsible Entity may credit the amount payable to an account of the

Responsible Entity to be held until the Relevant Security Holder nominates a valid account.

- (d) Where a Relevant Security Holder does not have a registered address or the Responsible Entity believes that a Relevant Security Holder is not known at the Relevant Security Holder's registered address, the Responsible Entity may credit an amount payable in respect of the Relevant Security Holder's Relevant Securities to an account of the Responsible Entity to be held until the Relevant Security Holder claims the amount payable or nominates a valid account.
- (e) An amount credited to an account under clauses 17.1(c) or 17.1(d) is to be treated as having been paid to the Relevant Security Holder at the time it is credited to that account. The Responsible Entity will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the Trust until claimed, reinvested under clause 17.1(f) or disposed of in accordance with the laws relating to unclaimed monies.
- (f) If a cheque for an amount payable under clause 17.1(a) is not presented for payment for at least six calendar months after issue or an amount is held in an account under clauses 17.1(c) or 17.1(d) for at least six calendar months, the Responsible Entity may reinvest the amount, after deducting reasonable expenses, into Relevant Securities on behalf of, and in the name of, the Relevant Security Holder concerned and may stop payment on the cheque. The Relevant Securities may be acquired on market or by way of new issue at a price the Responsible Entity accepts is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the Relevant Security Holder, as the Responsible Entity decides. The Responsible Entity's liability to provide the relevant amount is discharged by an application under this clause 17.1(f). The Responsible Entity may do anything necessary or desirable (including executing any document) on behalf of the Relevant Security Holder to effect the application of an amount under this clause 17.1(f). The Responsible Entity may determine other clauses to regulate the operation of this clause 17.1(f) and may delegate its power under this clause to any person.

17.2 Rounding

Only whole cents are to be paid and any remaining fraction of a cent becomes an Asset.

17.3 Third party arrangements

The Responsible Entity may from time to time make available to Relevant Security Holders a third party payment facility on terms and conditions determined by the Responsible Entity. Where, under the terms of a third party payment facility the Relevant Security Holder requests that the proceeds of a redemption of Units be paid to a third party, the redemption proceeds may be paid to a third party in accordance with that request.

17.4 Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, in payment of a distribution, amounts owing under a buyback, as part of the winding up

of the Trust or any other amounts owing to the Member in respect of the Trust, either:

- (i) with the consent of the Member; or
 - (ii) if the Responsible Entity reasonably considers the transfer of Assets rather than cash is in the best interests of Members as a whole, without the consent of the Member which is to receive the transfer of Assets.
- (b) The Assets transferred together with any cash paid must be of equal value to the total amount due to the Member (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of assets involved and prevailing market conditions³⁴). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.
- (c) For the purposes of this clause 17.4 the Responsible Entity will be taken to have the transferred Assets to a Member or former Member where the Responsible Entity has done everything reasonably necessary on its part to convey the Assets to the Member or former Member.

17.5 Joint Relevant Security Holders

A payment to any one of joint Relevant Security Holders will discharge the Responsible Entity in respect of the payment.

17.6 Deduction of Tax or amounts owing

The Responsible Entity may deduct from any amount to be paid to a Relevant Security Holder, or received from a Relevant Security Holder, any amount of Tax (or an estimate of it) or any other amount owed by the Relevant Security Holder to the Responsible Entity or any other person which the Responsible Entity is required or authorised to deduct by law or by this constitution or which the Responsible Entity considered should be deducted.

18 Powers of the Responsible Entity

18.1 General powers

- (a) Subject to this constitution, the Responsible Entity has all the legal capacity and powers both inside and outside Australia in respect of the Trust that it is possible under the law to confer on a trustee and as though the Responsible Entity were an individual who is the absolute owner of the Assets acting in their personal capacity.
- (b) The Responsible Entity is not and nothing in this constitution entitles the Responsible Entity to act as, the agent of any Member or Members.

³⁴ ASIC RG 134.226

18.2 Contracting powers³⁵

Without limiting clause 18.1, the Responsible Entity in its capacity as responsible entity of the Trust has power to incur all types of obligations and liabilities including:

- (a) to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities) including to issue Financial Instruments;
- (b) to grant all types of security (whether for the obligations of the Responsible Entity or another person);
- (c) to grant guarantees and indemnities; and
- (d) to enter into derivatives.

18.3 Investment and lending powers

Without limiting clause 18.1, the Responsible Entity may in its capacity as responsible entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.³⁶ This includes power to:

- (a) invest the whole or part of the Assets in a single type of asset, or in trusts managed or controlled by the Responsible Entity or its related body corporate, or such other investments as the Responsible Entity determines; and
- (b) lend money and on-lend or provide financial accommodation to any person.

18.4 Power of delegation³⁷

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.³⁸

18.5 Terms of delegation

The Responsible entity may include provisions in the authorisation provisions to protect and assist those dealing with the agent or delegate and to limit the Responsible Entity's liability, as the Responsible Entity thinks fit.

³⁵ Required to be included by Section 601GA(3)

³⁶ Subject to Section 601FC(4)

³⁷ See also Section 601FB.

³⁸ Subject to Part 5C.7

18.6 Exercise of discretion

Subject to this constitution, the Responsible Entity may in its absolute discretion decide how, when and how often to exercise its powers.

18.7 Underwriting

Subject to the Corporations Act, the Responsible Entity may enter into an agreement with a person (including an associate of the Responsible Entity) to underwrite the subscription or purchase of Units, Options or Financial Instruments or to manage the offer of Units, Options or Financial Instruments on such terms as the Responsible Entity determines. Unless the agreement expressly states otherwise, the underwriter or offer manager will not be an agent or delegate of the Responsible Entity.

18.8 Voting

Subject to the Corporations Act, and without limiting clause 18.1, the Responsible Entity may exercise all voting rights conferred by the Assets at its absolute discretion.

