



Arena REIT

(ASX code: ARF)

ASX Announcement

25 August 2014

COMMENCEMENT OF DISTRIBUTION REINVESTMENT PLAN AND AMENDMENT OF CONSTITUTION

Opening of distribution reinvestment plan

Arena Investment Management Limited (**Arena**), as responsible entity of Arena REIT (**ARF**), today announced the opening of a distribution reinvestment plan (**DRP**) effective from and including the upcoming September 2014 quarter distribution.

The **DRP** will assist with funding **ARF**'s current development pipeline. A copy of the **DRP** rules (**Plan**) is attached to this announcement. Capitalised terms used in this announcement have the same meaning given to them under the **Plan**.

Under the **Plan**:

- Participation is voluntary;
- Investors can participate in the **DRP** for all or part of their security-holding;
- There are no fees, brokerage or other transaction costs for Securities issued under the **Plan**;
- Holders can join, withdraw, or vary participation in the **Plan** at any time;
- Securities acquired under the **Plan** will rank equally with existing Securities; and
- Securities may be issued at a discount to the VWAP over the Pricing Period.

Under the **Plan**, **Arena** will determine the Pricing Period and any **DRP** Discount that may apply. For the September 2014 quarter distribution the **DRP** Discount will be 1.5% and the Pricing Period will commence on 2 October and run for 15 business days, ending on 22 October 2014.

Investors can elect to participate in the **DRP** by completing the participation form available on **Arena**'s website (<http://www.arenainvest.com.au/Investors/investor-information/forms>) or by contacting the registry on 1800 008 494 or at info@arenainvest.com.au. The last day to elect to participate in the **DRP** for the September quarter distribution will be Tuesday 2 October 2014.

Amendment of Constitutions to facilitate **DRP**

Arena has made technical amendments to the constitutions of **Arena REIT No. 1** and **Arena REIT No. 2** (**Constitutions**) to ensure consistency with market practice for setting the Pricing Period shortly after the end of the relevant quarter.

The **Constitutions** have been amended as set out in the attached consolidated versions of the **Constitutions** (showing the amendment in mark-up).

Responsible entity of **Arena REIT** stapled group (ASX:ARF)
Stapled Group comprising **Arena REIT No.1** (ARSN 106 891 641) and **Arena REIT No. 2** (ARSN 101 067 878)

71 Flinders Lane
Melbourne VIC 3000
www.arenainvest.com.au

Locked Bag 32002 Collins Street East
Melbourne VIC 8003
info@arenainvest.com.au

T +61 3 9093 9000
Freecall 1800 008 494
F +61 3 9093 9093



Peter Hulbert
Company Secretary
Arena Investment Management Limited

– ENDS –

About Arena REIT

Arena REIT is an S&P/ASX 300 listed stapled group with a strategy to invest in sectors such as childcare, healthcare, education and government tenanted facilities leased on a relatively long term basis. ARF owns 176 childcare centres, 10 development sites and 7 multi-disciplinary medical centres situated throughout Australia with an aggregate value of over \$355 million. Distributions are paid to investors on a quarterly basis.

Media enquiries:

Bryce Mitchelson
Joint Managing Director
+61 408 275 375
bryce.mitchelson@arenainvest.com.au

Investor enquiries:

Arena Investor Services
1800 008 494 (Freecall within Australia)
+61 3 9093 9017
info@arenainvest.com.au

Disclaimer

This announcement contains forward-looking statements including certain forecast financial information. The forward-looking statements are made only as at the date of this announcement and involve known and unknown risks, uncertainties, assumptions and other factors, many of which are beyond the control of Arena Investment Management Ltd ("Arena") and its directors. Such statements are not guarantees of future performance and actual results may differ materially from anticipated result, performance or achievements expressed or implied by the forward-looking statements. Other than as required by law, although they believe there is a reasonable basis for the forward-looking statements, neither Arena nor any other person (including any director, officer, or employee of Arena or any related body corporate) gives any representation, assurance or guarantee (express or implied) as to the accuracy or completeness of each forward-looking statement or that the occurrence of any event, result, performance or achievement will actually occur. You should not place undue reliance on any of the forward-looking statement.



ARENA REIT
DISTRIBUTION REINVESTMENT PLAN

August 2014

Introduction

This document sets out the rules applicable to the Arena REIT distribution reinvestment plan (Plan). The Plan allows Eligible Members to reinvest their Distributions by automatically applying them to the issue of new Stapled Securities. The Plan features are:

- Participation is voluntary
- You can participate in the Plan for all or part of your Stapled Securities
- There are no fees, brokerage or other transaction costs for Stapled Securities issued under the Plan
- You can join, withdraw or vary your participation in the Plan at any time
- Stapled Securities acquired under the Plan will rank equally with existing Stapled Securities
- Stapled Securities may be issued at a discount to VWAP
- Distributions payable to you will be automatically reinvested in Stapled Securities.

1. Applications to participate in the Plan

- 1.1 No person other than an Eligible Member may apply to participate in the Plan.
- 1.2 Participation in the Plan is optional and not transferable.
- 1.3 Every Eligible Member who wishes to participate in the Plan must lodge a Notice of Election with the Responsible Entity.
- 1.4 All joint holders of Stapled Securities must sign a Notice of Election for it to be valid.
- 1.5 A Notice of Election must be lodged for each Stapled Security holding account and each Stapled Security holding account of an Eligible Member will be treated separately for all purposes under the Plan.
- 1.6 Subject to the relevant Constitution, the Responsible Entity may require that an Eligible Member's entitlement to a Distribution is reinvested under the Plan if:
 - 1.6.1 The entitlement is less than an amount determined by the Responsible Entity and advised to members, or
 - 1.6.2 A member fails to provide a direction to the Responsible Entity as to the bank account into which the member wishes its Distribution to be paid on or before the first Business Day after the Record Date for the Distribution.

2. Degree of participation

- 2.1 An Eligible Member must specify on the Notice of Election the degree to which the Eligible Member wishes to participate in the Plan in respect of the nominated Stapled Security holding account. Participation may be:
 - 2.1.1 full participation for all the Participant's Stapled Securities from time to time however acquired (including Stapled Securities issued or transferred to the Participant under the Plan); or
 - 2.1.2 partial participation for a specific number of Stapled Securities nominated by the Participant together with the Stapled Securities issued or transferred to the Participant under the Plan and any bonus Stapled Securities issued or transferred to the Participant in respect of Plan Stapled Securities. However, if at the Record Date for a Distribution, the number of the Stapled Securities held by the Participant is fewer than the nominated number, then the Plan will apply only to that lesser number for that Distribution; or
 - 2.1.3 partial participation for a specific proportion of Stapled Securities.
- 2.2 If a Notice of Election received by the Responsible Entity does not indicate the Stapled Security holding account to which the notice applies or the degree of participation in the Plan, the Notice of Election will be deemed to be an application for full participation in the Plan for all Stapled Security holding accounts of the applicant.
- 2.3 If an Eligible Member is required to participate in the Plan under rule 1.6, the Responsible Entity is treated as having received a Notice of Election specifying full participation for all of the Participant's Stapled Securities.

3. Acceptance of applications

- 3.1 The Board may on behalf of the Responsible Entity in its absolute discretion accept or refuse any Notice of Election, without being bound to give any reason for doing so.
- 3.2 Each Notice of Election accepted by the Responsible Entity will be effective in respect of the first Distribution payment after receipt of the Notice of Election, provided it is received before close of business on the first Business Day after the Record Date for that Distribution.
- 3.3 The Responsible Entity will record for each Stapled Security holding account of each Participant particulars of:
 - 3.3.1 the name and address of the Participant;

- 3.3.2 the number of Plan Stapled Securities held by the Participant from time to time, and the Responsible Entity's records will be conclusive evidence of the matters so recorded.

4. Reinvestment of Distributions

- 4.1 Distributions on Plan Stapled Securities will be applied by the Responsible Entity on the Participant's behalf in subscribing for Stapled Securities. Stapled Securities will either be issued, or, subject to any requirements of the Corporations Act or other applicable law, acquired on market for the Participant, as the Board determines in its discretion. Any Distributions on Stapled Securities which the Responsible Entity is entitled to retain under the relevant Constitution or otherwise, will not be available for subscribing for Stapled Securities. If withholding tax is payable in respect of a Distribution or any part of a Distribution that tax will be deducted and only the balance will be applied in subscribing for Stapled Securities.
- 4.2 The number of Stapled Securities issued or transferred to each Participant will be the whole number equal to, or when not a whole number, the nearest whole number below the number calculated by the formula:

$$\frac{D - T}{P}$$

where:

- D is the Distribution payable on the Participant's Plan Stapled Securities as at the Record Date for that Distribution;
- T is any withholding tax or other sum the Responsible Entity is entitled to retain in relation to the Distribution or the Plan Stapled Securities; and
- P is the Acquisition Price as determined in accordance with Rule 4.3.
- 4.3 The price at which Stapled Securities are issued or transferred to Participants (**Acquisition Price**) will be the arithmetic average of the daily VWAP for Stapled Securities sold on the stock market of ASX during the Pricing Period for the relevant Distribution (Average Market Price), less an amount (**DRP Discount**) determined by the Board from time to time.
- 4.4 The Responsible Entity shall agree the allocation of the Acquisition Price between Arena REIT No. 1 and Arena REIT No. 2 Units.
- 4.5 The Responsible Entity is not required to pay or retain for the Participant's benefit any notional balance remaining after the rounding down of the number of Stapled Securities issued or transferred under clause 4.2 but if the total of the notional balances arising after the current issue or transfer and any

previous issues or transfers under the Plan to a Participant exceed the Acquisition Price in relation to the current issue or transfer then:

- 4.5.1 the Participant is entitled to receive additional Stapled Securities and additional Stapled Securities will be issued or transferred to the Participant; and
 - 4.5.2 the notional balance will be reduced by the Acquisition Price applicable to those additional Stapled Securities. Additional Stapled Securities will only be issued or transferred under clause 5.4(a) if their issue or transfer will not reduce the notional balance under clause 5.4(b) to less than zero.
- 4.6 The Responsible Entity, will send to each Participant a statement of holding in accordance with, and containing the information required by, the CHESS Rules together with, for each Stapled Security holding account, a statement setting out the following information (unless already required to be included by the CHESS Rules):
- 4.6.1 the number of the Participant's Plan Stapled Securities on the Record Date for the relevant Distribution;
 - 4.6.2 the Distribution payable in respect of that Participant's Plan Stapled Securities and the amount of that distribution which has been applied towards subscription for additional Stapled Securities;
 - 4.6.3 the number of additional Stapled Securities issued or transferred to that Participant under the Plan;
 - 4.6.4 the number of Stapled Securities (including Plan Stapled Securities) in respect of which that Participant is the registered holder after the issue or transfer; and
 - 4.6.5 the total amount of the notional balance, if any, which has arisen after the current issue or transfer and any previous issues or transfers under the Plan to that Participant.
- 4.7 All Stapled Securities issued or transferred under the Plan will, from their date of issue or transfer, rank equally in all respects with existing Stapled Securities.
- 4.8 Stapled Securities to be issued or transferred under the Plan will be issued or transferred at, or as soon as practicable after, the time of payment of the relevant Distribution.
- 4.9 Stapled Securities issued or transferred to a Participant under the Plan will be registered:

- 4.9.1 if the Plan Stapled Securities already held by the Participant are registered on one register - on that register; or
- 4.9.2 if the Plan Stapled Securities already held by that Participant are registered on more than one register – on the register designated by that Participant or, in the absence of a designation, on the register selected by the Responsible Entity.
- 4.10 The Responsible Entity will make application promptly after each issue of Stapled Securities under the Plan for quotation of those Stapled Securities on the ASX, if other Stapled Securities are quoted at that time.

5. Variation or termination of participation

- 5.1 A Participant may, by lodging with the Responsible Entity a Notice of Variation, increase or decrease the number of its Plan Stapled Securities or terminate participation in the Plan. A Notice of Variation must be lodged for each Stapled Security holding account. To be effective for a forthcoming Distribution, the Notice of Variation must be received by the Responsible Entity before the Record Date for that Distribution.
- 5.2 If a Participant disposes of all the Participant's Stapled Securities without giving the Responsible Entity a Notice of Variation and is not registered as a holder of any Stapled Securities when the Stapled Security register is next closed for payment of a Distribution, the Participant will be deemed to have terminated participation on the last date when a transfer of the Participant's Stapled Securities was registered.
- 5.3 If a Participant terminates participation in the Plan or disposes of all the Participant's Stapled Securities, the Responsible Entity is not required to pay the Participant any notional balance then remaining after making any calculation under clause 5.2.
- 5.4 When a Participant disposes of part of the holding of Stapled Securities of that Participant, and does not notify the Responsible Entity otherwise, the Stapled Securities disposed of will, to the extent possible, be taken to be:
 - 5.4.1 first, Stapled Securities which are not Plan Stapled Securities; and
 - 5.4.2 secondly, Plan Stapled Securities.

6. Limit on subscription

- 6.1 The Board may at any time by notice in writing to Participants limit the amount of any Distribution which may be reinvested in subscription for Stapled Securities under the Plan.

7. Modification, suspension and termination of the Plan

- 7.1 The Plan may be modified by the Responsible Entity at any time after giving one week's notice in writing to all Participants on behalf of Arena REIT No. 1 and Arena REIT No. 2 in accordance with the relevant Constitution.
- 7.2 The Plan may be suspended or terminated by the Responsible Entity at any time, after giving such notice (if any) as the Board determines is appropriate. Notice of suspension or termination must be given to all Participants by lodging a notice with the ASX.
- 7.3 The accidental omission to give notice of modification, suspension or termination to any Participant or the non-receipt of any notice by any Participant will not invalidate the modification, suspension or termination of the Plan.

8. Administration of the Plan

- 8.1 This Plan will be administered by the Board which has the power to:
 - 8.1.1 administer the Plan on behalf of the Responsible Entity;
 - 8.1.2 determine procedures for administration of the Plan consistent with the Rules;
 - 8.1.3 settle in such manner as they think expedient any difficulties, anomalies or disputes which may arise in connection with, or by reason of, the operation of the Plan, whether generally or in relation to any Participant or any Stapled Securities and the determination of the Board is to be conclusive and binding on all Participants and other persons to whom the determination relates; and
 - 8.1.4 delegate to any one or more persons, for such period and on such conditions as they may determine, the exercise of any of their powers or discretions arising under the Plan.

9. Participants to be bound

- 9.1 Participants are at all times bound by the Rules of the Plan as modified from time to time.

10. Costs to Participants

- 10.1 Subject to Rule 10.2, no brokerage, commission or other transaction costs will be payable by Participants in respect of Stapled Securities issued or transferred under the Plan. However, the Responsible Entity assume no liability for any taxes or other imposts assessed against or imposed on a Participant.

10.2 In the event of a change in any law such that at the date of any issue or transfer of Stapled Securities under the Plan, stamp duty is payable in respect of all or any part of the issue or transfer, the amount of stamp duty will be paid by the Participant to whom the Stapled Securities are issued or transferred and will be debited to that Participant's Plan account.

11. ASX listing

11.1 Application will be made to have the Stapled Securities issued under this Plan listed for quotation on the official list of the ASX.

12. Underwriting

12.1 The Responsible Entity may, in its absolute discretion, arrange for an issue of Stapled Securities under this Plan to be underwritten or sub-underwritten by or more underwriters which may include, without limitation, the Responsible Entity, its related bodies corporate or its associates, subject to the ASX Listing Rules.

13. Interpretation

The following words have these meanings in these Rules, unless the contrary intention appears:

Arena REIT means the stapled group comprising Arena REIT No. 1 and Arena REIT No. 2.

Arena REIT No. 1 means Arena REIT No. 1 ARSN 106 891 641.

Arena REIT No. 2 means Arena REIT No. 2 ARSN 101 067 878.

Arena REIT No. 1 Constitution means the constitution of Arena REIT No. 1 dated 27 August 2003 as amended.

Arena REIT No. 2 Constitution means the constitution of Arena REIT No. 2 dated 20 June 2002 as amended.

Arena REIT No. 1 Unit means a fully paid ordinary unit of Arena REIT No. 1.

Arena REIT No. 2 Unit means a fully paid ordinary unit of Arena REIT No. 2.

ASX means Australian Securities Exchange.

ASX Settlement means ASX Settlement Pty Limited ABN 49 008 504 532 as the securities clearing house under the Corporations Act 2001.

Business Day has the meaning given to it in the ASX Listing Rules.

Board mean the board of directors of Arena Investment Management Limited.

CHESS Rules means the rules of the clearing house electronic sub-register system operated by ASX Settlement.

Distribution means a cash distribution paid by Arena REIT No. 1 and/or Arena REIT No. 2 whether income or capital.

Eligible Member means a person registered as the holder of Stapled Securities other than a person with a registered address in any place where, in the opinion of the Board, participation or the making of an offer or invitation to participate in the Plan would require the issue of a prospectus under overseas law or would be otherwise undesirable or impractical.

Notice of Election means the application to participate in the Plan in respect of a particular Stapled Security holding account in the form that the Board from time to time approves.

Notice of Variation means a notice in the form that the Board from time to time approves for a Participant to increase or decrease the number of the Participant's Plan Stapled Securities.

Participant means an Eligible Member whose application to participate in the Plan in respect of a particular Stapled Security holding account has been accepted by the Board.

Plan means the Arena REIT Distribution Reinvestment Plan, the terms of which are set out in these Rules.

Plan Stapled Securities means the stapled securities in a particular Stapled Security holding account which are designated by a Participant as Stapled Securities the Distributions on which are to be applied in subscribing for Stapled Securities under the Plan, or which are designated by the Responsible Entity as Stapled Securities the Distributions on which are to be applied in subscribing for Stapled Securities under the rule 2 of Plan.

Pricing Period means, in relation to any Distribution, the period of 15 consecutive Trading Days (or such other number of Trading Days as the Board may determine from time to time in its discretion) commencing on the 2nd Trading Day following the Record Date, or such other date determined by the Board in its discretion and announced to the ASX in respect of that Distribution.

Record Date, in respect of a Distribution, has the meaning given to that expression in section 2 of the ASX Settlement Operating Rules.

Responsible Entity means the responsible entity from time to time of Arena REIT No. 1 and Arena REIT No. 2.

Rules means the rules of the Arena REIT Distribution Reinvestment Plan.

Stapled Security means an Arena REIT No. 1 Unit stapled to an Arena REIT No. 2 Unit.

Trading Day has the meaning given to that expression in the Listing Rules of ASX provided that -

(a) any day in which there is a trading halt on Stapled Securities, or during which trading in Stapled Securities is suspended for the entire day will not be a trading day; and

(b) if there is a trading halt on Stapled Securities, or trading in Stapled Securities is suspended, for only part of a day, the Board will determine in their discretion, whether that day will be a trading day.

Unit has the meaning given to that term in the relevant Constitution.

VWAP means the daily volume weighted average market price for all Stapled Securities sold on the ASX automated trading system, excluding Stapled Securities which are sold otherwise than in the ordinary course of trading (which include but are not limited to transactions defined in the ASX Market Rules as special crossings, crossings prior to the commencement of the open session state, portfolio special crossings, equity combinations, crossings during overnight trading, overseas trades or trades pursuant to the exercise of options over Stapled Securities) and any other sales that the Responsible Entity determines should be excluded on the basis that they are not fairly reflective of genuine supply and demand.

A reference to a person includes a corporation and the singular includes the plural and vice versa.

Contact

Arena Investment Management Limited
ACN 077 235 879
AFSL No. 233190
71 Flinders Lane
Melbourne Victoria 3000

Any questions may be directed to:
Free call: 1800 008 494
Fax: 03 9093 9093

Postal address:
Locked Bag 32002
Collins Street East
Victoria 8003

www.arenainvest.com.au



Hall&Wilcox
Lawyers

Consolidated constitution

Arena REIT No.1

Note: This document is a working copy of the consolidated constitution for lodgement with the ASX. This is not a legally binding document. Reference should be made to the constitutions lodged with the Australian Securities and Investments Commission.

Level 30
Bourke Place
600 Bourke Street
Melbourne Vic 3000
DX 320

Telephone +61 3 9603 3555
Facsimile +61 3 9670 9632
www.hallandwilcox.com.au

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Terms

1 Definitions and interpretation

1.1 Definitions

The definitions are in Schedule 1 of this Constitution.

1.2 Interpretation

The interpretation provisions are in Schedule 2 of this Constitution.

1.3 Persons Bound

This Constitution applies to the Fund and binds the Entity, each Member, and any person claiming through any of them as if each of them had been a party to this Constitution.

1.4 Governing Law

This deed is governed by the law of New South Wales.

2 Corporations Act

2.1 Conditions included

- (a) Subject to clause 2.1(b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, that provision does not have any force or effect.
- (b) If the Corporations Act requires that this Constitution contain certain covenants or if ASIC makes a declaration or grants an exemption on condition that this Constitution contain covenants other than or inconsistent with those which are otherwise included in this Constitution, then for so long as that Corporations Act requirement remains current or that declaration or exemption remains current in respect of or applicable to the Fund those covenants are deemed to be incorporated in this Constitution and, to the extent of any inconsistency, prevail over those covenants otherwise included in this Constitution.

2.2 Covenant to comply with conditions

The Entity and each Member covenants to comply with any covenants deemed to be included in this Constitution under clause 2.1 relevant to them for so long as they are so included.

2.3 Clause 2 prevails

This clause 2 prevails over all other provisions of this Constitution to the extent of any inconsistency, including any provisions that are expressed to prevail over it.

3 The Fund

3.1 Name

The Fund formed under this Constitution is called the "Arena REIT No.1" or such other name as the Entity may from time to time determine.

3.2 Entity as trustee and responsible entity

Arena Investment Management Limited (ACN 077 235 879) is and agrees to act as trustee of the Fund. If the Fund is registered as a managed investment scheme under the Corporations Act, the Entity will be the responsible entity of the Fund.

3.3 Assets vest in Entity

The Entity must hold the Assets on trust for the Members. The Assets vest in the Entity, but, subject to the Entity's duties and obligations as trustee, must be kept as a separate fund.

3.4 Exclusion of other obligations

To the maximum extent permitted by law, all duties, obligations or liabilities which might otherwise be imposed by law or equity upon the Entity in any capacity are hereby excluded.

3.5 Appointment of a custodian

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

4 Duration of Fund

4.1 Initial settlement

The Fund commences when the Entity issues the first Units.

4.2 Termination Date

The Fund terminates on the earlier of:

- (a) a date selected by the Entity at any time at its discretion and notified to the Members as the date on which the Fund is to terminate
- (b) the day 80 years from the day the Fund commenced, or
- (c) the date on which the Fund is terminated under this Constitution or by law.

5 Interest of members

5.1 Units

The beneficial interest in the Fund is divided into Units. Each Unit confers an equal undivided interest. A Unit does not confer any interest in a particular Asset but only an interest in the Assets of the Fund as a whole, subject to the Liabilities of the Fund. Members

hold Units subject to the rights, restrictions and obligations attaching to those Units under this Constitution.

5.2 Fractions

Fractions of a Unit may be issued (unless the Entity determines otherwise) to such number of decimal places as the Entity decides. If the Entity determines that fractions are not to be issued, where any calculation performed under this Constitution would otherwise result in the issue of a fraction of one Unit, the number of Units to be issued is to be rounded to the nearest whole Unit. Any excess application or other moneys become an Asset of the Fund.

5.3 Consolidation and division

- (a) Units may be consolidated or divided as determined by the Entity.
- (b) While Stapling applies, Units may only be consolidated or divided if the Attached Securities Stapled to those Units are also consolidated or divided at the same time and to the same extent.

5.4 Restrictions

A Member must not:

- (a) interfere with any rights or powers of the Entity under this Constitution
- (b) 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, or
- (c) require an Asset to be transferred to the Member.

5.5 Waiver of certain rights by Members

Each Member waives any right it might otherwise have to lodge any caveat or other notice to protect or maintain in litigation or otherwise any proprietary, or other interest or claim in, or in relation to, the Assets (or any part of it).

5.6 Power to request Information

Each Member must provide to the Entity any information the entity reasonably requires relevant to the Member's holding of Units.

5.7 Classes

The Entity may create and issue Units of different classes with such rights, obligations and restrictions attaching to the Units of such classes as it determines in accordance with the Corporations Act and, if relevant, the Listing Rules.

6 Applications for units

6.1 Issue of units

- (a) The Entity may accept applications in a form or manner from time to time acceptable to it and which is in accordance with the Corporations Act and this Constitution.

- (b) While Stapling applies, the Entity may only accept an application if at the same time the Stapled Entity accepts a corresponding application from the same applicant for an identical number of Attached Securities.

6.2 Property contributions

If the Entity intends to accept Property, the Entity must obtain:

- (a) an effective transfer to the Entity or to the Entity's agent of title to the Property, confirmed in a manner approved by the Entity, and
- (b) a valuation acceptable to the Entity stating the market value of the Property

and the Entity may determine what costs, if any, incurred in valuing and transferring the Property must be deducted from the market value of the Property (as stated in the valuation) before the number of Units to be issued is calculated.

6.3 Uncleared funds

- (a) An issue of Units is void if:
 - (i) the application money is not in cleared funds or subsequently cleared within five Business Days of receipt (or such longer period determined by the Entity), or
 - (ii) the transfer of the Property is not effective or the Property is not transferred free of encumbrances.
- (b) Where an issue of Units is void by the operation of clause 6.3(a):
 - (i) the Units are deemed for all purposes not to have been created or issued, and
 - (ii) the Entity may cause the Register of Members to be rectified.
- (c) While Stapling applies, where an issue of Units is voided pursuant to clause 6.3(a), any Attached Securities issued with the Units must also be voided at the same time.

6.4 Entity may reject

- (a) The Entity may in its absolute discretion reject an application in whole or in part without giving any reason for doing so.
- (b) While Stapling applies, the Entity must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units.

6.5 Minimum application

The Entity may set a minimum application amount for the Fund, and alter that amount at any time.

6.6 Issue of Units

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

6.7 Nomination of holder

The Entity alone may nominate the person to be registered as the holder of a Unit, and the Entity may treat the registered holder as the absolute owner of it. The Entity's power of nomination ceases once a person has been registered as the holder of a Unit. Subject to clause 19, the Entity need not recognise any claim or interest in a Unit by another person, even if it has notice of it.

6.8 Number of Units

When determining the number of Units to be issued to a Member in relation to an application, the number of Units is that number calculated by the Entity by dividing the application money received by the application price of a Unit.

6.9 Capital Reallocation Issue

- (a) Despite any other provision of this Constitution, the Entity may at any time issue Units ("**Capital Reallocation Units**") in either of the following circumstances:
 - (i) a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for all the holders of Stapled Securities and compulsorily applies a distribution of capital paid out of the Stapled Entity towards the application moneys for those Capital Reallocation Units; or
 - (ii) a Stapled Entity makes an application for Capital Reallocation Units out of distribution of capital paid out of the Stapled Entity and the Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities.
- (b) The Entity must immediately consolidate the Capital Reallocation Units issued under clause 6.9(a) with all other Units then on issue in the Fund such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue prior to the issue of the Capital Reallocation Units taking place.
- (c) Capital Reallocation Units issued under this clause 6.9 will be issued at an application price equal to the amount calculated by dividing the total amount received in relation to the application by the number of Units then on issue in the Fund.

6.10 Stapled Securities

While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Attached Securities on the basis that Units are to be Stapled to Attached Securities.

7 Withdrawal from the Fund

7.1 No right to withdraw from Fund

- (a) While the Fund is admitted to the Official List, a Member has no right to withdraw from the Fund.
- (b) While the Fund is not admitted to the Official List, a Member has no right to withdraw from the Fund other than:
 - (i) until registration of the Fund as a managed investment scheme under the Corporations Act, as determined by the Entity in its absolute discretion; and
 - (ii) on and from such registration, in accordance with this clause 7 the terms of which have effect on and from such registration.

7.2 No obligation to make Withdrawal Offer when Fund is not liquid

Nothing in this Constitution imposes any obligation on the Entity to make a Withdrawal Offer at any time.

7.3 Withdrawal Offer

Subject to sections 601KB-KE of the Corporations Act, if a Withdrawal Offer is made by the Entity, then a Unit must only be redeemed at its redemption price determined in accordance with clause 8.2 at the time the Withdrawal Offer closes.

7.4 Cancellation of Withdrawal Offer

The Entity may, without notice to any of the Members, at any time before a Withdrawal Offer closes, decide to cancel the offer pursuant to section 601KE of the Corporations Act, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Entity will give written notice of the cancellation to the Members to whom the Withdrawal Offer was made.

7.5 When Fund is not Liquid

- (a) This clause 7.5 applies only while the Fund is not Liquid.
- (b) A Member may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Entity under the Corporations Act and this Constitution regulating offers of that kind.
- (c) If there is no Withdrawal Offer currently open for acceptance by Members, a Member has no right to withdraw from the Fund.
- (d) The Entity may make a Withdrawal Offer by:
 - (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet), or
 - (ii) giving a copy to the Members.

However, the Entity is not at any time obliged to make a Withdrawal Offer.

- (e) The Entity may cancel a Withdrawal Offer by:
 - (i) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet), or
 - (ii) notice in writing to the Members to whom the Withdrawal Offer was made.
- (f) If the Entity receives a Withdrawal Request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the Withdrawal Offer effective as at the time the offer is made.

7.6 Provisions applicable to all withdrawals

- (a) The Entity is not obliged to pay any part of the redemption price out of its own funds.
- (b) The Entity may at any time cause the redemption of any or all of a Member's Units.
- (c) A Member may not withdraw a Withdrawal Request unless the Entity agrees.
- (d) Unless the Entity decides otherwise, the first Units issued to a Member are the first redeemed.
- (e) If compliance with a Withdrawal Request would result in the Member holding fewer Units than the then current minimum application amount, the Entity may treat the Withdrawal Request as relating to the Member's entire holding of Units.
- (f) The Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer or Withdrawal Request any unpaid moneys due by the Member to the Entity.

7.7 On market buy back of Units

Subject to the Listing Rules, the Corporations Act and any applicable ASIC Relief, the Entity may effect a buy back of Units (including where Units are part of a Stapled Security) by purchasing the Units (or the Stapled Security, as the case may be) on market as if the Fund was a company, with any adaptations that the ASX or ASIC may consider appropriate.

7A Small Holdings

7A.1 Application of this clause

This clause 7A only applies while the Fund is admitted to the Official List.

7A.2 Powers of the Entity

- (a) Subject to the Corporations Act and provisions of this clause 7A, the Entity may in its discretion from time to time sell any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Entity may only sell Units under this clause 7A on one occasion in any 12 month period.

7A.3 Notification to Member

- (a) The Entity must notify the Member in writing of its intention to sell Units under this clause 7A.
- (b) The Entity will not sell the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under paragraph 7A.3(a) above; or
 - (ii) if, within the 6 weeks allowed by paragraph 7A.3(b)(i) above, the Member advises the Entity that the Member wishes to retain the Units.

7A.4 Effect of takeover

The Entity's power to sell Units under this clause 7A lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.

7A.5 Costs of sale

The Entity or the purchaser of the units will pay the costs of the sale.

8 Unit price and valuation

8.1 Application price

Subject to clauses 8.7 to 8.13 a Unit must only be issued:

- (a) in the case of the issue of the first Units, and in the case of the issue of Units pursuant to the first product disclosure statement (and any supplementary product disclosure statement) under the Corporations Act for the Fund and up to 1 January 2005, at the application price of \$1.00.
- (b) if the Fund is not registered as a managed investment scheme under the Corporations Act, in the case of all other issues of Units, at a price determined by the Entity in its absolute discretion, and
- (c) if the Fund is registered as a managed investment scheme under the Corporations Act and while the Fund is not admitted to the Official List, in the case of all other Units, at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

8.2 Redemption price

- (a) Subject to clause 8.2(d), if the Fund is registered as a managed investment scheme under the Corporations Act and the Fund has cash available to satisfy withdrawals, a Unit will be redeemed at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

- (b) If the Fund is registered as a managed investment scheme under the Corporations Act and Withdrawal Requests are funded by the proceeds from the sale of Assets of the Fund, a Unit will be redeemed at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

- (c) If the Fund is not so registered, a Unit may be redeemed at a price determined by the Entity in its absolute discretion.
- (d) In respect of the Withdrawal Offer that is to be made to Members (or persons entitled to become Members) that were unit holders in the Arena REIT No. 2 ARSN 101 067 878 (**REIT 2**) immediately prior to the Stapling of Units to units in REIT 2, the redemption price per Stapled Security is \$1.15.

8.3 Periodic price

The Entity shall ascertain the value of each Asset at regular intervals appropriate to the nature of the Asset and may cause an Asset to be revalued at any time using the valuation method described in clause 8.4. The Entity may determine Net Asset Value at any time in its absolute discretion, including more than once on each day. The Entity is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

8.4 Valuation methods

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

8.5 Rounding

The Entity may round the redemption price of a Unit calculated under clause 8.1(c) to such number of decimal places as determined by the Entity.

8.6 Options

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

8.7 Issue of Units at application price which is determined by Entity - rights issues of Units

While the Fund is a registered managed investment scheme and is not admitted to the Official List, the Entity may issue Units at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to offers made at substantially the same time to only and all the then Members if:

- (a) all the Units offered are in the same class;
- (b) the application price of all the Units offered is the same;
- (c) the amount by which the price is less than any amount that would otherwise apply under the Constitution does not exceed 50 percent; and
- (d) the amount of Units offered to each Member is proportionate to the value of that Member's Unit holding,

where, if the Entity reasonably considers that it would be in the best interests of Members to exclude certain members that are connected to a place outside Australia and New Zealand ("**Foreign Members**") and not unfair to those members, the Entity need not offer or issue the Units to the Foreign Members if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Foreign Members are promptly paid the net sale price.

8.8 Issue of Units at application price which is determined by Entity - Options

The Entity may issue Units on the exercise of Options at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to offers of Options made at substantially the same time to only and all the then Members if::

- (a) all the Options offered are in the same class;
- (b) the issue and the exercise price of all the Options offered is the same
- (c) the means of calculating the exercise price is set out in the terms of issue of the Option; and
- (d) the amount by which the exercise price is less than the amount that would otherwise apply under this Constitution, does not exceed 50 percent on the date of exercise of the Option,

where if the Entity reasonably considers that it would be in the best interests of members to exclude Foreign Members and not unfair to those members, the Entity need not offer or issue the Options to Foreign Members if the Options are sold, taking reasonable steps to maximise the sale price net of expenses of the sale and the Foreign Members are promptly paid the net sale price.

8.9 Issue of Units at application price which is determined by Entity - distribution reinvestment

While the Fund is a registered managed investment scheme and is not admitted to the Official List, the Entity may issue Units at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to a distribution reinvestment arrangement where:

- (a) the whole or part of a Member's distribution is applied in payment for the subscription for Units;

- (b) each Members may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distribution which is or would otherwise be, payable to that Member;
- (c) all the Units issued under the arrangement are of the same class;
- (d) the application price of each Unit issued pursuant to that arrangement at substantially the same time is the same; and
- (e) the application price of those Units is not less than 95% of the amount that would otherwise apply under this Constitution,

where, if the Entity reasonably considers that it would be in the best interests of Members to exclude Foreign Members and not unfair to those members, the Entity need not offer or issue the Units to the Foreign Members if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Foreign Members are promptly paid the net sale price.

8.10 Issue of Units at application price which is determined by Entity - issue of Units at an individually negotiated price

The Entity may issue Units at a price individually negotiated and agreed between the Entity and a person:

- (a) who is a wholesale client within the meaning of section 761G of the Corporations Act (“**Wholesale Client**”), being a price that differs from the application price determined in accordance with clause 8.1 only to the extent that the price is less than the application price determined under clause 8.1 to the extent of lower fees that are payable to the Entity in relation to the acquisition (each a “**Fee Arrangement**”) if:
- (b) the Entity ensures that if fees may be individually negotiated with certain Wholesale Clients, then a statement of that fact is disclosed to all Members by no later than the date of the first communication the Entity makes to all Members which is made after the date the Fee Arrangement is first offered; and
- (c) the Entity ensures that if fees may be individually negotiated with certain Wholesale Clients, a statement of that fact is disclosed in any disclosure document used for an offer of interests in the Fund; and
- (d) the Fee Arrangement does not adversely affect the fees that are paid or to be paid by any other member of the Fund who is not party to the Fee Arrangement.

8.11 Average Market Price: Fund admitted to the Official List

- (a) While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) at an application price that is no less than 50% of the Average Market Price of Units (or Stapled Securities if Stapling applies) immediately prior to the date on which or as at which the application price is calculated.
- (b) Where Units (or Stapled Securities if Stapling applies) are issued in accordance with clause 11.8 or 11.8A, and the Fund is admitted to the Official List, the application price is to be no less than 50% of the Average Market Price of Units (or Stapled

Securities if Stapling applies) as at the date on which the application price is calculated immediately prior to the date on which the Units are issued.

- (c) While the Fund is admitted to the Official List, if Units (or Stapled Securities if Stapling applies) are to be issued to the Entity (or any of its related bodies corporate as defined in the Corporations Act) in payment of fees of the Entity, the application price is to be equal to the Average Market Price of Units (or Stapled Securities if Stapling applies) on the day of issue (or if payment of fees is deferred, on the day payment of the fees would otherwise have been due).

8.12 Rights Issue: Fund admitted to the Official List

While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) at an application price determined by the Entity to those persons who were Members on a date determined by the Entity not being more than 30 days immediately prior to the date of the offer if:

- (a) the Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief; and
- (b) the application price is not less than 50% of the Average Market Price on the day preceding the date the issue was announced to the ASX.

Subject to the Corporations Act, the Listing Rules and any applicable ASIC Relief, the Entity is not required to offer Units under a rights issue to Members whose address as recorded in the Register is outside Australia or New Zealand.

8.13 Placements: Fund admitted to the Official List

While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) to any person, whether by way of a placement or otherwise, and at an application price and on terms determined by it, if the Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief and if the application price is not less than 50% of the Average Market Price on the day preceding the date the Entity (or its agents) offered the Units (or Stapled Securities if Stapling applies) to potential investors.

8.14 Prices while Stapling applies

While Stapling applies, in the case of an issue, redemption, sale, cancellation or buy back of a Stapled Security, the application, redemption, sale, cancellation or buy back price of a Stapled Security will be allocated between the Unit and the Attached Security on the basis of fair value as agreed between the Responsible Entity and the Stapled Entity or, failing agreement, determined by an independent accountant based upon fair market value as determined by the independent accountant having regard to the net asset backing of each Unit and the Attached Security immediately prior to the issue, sale, redemption, cancellation or buyback of the Stapled Security and any other factors which the accountant believes should be taken into account. However, where the Stapled Security is being issued pursuant to the exercise of an option and the terms of the option specify the issue price of the Unit, the issue price of the Unit and Attached Security must be determined in accordance with any relevant provisions of the terms of the option.

9 Entity's powers

9.1 Powers

- (a) Subject to this Constitution, the Entity has all the powers in respect of the Fund that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets acting in its personal capacity.
- (b) Without limiting clause 9.1(a), the Entity's powers include the power to do the following:
 - (i) Acquire and invest in any property (whether real or personal) or assets.
 - (ii) Dispose of or otherwise deal with assets.
 - (iii) Manage and administer the assets.
 - (iv) Borrow or raise money, grant security and incur all other types of obligations and liabilities.