18.9 AMIT powers

- (a) The Responsible Entity has, in addition to its other rights and powers provided for under the constitution:
 - (i) the power to make an election to determine the Trust to be an AMIT; and
 - (ii) in respect of an AMIT Income Year, all of the powers and rights which are necessary or desirable to enable the Trust to:
 - (A) be eligible to apply the AMIT Regime;
 - (B) comply with the requirements of the AMIT Regime;
 - (C) be properly administered and operated under the AMIT Regime; and
 - (D) maintain equity between the Members as a result of the operation of the AMIT Regime.
- (b) The Responsible Entity may under the AMIT Regime in respect of an AMIT Income Year:
 - (i) 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 all of the relevant Determined Trust Components and Trust Components;
 - (ii) make an attribution of the taxable income of the Trust to Members under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes. This includes all of each Member's Determined Member Components and Member Components;

- (iii) make an alteration to the Responsible Entity's determination of the taxable income of the Trust for a Financial Year, or the Responsible Entity's attribution of the taxable income of the Trust to Members 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 relevant Determined Trust Components and Determined Member Components as a result of any Unders or Overs;
- (iv) determine whether to issue an AMMA Statement to any Member of the Trust;
- (v) determine what information should be contained in any such AMMA Statement, and any other content of the AMMA Statement;
- (vi) issue an AMMA Statement to any Member;
- (vii) amend an AMMA Statement that has been issued to Members, and the basis on which the AMMA Statement issued to Members will be amended;
- (viii) require a Member to provide the Responsible Entity with an indemnity in respect of any Tax incurred by the Responsible Entity as a result of the application of the AMIT Regime. This includes any Tax paid by the Responsible Entity as a result of:
 - (A) the Trust having a shortfall for the purposes of section 276-405, 276-415, 276-420 or 276-425 of the Tax Act;
 - (B) the Trust having an excess for the purposes of section 276-410 of the Tax Act;
 - (C) the Trust having a trust component deficit relating to a tax offset under section 276-340 of the Tax Act; or
 - (D) the Responsible Entity making a deemed payment under section 12A-205 of the Tax Administration Act 1953 to an entity covered by section 12-410 of the Tax Administration Act 1953 or an entity that is not an Australian resident for the purposes of the Tax Act;
- (ix) require a Member to provide the Responsible Entity with an indemnity in respect of any cost or expenses incurred by the Responsible Entity as a result of the Member making a Member Objection Choice; and
- (x) determine how the Member must indemnify the Responsible Entity, pursuant to an indemnity required by the Responsible Entity under clauses 18.9(b)(viii) to 18.9(b)(ix) above.

(c) Limitation of liability for AMIT Regime powers

To the maximum extent permitted by law including the Corporations Act, provided the Responsible Entity was acting in the proper performance of its duties, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under clause 18.9(a) or 18.9(b), 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.

(d) **Clearly Defined Rights**

Any power, right or discretion conferred on the Responsible Entity under the terms of this constitution will be read down or regarded as void to the extent necessary to ensure that the Trust will have Clearly Defined Rights.

19 Retirement of Responsible Entity

19.1 Voluntary retirement

The Responsible Entity may retire as the responsible entity of the Trust as permitted by law³⁹.

19.2 Compulsory retirement

The Responsible Entity must retire as the responsible entity of the Trust when required by law⁴⁰.

19.3 New responsible entity

Any replacement Responsible Entity must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

19.4 Release

When it retires or is removed, the Responsible Entity, subject to the Corporations Act, is released from all obligations in relation to the Trust arising after the time it retires or is removed.⁴¹

20 Notices to Members

20.1 Form

Subject to the Corporations Act and the Listing Rules, a notice or other communication required to be given to a Relevant Security Holder in connection with the Trust may be delivered personally or by prepaid post, email or other electronic means or in any other manner as the Responsible Entity determines (including a notification that it is available by electronic means). It must be delivered or sent to the Relevant Security Holder at their physical or electronic address last advised to the Responsible Entity for delivery of notices.

³⁹ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

⁴⁰ See Section 601FM and 601FA.

⁴¹ See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

20.2 Cheques

A cheque payable to a Relevant Security Holder may be posted to their physical address or handed to them or a person authorised in writing by them.

20.3 Joint Relevant Security Holders

In the case of joint Relevant Security Holders, their physical or electronic address means the physical or electronic address of the Relevant Security Holder first named in the Register.

20.4 When notice received

Subject to the Corporations Act a notice or other communication sent to a Relevant Security Holder:

- (a) by post is taken to be received on the Business Day after it is posted;
- (b) by email or other electronic means is taken to be received when the email or electronic communication is sent.
- (c) A cheque is taken to be received on the Business Day after it is posted.
- (d) Where the Responsible Entity gives a notice to a member by any other means permitted by the Corporations Act relating to the giving of notices and electronic means of access to them, the notice is taken as given on the day after the date on which the member is notified that the notice is available.
- (e) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

Proof of actual receipt is not required. Subject to the law, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

21 Notices to the Responsible Entity

21.1 Form of Notice

A notice required under this constitution to be given to the Responsible Entity must be given in writing, or in such other manner as the Responsible Entity determines.

21.2 When notice received

A notice to the Responsible Entity is effective only at the time of receipt in legible form.

21.3 Signature

The notice must bear the actual, facsimile or electronic signature of the Relevant Security Holder or their duly authorised officer or representative⁴² unless the Responsible Entity dispenses with this requirement.

22 Meetings of Members

22.1 Convening of meetings

The Responsible Entity may at any time convene a meeting of Members and must do so if required by the Corporations Act.⁴³

22.2 Members' request for meeting

- (a) The provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.
- (b) Without limiting Members' rights to request a meeting under the Corporations Act, while the Trust is Listed, Members may also requisition a meeting to vote on a proposed ordinary resolution to terminate the Management Services Agreement in accordance with the terms of that agreement.

22.3 Notice Period

The requirements for notice of meetings of Members are governed by the Corporations Act.