9.2 Delegation

The Entity may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or obligation or exercise any discretion or power of the Entity including, without limitation, the power to sub-delegate. Subject to the terms of the delegate's appointment, the delegate may appoint a sub-delegate without reference to the Entity. The authorisation must be written. The Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be responsible entity for the Fund. The Entity remains liable for the acts and omissions of a delegate (and any sub-delegate). The Entity may include provisions to protect and assist those dealing with the delegate in the authorisation as the Entity thinks fit. Subject to any consent required by law, the delegate or any sub-delegate may be the Entity (acting in another capacity), or an associate of the Entity.

9.3 Indemnity

The Entity is entitled to be indemnified out of the Assets of the Fund for any liability incurred by the Entity in properly performing or exercising any of its powers or duties in relation to the Fund. This indemnity is in addition to any indemnity allowed by law.

9.4A Underwriting

- (a) Without limiting any other provision of this Constitution, the Entity may engage any person to underwrite the subscription of Units on such terms as the Entity determines.
- (b) Notwithstanding anything to the contrary in this Constitution and subject to the Corporations Act, any underwriting liabilities of the Entity are an expense of the Fund, provided the Entity has acted in good faith and without wilful default in relation to those underwriting liabilities.
- (c) Unless the agreement between the Entity and the underwriters (if any) expressly states otherwise, the underwriters will not be agents or delegates of the Entity.

9.4 Voluntary retirement

- (a) If the Fund is registered as a managed investment scheme under the Corporations Act, the Entity may retire as responsible entity of the Fund as permitted by the Corporations Act.
- (b) If the Fund is not so registered, the Entity may retire as trustee as determined by it in its absolute discretion.

9.5 Compulsory retirement

The Entity must retire as responsible entity of the Fund when required by the Corporations Act.

9.6 Release

- (a) When it retires or is removed, the Entity is released from all obligations in relation to the Fund arising from the time it retires or is removed except that the Entity must cause the Assets of the Fund to be vested in the new Entity and must deliver to the new Entity all books and records under its control relating to the Fund. The release does not affect its right of indemnity out of the Fund in respect of liabilities and expenses properly incurred before the retirement or removal. On retirement or removal as Entity the retiring Entity will be paid any amount due to it under this Constitution.
- (b) The new Entity will be taken to have agreed:
 - (i) to indemnify the former responsible entity for all its costs and expenses incurred (after the time of that alteration) in connection with discharging its obligations under section 601FR of the Corporations Act, and
 - (ii) if it is not an associate of the former Entity or it has not obtained the written consent of the former Entity, to promptly take whatever action is necessary to change the name of the Fund and remove any words, letters or expressions from this Constitution and any other documents which might express or imply an association with the former Entity or any of its associates and agrees not to use any such words, letters or expressions in connection with the Fund and this Constitution.

9.7 Covenant of proposed new Entity

If the Fund is registered under the Corporations Act as a managed investment scheme, any proposed new responsible entity of the Fund must execute a deed under which it covenants in favour of the current responsible entity of the Fund in the same terms as clauses 9.6(a) and 9.6(b) which covenants must be expressed to take effect on and from the time of alteration of ASIC's record of registration.

9.8 Agents and advisers

Subject to the Corporations Act, the Entity may engage any agent, adviser, valuer, broker, underwriter or other contractor to assist the Entity to transact any business or do any act required to be transacted or done in connection with the Fund. Subject to the Corporations Act, the Entity may engage any adviser to advise the Entity regarding any matter relevant to

the exercise of its powers or duties as Entity. In either case the Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be the responsible entity for the Fund. Subject to the Corporations Act, the Entity will not be responsible for the default of any such person if employed in good faith. This clause extends, without limitation, to dealing with Assets through a clearing, settlement, transfer or other similar system. The person engaged may be an associate of the Entity. This clause is subject to clause 9.2.

9.9 Name of Fund

If the Entity retires or is removed the retiring Entity may by notice to the new Entity require the name of the Fund to be changed to a name which does not include any part of the current or any former name or business name of the retiring Entity or which is not in the retiring Entity's opinion misleadingly or deceptively similar to those names or any abbreviation of them. The Entity may change the name of the Fund at any time.

10 Investment

The Entity has absolute discretion as to how Assets are invested or otherwise dealt with and as to how liabilities are incurred or otherwise dealt with. For example, the Entity may acquire and dispose of any legal or equitable estate or interest in real or personal property of any kind, enter into all types of contracts whether of a speculative nature or not and raise or borrow money in respect of the Fund. Investments may be made with or without security.

11 Income and distributions

11.1 Net income

The Entity must determine the Distributable Income of the Fund for each Distribution Period in accordance with generally accepted accounting principles and having regard to clause 11.6. The Entity is to decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

11.2 Entitlement

At the end of each Distribution Period the Members will be presently entitled (within the meaning of the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997) to all Distributable Income derived during the relevant Distribution Period in accordance with their Income Entitlement.

11.3 Deferral

If in the Entity's opinion it is not practical to distribute income received in a Distribution Period, it may be treated as having been received in the next Distribution Period.

11.4 Balances

Any balance representing a fraction of one cent arising as a consequence of any calculation of the Distributable Income for a Distribution Period shall be deemed to accrue in the next Distribution Period.

11.5 Separate accounts

The Entity may keep separate accounts of different categories or sources of income or both and may allocate income from a particular category or source or both to particular Members.

11.6 Minimum distribution

The Entity may transfer capital to Distributable Income to enable distribution to Members of the minimum amount necessary to avoid the Entity becoming assessable to pay tax in respect of any amount to which Members may not otherwise be presently entitled.

11.7 Other distributions

- (a) The Entity may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Entity. The distribution may be in cash, by way of bonus Units or by way of an in specie distribution of any of the Assets.
- (b) Each Member irrevocably appoints the Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect an in specie transfer of any of the Assets to the Member.

11.8 Reinvestment

- (a) If the Entity offers the right of reinvestment to Members, a Member may elect to reinvest any distribution by acquiring additional Units. In those cases, the Units are issued on the date the Entity pays the distribution to all other Members who have not elected to reinvest their distribution. The procedure for reinvestment of distributions is to be determined by the Entity and notified to Members from time to time.
- (b) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units, the Member subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units as a result of the reinvestment.

11.8A Entity may require reinvestment

The Entity may require that a Member's entitlement to Distributable Income of the Fund as is payable under this clause or any other provision of this Constitution (as appropriate) shall be reinvested by the Entity to acquire additional units in the Fund if:

- (a) the entitlement is less than an amount determined by the Entity and advised to Members, or
- (b) a Member fails to provide a direction to the Entity as to the manner in which the Member wishes his or her entitlement to be dealt with.

In those cases, the Entity is treated as having received an application (in the approved form if any) accompanied by a payment equal to the amount of the entitlement to Distributable Income on the date on which such distribution was made.

11.9 Nominated payment amount

If the Entity offers to Members the right to nominate distribution payment amounts, a Member may nominate and vary in such manner as the Entity approves an amount which the Member wishes to receive from the Fund at the end of a Distribution Period. The nominated amount shall be paid out of the Member's entitlement under clause 11.2 and, if that is not sufficient, the Entity may reduce the nominated amount to the amount equal to the amount of the Member's entitlement under clause 11.2. If the Member's entitlement under clause 11.2 exceeds the Member's nominated amount, the excess shall be reinvested in accordance with clause 11.8.

11.10 Payment

The Entity must prepare distribution cheques or arrange for distributions to be paid. Cheques not presented within 6 months may be cancelled and reinvested in additional Units in the name of the Holder at the application price prevailing at the time the cheque is cancelled.

11.11 Time

Payments must be made to Members out of the distribution account as soon as reasonably practicable after the applicable Calculation Date, but in any case within 60 days. Clause 12.10 and 12.13 apply to the payments.

11.12 Transfers

Income in the distribution account when a transfer or transmission of Units is registered remains credited to the transferor.

11.13 Distribution equalisation reserve

The Entity may withhold from distributions to persons entitled to receive them during any period an amount which the Entity considers is necessary to minimise variability in distributions over the relevant period.

12 Administration and reporting

12.1 Register

The Entity must establish a Register of Members and keep it up to date. The Register of Members is conclusive evidence of the matters recorded in it and may be relied upon as such by the Entity. The Entity is not required to register more than three persons as joint Members.

12.1A Joint tenancy

Persons registered jointly as joint members hold as joint tenants and not as tenants in common unless the Entity otherwise agrees.

12.2 Member is absolute owner

The Entity may treat a Member as the absolute owner of the Unit or Units which are registered in their name. Except as required by law, the Entity need not recognise any claim or interest in a Unit by another person, but if it decides to do so, the terms and conditions on

which it is prepared to do so will be determined by the Entity from time to time in its absolute discretion.

12.3 Inspection of Register

If a Member inspects or is given a copy of the Register of Members (or part of the Register of Members) pursuant to section 173(3) of the Corporations Act then they will be taken to have agreed not to use any information obtained from the Register of Members (or part) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars of the unit holding of that Member. A Member's obligation under this clause survives the transfer of all or any part of their Units.

12.4 Notify change or name or address of Member

A Member must notify the Entity of a change of name or address.

12.5 Certificates

No certificates will be issued for Units.

12.6 Transfers

- (a) Subject to this clause 12.6 and clause 12.7 a Unit, may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the Entity approves or requires.
- (b) A transferor of Units remains the Member in respect of the Units transferred until the transfer is registered by the Entity.
- (c) While the Fund is admitted to the Official List, no transfer is permitted except as permitted by the Listing Rules.
- (d) While Stapling applies, no transfer of a Unit may be made unless there is a corresponding transfer of an identical number of Attached Securities from the transferor of the Unit to the recipient of the transfer.

12.7 Refusal to register transfer

- (a) Subject to clauses 12.7(b) and 12.7(c), the Entity may refuse to register any transfer in its absolute discretion.
- (b) While the Fund is admitted to the Official List, the Entity may only refuse to record any transfer of Units in the Fund where the Listing Rules permit or require or where the transfer is in breach of the Listing Rules. While the Listing Rules apply, the Entity may also apply a holding lock (or request that a holding lock be applied) to the extent permitted by the Listing Rules.
- (c) While Stapling applies, the Entity must refuse to register a transfer of Units to a transferee until the registration of the transfer of the corresponding Attached Securities is effected.

12.8 Death, legal disability

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 legal personal representative (in any other case) will be recognised as having any claim to Units registered in the Member's name.

12.9 Discharge to Entity

A Member or person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Member may give good discharge for any money payable or property transferable in respect of Units.

12.10 Payments

Money payable by the Entity to a Member may be:

- (a) paid by crossed not negotiable cheque posted to the Member's registered address
- (b) deposited to an account with a financial institution nominated by the Member in writing, or
- (c) paid in any other manner determined by the Entity.

Only whole cents are to be paid. Any remaining fraction of a cent becomes an Asset of the Fund. Any Joint Member may give an effective receipt which will discharge the Entity in respect of the payment.

12.11 Deductions

- (a) The Entity may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which it either is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Entity considers should be deducted, including any amount of Tax which may be payable on or in respect of the issue of Units to, or redemption of Units from, that Member. Joint Members are jointly and severally liable in respect of all payments including payments of Tax, which ought to be made in respect of Units held jointly.
- (b) The Entity may also pay any such liability itself out of the Assets, and in accordance with this clause, deduct the amount so paid from any money payable to a Member under this Constitution or otherwise recover all amounts paid from a Member.
- (c) The Entity has a first and paramount lien over all of a Member's Units in respect of any monies payable to the Entity on any basis under this Constitution or the Corporations Act in respect of any of those Units. This lien extends to distributions from time to time declared in respect of any such Units. The registration by the Entity of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

12.12 Reports

The Entity must report to Members concerning the affairs of the Fund and their respective Unit holdings as required by the Corporations Act. The Entity may otherwise provide such reports to Members at such times as it determines. The form content and timing of any report

sent by the Entity to Members is (subject to the Corporations Act) at the discretion of the Entity.

12.13 Notices to Members

A notice or other communication required under this Constitution to be given to a Member must be given in writing (which includes a fax or an electronic communication). A notice, or other communication sent by post is taken to be received on the day after it is posted; a fax is taken to be received one hour after receipt by the transmitter of confirmation of transmission; and an electronic communication is taken to be received one hour after sending and proof of actual receipt is not required.

12.14 Notices to Joint Members

For Joint Members, applications, notices or other communications given to or by the holder named first in the Register of Members as provided in clause 12.13 will be taken to be validly given to or by all the Joint Members.

12.15 Notices to Entity

A notice required under this Constitution to be given to the Entity must be given in writing (which includes a fax and an electronic communication) and is to be signed by the person giving it or by a duly authorised officer.

12.16 Restricted Securities

- (a) While the Fund is admitted to the Official List and the Listing Rules or a restriction agreement requires, the Entity must refuse to acknowledge, deal with, accept or register any disposal (including any sale, assignment or transfer) of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any restriction agreement entered into by the Entity under the Listing Rules in relation to Restricted Securities.
- (b) During a breach of the Listing Rules relating to Restricted Securities or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any distribution or (subject to the Corporations Act) voting rights in respect of the Restricted Securities.

13 Meetings of Members

13.1 Corporations Act to apply

Except as provided for in clauses 13.2 to 13.9 inclusive, the provisions of Part 2G.4 of the Corporations Act apply to meetings of Members.

13.2 Date time and place

Subject to the Corporations Act, the Entity may determine the date, time and place at which each meeting of Members will be held.

13.3 Quorum

The quorum for a meeting is two Members present in person or by proxy provided that if the Fund has only one Member, that Member is a quorum.

13.4 No Quorum

If a quorum is not present within 30 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 such place and time as the Entity determines,

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

13.5 Adjournment

Subject to clause 13.4(b), the chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit.

13.6 Other attendees

The Entity may attend and speak at any meeting, or invite any other person to attend and speak.

13.7 Chair

The chair of the meeting of Members need not be a Member and does not have a casting vote in addition to the votes to which they may be entitled as a Member.

13.8 Resolutions binding

A Resolution binds all Members, whether or not they are present at the meeting.

13.9 Failure to receive notice of meeting

Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting is not invalid if either or both a person does not receive notice of the meeting or the Entity accidentally does not give notice of the meeting to the person.

13.10 Meetings while Stapling applies

While Stapling applies, the directors or other representatives of the Stapled Entity may attend and speak at any meeting of Members, or invite any other person to attend and speak.

14 Rights and liabilities of Entity

14.1 Holding Units

The Entity and the Entity's associates may hold Units or, if Stapling applies, Stapled Securities, in any capacity.

14.2 Other capacities

Nothing in this Constitution restricts the Entity, or its associates, from:

- (a) dealing with each other, the Fund or any Member
- (b) being interested in any contract or transaction with the other of them, the Fund or any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction, or
- (c) acting in the same or a similar capacity in relation to any other scheme

subject to the Entity acting at all times with good faith toward Members.

14.3 Entity and Associates not liable to account

The Entity and its associates may retain and are not liable to the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 14.2.

14.4 No liability for Entity

Subject to clause 14.5 and except to the extent the Corporations Act provides otherwise, the Entity is not liable to any Member for any loss or damage to the Assets (or any part of it) regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts or omissions:

- (a) The Entity obtaining or relying on (in accordance with clause 14.9) any of the opinions, advice, statements, documents or information referred to in clause 14.9.
- (b) The Entity performing or not performing its duties or exercising or not exercising any of its powers.
- (c) The Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Entity.
- (d) Any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Entity). This includes fraudulent or unauthorised acts or omissions.
- (e) The Entity making any payment to any fiscal authority on any basis even if the payment need not have been made.
- (f) The Entity doing or omitting to do any act which by reason of:
 - (i) any present or future law, or
 - (ii) any decree, order or judgment of any Court,the Entity is hindered, prevented or forbidden from doing or required to do.

14.5 Fraud, gross negligence or wilful default of the Entity

Clause 14.4 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Entity.

14.6 Liability limited to third parties

The Entity is not liable to any person who is not a Member and nor will that person be entitled to enforce any rights against the Entity to any greater extent than the Entity is entitled to recover through its right of indemnity from and is in fact indemnified from the Assets.

14.7 Entity action

The Entity is not required to do anything for which it does not (or for which it considers it does not) have full rights of indemnity and reimbursement out of the Assets, or which it cannot fully pay from the Assets.

14.8 No limitation on other statutory protection for the Entity

Nothing in this Constitution limits, prejudices or otherwise affects the operation of the provisions of any statute under which the Entity may obtain relief from a breach of trust or other duty in respect of the Fund.

14.9 Entity may rely on advice

The Entity may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Entity in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally as to the administration of the Fund or any other matter in connection with the Fund
- (b) the advice, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Entity who are in each case believed by the Entity in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Entity
- (c) a document which the Entity or an agent of the Entity believes in good faith to be the original or copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Fund, and
- (d) any other document provided to the Entity or an agent of the Entity in connection with the Fund upon which it is reasonable for the Entity or its agent to rely

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

14.10 Entity may rely upon signatures and documents

The Entity may rely upon:

- (a) the validity of any signature on any transfer form or application or other instruments submitted to it by any other person, and

- (b) the authenticity of documents or other instruments.

The Entity will not be liable for any loss incurred by any person in the event the signature, documents or other instruments are not authentic unless the Entity has reasonable grounds to believe that the signature, documents or other instruments are not genuine.

14.11 Exercise of discretion

- (a) The Entity may decide how and when to exercise its powers in its absolute discretion.
- (b) While Stapling applies, the Entity may in exercising any power or discretion have regard to the interests of the Members in their capacity as Members and the interests of Members as members of the Stapled Entity. This is the case notwithstanding any other provision of this Constitution, or any rule of law or equity to the contrary, other than any applicable provision of the Corporations Act.

14.12 Liability for cheques etc

Subject to the Cheques Act 1986 (Commonwealth), Members indemnify and release the Entity and any relevant bank against and from all actions, claims and demands in respect of any losses or liabilities arising upon the issue of a cheque or other payment to a Member, whether such loss or liability arises from the exercise by the Entity of any of the discretions under this Constitution, including the issue of a cheque or other form of payment to a person other than the Member at the request of the Member.

14.13 Taxation Liability

Each Relevant Person indemnifies the Entity (on its own account and on account of the Fund) for any Taxation Amount of that Relevant Person which is:

- (a) paid out of the Fund (either directly or by way of reimbursement to the Entity), or
- (b) paid by the Entity on its own account and not reimbursed out of the Fund.

15 Liability of Members

15.1 Liability limited

Subject to the provisions of this Constitution and any separate agreement or acknowledgment by a Member, the liability of a Member is limited to the application price paid or agreed to be paid for a Unit and a Member need not indemnify the Entity if there is a deficiency in the Net Assets of the Fund or meet the claim of any creditor of the Entity in respect of the Fund.

15.2 Recourse

Subject to the provisions of this Constitution, the recourse of the Entity and any creditor is limited to the Assets.

15.3 Agency relationship

Any relationship of agency between the Entity in that capacity and any Member is expressly excluded.

16 Remuneration and expenses

16.1 Asset acquisition fee

- (a) The Entity is entitled to an acquisition fee of up to one percent of the value of any real property acquired by the Fund. This fee is payable upon completion of the acquisition of that Asset and payable out of the Fund.
- (b) The acquisition fee is also payable on the merger, stapling or amalgamation of the Fund with another managed investment scheme. The fee is payable as if the real property assets of the other managed investment scheme were acquired for an amount equal to the value of the real properties as at the date of the merger, stapling or amalgamation as determined by an approved valuer appointed by the Entity. If the merger, stapling or amalgamation occurs when the Stapling Provisions apply, the aggregate acquisition fee paid to the Entity and the Stapled Entity (if any) must not exceed one per cent of the value of the real properties of the other managed investment scheme at the date of merger, stapling or amalgamation.

16.2 Asset disposal fee

- (a) The Entity is entitled to an asset disposal fee of up to one percent of the gross sale price of any real property provided the gross sale price of the real property exceeds the price paid by the Fund for that real property. This fee is payable upon the completion of the disposal of that Asset and is payable out of the Fund.
- (b) If upon the sale of any real property, the gross sale price exceeds the purchase price of that real property by more than 20 percent, then the fee payable under clause 16.2(a) above is increased from one percent to two percent of the gross sale price achieved in respect of that real property.
- (c) The Entity is also entitled to the asset disposal fees in clauses clause 16.2(a) and 16.2(b) in the event the Fund is merged or amalgamated with another managed investment scheme. The fees are payable as if the real property Assets of the Fund were sold for an amount equal to the value of the real properties at the date of the merger or amalgamation, determined by an approved valuer appointed by the Entity.

16.3 Ongoing management fee

The Entity is entitled to an ongoing management fee of up to:

- (a) 0.8 percent per annum of the gross value of the Assets up to \$400 million;
- (b) 0.7 percent per annum of the gross value of the Assets greater than \$400 million and up to \$950 million; and
- (c) 0.6 percent per annum of the gross value of the Assets greater than \$950 million.

This fee accrues daily and is calculated and paid monthly in arrears out of the Fund.

16.4 Waiver of fees

The Entity may waive the whole or part of any fee to which it is entitled under this Constitution and may defer payment for any period. Where payment is deferred (as opposed to waived), the fee still accrues daily until paid.

16.5 Expenses

Subject to the Corporations Act, all costs, fees expenses and other amounts reasonably and properly incurred by the Entity in connection with the Fund or in the proper performance of its duties and exercise of its powers in relation to the operation, administration and management of the Fund or otherwise in connection with the Fund are payable or reimbursable out of the Assets. This includes, without limitation, costs, fees, expenses and other amounts connected with:

- (a) this Constitution, any supplemental deed and the formation of the Fund
- (b) preparation, review, distribution and promotion of any disclosure document in respect of Units
- (c) the sale, purchase, insurance, custody and any other dealing with Assets (or any proposal to do any of those things)
- (d) any proposed investment
- (e) the administration, management or promotion of the Fund or its Assets and Liabilities including without limitation complying with any law and any of the requirements of ASIC
- (f) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members
- (g) Tax (other than Tax on income received beneficially by the Entity as against the Fund) and bank fees
- (h) the engagement of delegates, agents, valuers, advisers, investment managers, brokers, solicitors, barristers, underwriters and contractors (including legal costs on a full indemnity basis)
- (i) preparation and audit of the taxation returns and accounts of the Fund
- (j) termination of the Fund and/or the retirement or removal of the Entity and the appointment of a new trustee or responsible entity
- (k) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Entity (except to the extent that the person incurring the expenses is found by a court to be in breach of trust, in default or to have been negligent in which case any expenses reimbursed under this clause 16.5(k) must be repaid)
- (l) fees paid to any ratings organisation
- (m) establishing and maintaining a Register of Members and/or Mortgagees

- (n) the preparation, printing and postage of distribution statements
- (o) Liabilities, including interest, discount and acceptance fees and all other borrowing costs and like amounts
- (p) swaps, forward rate agreements, currency exchange agreements, securities lending agreements or any derivative transactions entered into by or on behalf of the Entity as trustee
- (q) the operation and development of computer facilities (both software and hardware) and the use of computerised or electronic communication or information networks (including, without limitation, the Internet) in relation to the Fund or its administration or management
- (r) complying with the requirements of any law in relation to the Fund or its administration or management
- (s) communications (printed, electronic or otherwise) with Members
- (t) the fees of the Auditor and of the Compliance Plan Auditor
- (u) the establishment and operation of the Compliance Committee (including the selection and appointment of CC Members). Without limitation this includes the fees paid to and any costs and expenses (including insurance premiums) of any member of a Compliance Committee
- (v) the cost of any legal, accounting or other professional advice commissioned by the Compliance Committee
- (w) the establishment and administration of the complaints handling procedures referred to in clause 20, and
- (x) the listing of the Fund on Australian Stock Exchange Limited.

For the avoidance of doubt, nothing in clause 16.5 limits the generality of anything else in clause 16.5.

Clause 16.5 applies to costs, fees, expenses and other amounts whether or not they are payable to the Entity (acting in another capacity) or an associate of the Entity.

The Entity may waive from time to time its right to reimbursement in whole or part under this clause.

16.6 Deferral

The Entity may defer reimbursement of any or all expenses under clause 16.5 for any period.

16.7 GST

Fees payable to the Entity under this Constitution do not include any amount referable to GST. If the Entity becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including, without limitation, the supply of goods, services, rights, benefits or things) then, in addition to any fee or other amount or consideration payable to the Entity in respect of the supply, the Entity is entitled to be paid an

additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply that is a taxable supply for GST purposes by the prevailing rate of GST, and the Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

16.8 Units as payment for fees

Subject to the Corporations Act and the Listing Rules, the Entity may elect that it is to be issued Units (or Stapled Securities if Stapling applies) instead of cash in payment of its fees or reimbursement of its expenses under this Constitution to be issued at the Average Market Price as at the date of issue of the Units (or Stapled Securities if Stapling applies).

17 Termination

17.1 Events which cause a winding up

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

- (a) The Fund comes to the end of its term as set out in this Constitution.
- (b) The Fund is without a responsible entity.
- (c) If the Fund's purpose has been accomplished or cannot be accomplished and the Entity uses the mechanism provided for in Section 601NC.
- (d) A court orders the Fund be wound up pursuant to Section 601ND.
- (e) Any of the circumstances set out in Section 601NE apply such that the Entity is required to wind up the Fund.

17.2 Process of winding up

- (a) Unless otherwise required by law, the Entity is responsible for the winding up of the Fund.
- (b) The Entity must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Members according to the beneficial interest of each Member in the Fund. The Entity may make interim distributions (i.e. income or capital) during the winding up process as it sees fit.
- (c) The Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Members to do so, then the Entity may postpone any part of the winding up for such time as it thinks desirable.

17.3 Post termination

The Entity's rights and obligations under this Constitution will continue to apply to the Fund during the period from the date of the Fund's termination until the final distribution in respect of the Fund is completed, except as provided in this clause 17.

17.4 Entity may withhold proceeds of realisation

The Entity may retain money from the proceeds of realisation of the Assets –

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

17.5 Auditor's certificate

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

18 Amendments to Constitution

Subject to the Corporations Act, the Entity may modify, repeal or replace this Constitution by a supplemental deed made by the Entity.

19 Securities and other interests in Units

19.1 Entry of Mortgagee on Register

At the written request of a Member in a form approved by the Entity from time to time, the Entity may enter the name of a Mortgagee in the Register of Members as mortgagee or chargee of those Units held by the Member and referred to in that request. The Entity may in its absolute discretion require that such request is accompanied by the written consent of the Mortgagee to the making of such entry. Any such request, and any such entry in the Register of Members, shall not give the Entity notice of or oblige it to inquire into the terms of the relevant mortgage or charge.

19.2 Acknowledgments and agreements

The Entity may as condition of exercising its power under clause 19.1 require such acknowledgments and agreements from the Mortgagee as the Entity in its absolute discretion considers appropriate to protect the Entity's rights under clause 7, clause 17 and this clause 19.

19.3 Removal of Mortgagee from Register

At the written request of a Mortgagee in a form approved by the Entity from time to time, the Entity will remove from the Register of Members all reference to the Mortgagee of the Units referred to in that request.

19.4 Mortgagee of Units being transferred

Notwithstanding any other provision of this Constitution, if there is a Mortgagee of Units in respect of which an instrument of transfer or withdrawal notice is given to the Entity, the Entity must decline to recognise the instrument of transfer or withdrawal notice unless a request pursuant to clause 19.3 in respect of those Units is given to the Entity simultaneously with the instrument of transfer or withdrawal notice.

19.5 Rights attaching to Mortgaged Units

Subject to clause 19.6, but notwithstanding any other provisions of this Constitution, where a Mortgagee is duly entered on the Register of Members, that Mortgagee shall, in relation to the Units in respect of which it has been entered, and to the exclusion of the Member, be entitled to all or any of the rights and powers conferred on the relevant Member by this Constitution, including without limitation:

- (a) to receive any or all distributions, whether on winding up or otherwise and whether of capital or of income (including in each case without limitation by the issue of Units), which would, in the absence of such entry, have been made or paid to the relevant Member
- (b) to make any request or application in relation to the relevant Units and to receive any notice, or other document or correspondence which would ordinarily be made or received by such Member, and
- (c) to receive notice of any meeting of Members convened by the Entity and to attend and vote at any such meeting in place of the relevant Member.

Under no circumstances shall the Entity be taken to be bound by, have notice of or be bound to enquire into the terms of any mortgage of or charge over Units.

19.6 Priority for Entity

Any interest in, rights against or security granted over:

- (a) the Units of a Member, or
- (b) any distribution or any proceeds of redemption in connection with those Units

held by the Member or a third party is subject to and ranks in priority after any right of the Entity to be paid amounts due to the Entity out of distributions or redemption proceeds payable to the Member.

19.7 Stapling

While Stapling applies, a mortgage of Units must be accompanied by a mortgage of Attached Securities.

20 Complaints

If the Fund is registered as a managed investment scheme under the Corporations Act, Complaints made by Members in relation to the Fund must be dealt with by the Entity in accordance with the provisions of this clause.

- (a) The Entity must seek to resolve each Complaint promptly and in a fair and equitable manner. In resolving each Complaint, the Entity must follow the procedure set out in this clause and must do so without charge to the Member who made the Complaint.
- (b) The Entity must record each Complaint in the register to be kept by the Entity for that purpose. Each Complaint made orally must be summarised by the person, being a representative or employee of the Entity, who receives the Complaint and that

summary must be kept in the records of the Fund for seven years. Each Complaint made in writing must be kept in the records of the Fund for seven years.

- (c) The Entity must promptly acknowledge, orally or in writing, receipt of each Complaint (Acknowledgment) unless the Entity has made its First Response (defined in sub-clause (e)) to the Complaint within 48 hours from receipt of the Complaint.
- (d) The Entity must consider each Complaint and, if necessary to resolve the Complaint, investigate the events or circumstances which led to the Complaint.
- (e) The Entity must respond, orally or in writing, to each Complaint, with a view to resolving the Complaint (First Response), within 45 days from receipt by it of the Complaint. The First Response must include the Entity's reasons for its response. If the Entity has not completed its consideration of and/or investigation into a Complaint within the time necessary to enable it to comply with this sub-clause:
 - (i) the Entity must within 45 days from receipt by it of the Complaint so inform the Member who made the Complaint (Interim Response), advise the Member of the reasons for the delay, undertake to complete its consideration of and/or investigation into the Complaint within a further 45 days and to then respond, in writing, to the Complaint, and
 - (ii) the Entity must respond to the Complaint, with a view to resolving the Complaint, within the period referred to in sub-clause (i) (Final Response). The Final Response must include the Entity's reasons for its response.
- (f) In its First Response, or if sub-clauses (e)(i) or (e)(ii) apply in its Interim Response and in its Final Response, the Entity must inform the Member who made the Complaint of the availability of external complaints handling mechanisms (if any).
- (g) Every decision of the Entity on Complaints and every Acknowledgment, First Response, Interim Response and Final Response must be recorded, in writing, in the records of the Fund and must be kept there for seven years.
- (h) All written communications by the Entity relating to a Complaint must be addressed to the Member who made the Complaint at the address given by such Member or, if no address is so given, at the address of the Member recorded in the Register of Members.

While Stapling applies, the Entity may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause to ensure an efficient and equitable resolution of the complaint.

21 Compliance committee members

21.1 Indemnification and insurance of Compliance Committee Members

- (a) To the extent permitted by law, the Entity may indemnify, or agree to indemnify, from the Assets, a person who is, or has been, a CC Member, to another person (other than the Entity or a relate body corporate of the Entity) provided that the liability does not arise out of conduct involving a lack of good faith.

- (b) To the extent permitted by law, the Entity may indemnify, or agree to indemnify, from the Assets, a person who is, or has been, a CC Member against a liability for costs and expenses incurred by that person:
 - (i) in defending any proceedings in which judgment is given in that person's favour, or in which that person is acquitted, or
 - (ii) in connection with an application in relation to such proceedings in which the Court grants relief to that person under the Corporations Act.
- (c) To the extent permitted by law, the Entity may pay, or agree to pay, from the Assets a premium in respect of a contract insuring a person who is, or has been, a CC Member against a liability:
 - (i) incurred by that person:
 - (A) in his or her capacity as a CC Member
 - (B) in the course of acting in connection with the Compliance Committee, or
 - (C) otherwise arising out of the person holding office as a CC Member,

provided that the liability does not arise out of conduct involving a wilful breach of duty referred to in section 601JD of the Corporations Act, or
 - (ii) for costs and expenses incurred by that person in defending proceedings, whatever the outcome.

22 Severability

- (a) Any provision of, or the application of any provision of this Constitution which is or becomes void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions.
- (b) Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Deed which remain in full force and effect."

23 Listing

If the Fund is admitted to the Official List of ASX, the following clauses apply:

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).

- (d) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

24 Stapling

24.1 Power to Staple Securities

The Entity may, subject to the Corporations Act and, if the Units are admitted to the Official List, subject to the Listing Rules, cause the Stapling of any Security to a Unit and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case there is an equal number of Attached Securities of every kind Stapled to each Unit.

24.2 Effect of Stapling

- (a) The provisions of this Constitution relating to Stapling including but not limited to this clause 24, (**Stapling Provisions**) take effect on and from the Stapling Date and apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.
- (b) While Stapling does not apply, a provision of this Constitution that relates to or is connected with Stapling will continue to apply to the extent that the provision does not relate to Stapling.
- (c) Subject to the other clauses of this Constitution, the Stapling Provisions prevail over all the other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.
- (d) The Entity must use every reasonable endeavour to procure that if the Stapled Securities are listed on the ASX as one Security, that the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to Stapling of the Attached Securities in the constitutions of the Stapled Entities.
- (e) The Units are intended to be Stapled to the Attached Securities in the ratio of one Unit to one Attached Security as from the Stapling Date, so that, to the extent the law permits, a Unit and an Attached Security which are Stapled will be treated as one Security.
- (f) The Entity must ensure that any future issue of Units that are to be Stapled will be Stapled in such a way that all of the relevant Securities become Attached Securities and are dealt with as one Security.

24.3 Cessation of Stapling

- (a) Each issued Unit will remain Stapled for so long as the Stapling Provisions apply.
- (b) The Stapling Provisions will cease to apply or be suspended, regardless of any other provision of this Constitution:
 - (i) if Stapled Security Holders pass a special resolution providing that the Stapling Provisions will cease to apply or be suspended;
 - (ii) if an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity or its property (as the case may be) and the Entity resolves that the Stapling Provisions will cease to apply or be suspended (as the case may be);
 - (iii) in the circumstances set out in the stapling deed or other agreement between the Entity and the Stapled Entity which provide for the Units to cease to be Stapled; and
 - (iv) on the payment of the final distribution on a winding up of the Fund.
- (c) On and from the Unstapling Date, each Unit ceases to be Stapled to an Attached Security and the Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (d) If the Entity determines to Unstaple the Stapled Securities pursuant to this clause 24, this does not prevent the Entity from:
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to an Attached Security which is not Stapled.

24.4 Distributions in specie

- (a) For the purposes of Stapling, the Entity may make an in specie distribution of Securities to all Members.
- (b) The Entity must effect the distribution to all Members in the same way and the Securities transferred to each Member must be of the same type, having the same rights and be fully paid.
- (c) Where Securities are to be transferred to Members, each Member authorises the Entity to act as the Member's agent:
 - (i) to agree to obtain the Securities; and
 - (ii) to become a holder of the Securities of the relevant Stapled Entity.

24.5 Units to be Stapled

- (a) The Entity may at any time Staple an Unstapled Unit to an Attached Security which is not Stapled.

- (b) On and from the Stapling Date and prior to the Unstapling Date, the 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 Stapled as a Stapled Security.
- (c) While Stapling applies, the Entity must use every endeavour to procure that the Stapled Securities are listed on the ASX as one joint security and that Units are dealt with under this Constitution in a manner consistent with the provisions of the Stapled Entity's constitution as regards Attached Securities Stapled with those Units.

24.6 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 other requirements set out in this Constitution, the transfer is accompanied by a transfer of the Attached Security to which the Unit is Stapled in favour of the same transferee;
 - (ii) a transfer of a Unit which is not accompanied by a transfer of the Attached Security will be taken to authorise the Entity as agent for the transferor to effect a transfer of the Attached Security to which the Unit is Stapled 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 Entity as trustee of the Fund) which is not accompanied by a transfer of the Unit will be taken to authorise the Entity as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Member irrevocably appoints the 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 Entity the transfer to the Entity (as trustee of the Fund) or to a person nominated by the Entity of any Attached Security which was Stapled to a forfeited Unit which has been cancelled or sold.

24.7 Stapled Security Register

The Entity must cause to be kept and maintained a Stapled Security Register which:

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

24.8 Variation of Stapling provisions

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

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

25 Restructure proposals

25.1 Power to enter into proposal

- (a) The Entity may enter into any scheme of arrangement, merger arrangement or similar proposal in relation to the Fund whether involving Units or the property of the Fund (**Proposal**). A Proposal may only be implemented with the approval of a Resolution.
- (b) If the Proposal involves Stapling and the Members have approved the Proposal by a Resolution the Members will be taken to have consented to each provision in the Constituent Documents.

25.2 General

If a Proposal has been approved by a Resolution then from the date of such approval:

- (a) the Proposal binds the Entity and all present and future Members notwithstanding that particular Members may not have approved the Proposal;
- (b) the Entity and so far as is relevant the Members must give effect to the Proposal in accordance with its terms;
- (c) the Entity will have power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and those powers apply notwithstanding any other provisions of this Constitution;
- (d) the terms of the Proposal prevail to the extent necessary in the event of any inconsistency with the other terms of this Constitution other than this clause 25.2;
- (e) subject to the Corporations Act, the Entity shall not have any liability of any nature whatsoever to Members beyond the Assets of the Fund out of which the Entity is actually indemnified arising directly or indirectly from the Entity doing or refraining from any act pursuant to or in connection with the Proposal; and
- (f) the Entity may amend the terms of the Proposal if such amendment is not inconsistent with the approval given by Members or such amendment does not adversely affect the rights of the Members and this clause 25.2 shall apply to the Proposal as amended.

25.3 Terms of Proposal

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

- (a) be subject to conditions;
- (b) involve the redemption, cancellation or transfer of Units;

- (c) provide for the Entity to execute any documents including any application for Securities as agent on behalf of all or any Members;
- (d) authorise the Entity as agent on behalf of all or any Members to pay the subscription money for new Securities from the Assets of the Fund;
- (e) allow the Entity to arrange the allotment and/or issue of further Units;
- (f) amend the time and procedures for the redemption, cancellation, transfer or issue of Units;
- (g) allow the Entity to suspend the registration of transfers of Units;
- (h) provide for borrowings, the raising of money or the incurring of liabilities by the Entity; or
- (i) provide for suspension of reinvestment of income entitlements.

25.4 Designated Foreign Investors

- (a) Without limiting the foregoing provisions of this clause 25, to enable the Entity to give effect to the Stapling of Attached Securities to the Units, the provisions of this clause 25.4 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Entity may determine that a Foreign Investor is a Designated Foreign Investor where the Entity reasonably considers that it would be unreasonable to issue or transfer an Attached Security to a Foreign Investor, having regard to each of the following:
 - (i) the number of Foreign Investors in the foreign place;
 - (ii) the number and the value of Attached Securities that may be issued or transferred to Foreign Investors in the foreign place; and
 - (iii) the cost of determining, and complying with, the legal requirements and the requirements of any relevant regulatory authority applicable to the issue or transfer of the Attached Securities in the foreign place.
- (c) Each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
 - (i) the Entity to pay any distributions, withdrawal proceeds or other payments in respect of its Unit or Stapled Security, which are to be used to obtain an Attached Security (**Amounts**), to a sale nominee (**Sale Nominee**);
 - (ii) the Sale Nominee to apply the Amount to obtain an Attached Security;
 - (iii) subject to clause 25.4(d), the Sale Nominee to then sell any Stapled Security to which the Attached Security is Stapled;
 - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.