22.4 Responsible Entity may determine

Subject to this clause 22 and the Corporations Act⁴⁴ and the Listing Rules, the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted, including a meeting of Members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

22.5 Quorum

- (a) The quorum for a meeting of Members of the Trust is at least 2 Members of the Trust present in person or by proxy together holding at least 5% of all Units of the Trust or such other quorum as is specified in the Corporations Act.
- (b) If the Trust has only one Member who may vote on a Resolution, the Member constitutes a quorum at a meeting of the Members.

⁴² See Clause 22.3(c)

⁴³ Refer Part 2G.4

⁴⁴ Refer Part 2G.4

22.6 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to any place and time as the Responsible Entity decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

22.7 Chairman

Subject to the Corporations Act⁴⁵ the Responsible Entity may appoint a person to chair a meeting of Members.

22.8 Conduct of meeting

The decision of the chairman on any matter relating to the conduct of the meeting is final.

22.9 Adjournment

The chairman has power to adjourn a meeting for any reason to a place and time as the chairman thinks fit.

22.10 Postponement or cancellation

The chairman has power to cancel a meeting or postpone a meeting for any reason to a place and time as the chairman thinks fit.

22.11 Voting

Subject to clause 22.14 the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Trust.

22.12 Proxies

Subject to clause 22.13, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Trust.⁴⁶

22.13 Validity of proxy

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

⁴⁵ Refer Part 2G.4 and Section 601FC(1)

⁴⁶ This provision is included for completeness – while the Trust is a Registered Scheme, the law operates of its own force.

22.14 Demand for a poll

A poll may be demanded by the chairman, or by the Members present in person proxy at least 5% of Units.

22.15 Resolutions binding

A Resolution by Members, binds all Members, whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

22.16 Objection at meeting

No objection may be made to any vote cast unless the objection is made at the meeting.

22.17 Non-receipt

If a Member does not receive a notice (including if a notice was accidentally omitted to be given to them) the meeting is not invalidated.

22.18 Option Holders and Financial Instrument Holders

Clauses 22.1 to 22.17 apply to meetings of Option Holders and Financial Instrument Holders with any necessary modifications.

23 Rights and liabilities of Responsible Entity

23.1 Holding Units

The Responsible Entity and its associates may hold Units in the Trust or interests in any trust or company which is an associate of any of them in any capacity⁴⁷.

23.2 Other capacities

Subject to the Corporations Act⁴⁸, the Responsible Entity (and any of its associates to the extent applicable) may:

- (a) deal with itself (as responsible entity of the Trust or in another capacity), its associates or with any Member, including to engage any of its associates to provide services to the Responsible Entity;
- (b) be interested in any contract or transaction with itself (as responsible entity of the Trust or in another capacity), its associates or with any Member or any other person including without limitation a contract or arrangement under which the Responsible Entity is entitled to receive fees or reimbursement of expenses in relation to the Trust or its office as

⁴⁷ See Section 601FG, Section 253E and Part 5C.7

⁴⁸ Refer Part 5C.7

responsible entity from a third party such as a sponsor or investment manager of the Trust; or

- (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust,

or retaining for its own benefit any profits or benefits derived from any such contract or transaction.

23.3 Responsible Entity may rely

The Responsible Entity may take and may act on:

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

and the Responsible Entity will not be liable for anything done, or omitted by it in good faith in reliance on any opinion, advice, statement, information or document.

24 Limitation of liability and indemnity in favour of Responsible Entity

24.1 Limitation on Responsible Entity's liability

- (a) The Responsible Entity is not liable in contract, tort or otherwise to Relevant Security Holders for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.
- (b) Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as responsible entity of the Trust or in relation to any Assets) is limited to the Responsible Entity's ability to be indemnified from the Assets.

24.2 Indemnity in favour of Responsible Entity

The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in:

- (a) properly performing its duties in relation to the Trust; or
- (b) exercising any of its powers in the proper performance of its duties in relation to the Trust⁴⁹.

24.3 Liability for agents

To the extent permitted by the Corporations Act⁵⁰, and otherwise without limitation the indemnity under clause 24.2 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

24.4 Indemnity continues

The indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as responsible entity of the Trust.

24.5 Right of indemnity not affected by unrelated breach

Where a Liability is incurred pursuant to the proper performance of the Responsible Entity's duties in relation to the Trust or the exercise of the Responsible Entity's powers in the proper performance of its duties in relation to the Trust, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Responsible Entity (in its capacity as responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

25 Liability of Relevant Security Holders

25.1 Liability limited

Subject to clauses 25.3 and 25.5 and any separate agreement or acknowledgement by the Member, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

25.2 Member need not indemnify

Subject to clause 25.3, a Member need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust.

25.3 Tax or User Pays fees

- (a) The Responsible Entity is entitled to be indemnified by a Relevant Security Holder or a person who was at any time a Relevant Security Holder in respect of a Taxation Amount to the extent that the

⁴⁹ See Section 601GA(2)

⁵⁰ See Sections 601FB(2) and 601GA(2)

Responsible Entity incurs any liability for Tax or User Pays Fees, as applicable, as a result of:

- (i) that Member's or person's action or inaction; or
- (ii) an act or omission requested by that Member or person; or
- (iii) any other matter arising in connection with Relevant Securities held by that Member or person,

but, in the absence of any separate agreement with the Member or person, is not otherwise entitled to be indemnified by them.

- (b) Without limiting the generality of clauses 17.6 or 25.3(a), each Member is required to indemnify the Responsible Entity for:
 - (i) any Tax payable by the Responsible Entity for an AMIT Income Year in the circumstances contemplated in clause 18.9(b)(viii) which the Responsible Entity reasonably determines relates to the Member, Units held by the Member, or an attribution of taxable income made to the Member; and
 - (ii) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under clause 25.3(b)(i).
- (c) The Responsible Entity may prescribe particular terms and conditions which apply in the event that the Responsible Entity is entitled to be indemnified by a Member under clause 25.3(b), or under the AMIT Regime for an AMIT Income Year.
- (d) Each Member agrees that the Responsible Entity may, if it is entitled to be indemnified by the Member under clause 25.3(b) or under the AMIT Regime for an AMIT Income Year, undertake the following actions in order to satisfy that indemnity:
 - (i) deduct from any amounts owing to the Member the aggregate of any amounts which the Responsible Entity is entitled to be indemnified under clause 25.3(b), or under the AMIT Regime; and
 - (ii) compulsorily redeem such number of Units held by the Member which the Responsible Entity reasonably determines is sufficient to cover the amounts which the Responsible Entity is entitled to be indemnified under clause 25.3(b), or under the AMIT Regime.