- (d) If an Attached Security is to be Stapled to a Unit or Stapled Security, the Designated Foreign Investor agrees to transfer each existing Unit or Stapled Security they hold free of any encumbrance to the Sale Nominee on or prior to the record date for that stapling (**Sale Record Date**) so that the Sale Nominee:
 - (i) is entered in the Register in respect of that Unit or Stapled Security as at the Sale Record Date; and
 - (ii) will receive the Attached Security pursuant to the Stapling of the Attached Security; and
 - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) The Entity:
 - (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
 - (ii) may take all steps to ensure that the Unit or Stapled Security held by the Designated Foreign Investor and to which an Attached Security is to be Stapled is transferred to the Sale Nominee prior to the Sale Record Date;
 - (iii) need not receive a transfer, instrument or certificate (if any) for existing Units or Stapled Securities in order for the Entity to register the transfer of the existing Units or Stapled Securities to the Sale Nominee. Such transfer shall be evidenced by, and shall have full effect from, its registration by the Entity in the Register of Members.
- (f) The amount received for a Unit upon sale of a Stapled Security under clause 25.4(e)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Attached Securities as determined by the Entity.

25.5 Modification or variation of Proposal

Where modifications or variations to the terms of this Constitution are not expressly provided for in the terms of the Proposal but are necessary for or consequential to the implementation of the Proposal, those modifications or variations are deemed to have been made to this Constitution. The Members:

- (a) authorise the Entity to make these amendments in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (b) agree that, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 25.5.

25.6 Entity's authorisation

- (a) Each Member irrevocably authorises and empowers the Entity or any officer of the Entity to, and the Entity is irrevocably appointed as the agent and attorney of each Member to, execute all transfer forms or withdrawal applications and other documents, and to do all things as the Entity may consider necessary or desirable for,

or reasonably incidental to, the implementation of the provisions of any Proposal approved (if required) under this clause 25 and to receive on the Member's behalf any moneys payable to that Member. Each Member undertakes to ratify anything lawfully done by the Entity in accordance with this clause 25.6(a).

- (b) Without limiting clause 25.6(a) or any provision of a relevant Constituent Document, to effect the Stapling of an Attached Security, each Member irrevocably appoints the Entity as the Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) agree to obtain any Attached Security;
 - (ii) apply any distributions, withdrawal proceeds or other payments to obtain an Attached Security;
 - (iii) where an Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
 - (iv) do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Entity, in consultation with each other issuer of Stapled Securities, considers necessary, desirable or reasonably incidental to effect the acquisition of the Attached Security by the Member.
- (c) Without limiting clause 25.6(a) or any provision of a relevant Constituent Document, to effect the disposal of Units or Stapled Securities held by or on behalf of a Designated Foreign Member, each Designated Foreign Member irrevocably appoints the Entity as that Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) receive and apply the Amounts referred to in clause 25.4(c)(i) in the manner contemplated in clause 25.4;
 - (ii) execute applications or transfers in relation to the transfer of any Units or Stapled Securities;
 - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
 - (iv) do all acts and things and execute any other documents which the Entity, in consultation with each other issuer of Attached Securities, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Member.

Schedule 1 - Dictionary

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

Accounting Standards	Has the meaning given to that term in Section 9 of the Corporations Act.
Accrued Income	For a Distribution Period means, the amount the Entity calculates as the net income for the Fund from the beginning of the current Distribution Period to the day on which the calculation is made.
ASIC	The Australian Securities and Investments Commission and includes any body which replaces the Australian Securities and Investments Commission.
ASIC Relief	A declaration or exemption from the provisions of the Corporations Act granted by ASIC.
Assets	All the property, rights and income of the Fund but excludes application money or property paid in respect of which Units have not been issued, proceeds from redemption which have not yet been paid, and Distributable Income awaiting payment to Members.
ASX	Australian Securities Exchange Limited.
Attached Security	A Security which is from time to time Stapled or to be Stapled to a Unit.
Auditor	The auditor for the time being of the Fund.
Average Market Price	<p>(a) the average weighted market price of Units (or Stapled Securities if Stapling applies) sold on the ASX in the ordinary course of business during the period of 5, 10, 15 or 20 (as determined by the Entity) consecutive trading days ending on the relevant date (Trading Days); or</p> <p>(b) if the Entity believes that the calculation of Average Market Price does not provide a fair reflection of the market price of a Unit (or a Stapled Security if Stapling applies) on that day, the average market price will be the price determined by a Qualified Valuer.</p>
Business Day	Is a day on which the Entity is open for business in

Sydney.

Calculation Date	The last day of each Financial Year and any other day the Entity determines.
CC Member	A member of the Compliance Committee.
Complaint	An expression of dissatisfaction, whether oral or written, by a Member in relation to the Fund, communicated to the Entity.
Compliance Committee	The committee (if any) established by the Entity pursuant to section 601JA(1) of the Corporations Act.
Constituent Documents	The constituent documents of a Stapled Entity.
Constitution	The provisions of this Deed Poll as amended from time to time.
Corporations Act	The Corporations Act 2001 (Commonwealth).
Designated Foreign Investor	Foreign Investor in respect of whom the Entity has made a determination in accordance with clause 25.4.
Distributable Income	Means any amount determined by the Entity from time to time to be distributed to Members, including – <ul style="list-style-type: none">(a) the net income of the Fund(b) other income of the Fund, and(c) any amount of capital of the Fund.
Distribution Period	Means: <ul style="list-style-type: none">(a) for the first Distribution Period, the period from the commencement of the Fund to any date determined by the Entity(b) for the last Distribution Period, the period beginning the day after the preceding Calculation Date to the date of termination of the Fund, and(c) in all other circumstances, the period beginning on the day after the preceding Calculation Date to the next occurring Calculation Date.
Entity	Means: <ul style="list-style-type: none">(a) (where the Fund is registered as a managed investment scheme under the Corporations Act), any person appointed in accordance with the Corporations Act as responsible entity or

	temporary responsible entity for the Fund, and
	(b) (where the Fund is not registered as a managed investment scheme under the Corporations Act), any person appointed by the Members as trustee of the Fund.
Expenses	Includes expenses, costs, charges, fees, commissions, taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.
Financial Year	Has the meaning given in the Corporations Act.
Foreign Investor	A Member whose address on the Register of Members is in a place other than Australia or New Zealand, and such other jurisdictions (if any) as the Entity may determine.
Fund	The trust constituted under this Constitution.
GST	Has the meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
Income Entitlement	Subject to the terms of issue, in respect of a Unit means the amount “IE” calculated by the following formula: <div style="margin-left: 40px;"> $IE = \frac{DI}{UI}$ </div> <p>Where:</p> <p>DI = Distributable Income for the Distribution Period for which the calculation is being made.</p> <p>UI = The number of Units on issue on the last day of the Distribution Period for which the calculation is made.</p>
Liabilities	All present liabilities of the Fund, including liabilities accrued but not yet paid and any provision which the Entity decides should be taken into account in determining the liabilities of the Fund. To the extent the Accounting Standards require any amounts representing Members’ funds to be classified as a liability, then for the purpose of calculating Net Asset Value for this Fund, Members’ funds are not to be treated as a liability.
Liquid	Has the meaning given in section 601KA of the Corporations Act.

Listing Rules	The Listing Rules of ASX and any other rules of ASX which are applicable while the Fund is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
Member	A person who has an interest in the Fund.
Mortgagee	A mortgagee or chargee of Units entered in the Register of Members pursuant to clause 19 and any employee, officer or agent of the Mortgagee appointed by the Mortgagee.
Net Assets	The Assets less the Liabilities.
Net Asset Value	The value of the Net Assets.
NAV Price	In respect of a Unit, means a price calculated in accordance with clause 8.1(c) and in respect of an Attached Security a price calculated in accordance with the equivalent provision in the constitution of the Stapled Entity.
Official List	Has the same meaning as in the Listing Rules.
Option	Means an option to subscribe for a Unit.
Option Holder	Means a person registered as the holder of an Option (including persons jointly registered).
Property	Any legal or equitable estate or interest in real or personal property other than cheques or cash equivalents acceptable to the Entity.
Qualified Valuer	A person competent to make a required valuation, recommendation or report having regard to the particular type of Assets the subject of the valuation, recommendation or report and who is independent from the Entity and approved by the Entity (having first satisfied itself on reasonable grounds of the qualifications of such person).
Register of Members	A register of Members of the Fund kept by the Entity.
Relevant Person	A person who at any time is, was, or becomes a Member and that person's executors, administrators and successors.
Required Majority	Except where this Constitution or any applicable law provides otherwise, means a simple majority and where this Constitution or any applicable law provides otherwise means that majority specified in this

	Constitution or applicable law.
Resolution	<p>Means:</p> <ul style="list-style-type: none"> (a) a resolution passed at a meeting of Members: <ul style="list-style-type: none"> (i) if a poll is required by the Corporations Act or is duly demanded, by the Required Majority of the number of Units held by Members present and voting on the poll, in person or by proxy, or (ii) on a show of hands, by the Required Majority of Members present in person or by proxy, or (b) where the Corporations Act allows, a resolution or counterpart resolutions in writing signed by Members holding the Required Majority of the Units.
Restricted Securities	Has the same meaning as in the Listing Rules.
Sale Facility	The facility under which Designated Foreign Investors are required to transfer their existing Units or Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register of Members in respect of those Units, and will receive the Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Members.
Sale Consideration	The average price (net of transaction costs including without limitation any applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held by and sold by the Sale Nominee for the relevant Designated Foreign Investor.
Security	Has the meaning given to that term in section 92(1) of the Corporations Act.
Staple, Stapled or Stapling	In relation to a Unit and an Attached Security or Attached Securities, means being linked together so that one may not be dealt with without the other or others.
Stapled Entity	Any trust (and where the context permits means the trustee of the trust), corporation, managed investment scheme (and where the context permits means the

	responsible entity of the managed investment scheme) or other entity the Securities in which are Stapled to Units.
Stapling Provision	The meaning given to by clause 24.2(a).
Stapled Security	A Unit and each Attached Security which are Stapled together.
Stapled Security Holder	The holder of a Stapled Security.
Stapled Security Register	The register of Stapled Securities to be established and maintained by or on behalf of the Entity in accordance with clause 24.7.
Stapling Date	The date determined by the Entity to be the day on which all Units will be Stapled to an Attached Security or Attached Securities.
Tax	The actual or anticipated taxes, duties, deductions and charges government, together with interest and penalties.
Taxation Amount (in relation to a Relevant Person)	<p>(a) An amount of Tax, bank fees or charges referable to the Relevant Person; and</p> <p>(b) An amount of Tax which the Relevant Person is or is expected to be primarily liable to pay.</p>
Transaction Costs	<p>(a) When calculating the application price of a Unit or the redemption price of a Unit under clause 8.2(a), an estimate (which is independently verifiable) by the Entity of:</p> <p>(i) the total transaction costs the Fund would incur to acquire afresh the Assets, or</p> <p>(ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total transaction costs, which may be zero.</p> <p>If the Entity makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the redemption price of a Unit under clause 8.2(b), an estimate (which is independently verifiable) by the Entity of:</p>

- (i) the total transaction costs the Fund would incur to sell the Assets, or
- (ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the withdrawal, a portion of the total transaction costs, which may be zero.

If the Entity makes no estimate, then the Transaction Costs are zero.

Unit	An undivided share in the beneficial interest in the Fund as provided in this Constitution.
Unstapled	In relation to a Unit, means not being Stapled to a Security.
Unstapling Date	The date the Stapling Provisions cease to apply or are suspended in accordance with clause 24.3(b).
Withdrawal Offer	A withdrawal offer in accordance with sections 601KB-601KE of the Corporations Act.
Withdrawal Request	A withdrawal request in accordance with sections 601KB-601KE of the Corporations Act.

Schedule 2 - Rules for interpretation

Unless the contrary appears, in this Constitution:

- (a) Terms defined in the Corporations Act are used with their defined meaning.
- (b) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements.
- (c) The singular includes the plural and vice versa.
- (d) The words "including" and "for example" when introducing a list of items does not exclude a reference to other items, whether of the same class or genus or not.
- (e) Amend includes delete or replace.
- (f) Person includes a firm, a body corporate, an unincorporated association or an authority.
- (g) Headings and marginal notes are for convenience only and do not affect interpretation of this Constitution.



Hall&Wilcox
Lawyers

Arena REIT No. 2 Constitution

Note: This document is a working copy of the consolidated constitution for lodgement with the ASX. This is not a legally binding document. Reference should be made to the constitutions lodged with the Australian Securities and Investments Commission.

Level 30
Bourke Place
600 Bourke Street
Melbourne Vic 3000
DX 320

Telephone +61 3 9603 3555
Facsimile +61 3 9670 9632
www.hallandwilcox.com.au

Arena REIT No. 2 Constitution

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Arena REIT No. 2 Constitution

1 Definitions and interpretation

1.1 Definitions

The definitions are in Schedule 1 of this Constitution.

1.2 Interpretation

The interpretation provisions are in Schedule 2 of this Constitution.

1.3 Persons Bound

This Constitution applies to the Fund and binds the Entity, each Member, and any person claiming through any of them as if each of them had been a party to this Constitution.

1.4 Governing Law

This deed is governed by the law of Victoria.

2 Corporations Act

2.1 Conditions included

- (a) Subject to clause 2.1(b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, that provision does not have any force or effect.
- (b) If the Corporations Act requires that this Constitution contain certain covenants or if ASIC makes a declaration or grants an exemption on condition that this Constitution contain covenants other than or inconsistent with those which are otherwise included in this Constitution, then for so long as that Corporations Act requirement remains current or that declaration or exemption remains current in respect of or applicable to the Fund those covenants are deemed to be incorporated in this Constitution and, to the extent of any inconsistency, prevail over those covenants otherwise included in this Constitution.

2.2 Covenant to comply with conditions

The Entity and each Member covenants to comply with any covenants deemed to be included in this Constitution under clause 2.1 relevant to them for so long as they are so included.

2.3 Clause 2 prevails

This clause 2 prevails over all other provisions of this Constitution to the extent of any inconsistency, including any provisions that are expressed to prevail over it.

3 The Fund

3.1 Name

The Fund formed under this Constitution is called the "Arena REIT No. 2" or such other name as the Entity may from time to time determine.

3.2 Entity as trustee and responsible entity

Arena Investment Management Limited (ACN 077 235 879) is and agrees to act as trustee of the Fund. If the Fund is registered as a managed investment scheme under the Corporations Act, the Entity will be the responsible entity of the Fund.

3.3 Assets vest in Entity

The Entity must hold the Assets on trust for the Members. The Assets vest in the Entity, but, subject to the Entity's duties and obligations as trustee, must be kept as a separate fund.

3.4 Exclusion of other obligations

To the maximum extent permitted by law, all duties, obligations or liabilities which might otherwise be imposed by law or equity upon the Entity in any capacity are hereby excluded.

3.5 Appointment of a custodian

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

4 Duration of Fund

4.1 Term of Fund

The Fund is established immediately ASIC registers the Fund pursuant to Part 5C.1 of the Law and Continues in operation until the end of the Period.

4.2 Winding up at the end of the Period

- (a) The Fund continues in operation until the earlier of:
- (b) the Fund being wound up following the date on which the Assets are sold;
- (c) any of the circumstances in clause 17.1 apply, or
- (d) the day 80 years from the day the Fund commenced.

5 Interest of members

5.1 Units

The beneficial interest in the Fund is divided into Units. Each Unit confers an equal undivided interest. A Unit does not confer any interest in a particular Asset but only an interest in the Assets of the Fund as a whole, subject to the Liabilities of the Fund. Members hold Units subject to the rights, restrictions and obligations attaching to those Units under this Constitution.

5.2 Fractions

Fractions of a Unit may be issued (unless the Entity determines otherwise) to such number of decimal places as the Entity decides. If the Entity determines that fractions are not to be issued, where any calculation performed under this Constitution would otherwise result in the issue of a fraction of one Unit, the number of Units to be issued is to be rounded to the nearest whole Unit. Any excess application or other moneys become an Asset of the Fund.

5.3 Consolidation and division

- (a) Units may be consolidated or divided as determined by the Entity.
- (b) While Stapling applies, Units may only be consolidated or divided if the Attached Securities Stapled to those Units are also consolidated or divided at the same time and to the same extent.

5.4 Restrictions

A Member must not:

- (a) interfere with any rights or powers of the Entity under this Constitution
- (b) 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, or
- (c) require an Asset to be transferred to the Member.

5.5 Waiver of certain rights by Members

Each Member waives any right it might otherwise have to lodge any caveat or other notice to protect or maintain in litigation or otherwise any proprietary, or other interest or claim in, or in relation to, the Assets (or any part of it).

5.6 Power to request Information

Each Member must provide to the Entity any information the entity reasonably requires relevant to the Member's holding of Units.

5.7 Classes

The Entity may create and issue Units of different classes with such rights, obligations and restrictions attaching to the Units of such classes as it determines in accordance with the Corporations Act and, if relevant, the Listing Rules.

6 Applications for units

6.1 Issue of units

- (a) The Entity may accept applications in a form or manner from time to time acceptable to it and which is in accordance with the Corporations Act and this Constitution.
- (b) While Stapling applies, the Entity may only accept an application if at the same time the Stapled Entity accepts a corresponding application from the same applicant for an identical number of Attached Securities.

6.2 Property contributions

If the Entity intends to accept Property, the Entity must obtain:

- (a) an effective transfer to the Entity or to the Entity's agent of title to the Property, confirmed in a manner approved by the Entity, and
- (b) a valuation acceptable to the Entity stating the market value of the Property

and the Entity may determine what costs, if any, incurred in valuing and transferring the Property must be deducted from the market value of the Property (as stated in the valuation) before the number of Units to be issued is calculated.

6.3 Uncleared funds

- (a) An issue of Units is void if:
 - (i) the application money is not in cleared funds or subsequently cleared within five Business Days of receipt (or such longer period determined by the Entity), or
 - (ii) the transfer of the Property is not effective or the Property is not transferred free of encumbrances.
- (b) Where an issue of Units is void by the operation of clause 6.3(a):
 - (i) the Units are deemed for all purposes not to have been created or issued, and
 - (ii) the Entity may cause the Register of Members to be rectified.
- (c) While Stapling applies, where an issue of Units is voided pursuant to clause 6.3(a), any Attached Securities issued with the Units must also be voided at the same time.

6.4 Entity may reject

- (a) The Entity may in its absolute discretion reject an application in whole or in part without giving any reason for doing so.
- (b) While Stapling applies, the Entity must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units.

6.5 Minimum application

The Entity may set a minimum application amount for the Fund, and alter that amount at any time.

6.6 Issue of Units

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

6.7 Nomination of holder

The Entity alone may nominate the person to be registered as the holder of a Unit, and the Entity may treat the registered holder as the absolute owner of it. The Entity's power of nomination ceases once a person has been registered as the holder of a Unit. Subject to clause 19, the Entity need not recognise any claim or interest in a Unit by another person, even if it has notice of it.

6.8 Number of Units

When determining the number of Units to be issued to a Member in relation to an application, the number of Units is that number calculated by the Entity by dividing the application money received by the application price of a Unit.

6.9 Capital Reallocation Issue

- (a) Despite any other provision of this Constitution, the Entity may at any time issue Units ("**Capital Reallocation Units**") in either of the following circumstances:
 - (i) a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for all the holders of Stapled Securities and compulsorily applies a distribution of capital paid out of the Stapled Entity towards the application moneys for those Capital Reallocation Units; or
 - (ii) a Stapled Entity makes an application for Capital Reallocation Units out of distribution of capital paid out of the Stapled Entity and the Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities.
- (b) The Entity must immediately consolidate the Capital Reallocation Units issued under clause 6.9(a) with all other Units then on issue in the Fund such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue prior to the issue of the Capital Reallocation Units taking place.
- (c) Capital Reallocation Units issued under this clause 6.9 will be issued at an application price equal to the amount calculated by dividing the total amount received in relation to the application by the number of Units then on issue in the Fund.