25.4 Joint Relevant Security Holders

Joint Relevant Security Holders are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 25.3 applies.

25.5 Recourse

Except where clause 18.9(b)(viii), 18.9(b)(ix) or 25.3(b) applies, in the absence of separate agreement with a Relevant Security Holder, the recourse of the Responsible Entity and any creditor, and any person claiming through them against a Relevant Security Holder is limited to the Assets.

25.6 Restrictions

A Relevant Security Holder:

- (a) must not interfere with any rights or powers of the Responsible Entity under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
- (c) may not require an Asset to be transferred to them.

26 Remuneration and expenses of Responsible Entity

26.1 Fees payable from the Assets

The fees in clause 26.3 are payable to the Responsible Entity out of the Assets.

26.2 Fees subject to Corporations Act

The fees in clause 26.3 may only be paid to the Responsible Entity to the extent they are payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Trust.

26.3 Management fee

The Responsible Entity is entitled to a management fee of up to 2% per annum of the Gross Value of the Assets calculated and accrued daily. The management fee is payable within 14 days of the end of the month, first out of income of the Trust and then out of capital.

26.4 Separate Arrangements for fees

Subject to the Corporations Act and any ASIC Relief, the Responsible Entity may make separate arrangements from time to time with any Member concerning the payment by the Member of management fees to the Responsible Entity whether on a uniform or differential basis. Such fee must not be paid out of the Assets.

26.5 Deferral and waiver of fees

- (a) The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period and may also charge variable fees in relation to any Members generally, if and to the extent permitted by the Corporations Act (including the conditions of any applicable ASIC Relief), based on bands, tiers or other criteria nominated in the relief instrument or by the Responsible Entity.
- (b) If payment is deferred, the relevant fee accrues daily until paid.

26.6 Expenses

All expenses incurred by the Responsible Entity in connection with the Trust are payable or reimburseable out of the Assets but reimbursement or payment is only available in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Trust. This includes expenses connected with:

- (a) this constitution and the formation of the Trust;
- (b) the preparation, review, distribution and promotion of any product disclosure statement, reference guide or offering memorandum in respect of Relevant Securities or other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment of the Trust;
- (e) borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs, and costs relating to interest rate swaps or any gearing facility;
- (f) the Management Services Agreement, including fees and expenses payable to the Manager;
- (g) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Relevant Securities;
- (h) costs of the admission of the Trust to the Official List and compliance with the Listing Rules;
- (i) underwriting or managing any subscription or purchase of Relevant Securities, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement;
- (j) convening and holding meetings of Relevant Security Holders, the implementation of any Resolutions and communications with Relevant Security Holders;
- (k) Tax, including any amount charged by a person making a supply to the Responsible Entity (by way of or as a reimbursement for GST) and financial institution fees;
- (l) the engagement of agents, valuers, contractors and advisers (including legal advisers), whether or not the agents, valuers, contractors or advisors are associates of the Responsible Entity;
- (m) accounting and compliance with taxation laws and procedures (whether internal expenses of the Responsible Entity or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Trust;
- (n) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;

- (o) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;
- (p) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation (“**Claim**”) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the failure of the Responsible Entity to properly perform its duties;
- (q) any compliance committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums⁵¹ in respect of Compliance Committee Members;
- (r) while there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (s) fees payable to any audit committee of the Trust;
- (t) the preparation, implementation, amendment and audit of the compliance plan;
- (u) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution scheme;
- (v) the cost of the Responsible Entity employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust; and
- (w) complying with any law, and any request or requirement of ASIC or ASX.

In this clause 26.6, “Expenses” includes amounts paid by the Responsible Entity to related bodies corporate for services where the expenses would have been reimburseable had they been incurred by the Responsible Entity.

26.7 GST

- (a) Except where stated otherwise, all amounts in this constitution do not include any amount payable on account of GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this constitution then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount on account of GST. This amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of

⁵¹ See Section 601JG

GST. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this constitution.

- (b) In relation to fees that are expressed as GST inclusive in this constitution this clause applies only to the extent to which there has been an increase in the rate of GST, so that the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the new prevailing rate of GST.
- (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, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of the input tax.

26.8 Amendment of fee provisions is contemplated

Without limiting clause 29, the Responsible Entity has power to amend any part of this clause 26 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 26, if the Responsible Entity complies with any applicable requirements of the Corporations Act relating to:

- (a) amending the constitution of a Registered Scheme,⁵² and
- (b) increasing fees or charges in relation to a Registered Scheme.

27 Duration of the Trust

27.1 [Not Used]

27.2 Termination

The Trust terminates on the earliest of:

- (a) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
- (b) a date determined by the Responsible Entity and advised to Members by notice in writing not less than 60 days before the proposed date of termination; and
- (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law.⁵³

27.3 Change in taxation

If at any time legislation is enacted the result of which is that the Responsible Entity is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not

⁵² Section 601GC.

⁵³ See Part 5C.9 on winding up.

distributed to Members, the Responsible Entity may call a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Responsible Entity may wind up the Trust.

27.4 Restriction on issue and redemption of Units

Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

The perpetuity period for the purposes of section 5 of the *Perpetuities and Accumulations Act 1968 (Vic)* is the period of 80 years from the day before the commencement of the Trust. The specification of a perpetuity period in this clause 27.4 does not require that the Trust terminate on the expiration of that period.