6.10 Stapled Securities

While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Attached Securities on the basis that Units are to be Stapled to Attached Securities.

7 Withdrawal from the Fund

7.1 No right to withdraw from Fund

- (a) While the Fund is admitted to the Official List, a Member has no right to withdraw from the Fund.
- (b) While the Fund is not admitted to the Official List, a Member has no right to withdraw from the Fund other than:
 - (i) until registration of the Fund as a managed investment scheme under the Corporations Act, as determined by the Entity in its absolute discretion; and
 - (ii) on and from such registration, in accordance with this clause 7 the terms of which have effect on and from such registration.

7.2 No obligation to make Withdrawal Offer when Fund is not liquid

Nothing in this Constitution imposes any obligation on the Entity to make a Withdrawal Offer at any time.

7.3 Withdrawal Offer

Subject to sections 601KB-KE of the Corporations Act, if a Withdrawal Offer is made by the Entity, then a Unit must only be redeemed at its redemption price determined in accordance with clause 8.2 at the time the Withdrawal Offer closes.

7.4 Cancellation of Withdrawal Offer

The Entity may, without notice to any of the Members, at any time before a Withdrawal Offer closes, decide to cancel the offer pursuant to section 601KE of the Corporations Act, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Entity will give written notice of the cancellation to the Members to whom the Withdrawal Offer was made.

7.5 When Fund is not Liquid

- (a) This clause 7.5 applies only while the Fund is not Liquid.
- (b) A Member may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Entity under the Corporations Act and this Constitution regulating offers of that kind.
- (c) If there is no Withdrawal Offer currently open for acceptance by Members, a Member has no right to withdraw from the Fund.
- (d) The Entity may make a Withdrawal Offer by:
 - (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet), or
 - (ii) giving a copy to the Members.

However, the Entity is not at any time obliged to make a Withdrawal Offer.

- (e) The Entity may cancel a Withdrawal Offer by:
 - (i) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet), or
 - (ii) notice in writing to the Members to whom the Withdrawal Offer was made.
- (f) If the Entity receives a Withdrawal Request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the Withdrawal Offer effective as at the time the offer is made.

7.6 Provisions applicable to all withdrawals

- (a) The Entity is not obliged to pay any part of the redemption price out of its own funds.
- (b) The Entity may at any time cause the redemption of any or all of a Member's Units.
- (c) A Member may not withdraw a Withdrawal Request unless the Entity agrees.
- (d) Unless the Entity decides otherwise, the first Units issued to a Member are the first redeemed.
- (e) If compliance with a Withdrawal Request would result in the Member holding fewer Units than the then current minimum application amount, the Entity may treat the Withdrawal Request as relating to the Member's entire holding of Units.
- (f) The Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer or Withdrawal Request any unpaid moneys due by the Member to the Entity.

7.7 On market buy back of Units

Subject to the Listing Rules, the Corporations Act and any applicable ASIC Relief, the Entity may effect a buy back of Units (including where Units are part of a Stapled Security) by purchasing the Units (or the Stapled Security, as the case may be) on market as if the Fund was a company, with any adaptations that the ASX or ASIC may consider appropriate.

7A Small Holdings

7A.1 Application of this clause

This clause 7A only applies while the Fund is admitted to the Official List.

7A.2 Powers of the Entity

- (a) Subject to the Corporations Act and provisions of this clause 7A, the Entity may in its discretion from time to time sell any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Entity may only sell Units under this clause 7A on one occasion in any 12 month period.

7A.3 Notification to Member

- (a) The Entity must notify the Member in writing of its intention to sell Units under this clause 7A.
- (b) The Entity will not sell the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under paragraph 7A.3(a) above; or
 - (ii) if, within the 6 weeks allowed by paragraph 7A.3(b)(i) above, the Member advises the Entity that the Member wishes to retain the Units.

7A.4 Effect of takeover

The Entity's power to sell Units under this clause 7A lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.

7A.5 Costs of sale

The Entity or the purchaser of the units will pay the costs of the sale.

8 Unit price and valuation

8.1 Application price

Subject to clauses 8.7 to 8.13 a Unit must only be issued:

- (a) in the case of the issue of the first Units, and in the case of the issue of Units pursuant to the first product disclosure statement (and any supplementary product disclosure statement) under the Corporations Act for the Fund and up to 1 January 2005, at the application price of \$1.00.
- (b) if the Fund is not registered as a managed investment scheme under the Corporations Act, in the case of all other issues of Units, at a price determined by the Entity in its absolute discretion, and
- (c) if the Fund is registered as a managed investment scheme under the Corporations Act and while the Fund is not admitted to the Official List, in the case of all other Units, at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

8.2 Redemption price

- (a) Subject to clause 8.2(d), if the Fund is registered as a managed investment scheme under the Corporations Act and the Fund has cash available to satisfy withdrawals, a Unit will be redeemed at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

- (b) If the Fund is registered as a managed investment scheme under the Corporations Act and Withdrawal Requests are funded by the proceeds from the sale of Assets of the Fund, a Unit will be redeemed at a price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units on issue}}$$

- (c) If the Fund is not so registered, a Unit may be redeemed at a price determined by the Entity in its absolute discretion.
- (d) In respect of the Withdrawal Offer that is to be made to Members that were unit holders in the Fund immediately prior to the Stapling of Units to units in Arena REIT No. 1 ARSN 106 891 641, the redemption price per Stapled Security is \$1.15.

8.3 Periodic price

The Entity shall ascertain the value of each Asset at regular intervals appropriate to the nature of the Asset and may cause an Asset to be revalued at any time using the valuation method described in clause 8.4. The Entity may determine Net Asset Value at any time in its absolute discretion, including more than once on each day. The Entity is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

8.4 Valuation methods

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

8.5 Rounding

The Entity may round the redemption price of a Unit calculated under clause 8.1(c) to such number of decimal places as determined by the Entity.

8.6 Options

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

8.7 Issue of Units at application price which is determined by Entity - rights issues of Units

While the Fund is a registered managed investment scheme and is not admitted to the Official List, the Entity may issue Units at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to offers made at substantially the same time to only and all the then Members if:

- (a) all the Units offered are in the same class;
- (b) the application price of all the Units offered is the same;

- (c) the amount by which the price is less than any amount that would otherwise apply under the Constitution does not exceed 50 percent; and
- (d) the amount of Units offered to each Member is proportionate to the value of that Member's Unit holding,

where, if the Entity reasonably considers that it would be in the best interests of Members to exclude certain members that are connected to a place outside Australia and New Zealand ("**Foreign Members**") and not unfair to those members, the Entity need not offer or issue the Units to the Foreign Members if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Foreign Members are promptly paid the net sale price.

8.8 Issue of Units at application price which is determined by Entity - Options

The Entity may issue Units on the exercise of Options at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to offers of Options made at substantially the same time to only and all the then Members if::

- (a) all the Options offered are in the same class;
- (b) the issue and the exercise price of all the Options offered is the same
- (c) the means of calculating the exercise price is set out in the terms of issue of the Option; and
- (d) the amount by which the exercise price is less than the amount that would otherwise apply under this Constitution, does not exceed 50 percent on the date of exercise of the Option,

where if the Entity reasonably considers that it would be in the best interests of members to exclude Foreign Members and not unfair to those members, the Entity need not offer or issue the Options to Foreign Members if the Options are sold, taking reasonable steps to maximise the sale price net of expenses of the sale and the Foreign Members are promptly paid the net sale price.

8.9 Issue of Units at application price which is determined by Entity - distribution reinvestment

While the Fund is a registered managed investment scheme and is not admitted to the Official List, the Entity may issue Units at an application price determined by the Entity, being a price other than the application price determined under clause 8.1 pursuant to a distribution reinvestment arrangement where:

- (a) the whole or part of a Member's distribution is applied in payment for the subscription for Units;
- (b) each Members may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distribution which is or would otherwise be, payable to that Member;
- (c) all the Units issued under the arrangement are of the same class;
- (d) the application price of each Unit issued pursuant to that arrangement at substantially the same time is the same; and

- (e) the application price of those Units is not less than 95% of the amount that would otherwise apply under this Constitution,

where, if the Entity reasonably considers that it would be in the best interests of Members to exclude Foreign Members and not unfair to those members, the Entity need not offer or issue the Units to the Foreign Members if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Foreign Members are promptly paid the net sale price.

8.10 Issue of Units at application price which is determined by Entity - issue of Units at an individually negotiated price

The Entity may issue Units at a price individually negotiated and agreed between the Entity and a person:

- (a) who is a wholesale client within the meaning of section 761G of the Corporations Act (“**Wholesale Client**”), being a price that differs from the application price determined in accordance with clause 8.1 only to the extent that the price is less than the application price determined under clause 8.1 to the extent of lower fees that are payable to the Entity in relation to the acquisition (each a “**Fee Arrangement**”) if:
 - (b) the Entity ensures that if fees may be individually negotiated with certain Wholesale Clients, then a statement of that fact is disclosed to all Members by no later than the date of the first communication the Entity makes to all Members which is made after the date the Fee Arrangement is first offered; and
 - (c) the Entity ensures that if fees may be individually negotiated with certain Wholesale Clients, a statement of that fact is disclosed in any disclosure document used for an offer of interests in the Fund; and
 - (d) the Fee Arrangement does not adversely affect the fees that are paid or to be paid by any other member of the Fund who is not party to the Fee Arrangement.

8.11 Average Market Price: Fund admitted to the Official List

- (a) While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) at an application price that is no less than 50% of the Average Market Price of Units (or Stapled Securities if Stapling applies) immediately prior to the date on which or as at which the application price is calculated.
- (b) Where Units (or Stapled Securities if Stapling applies) are issued in accordance with clause 11.8 or 11.8A, and the Fund is admitted to the Official List, the application price is to be no less than 50% of the Average Market Price of Units (or Stapled Securities if Stapling applies) as at the date on which the application price is calculated immediately prior to the date on which the Units are issued.
- (c) While the Fund is admitted to the Official List, if Units (or Stapled Securities if Stapling applies) are to be issued to the Entity (or any of its related bodies corporate as defined in the Corporations Act) in payment of fees of the Entity, the application price is to be equal to the Average Market Price of Units (or Stapled Securities if Stapling applies) on the day of issue (or if payment of fees is deferred, on the day payment of the fees would otherwise have been due).

8.12 Rights Issue: Fund admitted to the Official List

While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) at an application price determined by the Entity to those persons who were Members on a date determined by the Entity not being more than 30 days immediately prior to the date of the offer if:

- (a) the Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief; and
- (b) the application price is not less than 50% of the Average Market Price on the day preceding the date the issue was announced to the ASX.

Subject to the Corporations Act, the Listing Rules and any applicable ASIC Relief, the Entity is not required to offer Units under a rights issue to Members whose address as recorded in the Register is outside Australia or New Zealand.

8.13 Placements: Fund admitted to the Official List

While the Fund is admitted to the Official List, the Entity may issue Units (or Stapled Securities if Stapling applies) to any person, whether by way of a placement or otherwise, and at an application price and on terms determined by it, if the Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief and if the application price is not less than 50% of the Average Market Price on the day preceding the date the Entity (or its agents) offered the Units (or Stapled Securities if Stapling applies) to potential investors.

8.14 Prices while Stapling applies

While Stapling applies, in the case of an issue, redemption, sale, cancellation or buy back of a Stapled Security, the application, redemption, sale, cancellation or buy back price of a Stapled Security will be allocated between the Unit and the Attached Security on the basis of fair value as agreed between the Responsible Entity and the Stapled Entity or, failing agreement, determined by an independent accountant based upon fair market value as determined by the independent accountant having regard to the net asset backing of each Unit and the Attached Security immediately prior to the issue, sale, redemption, cancellation or buyback of the Stapled Security and any other factors which the accountant believes should be taken into account. However, where the Stapled Security is being issued pursuant to the exercise of an option and the terms of the option specify the issue price of the Unit, the issue price of the Unit and Attached Security must be determined in accordance with any relevant provisions of the terms of the option.

9 Entity's powers

9.1 Powers

- (a) Subject to this Constitution, the Entity has all the powers in respect of the Fund that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets acting in its personal capacity.
- (b) Without limiting clause 9.1(a), the Entity's powers include the power to do the following:
 - (i) Acquire and invest in any property (whether real or personal) or assets.

- (ii) Dispose of or otherwise deal with assets.
- (iii) Manage and administer the assets.
- (iv) Borrow or raise money, grant security and incur all other types of obligations and liabilities.

9.2 Delegation

The Entity may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or obligation or exercise any discretion or power of the Entity including, without limitation, the power to sub-delegate. Subject to the terms of the delegate's appointment, the delegate may appoint a sub-delegate without reference to the Entity. The authorisation must be written. The Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be responsible entity for the Fund. The Entity remains liable for the acts and omissions of a delegate (and any sub-delegate). The Entity may include provisions to protect and assist those dealing with the delegate in the authorisation as the Entity thinks fit. Subject to any consent required by law, the delegate or any sub-delegate may be the Entity (acting in another capacity), or an associate of the Entity.

9.3 Indemnity

The Entity is entitled to be indemnified out of the Assets of the Fund for any liability incurred by the Entity in properly performing or exercising any of its powers or duties in relation to the Fund. This indemnity is in addition to any indemnity allowed by law.

9.4A Underwriting

- (a) Without limiting any other provision of this Constitution, the Entity may engage any person to underwrite the subscription of Units on such terms as the Entity determines.
- (b) Notwithstanding anything to the contrary in this Constitution and subject to the Corporations Act, any underwriting liabilities of the Entity are an expense of the Fund, provided the Entity has acted in good faith and without wilful default in relation to those underwriting liabilities.
- (c) Unless the agreement between the Entity and the underwriters (if any) expressly states otherwise, the underwriters will not be agents or delegates of the Entity.

9.4 Voluntary retirement

- (a) If the Fund is registered as a managed investment scheme under the Corporations Act, the Entity may retire as responsible entity of the Fund as permitted by the Corporations Act.
- (b) If the Fund is not so registered, the Entity may retire as trustee as determined by it in its absolute discretion.

9.5 Compulsory retirement

The Entity must retire as responsible entity of the Fund when required by the Corporations Act.

9.6 Release

- (a) When it retires or is removed, the Entity is released from all obligations in relation to the Fund arising from the time it retires or is removed except that the Entity must cause the Assets of the Fund to be vested in the new Entity and must deliver to the new Entity all books and records under its control relating to the Fund. The release does not affect its right of indemnity out of the Fund in respect of liabilities and expenses properly incurred before the retirement or removal. On retirement or removal as Entity the retiring Entity will be paid any amount due to it under this Constitution.
- (b) The new Entity will be taken to have agreed:
 - (i) to indemnify the former responsible entity for all its costs and expenses incurred (after the time of that alteration) in connection with discharging its obligations under section 601FR of the Corporations Act, and
 - (ii) if it is not an associate of the former Entity or it has not obtained the written consent of the former Entity, to promptly take whatever action is necessary to change the name of the Fund and remove any words, letters or expressions from this Constitution and any other documents which might express or imply an association with the former Entity or any of its associates and agrees not to use any such words, letters or expressions in connection with the Fund and this Constitution.

9.7 Covenant of proposed new Entity

If the Fund is registered under the Corporations Act as a managed investment scheme, any proposed new responsible entity of the Fund must execute a deed under which it covenants in favour of the current responsible entity of the Fund in the same terms as clauses 9.6(a) and 9.6(b) which covenants must be expressed to take effect on and from the time of alteration of ASIC's record of registration.

9.8 Agents and advisers

Subject to the Corporations Act, the Entity may engage any agent, adviser, valuer, broker, underwriter or other contractor to assist the Entity to transact any business or do any act required to be transacted or done in connection with the Fund. Subject to the Corporations Act, the Entity may engage any adviser to advise the Entity regarding any matter relevant to the exercise of its powers or duties as Entity. In either case the Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be the responsible entity for the Fund. Subject to the Corporations Act, the Entity will not be responsible for the default of any such person if employed in good faith. This clause extends, without limitation, to dealing with Assets through a clearing, settlement, transfer or other similar system. The person engaged may be an associate of the Entity. This clause is subject to clause 9.2.

9.9 Name of Fund

If the Entity retires or is removed the retiring Entity may by notice to the new Entity require the name of the Fund to be changed to a name which does not include any part of the current or any former name or business name of the retiring Entity or which is not in the retiring Entity's opinion misleadingly or deceptively similar to those names or any abbreviation of them. The Entity may change the name of the Fund at any time.

10 Investment

The Entity has absolute discretion as to how Assets are invested or otherwise dealt with and as to how liabilities are incurred or otherwise dealt with. For example, the Entity may acquire and dispose of any legal or equitable estate or interest in real or personal property of any kind, enter into all types of contracts whether of a speculative nature or not and raise or borrow money in respect of the Fund. Investments may be made with or without security.

11 Income and distributions

11.1 Net income

The Entity must determine the Distributable Income of the Fund for each Distribution Period in accordance with generally accepted accounting principles and having regard to clause 11.6. The Entity is to decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

11.2 Entitlement

At the end of each Distribution Period the Members will be presently entitled (within the meaning of the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997) to all Distributable Income derived during the relevant Distribution Period in accordance with their Income Entitlement.

11.3 Deferral

If in the Entity's opinion it is not practical to distribute income received in a Distribution Period, it may be treated as having been received in the next Distribution Period.

11.4 Balances

Any balance representing a fraction of one cent arising as a consequence of any calculation of the Distributable Income for a Distribution Period shall be deemed to accrue in the next Distribution Period.

11.5 Separate accounts

The Entity may keep separate accounts of different categories or sources of income or both and may allocate income from a particular category or source or both to particular Members.

11.6 Minimum distribution

The Entity may transfer capital to Distributable Income to enable distribution to Members of the minimum amount necessary to avoid the Entity becoming assessable to pay tax in respect of any amount to which Members may not otherwise be presently entitled.

11.7 Other distributions

- (a) The Entity may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Entity. The distribution may be in cash, by way of bonus Units or by way of an in specie distribution of any of the Assets.

- (b) Each Member irrevocably appoints the Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect an in specie transfer of any of the Assets to the Member.

11.8 Reinvestment

- (a) If the Entity offers the right of reinvestment to Members, a Member may elect to reinvest any distribution by acquiring additional Units. In those cases, the Units are issued on the date the Entity pays the distribution to all other Members who have not elected to reinvest their distribution. The procedure for reinvestment of distributions is to be determined by the Entity and notified to Members from time to time.
- (b) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units, the Member subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units as a result of the reinvestment.

11.8A Entity may require reinvestment

The Entity may require that a Member's entitlement to Distributable Income of the Fund as is payable under this clause or any other provision of this Constitution (as appropriate) shall be reinvested by the Entity to acquire additional units in the Fund if:

- (a) the entitlement is less than an amount determined by the Entity and advised to Members, or
- (b) a Member fails to provide a direction to the Entity as to the manner in which the Member wishes his or her entitlement to be dealt with.

In those cases, the Entity is treated as having received an application (in the approved form if any) accompanied by a payment equal to the amount of the entitlement to Distributable Income on the date on which such distribution was made.

11.9 Nominated payment amount

If the Entity offers to Members the right to nominate distribution payment amounts, a Member may nominate and vary in such manner as the Entity approves an amount which the Member wishes to receive from the Fund at the end of a Distribution Period. The nominated amount shall be paid out of the Member's entitlement under clause 11.2 and, if that is not sufficient, the Entity may reduce the nominated amount to the amount equal to the amount of the Member's entitlement under clause 11.2. If the Member's entitlement under clause 11.2 exceeds the Member's nominated amount, the excess shall be reinvested in accordance with clause 11.8.

11.10 Payment

The Entity must prepare distribution cheques or arrange for distributions to be paid. Cheques not presented within 6 months may be cancelled and reinvested in additional Units in the name of the Holder at the application price prevailing at the time the cheque is cancelled.

11.11 Time

Payments must be made to Members out of the distribution account as soon as reasonably practicable after the applicable Calculation Date, but in any case within 60 days. Clause 12.10 and 12.13 apply to the payments.

11.12 Transfers

Income in the distribution account when a transfer or transmission of Units is registered remains credited to the transferor.

11.13 Distribution equalisation reserve

The Entity may withhold from distributions to persons entitled to receive them during any period an amount which the Entity considers is necessary to minimise variability in distributions over the relevant period.

12 Administration and reporting

12.1 Register

The Entity must establish a Register of Members and keep it up to date. The Register of Members is conclusive evidence of the matters recorded in it and may be relied upon as such by the Entity. The Entity is not required to register more than three persons as joint Members.

12.1A Joint tenancy

Persons registered jointly as joint members hold as joint tenants and not as tenants in common unless the Entity otherwise agrees.

12.2 Member is absolute owner

The Entity may treat a Member as the absolute owner of the Unit or Units which are registered in their name. Except as required by law, the Entity need not recognise any claim or interest in a Unit by another person, but if it decides to do so, the terms and conditions on which it is prepared to do so will be determined by the Entity from time to time in its absolute discretion.

12.3 Inspection of Register

If a Member inspects or is given a copy of the Register of Members (or part of the Register of Members) pursuant to section 173(3) of the Corporations Act then they will be taken to have agreed not to use any information obtained from the Register of Members (or part) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars of the unit holding of that Member. A Member's obligation under this clause survives the transfer of all or any part of their Units.

12.4 Notify change or name or address of Member

A Member must notify the Entity of a change of name or address.

12.5 Certificates

No certificates will be issued for Units.

12.6 Transfers

- (a) Subject to this clause 12.6 and clause 12.7, a Unit may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the Entity approves or requires.

- (b) A transferor of Units remains the Member in respect of the Units transferred until the transfer is registered by the Entity.
- (c) While the Fund is admitted to the Official List, no transfer is permitted except as permitted by the Listing Rules.
- (d) While Stapling applies, no transfer of a Unit may be made unless there is a corresponding transfer of an identical number of Attached Securities from the transferor of the Unit to the recipient of the transfer.

12.7 Refusal to register transfer

- (a) Subject to clauses 12.7(b) and 12.7(c), the Entity may refuse to register any transfer in its absolute discretion.
- (b) While the Fund is admitted to the Official List, the Entity may only refuse to record any transfer of Units in the Fund where the Listing Rules permit or require or where the transfer is in breach of the Listing Rules. While the Listing Rules apply, the Entity may also apply a holding lock (or request that a holding lock be applied) to the extent permitted by the Listing Rules.
- (c) While Stapling applies, the Entity must refuse to register a transfer of Units to a transferee until the registration of the transfer of the corresponding Attached Securities is effected.

12.8 Death, legal disability

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 legal personal representative (in any other case) will be recognised as having any claim to Units registered in the Member's name.

12.9 Discharge to Entity

A Member or person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Member may give good discharge for any money payable or property transferable in respect of Units.

12.10 Payments

Money payable by the Entity to a Member may be:

- (a) paid by crossed not negotiable cheque posted to the Member's registered address
- (b) deposited to an account with a financial institution nominated by the Member in writing, or
- (c) paid in any other manner determined by the Entity.

Only whole cents are to be paid. Any remaining fraction of a cent becomes an Asset of the Fund. Any Joint Member may give an effective receipt which will discharge the Entity in respect of the payment.

12.11 Deductions

- (a) The Entity may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which it either is required or authorised

to deduct in respect of that payment or receipt by law or by this Constitution or which the Entity considers should be deducted, including any amount of Tax which may be payable on or in respect of the issue of Units to, or redemption of Units from, that Member. Joint Members are jointly and severally liable in respect of all payments including payments of Tax, which ought to be made in respect of Units held jointly.

- (b) The Entity may also pay any such liability itself out of the Assets, and in accordance with this clause, deduct the amount so paid from any money payable to a Member under this Constitution or otherwise recover all amounts paid from a Member.
- (c) The Entity has a first and paramount lien over all of a Member's Units in respect of any monies payable to the Entity on any basis under this Constitution or the Corporations Act in respect of any of those Units. This lien extends to distributions from time to time declared in respect of any such Units. The registration by the Entity of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

12.12 Reports

The Entity must report to Members concerning the affairs of the Fund and their respective Unit holdings as required by the Corporations Act. The Entity may otherwise provide such reports to Members at such times as it determines. The form content and timing of any report sent by the Entity to Members is (subject to the Corporations Act) at the discretion of the Entity.

12.13 Notices to Members

A notice or other communication required under this Constitution to be given to a Member must be given in writing (which includes a fax or an electronic communication). A notice, or other communication sent by post is taken to be received on the day after it is posted; a fax is taken to be received one hour after receipt by the transmitter of confirmation of transmission; and an electronic communication is taken to be received one hour after sending and proof of actual receipt is not required.

12.14 Notices to Joint Members

For Joint Members, applications, notices or other communications given to or by the holder named first in the Register of Members as provided in clause 12.13 will be taken to be validly given to or by all the Joint Members.

12.15 Notices to Entity

A notice required under this Constitution to be given to the Entity must be given in writing (which includes a fax and an electronic communication) and is to be signed by the person giving it or by a duly authorised officer.

12.16 Restricted Securities

- (a) While the Fund is admitted to the Official List and the Listing Rules or a restriction agreement requires, the Entity must refuse to acknowledge, deal with, accept or register any disposal (including any sale, assignment or transfer) of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any restriction agreement entered into by the Entity under the Listing Rules in relation to Restricted Securities.
- (b) During a breach of the Listing Rules relating to Restricted Securities or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any

distribution or (subject to the Corporations Act) voting rights in respect of the Restricted Securities.

13 Meetings of Members

13.1 Corporations Act to apply

Except as provided in clauses 13.2 to 13.9 inclusive, the provisions of Part 2G.4 of the Corporations Act apply to meetings of Members.

13.2 Date time and place

Subject to the Corporations Act, the Entity may determine the date, time and place at which each meeting of Members will be held.

13.3 Quorum

The quorum for a meeting is two Members present in person or by proxy provided that if the Fund has only one Member, that Member is a quorum.

13.4 No Quorum

If a quorum is not present within 30 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 such place and time as the Entity determines,

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

13.5 Adjournment

Subject to clause 13.4(b), the chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit.

13.6 Other attendees

The Entity may attend and speak at any meeting, or invite any other person to attend and speak.

13.7 Chair

The chair of the meeting of Members need not be a Member and does not have a casting vote in addition to the votes to which they may be entitled as a Member.

13.8 Resolutions binding

A Resolution binds all Members, whether or not they are present at the meeting.

13.9 Failure to receive notice of meeting

Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting is not invalid if either or both a person does not receive notice of the meeting or the Entity accidentally does not give notice of the meeting to the person.

13.10 Meetings while Stapling applies

While Stapling applies, the directors or other representatives of the Stapled Entity may attend and speak at any meeting of Members, or invite any other person to attend and speak.

14 Rights and liabilities of Entity

14.1 Holding Units

The Entity and the Entity's associates may hold Units or, if Stapling applies, Stapled Securities, in any capacity.

14.2 Other capacities

Nothing in this Constitution restricts the Entity, or its associates, from:

- (a) dealing with each other, the Fund or any Member
- (b) being interested in any contract or transaction with the other of them, the Fund or any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction, or
- (c) acting in the same or a similar capacity in relation to any other scheme

subject to the Entity acting at all times with good faith toward Members.

14.3 Entity and Associates not liable to account

The Entity and its associates may retain and are not liable to the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 14.2.

14.4 No liability for Entity

Subject to clause 14.5 and except to the extent the Corporations Act provides otherwise, the Entity is not liable to any Member for any loss or damage to the Assets (or any part of it) regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts or omissions:

- (a) The Entity obtaining or relying on (in accordance with clause 14.9) any of the opinions, advice, statements, documents or information referred to in clause 14.9.
- (b) The Entity performing or not performing its duties or exercising or not exercising any of its powers.

- (c) The Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Entity.
- (d) Any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Entity). This includes fraudulent or unauthorised acts or omissions.
- (e) The Entity making any payment to any fiscal authority on any basis even if the payment need not have been made.
- (f) The Entity doing or omitting to do any act which by reason of:
 - (i) any present or future law, or
 - (ii) any decree, order or judgment of any Court,
 the Entity is hindered, prevented or forbidden from doing or required to do.

14.5 Fraud, gross negligence or wilful default of the Entity

Clause 14.4 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Entity.

14.6 Liability limited to third parties

The Entity is not liable to any person who is not a Member and nor will that person be entitled to enforce any rights against the Entity to any greater extent than the Entity is entitled to recover through its right of indemnity from and is in fact indemnified from the Assets.

14.7 Entity action

The Entity is not required to do anything for which it does not (or for which it considers it does not) have full rights of indemnity and reimbursement out of the Assets, or which it cannot fully pay from the Assets.

14.8 No limitation on other statutory protection for the Entity

Nothing in this Constitution limits, prejudices or otherwise affects the operation of the provisions of any statute under which the Entity may obtain relief from a breach of trust or other duty in respect of the Fund.

14.9 Entity may rely on advice

The Entity may take and act upon:

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

- (c) a document which the Entity or an agent of the Entity believes in good faith to be the original or copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Fund, and
- (d) any other document provided to the Entity or an agent of the Entity in connection with the Fund upon which it is reasonable for the Entity or its agent to rely

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

14.10 Entity may rely upon signatures and documents

The Entity may rely upon:

- (a) the validity of any signature on any transfer form or application or other instruments submitted to it by any other person, and
- (b) the authenticity of documents or other instruments.

The Entity will not be liable for any loss incurred by any person in the event the signature, documents or other instruments are not authentic unless the Entity has reasonable grounds to believe that the signature, documents or other instruments are not genuine.

14.11 Exercise of discretion

- (a) The Entity may decide how and when to exercise its powers in its absolute discretion.
- (b) While Stapling applies, the Entity may in exercising any power or discretion have regard to the interests of the Members in their capacity as Members and the interests of Members as members of the Stapled Entity. This is the case notwithstanding any other provision of this Constitution, or any rule of law or equity to the contrary, other than any applicable provision of the Corporations Act.

14.12 Liability for cheques etc

Subject to the Cheques Act 1986 (Commonwealth), Members indemnify and release the Entity and any relevant bank against and from all actions, claims and demands in respect of any losses or liabilities arising upon the issue of a cheque or other payment to a Member, whether such loss or liability arises from the exercise by the Entity of any of the discretions under this Constitution, including the issue of a cheque or other form of payment to a person other than the Member at the request of the Member.

14.13 Taxation Liability

Each Relevant Person indemnifies the Entity (on its own account and on account of the Fund) for any Taxation Amount of that Relevant Person which is:

- (a) paid out of the Fund (either directly or by way of reimbursement to the Entity), or
- (b) paid by the Entity on its own account and not reimbursed out of the Fund.

15 Liability of Members

15.1 Liability limited

Subject to the provisions of this Constitution and any separate agreement or acknowledgment by a Member, the liability of a Member is limited to the application price paid or agreed to be paid for a Unit and a Member need not indemnify the Entity if there is a deficiency in the Net Assets of the Fund or meet the claim of any creditor of the Entity in respect of the Fund.

15.2 Recourse

Subject to the provisions of this Constitution, the recourse of the Entity and any creditor is limited to the Assets.

15.3 Agency relationship

Any relationship of agency between the Entity in that capacity and any Member is expressly excluded.

16 Remuneration and expenses

16.1 Asset acquisition fee

- (a) The Entity is entitled to an acquisition fee of up to one percent of the value of any real property acquired by the Fund. This fee is payable upon completion of the acquisition of that Asset and payable out of the Fund.
- (b) The acquisition fee is also payable on the merger, stapling or amalgamation of the Fund with another managed investment scheme. The fee is payable as if the real property assets of the other managed investment scheme were acquired for an amount equal to the value of the real properties as at the date of the merger, stapling or amalgamation as determined by an approved valuer appointed by the Entity. If the merger, stapling or amalgamation occurs when the Stapling Provisions apply, the aggregate acquisition fee paid to the Entity and the Stapled Entity (if any) must not exceed one per cent of the value of the real properties of the other managed investment scheme at the date of merger, stapling or amalgamation.

16.2 Asset disposal fee

- (a) The Entity is entitled to an asset disposal fee of up to one percent of the gross sale price of any real property provided the gross sale price of the real property exceeds the price paid by the Fund for that real property. This fee is payable upon the completion of the disposal of that Asset and is payable out of the Fund.
- (b) If upon the sale of any real property, the gross sale price exceeds the purchase price of that real property by more than 20 percent, then the fee payable under clause 16.2(a) above is increased from one percent to two percent of the gross sale price achieved in respect of that real property.
- (c) The Entity is also entitled to the asset disposal fees in clauses clause 16.2(a) and 16.2(b) in the event the Fund is merged or amalgamated with another managed investment scheme. The fees are payable as if the real property Assets of the Fund were sold for an

amount equal to the value of the real properties at the date of the merger or amalgamation, determined by an approved valuer appointed by the Entity.

16.3 Ongoing management fee

The Entity is entitled to an ongoing management fee of up to:

- (a) 0.8 percent per annum of the gross value of the Assets up to \$400 million;
- (b) 0.7 percent per annum of the gross value of the Assets greater than \$400 million and up to \$950 million; and
- (c) 0.6 percent per annum of the gross value of the Assets greater than \$950 million.

This fee accrues daily and is calculated and paid monthly in arrears out of the Fund.

16.4 Waiver of fees

The Entity may waive the whole or part of any fee to which it is entitled under this Constitution and may defer payment for any period. Where payment is deferred (as opposed to waived), the fee still accrues daily until paid.

16.5 Expenses

Subject to the Corporations Act, all costs, fees expenses and other amounts reasonably and properly incurred by the Entity in connection with the Fund or in the proper performance of its duties and exercise of its powers in relation to the operation, administration and management of the Fund or otherwise in connection with the Fund are payable or reimbursable out of the Assets. This includes, without limitation, costs, fees, expenses and other amounts connected with:

- (a) this Constitution, any supplemental deed and the formation of the Fund
- (b) preparation, review, distribution and promotion of any disclosure document in respect of Units
- (c) the sale, purchase, insurance, custody and any other dealing with Assets (or any proposal to do any of those things)
- (d) any proposed investment
- (e) the administration, management or promotion of the Fund or its Assets and Liabilities including without limitation complying with any law and any of the requirements of ASIC
- (f) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members
- (g) Tax (other than Tax on income received beneficially by the Entity as against the Fund) and bank fees
- (h) the engagement of delegates, agents, valuers, advisers, investment managers, brokers, solicitors, barristers, underwriters and contractors (including legal costs on a full indemnity basis)
- (i) preparation and audit of the taxation returns and accounts of the Fund

- (j) termination of the Fund and/or the retirement or removal of the Entity and the appointment of a new trustee or responsible entity
- (k) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Entity (except to the extent that the person incurring the expenses is found by a court to be in breach of trust, in default or to have been negligent in which case any expenses reimbursed under this clause 16.5(k) must be repaid)
- (l) fees paid to any ratings organisation
- (m) establishing and maintaining a Register of Members and/or Mortgagees
- (n) the preparation, printing and postage of distribution statements
- (o) Liabilities, including interest, discount and acceptance fees and all other borrowing costs and like amounts
- (p) swaps, forward rate agreements, currency exchange agreements, securities lending agreements or any derivative transactions entered into by or on behalf of the Entity as trustee
- (q) the operation and development of computer facilities (both software and hardware) and the use of computerised or electronic communication or information networks (including, without limitation, the Internet) in relation to the Fund or its administration or management
- (r) complying with the requirements of any law in relation to the Fund or its administration or management
- (s) communications (printed, electronic or otherwise) with Members
- (t) the fees of the Auditor and of the Compliance Plan Auditor
- (u) the establishment and operation of the Compliance Committee (including the selection and appointment of CC Members). Without limitation this includes the fees paid to and any costs and expenses (including insurance premiums) of any member of a Compliance Committee
- (v) the cost of any legal, accounting or other professional advice commissioned by the Compliance Committee
- (w) the establishment and administration of the complaints handling procedures referred to in clause 20, and
- (x) the listing of the Fund on Australian Stock Exchange Limited.

For the avoidance of doubt, nothing in clause 16.5 limits the generality of anything else in clause 16.5.

Clause 16.5 applies to costs, fees, expenses and other amounts whether or not they are payable to the Entity (acting in another capacity) or an associate of the Entity.

The Entity may waive from time to time its right to reimbursement in whole or part under this clause.

16.6 Deferral

The Entity may defer reimbursement of any or all expenses under clause 16.5 for any period.

16.7 GST

Fees payable to the Entity under this Constitution do not include any amount referable to GST. If the Entity becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including, without limitation, the supply of goods, services, rights, benefits or things) then, in addition to any fee or other amount or consideration payable to the Entity in respect of the supply, the Entity is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply that is a taxable supply for GST purposes by the prevailing rate of GST, and the Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

16.8 Units as payment for fees

Subject to the Corporations Act and the Listing Rules, the Entity may elect that it is to be issued Units (or Stapled Securities if Stapling applies) instead of cash in payment of its fees or reimbursement of its expenses under this Constitution to be issued at the Average Market Price as at the date of issue of the Units (or Stapled Securities if Stapling applies).

16.9 Deferred management and performance fee

On the Stapling Date on which Units are Stapled to units in Arena REIT No. 1 ARSN 106 891 641, the Entity will be entitled to deferred management and performance fees of an aggregate \$3.4 million.

17 Termination

17.1 Events which cause a winding up

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

- (a) The Fund comes to the end of its term as set out in this Constitution.
- (b) The Fund is without a responsible entity.
- (c) If the Fund's purpose has been accomplished or cannot be accomplished and the Entity uses the mechanism provided for in Section 601NC.
- (d) A court orders the Fund be wound up pursuant to Section 601ND.
- (e) Any of the circumstances set out in Section 601NE apply such that the Entity is required to wind up the Fund.

17.2 Process of winding up

- (a) Unless otherwise required by law, the Entity is responsible for the winding up of the Fund.
- (b) The Entity must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Members according to the beneficial interest of each Member in the

Fund. The Entity may make interim distributions (i.e. income or capital) during the winding up process as it sees fit.

- (c) The Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Members to do so, then the Entity may postpone any part of the winding up for such time as it thinks desirable.

17.3 Post termination

The Entity's rights and obligations under this Constitution will continue to apply to the Fund during the period from the date of the Fund's termination until the final distribution in respect of the Fund is completed, except as provided in this clause 17.

17.4 Entity may withhold proceeds of realisation

The Entity may retain money from the proceeds of realisation of the Assets –

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

17.5 Auditor's certificate

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

18 Amendments to Constitution

Subject to the Corporations Act, the Entity may modify, repeal or replace this Constitution by a supplemental deed made by the Entity.

19 Securities and other interests in Units

19.1 Entry of Mortgagee on Register

At the written request of a Member in a form approved by the Entity from time to time, the Entity may enter the name of a Mortgagee in the Register of Members as mortgagee or chargee of those Units held by the Member and referred to in that request. The Entity may in its absolute discretion require that such request is accompanied by the written consent of the Mortgagee to the making of such entry. Any such request, and any such entry in the Register of Members, shall not give the Entity notice of or oblige it to inquire into the terms of the relevant mortgage or charge.