28 Procedure on termination

28.1 Realisation of Assets and payment of expenses

Following termination, the Responsible Entity must:

- (a) realise the Assets except to the extent that it determines to distribute Assets to Members in accordance with clause 17.4 pro rata according to their holding of Units as part of the winding up of the Trust; and
- (b) make payments (or set aside estimated amounts) from the Assets to pay the Trust's expenses and liabilities, and the costs or anticipated costs of winding up the Trust. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.⁵⁴

To the extent that realisation of Assets is required, it must be completed in 180 days if practical and in any event as soon as possible after that. The Responsible Entity may, however, postpone realisation of the Assets or any Asset if the Responsible Entity reasonably considers it would be in the best interests of Members to do so, and the Responsible Entity is not responsible for any consequent loss or damage attributable to that postponement.

28.2 Auditor and liquidator

- (a) The Responsible Entity must arrange for an independent audit of the final accounts of the Trust by a registered company auditor.⁵⁵
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Responsible Entity under this constitution as necessary to facilitate the winding up.

⁵⁴ ASIC RG 134.258.

⁵⁵ ASIC RG 134.265.

28.3 Distribution following termination

Subject to any rights, obligations and restrictions attaching to any particular Unit which are specified in this constitution, the net proceeds of realisation after making allowance for all Liabilities of the Trust (actual and anticipated) including entitlements of Members to a share of Income, meeting the expenses (including anticipated expenses) of the termination and taking into account Assets which are to be distributed pro rata to Members as part of the winding up, must be distributed to Members in accordance with the following formula for the amount a particular Member is to receive:

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

where

CE is the proportion of the distribution to which the Member is entitled;

A is the net proceeds of realisation;

B is the number of Units held by the Member at the date of distribution; and

C is the total number of Units on issue at the date of distribution.

The Responsible Entity may distribute any Assets and the net proceeds of realisation in instalments.

28.4 Provisions continue to apply

Subject to the Corporations Act and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 28.3, but during that period the Responsible Entity:

- (a) may not accept any applications for Units from a person who is not an existing Member; and
- (b) is under no obligation to consider or process redemption requests received.

29 Amendments to this constitution

29.1 Responsible Entity may amend

Subject to the Corporations Act⁵⁶, this constitution may be amended:

- (a) by Resolution;⁵⁷ or
- (b) by deed executed by the Responsible Entity.

⁵⁶ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁵⁷ The required majority under section 601GC(1)(a) is 75%.

If the constitution is amended by Resolution, the Responsible Entity may give effect to the amendments by executing a supplemental deed.

30 Regulatory provisions and paramountcy

30.1 Listing Rules

While the Trust is included in the Official List:

- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act will not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) 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.

30.2 Corporations Act and ASIC Relief

- (a) If the Corporations Act requires that this constitution contain certain provisions, or if ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693 (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Trust and the Responsible Entity) requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
- (b) if any part of this constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Responsible Entity to make the amendments referred to in this clause 30.2 in a deed and, if required, to lodge it with ASIC; and

- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

Changes in the text of the constitution to which this clause 30.2 applies are made pursuant to the power in clause 29.1, but in respect of those changes, the requirements of clause 29.1 are to be read subject to this clause 30.

30.3 Application of Corporations Act and Listing Rules

In this constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Trust is Listed.

30.4 ASIC Class Orders

In accordance with ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 30.2 that is covered by the relief instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 30.4 applies are made pursuant to the power in clause 29.1 but in respect of those changes the requirements of clause 29.1 are to be read subject to this clause 30.4.

30.5 Paramountcy of provisions

Subject to the Corporations Act and the Listing Rules, clauses 0 to 30.2 and provisions taken to be included or amended under them prevail over other provisions of this constitution to the extent of any inconsistency.

31 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁵⁸.

32 Complaints

If a Member or former Member submits to the Responsible Entity a Complaint, in relation to the Trust, the Responsible Entity:

⁵⁸ See section 601JF

- (a) must, if the Member or former Member is a Retail Client, comply with the requirements of section 912A(2) of the corporations Act applicable to the Complaint;⁵⁹ and
- (b) in respect of a Complaint from a Member or former Member who is not a Retail Client:⁶⁰
 - (i) must acknowledge receipt of the Complaint within 24 hours of receiving it, or as soon as practicable;⁶¹
 - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
 - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
 - (iv) may give any of the following remedies to the complainant:
 - (A) information and explanation regarding the circumstances giving rise to the Complaint;
 - (B) an apology; or
 - (C) compensation for loss incurred by the Member or former Member as a direct result of any breach; and
 - (v) must communicate to the complainant as soon as practicable and in any event not more than 30 days after receipt by the Responsible Entity of the Complaint:
 - (A) the determination in relation to the Complaint;
 - (B) any remedies available to the Member or former Member; and
 - (C) information regarding any further avenue for complaint.

33 Restricted Securities

33.1 Restricted Securities Requirements

If, at any time, any Unit is, or on and from the Stapling Date and prior to the Unstapling Date, a Stapled Security is, classified by the ASX as a 'Restricted Security', then despite any other provision of this constitution:

- (a) a holder of Restricted Securities must not dispose of, or agree or offer to dispose of, the Restricted Securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX;

⁵⁹ See ASIC RG 134.155.

⁶⁰ The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.167 and ASIC Instrument 2023/697.

⁶¹ Australian compliance standard AS/NZS10002:2014 was adopted in ASIC RG 271 (for financial services licensees) effective September 2021.

- (b) if the Restricted Securities are in the same class as quoted securities, the holder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Trust's issuer sponsored subregister and are to have a holding lock applied for the duration of the escrow period applicable to those securities;
- (c) the Responsible Entity will refuse to acknowledge any disposal (including, without limitation, to register any transfer) of Restricted Securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX;
- (d) a holder of Restricted Securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX; and
- (e) if a holder of Restricted Securities breaches a restriction deed or a provision of this constitution restricting a disposal of those securities, the holder will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of those securities for so long as the breach continues.

33.2 Stapling

On and from the Stapling Date and prior to the Unstapling Date, for the purposes of this clause 32, any restriction on an Attached Security also restricts the Units to which the Attached Security is Stapled, or to be Stapled, to the same extent and in the same manner.

34 Small Holdings⁶²

34.1 Application of this clause

This clause 34 applies while the Units are Officially Quoted.

34.2 Divestment Notice

If the Responsible Entity determines that a Member is a Small Holder or a New Small Holder the Responsible Entity may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Units making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Responsible Entity intends to sell the Relevant Units in accordance with this clause 34 after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Responsible Entity in writing that the Member desires to retain the Relevant Units and that if the

⁶² See Listing Rules 15.13, 15.13A and 15.13B.

Member does so the Responsible Entity will not be entitled to sell the Relevant Units under that Divestment Notice; and

- (d) after the end of the Relevant Period the Responsible Entity may, for the purpose of selling the Relevant Units that are in a CS Facility holding, initiate a holding adjustment to move those Units from that CS Facility holding to an issuer sponsored holding or certificated holding.

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

34.3 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given.

34.4 Responsible Entity can sell Relevant Units

At the end of the Relevant Period the Responsible Entity is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Responsible Entity in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units, in which event the Responsible Entity must not sell those Relevant Units under that Divestment Notice; and
- (b) the Relevant Units of a Member who is a New Small Holder.

34.5 Responsible Entity as Member's attorney

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

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

34.6 Conclusive evidence

A statement in writing by or on behalf of the Responsible Entity under this clause 34 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 34 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

34.7 Registering the purchaser

The Responsible Entity must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Responsible Entity under this clause 34.

34.8 Payment of proceeds

Subject to clause 34.9, where:

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

the Responsible Entity must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds.

34.9 Costs

In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause, the Responsible Entity is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Responsible Entity. In any other case, the Responsible Entity or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Responsible Entity in connection with the sale and transfer of the Relevant Units.

34.10 Remedy limited to damages

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

34.11 Dividends and voting suspended

Unless the Responsible Entity determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 34, then despite any other provision in this constitution, the rights to receive payment of dividends and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this clause, have been paid to that Member must be held by the Responsible Entity and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Units of that Member are transferred; and

- (b) the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

34.12 Twelve month limit

If it is a requirement of the Listing Rules, the Responsible Entity must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 34.13).

34.13 Effect of takeover bid

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Responsible Entity's powers under this clause 34 to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Responsible Entity may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite clause 34.12 and the fact that it may be less than 12 months since the Responsible Entity gave a Divestment Notice to that Member.

34.14 Revocation

The Responsible Entity may, before a sale is effected under this clause 34, revoke a Divestment Notice, or suspend or termination the operation of this clause either generally or in specific cases.

35 Compliance with ASX Settlement Operating Rules

35.1 ASX Settlement Operating Rules

- (a) While any of the Relevant Securities in the Trust are CHESSE Approved Securities, the Responsible Entity must comply with the ASX Settlement Operating Rules. While all of the Relevant Securities in the Trust are not CHESSE Approved Securities, the Responsible Entity is not required to comply with the ASX Settlement Operating Rules.
- (b) The Responsible Entity may do any act, matter or thing to facilitate involvement by the Trust in any clearing and settlement facility for the transfer of financial products.

36 Security Interest

- (a) If any provision of this constitution creates a security interest in Units or other personal property ("**Collateral**") to which the PPSA applies:
 - (i) the Responsible Entity need not comply with any provisions of the PPSA that the parties may contract out of in relation to the Collateral; and
 - (ii) Members may not exercise any rights under sections 142 (redemption of collateral) or 143 (reinstatement of security agreement) of the PPSA to the extent the law permits those rights to be excluded.

- (b) The Responsible Entity need not give the Member any other notice required under the PPSA (including a notice of verification statements under section 157 of the PPSA) unless the notice cannot be excluded.

37 Stapling

37.1 Power to staple Securities

- (i) For purposes of implementing a Stapling Proposal, the Responsible Entity may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, at any time Staple Securities of any class or type to one or more Units (including where the Unit is already a component of a Stapled Security) and determine the Stapling Date or the date from which the relevant Securities will be Stapled.
- (b) The Responsible Entity may Staple to a Unit (or to an existing Stapled Security):
 - (i) Securities of any class or type, including Securities issued by the Responsible Entity, another already Stapled Entity or any other entity;
 - (ii) more than one class or type of Securities; and
 - (iii) a fraction of one or more than one Security of a class or type, so that different numbers of different classes or types of Securities may be Stapled together (in which case the relevant fraction or number will become the Corresponding Number in relation to a Unit).

37.2 Implementation

- (a) For purposes of implementing a Stapling Proposal, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, the Responsible Entity has the power to do all things which it reasonably considers necessary, incidental or desirable to implement the Stapling Proposal, including:
 - (i) consolidating or splitting any Securities;
 - (ii) making a distribution or payment to a Member;
 - (iii) issuing or transferring Securities to a Member or member of a Stapled Entity (or entity proposed to become a Stapled Entity) by any means;
 - (iv) entering a Member as holder of Securities in the relevant Register whether or not the Responsible Entity has received an application, transfer or other document in respect of those Securities, in which case the Member becomes the holder of those Securities with effect from the date their name is recorded in the relevant Register as holder of those Securities; and

- (v) Stapling Options to options to subscribe for a Corresponding Number of Attached Securities,

and those powers apply notwithstanding, and are not limited by, any provision of this constitution other than clause 30.

- (b) The Responsible Entity is irrevocably appointed as the agent and attorney of each Member to execute all documents and do all things which it reasonably considers are necessary, incidental or desirable to be executed or done on behalf of a Member to effect a Stapling Proposal, including:

- (i) executing applications, withdrawals, transfers and other documents, and receiving, holding and paying money;
- (ii) applying for and acquiring (whether by subscription, purchase or otherwise) Securities in the name of a Member;
- (iii) receiving and applying distributions or other payments (otherwise payable to a Member) to pay for the subscription for or purchase of Securities;
- (iv) accepting an issue or transfer of Securities;
- (v) agreeing that the Member will become a member of a Stapled Entity (or entity proposed to be become a Stapled Entity) and will be bound by its constitution; and
- (vi) taking all necessary action to compulsorily transfer all Securities held by each a foreign Member whom the Responsible Entity determines is ineligible to participate in a Stapling Proposal, and in particular, to receive Attached Securities.

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

- (c) Subject to the Corporations Act, the Responsible Entity or an officer, employee or associate of the Responsible Entity may do the things described in this clause 37.2 even if it has an interest in the outcome.
- (d) The Responsible Entity will not have any liability of any nature to Members (which exceeds the extent to which it is entitled to be indemnified out of the assets of the Fund) 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 proper implementation of the Stapling Proposal.

37.3 Operation of Stapling provisions

Clauses 37.4 to 37.10 apply only, and for so long as, a Unit is a component of a Stapled Security.

37.4 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) Subject to the Corporations Act, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.
- (c) The number of issued Units must equal the number of issued Attached Securities at that time divided by the Corresponding Number.
- (d) The Responsible Entity must not issue Units unless satisfied either that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (e) The Responsible Entity and the Members must neither do any act, matter or thing nor 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:
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) the Responsible Entity must not consolidate, sub-divide, cancel, buy-back or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
 - (v) the Responsible Entity must not forfeit a Unit unless the Corresponding Number of each Attached Security is also forfeited; and
 - (vi) the Responsible Entity must not register the transmission or transfer of Units unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.
- (f) The provisions of this clause 37.4 apply, with necessary modifications, to the issue, offer, sale or reorganisation of Options.

37.5 Unstapling

- (a) Subject to the Corporations Act, the Listing Rules and approval by a special resolution of the Members and the members of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling provisions of this constitution will cease to apply to particular Securities and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of that winding up; and

- (i) on or before commencement of a winding up of the Trust, the liquidator must give each Stapled Entity notice that the Trust is to be wound up.
- (c) 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.
- (d) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 37.5, this does not prevent the Responsible Entity from doing the following (subject to the same resolutions of the Members and members of the Attached Securities being passed):
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) Stapling an Unstapled Unit to Securities which are not Stapled.

37.6 Transfer of Stapled Securities

- (a) Until the Unstapling Date:
 - (i) 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 9, 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;
 - (ii) 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
 - (iii) 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 trustee 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 Member 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 trustee of the Trust).

37.7 Excluded U.S. Persons

- (a) Each holder of Stapled Securities acknowledges that Stapled Securities are not permitted to be held by or for the account or benefit of any person who is a U.S. Person who is not both:

- (i) a 'Qualified Institutional Buyer' within the meaning given in Rule 144A under the Securities Act of 1933, of the United States of America, as amended; and
 - (ii) a 'Qualified Purchaser' within the meaning given in Section 2(a)(51) of the Investment Company Act of 1940, of the United States of America, as amended and the rules and regulations of the Securities and Exchange Commission promulgated thereunder,

(a **QIB-QP**).
- (b) Subject to the Corporations Act, at any time the Responsible Entity may determine:
 - (i) that a holder of Stapled Securities (or a person who seeks to be registered as a holder of Stapled Securities) is excluded, if it considers that the person is a U.S. Person that is not a QIB-QP or holds or will hold Stapled Securities for the account or benefit of any U.S. Person who is not a QIB-QP (such person being an **Excluded U.S. Person**); and
 - (ii) that some or all of the Stapled Securities held or to be held by the Excluded U.S. Person are excluded (such Stapled Securities being **Excluded Stapled Securities**).
- (c) At any time, the Responsible Entity may require a holder of Stapled Securities to complete a statutory declaration in relation to whether the holder (or any person on whose account or benefit it holds Stapled Securities) is a U.S. Person who is not a QIB-QP, and the number of Stapled Securities affected. The Responsible Entity may determine that any holder who does not comply with a request for information under this clause 37.7(c) is an Excluded U.S. Person in respect of all Stapled Securities held by that holder or such lesser number of Stapled Securities as the Responsible Entity determines.
- (d) Where the Responsible Entity has made a determination under clause 37.7(b) or clause 37.7(c) the Responsible Entity may:
 - (i) refuse to register a transfer of Excluded Stapled Securities to the Excluded U.S. Person; or
 - (ii) give the Excluded U.S. Person a notice requiring them to dispose of their Excluded Stapled Securities to any person other than someone who is, or will hold the Stapled Securities for the account or benefit of, a U.S. Person who is not a QIB-QP (such person being a **Permitted Person**) within a period of not less than 30 Business Days specified in the notice (the **Transfer Period**) after which the Excluded Stapled Securities must be transferred to a person nominated by the Responsible Entity to sell the Excluded Stapled Securities (the **US Sale Nominee**).
- (e) Each holder of Stapled Securities who is or becomes an Excluded U.S. Person may transfer their Excluded Stapled Securities to a Permitted Person during the Transfer Period. At the end of the Transfer Period, the Excluded U.S. Person must transfer any remaining Excluded Stapled Securities free of any encumbrances or third party rights to the US Sale Nominee within 3 Business Days after the end of the Transfer Period.
- (f) The Responsible Entity must ensure that the US Sale Nominee:

- (i) sells any Excluded Stapled Securities transferred to it under clause 37.7(e) for cash; and
- (ii) pays the sale proceeds (net of transaction costs, including brokerage, stamp duty and other Taxes) for the Excluded Stapled Securities to the Excluded U.S. Person as soon as practicable after completion of the sale.

Each holder of Stapled Securities who is or becomes an Excluded U.S. Person authorises and directs the US Sale Nominee to sell the Excluded Stapled Securities and pay the net sale proceeds in accordance with this clause 37.7.

- (g) The Responsible Entity may register the transfer of Excluded Stapled Securities to the US Sale Nominee and to the buyer from the US Sale Nominee in the Stapled Securities Register without having received a transfer or certificate (if any) for Excluded Stapled Securities. The relevant transfers take effect from registration in the Stapled Securities Register.
- (i) Each holder of Stapled Securities irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect the transfer of Excluded Stapled Securities as contemplated by this clause 37.7.

37.8 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 Members, the number of Units held, the number of Attached Securities held by the Member to which each Member'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.

37.9 Member Meetings

- (a) The boards of directors of Stapled Entities (or of the responsible entity of Stapled Entities) may attend and speak at any Meeting or invite any other person to attend and speak.
- (b) If permitted by the Corporations Act, any meetings of Members may be held in conjunction with and as part of a meeting of the members of the Stapled Entities and, subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of such meetings as the Responsible Entity determines.
- (c) If such a joint meeting is permitted, both of the following apply:
 - (i) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Members and meetings of the members of the Stapled Entities, with such modifications as the Responsible Entity decides; and

- (ii) any decision made by, or resolution passed by, the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Members.

37.10 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 does either of the following:

- (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.

37.11 Responsible Entity's duties

- (a) Despite any provision of this constitution or the constitutions of the Stapled Entities, or any rule of law (but subject to the Corporations Act), while the Units and the Attached Securities are Stapled and subject always to clause 37.11(b):
 - (i) without limiting clause 37.11(a)(ii), in exercising any power or discretion, the Responsible Entity may have regard to the interests of the holders of Stapled Securities as a whole and not only to the interests of the holders of the Units and relevant Attached Securities considered separately;
 - (ii) the Stapled Company will have the primary responsibility for making decisions in relation to the Stapled Group, including (but not limited to) in relation to determining the Application Price, Net Asset Value and Redemption Price, and may direct the Responsible Entity to implement, in relation to the Trust, the decisions of the Stapled Entities in relation to the Stapled Group and the Responsible Entity must use reasonable endeavours to action and implement each such direction as soon as reasonably practicable; and
 - (iii) without limiting clause 37.11(a)(ii), in implementing directions given by the Stapled Company in accordance with clause 37.11(a)(ii), the Responsible Entity is entitled to have regard to the fact that the Trust is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of their obligations, the Responsible Entity may, have regard to the interests of members as holders of other Attached Securities.
- (b) Despite any direction given under clause 37.11(a)(ii) and when implementing such a direction in accordance with clause 37.11(a)(ii), the Responsible Entity need not implement any direction which would cause the Responsible Entity to breach its statutory and fiduciary duties or its non-delegable duties or otherwise breach applicable law.

37.12 Paramountcy

- (a) Subject only to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, this clause 37.12 has effect notwithstanding any other provision of this constitution and any provision of this constitution which is inconsistent with this clause 37.12 does not operate to the extent of any inconsistency.
- (b) If there is an inconsistency between any provision of this constitution relating to Stapling (including this clause 37.12) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the ASX Settlement Operating Rules, the Corporations Act or any other law. The provisions relating to Stapling prevail in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this constitution.

38 Plebiscite to approve proportional takeover bids

38.1 Definitions

The meanings of the terms used in this clause 38 are set out below.

Term	Meaning
Approving Resolution	in relation to a Proportional Takeover Bid, a resolution to approve the Proportional Takeover Bid passed in accordance with clause 38.3.
Approving Resolution Deadline	in relation to a Proportional Takeover Bid, the day that is 14 days before the last day of the bid period and during which the offers under the Proportional Takeover Bid remain open or a later day allowed by the ASIC.
Proportional Takeover Bid	a takeover bid that is made or purports to be made under section 618(1)(b) of the Corporations Act in respect of Securities included in a class of Relevant Securities.
Relevant Class	in relation to a Proportional Takeover Bid, means the class of Relevant Securities in respect of which offers are made under the Proportional Takeover Bid.

38.2 Transfers not to be registered

Despite clause 9, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless an Approving Resolution has been passed or is taken to be passed in accordance with clause 38.3.

38.3 Approving Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the Responsible Entity must:
 - (i) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if though fit, passing a resolution to approve the Proportional Takeover Bid; and
 - (ii) ensure that the resolution is voted on in accordance with this clause 38.3,

before the Approving Resolution Deadline.
- (b) The provisions of this deed relating to general meetings apply (with any necessary changes) to a meeting that is convened under clause 38.3(a), as if that meeting were a general meeting of Members.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to clause 38.3(c), a person who held Securities of the relevant class as at the end of the day on which the first offer under the Proportional Takeover Bid was made is entitled to vote on the Approving Resolution.
- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this clause 38.3 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this clause 38.3 on the Approving Resolution Deadline.

38.4 Sunset

Clauses 38.1, 38.2 and 38.3 cease to have effect at the end of 3 years beginning:

- (a) where those clauses have not been renewed in accordance with the Corporations Act, on the day those rules were adopted by the Responsible Entity in relation to the Trust; or
- (b) where those clauses have been renewed in accordance with the Corporations Act, on the date those clauses were last renewed.

EXECUTED as a deed poll.⁶³

⁶³ See ASIC RG 134.273.

Schedule 1 – Finding list – Corporations Act

This list is included to assist ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA	
(1)(a)	11.1 - 11.10
(1)(b)	18.1 - 18.3
(1)(c)	32
(1)(d)	28
(2)	24.2 - 24.5, 26.1 - 26.8
(3)	18.2, 18.3
(4)(a)	14.1 - 14.7, 14.15 - 14.16
(4)(b)	14.4 - 14.7, 14.12, 13.1 - 13.4
(4)(c)	14.9 - 14.12, 13.1 - 13.4
601GB	2.4

Schedule 2 – Finding list – Listing Rules

This list is included to assist ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules for constitutions of registered managed investment schemes.

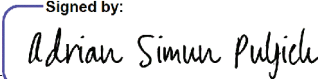
Listing Rules	Constitution
1.1, condition 2	30.1, 30.5
1.1, condition 5	14.1, 14.9 - 14.11, 14.15 - 14.16
15.12	33
Appendix 15A	30



HERBERT
SMITH
FREEHILLS

Executed as a deed poll:

Signed sealed and delivered by
GTH Resorts No 2 Pty Ltd as trustee for the GTH Resorts No 2 Unit Trust by

sign here ► 

Company Secretary/Director
Adrian Simun Puljich
print name _____

sign here ► 

Director
ASHMIT SINGH THAKRAL
print name _____