19.2 Acknowledgments and agreements

The Entity may as condition of exercising its power under clause 19.1 require such acknowledgments and agreements from the Mortgagee as the Entity in its absolute discretion considers appropriate to protect the Entity's rights under clause 7, clause 17 and this clause 19.

19.3 Removal of Mortgagee from Register

At the written request of a Mortgagee in a form approved by the Entity from time to time, the Entity will remove from the Register of Members all reference to the Mortgagee of the Units referred to in that request.

19.4 Mortgagee of Units being transferred

Notwithstanding any other provision of this Constitution, if there is a Mortgagee of Units in respect of which an instrument of transfer or withdrawal notice is given to the Entity, the Entity must decline to recognise the instrument of transfer or withdrawal notice unless a request pursuant to clause 19.3 in respect of those Units is given to the Entity simultaneously with the instrument of transfer or withdrawal notice.

19.5 Rights attaching to Mortgaged Units

Subject to clause 19.6, but notwithstanding any other provisions of this Constitution, where a Mortgagee is duly entered on the Register of Members, that Mortgagee shall, in relation to the Units in respect of which it has been entered, and to the exclusion of the Member, be entitled to all or any of the rights and powers conferred on the relevant Member by this Constitution, including without limitation:

- (a) to receive any or all distributions, whether on winding up or otherwise and whether of capital or of income (including in each case without limitation by the issue of Units), which would, in the absence of such entry, have been made or paid to the relevant Member
- (b) to make any request or application in relation to the relevant Units and to receive any notice, or other document or correspondence which would ordinarily be made or received by such Member, and
- (c) to receive notice of any meeting of Members convened by the Entity and to attend and vote at any such meeting in place of the relevant Member.

Under no circumstances shall the Entity be taken to be bound by, have notice of or be bound to enquire into the terms of any mortgage of or charge over Units.

19.6 Priority for Entity

Any interest in, rights against or security granted over:

- (a) the Units of a Member, or
- (b) any distribution or any proceeds of redemption in connection with those Units

held by the Member or a third party is subject to and ranks in priority after any right of the Entity to be paid amounts due to the Entity out of distributions or redemption proceeds payable to the Member.

19.7 Stapling

While Stapling applies, a mortgage of Units must be accompanied by a mortgage of Attached Securities.

20 Complaints

If the Fund is registered as a managed investment scheme under the Corporations Act, Complaints made by Members in relation to the Fund must be dealt with by the Entity in accordance with the provisions of this clause.

- (a) The Entity must seek to resolve each Complaint promptly and in a fair and equitable manner. In resolving each Complaint, the Entity must follow the procedure set out in this clause and must do so without charge to the Member who made the Complaint.
- (b) The Entity must record each Complaint in the register to be kept by the Entity for that purpose. Each Complaint made orally must be summarised by the person, being a representative or employee of the Entity, who receives the Complaint and that summary must be kept in the records of the Fund for seven years. Each Complaint made in writing must be kept in the records of the Fund for seven years.
- (c) The Entity must promptly acknowledge, orally or in writing, receipt of each Complaint (Acknowledgment) unless the Entity has made its First Response (defined in sub-clause (e)) to the Complaint within 48 hours from receipt of the Complaint.
- (d) The Entity must consider each Complaint and, if necessary to resolve the Complaint, investigate the events or circumstances which led to the Complaint.
- (e) The Entity must respond, orally or in writing, to each Complaint, with a view to resolving the Complaint (First Response), within 45 days from receipt by it of the Complaint. The First Response must include the Entity's reasons for its response. If the Entity has not completed its consideration of and/or investigation into a Complaint within the time necessary to enable it to comply with this sub-clause:
 - (i) the Entity must within 45 days from receipt by it of the Complaint so inform the Member who made the Complaint (Interim Response), advise the Member of the reasons for the delay, undertake to complete its consideration of and/or investigation into the Complaint within a further 45 days and to then respond, in writing, to the Complaint, and
 - (ii) the Entity must respond to the Complaint, with a view to resolving the Complaint, within the period referred to in sub-clause (i) (Final Response). The Final Response must include the Entity's reasons for its response.
- (f) In its First Response, or if sub-clauses (e)(i) or (e)(ii) apply in its Interim Response and in its Final Response, the Entity must inform the Member who made the Complaint of the availability of external complaints handling mechanisms (if any).
- (g) Every decision of the Entity on Complaints and every Acknowledgment, First Response, Interim Response and Final Response must be recorded, in writing, in the records of the Fund and must be kept there for seven years.
- (h) All written communications by the Entity relating to a Complaint must be addressed to the Member who made the Complaint at the address given by such Member or, if no address is so given, at the address of the Member recorded in the Register of Members.

While Stapling applies, the Entity may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause to ensure an efficient and equitable resolution of the complaint.

21 Compliance committee members

21.1 Indemnification and insurance of Compliance Committee Members

- (a) To the extent permitted by law, the Entity may indemnify, or agree to indemnify, from the Assets, a person who is, or has been, a CC Member, to another person (other than the Entity or a relate body corporate of the Entity) provided that the liability does not arise out of conduct involving a lack of good faith.
- (b) To the extent permitted by law, the Entity may indemnify, or agree to indemnify, from the Assets, a person who is, or has been, a CC Member against a liability for costs and expenses incurred by that person:
 - (i) in defending any proceedings in which judgment is given in that person's favour, or in which that person is acquitted, or
 - (ii) in connection with an application in relation to such proceedings in which the Court grants relief to that person under the Corporations Act.
- (c) To the extent permitted by law, the Entity may pay, or agree to pay, from the Assets a premium in respect of a contract insuring a person who is, or has been, a CC Member against a liability:
 - (i) incurred by that person:
 - (A) in his or her capacity as a CC Member
 - (B) in the course of acting in connection with the Compliance Committee, or
 - (C) otherwise arising out of the person holding office as a CC Member,provided that the liability does not arise out of conduct involving a wilful breach of duty referred to in section 601JD of the Corporations Act, or
 - (ii) for costs and expenses incurred by that person in defending proceedings, whatever the outcome.

22 Severability

- (a) Any provision of, or the application of any provision of this Constitution which is or becomes void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions.
- (b) Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Deed which remain in full force and effect."

23 Listing

If the Fund is admitted to the Official List of ASX, the following clauses apply:

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

24 Stapling

24.1 Power to Staple Securities

The Entity may, subject to the Corporations Act and, if the Units are admitted to the Official List, subject to the Listing Rules, cause the Stapling of any Security to a Unit and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case there is an equal number of Attached Securities of every kind Stapled to each Unit.

24.2 Effect of Stapling

- (a) The provisions of this Constitution relating to Stapling including but not limited to this clause 24, **(Stapling Provisions)** take effect on and from the Stapling Date and apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.
- (b) While Stapling does not apply, a provision of this Constitution that relates to or is connected with Stapling will continue to apply to the extent that the provision does not relate to Stapling.
- (c) Subject to the other clauses of this Constitution, the Stapling Provisions prevail over all the other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.
- (d) The Entity must use every reasonable endeavour to procure that if the Stapled Securities are listed on the ASX as one Security, that the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to Stapling of the Attached Securities in the constitutions of the Stapled Entities.
- (e) The Units are intended to be Stapled to the Attached Securities in the ratio of one Unit to one Attached Security as from the Stapling Date, so that, to the extent the law permits, a Unit and an Attached Security which are Stapled will be treated as one Security.

- (f) The Entity must ensure that any future issue of Units that are to be Stapled will be Stapled in such a way that all of the relevant Securities become Attached Securities and are dealt with as one Security.

24.3 Cessation of Stapling

- (a) Each issued Unit will remain Stapled for so long as the Stapling Provisions apply.
- (b) The Stapling Provisions will cease to apply or be suspended, regardless of any other provision of this Constitution:
 - (i) if Stapled Security Holders pass a special resolution providing that the Stapling Provisions will cease to apply or be suspended;
 - (ii) if an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity or its property (as the case may be) and the Entity resolves that the Stapling Provisions will cease to apply or be suspended (as the case may be);
 - (iii) in the circumstances set out in the stapling deed or other agreement between the Entity and the Stapled Entity which provide for the Units to cease to be Stapled; and
 - (iv) on the payment of the final distribution on a winding up of the Fund.
- (c) On and from the Unstapling Date, each Unit ceases to be Stapled to an Attached Security and the Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (d) If the Entity determines to Unstaple the Stapled Securities pursuant to this clause 24, this does not prevent the Entity from:
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to an Attached Security which is not Stapled.

24.4 Distributions in specie

- (a) For the purposes of Stapling, the Entity may make an in specie distribution of Securities to all Members.
- (b) The Entity must effect the distribution to all Members in the same way and the Securities transferred to each Member must be of the same type, having the same rights and be fully paid.
- (c) Where Securities are to be transferred to Members, each Member authorises the Entity to act as the Member's agent:
 - (i) to agree to obtain the Securities; and
 - (ii) to become a holder of the Securities of the relevant Stapled Entity.

24.5 Units to be Stapled

- (a) The Entity may at any time Staple an Unstapled Unit to an Attached Security which is not Stapled.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the 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 Stapled as a Stapled Security.
- (c) While Stapling applies, the Entity must use every endeavour to procure that the Stapled Securities are listed on the ASX as one joint security and that Units are dealt with under this Constitution in a manner consistent with the provisions of the Stapled Entity's constitution as regards Attached Securities Stapled with those Units.

24.6 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 other requirements set out in this Constitution, the transfer is accompanied by a transfer of the Attached Security to which the Unit is Stapled in favour of the same transferee;
 - (ii) a transfer of a Unit which is not accompanied by a transfer of the Attached Security will be taken to authorise the Entity as agent for the transferor to effect a transfer of the Attached Security to which the Unit is Stapled 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 Entity as trustee of the Fund) which is not accompanied by a transfer of the Unit will be taken to authorise the Entity as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Member irrevocably appoints the 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 Entity the transfer to the Entity (as trustee of the Fund) or to a person nominated by the Entity of any Attached Security which was Stapled to a forfeited Unit which has been cancelled or sold.

24.7 Stapled Security Register

The Entity must cause to be kept and maintained a Stapled Security Register which:

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

24.8 Variation of Stapling provisions

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

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

25 Restructure proposals

25.1 Power to enter into proposal

- (a) The Entity may enter into any scheme of arrangement, merger arrangement or similar proposal in relation to the Fund whether involving Units or the property of the Fund (**Proposal**). A Proposal may only be implemented with the approval of a Resolution.
- (b) If the Proposal involves Stapling and the Members have approved the Proposal by a Resolution,

the Members will be taken to have consented to each provision in the Constituent Documents.

25.2 General

If a Proposal has been approved by a Resolution then from the date of such approval:

- (a) the Proposal binds the Entity and all present and future Members notwithstanding that particular Members may not have approved the Proposal;
- (b) the Entity and so far as is relevant the Members must give effect to the Proposal in accordance with its terms;
- (c) the Entity will have power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and those powers apply notwithstanding any other provisions of this Constitution;
- (d) the terms of the Proposal prevail to the extent necessary in the event of any inconsistency with the other terms of this Constitution other than this clause 25.2;
- (e) subject to the Corporations Act, the Entity shall not have any liability of any nature whatsoever to Members beyond the Assets of the Fund out of which the Entity is actually indemnified arising directly or indirectly from the Entity doing or refraining from any act pursuant to or in connection with the Proposal; and
- (f) the Entity may amend the terms of the Proposal if such amendment is not inconsistent with the approval given by Members or such amendment does not adversely affect the rights of the Members and this clause 25.2 shall apply to the Proposal as amended.

25.3 Terms of Proposal

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

- (a) be subject to conditions;
- (b) involve the redemption, cancellation or transfer of Units;
- (c) provide for the Entity to execute any documents including any application for Securities as agent on behalf of all or any Members;
- (d) authorise the Entity as agent on behalf of all or any Members to pay the subscription money for new Securities from the Assets of the Fund;
- (e) allow the Entity to arrange the allotment and/or issue of further Units;
- (f) amend the time and procedures for the redemption, cancellation, transfer or issue of Units;
- (g) allow the Entity to suspend the registration of transfers of Units;
- (h) provide for borrowings, the raising of money or the incurring of liabilities by the Entity; or
- (i) provide for suspension of reinvestment of income entitlements.

25.4 Designated Foreign Investors

- (a) Without limiting the foregoing provisions of this clause 25, to enable the Entity to give effect to the Stapling of Attached Securities to the Units, the provisions of this clause 25.4 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Entity may determine that a Foreign Investor is a Designated Foreign Investor where the Entity reasonably considers that it would be unreasonable to issue or transfer an Attached Security to a Foreign Investor, having regard to each of the following:
 - (i) the number of Foreign Investors in the foreign place;
 - (ii) the number and the value of Attached Securities that may be issued or transferred to Foreign Investors in the foreign place; and
 - (iii) the cost of determining, and complying with, the legal requirements and the requirements of any relevant regulatory authority applicable to the issue or transfer of the Attached Securities in the foreign place.
- (c) Each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
 - (i) the Entity to pay any distributions, withdrawal proceeds or other payments in respect of its Unit or Stapled Security, which are to be used to obtain an Attached Security (**Amounts**), to a sale nominee (**Sale Nominee**);
 - (ii) the Sale Nominee to apply the Amount to obtain an Attached Security;
 - (iii) subject to clause 25.4(d), the Sale Nominee to then sell any Stapled Security to which the Attached Security is Stapled:

- (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If an Attached Security is to be Stapled to a Unit or Stapled Security, the Designated Foreign Investor agrees to transfer each existing Unit or Stapled Security they hold free of any encumbrance to the Sale Nominee on or prior to the record date for that stapling (Sale Record Date) so that the Sale Nominee:
 - (i) is entered in the Register in respect of that Unit or Stapled Security as at the Sale Record Date; and
 - (ii) will receive the Attached Security pursuant to the Stapling of the Attached Security; and
 - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) The Entity:
 - (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
 - (ii) may take all steps to ensure that the Unit or Stapled Security held by the Designated Foreign Investor and to which an Attached Security is to be Stapled is transferred to the Sale Nominee prior to the Sale Record Date;
 - (iii) need not receive a transfer, instrument or certificate (if any) for existing Units or Stapled Securities in order for the Entity to register the transfer of the existing Units or Stapled Securities to the Sale Nominee. Such transfer shall be evidenced by, and shall have full effect from, its registration by the Entity in the Register of Members.
- (f) The amount received for a Unit upon sale of a Stapled Security under clause 25.4(e)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Attached Securities as determined by the Entity.

25.5 Modification or variation of Proposal

Where modifications or variations to the terms of this Constitution are not expressly provided for in the terms of the Proposal but are necessary for or consequential to the implementation of the Proposal, those modifications or variations are deemed to have been made to this Constitution. The Members:

- (a) authorise the Entity to make these amendments in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (b) agree that, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 25.5.

25.6 Entity's authorisation

- (a) Each Member irrevocably authorises and empowers the Entity or any officer of the Entity to, and the Entity is irrevocably appointed as the agent and attorney of each Member to,

execute all transfer forms or withdrawal applications and other documents, and to do all things as the Entity may consider necessary or desirable for, or reasonably incidental to, the implementation of the provisions of any Proposal approved (if required) under this clause 25 and to receive on the Member's behalf any moneys payable to that Member. Each Member undertakes to ratify anything lawfully done by the Entity in accordance with this clause 25.6(a).

- (b) Without limiting clause 25.6(a) or any provision of a relevant Constituent Document, to effect the Stapling of an Attached Security, each Member irrevocably appoints the Entity as the Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) agree to obtain any Attached Security;
 - (ii) apply any distributions, withdrawal proceeds or other payments to obtain an Attached Security;
 - (iii) where an Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
 - (iv) do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Entity, in consultation with each other issuer of Stapled Securities, considers necessary, desirable or reasonably incidental to effect the acquisition of the Attached Security by the Member.
- (c) Without limiting clause 25.6(a) or any provision of a relevant Constituent Document, to effect the disposal of Units or Stapled Securities held by or on behalf of a Designated Foreign Member, each Designated Foreign Member irrevocably appoints the Entity as that Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) receive and apply the Amounts referred to in clause 25.4(c)(i) in the manner contemplated in clause 25.4;
 - (ii) execute applications or transfers in relation to the transfer of any Units or Stapled Securities;
 - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
 - (iv) do all acts and things and execute any other documents which the Entity, in consultation with each other issuer of Attached Securities, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Member.

Schedule 1 - Dictionary

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

Accounting Standards	Has the meaning given to that term in Section 9 of the Corporations Act.
Accrued Income	For a Distribution Period means, the amount the Entity calculates as the net income for the Fund from the beginning of the current Distribution Period to the day on which the calculation is made.
ASIC	The Australian Securities and Investments Commission and includes any body which replaces the Australian Securities and Investments Commission.
ASIC Relief	A declaration or exemption from the provisions of the Corporations Act granted by ASIC.
Assets	All the property, rights and income of the Fund but excludes application money or property paid in respect of which Units have not been issued, proceeds from redemption which have not yet been paid, and Distributable Income awaiting payment to Members.
ASX	Australian Stock Exchange Limited.
Attached Security	A Security which is from time to time Stapled or to be Stapled to a Unit.
Auditor	The auditor for the time being of the Fund.
Average Market Price	<p>(a) the average weighted market price of Units (or Stapled Securities if Stapling applies) sold on the ASX in the ordinary course of business during the period of 5,10, 15 or 20 (as determined by the Entity) consecutive trading days ending on the relevant date (Trading Days); or</p> <p>(b)</p> <p>(c) if the Entity believes that the calculation of Average Market Price does not provide a fair reflection of the market price of a Unit (or a Stapled Security if Stapling applies) on that day, the average market price will be the price determined by a Qualified Valuer.</p>
Business Day	Is a day on which the Entity is open for business in Sydney.
Calculation Date	The last day of each Financial Year and any other day the Entity determines.

CC Member	A member of the Compliance Committee.
Complaint	An expression of dissatisfaction, whether oral or written, by a Member in relation to the Fund, communicated to the Entity.
Compliance Committee	The committee (if any) established by the Entity pursuant to section 601JA(1) of the Corporations Act.
Constituent Documents	The constituent documents of a Stapled Entity.
Constitution	The provisions of this Deed Poll as amended from time to time.
Corporations Act	The Corporations Act 2001 (Commonwealth).
Designated Foreign Investor	Foreign Investor in respect of whom the Entity has made a determination in accordance with clause 25.4.
Distributable Income	Means any amount determined by the Entity from time to time to be distributed to Members, including – <ul style="list-style-type: none"> (a) the net income of the Fund (b) other income of the Fund, and (c) any amount of capital of the Fund.
Distribution Period	Means: <ul style="list-style-type: none"> (a) for the first Distribution Period, the period from the commencement of the Fund to any date determined by the Entity (b) for the last Distribution Period, the period beginning the day after the preceding Calculation Date to the date of termination of the Fund, and (c) in all other circumstances, the period beginning on the day after the preceding Calculation Date to the next occurring Calculation Date.
Entity	Means: <ul style="list-style-type: none"> (a) (where the Fund is registered as a managed investment scheme under the Corporations Act), any person appointed in accordance with the Corporations Act as responsible entity or temporary responsible entity for the Fund, and (b) (where the Fund is not registered as a managed investment scheme under the Corporations Act), any person appointed by the Members as trustee of the Fund.
Expenses	Includes expenses, costs, charges, fees, commissions, taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

Financial Year	Has the meaning given in the Corporations Act.
Foreign Investor	A Member whose address on the Register of Members is in a place other than Australia or New Zealand, and such other jurisdictions (if any) as the Entity may determine.
Fund	The trust constituted under this Constitution.
GST	Has the meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
Income Entitlement	<p>Subject to the terms of issue, in respect of a Unit means the amount "IE" calculated by the following formula:</p> $IE = \frac{DI}{UI}$ <p>Where:</p> <p>DI = Distributable Income for the Distribution Period for which the calculation is being made.</p> <p>UI= The number of Units on issue on the last day of the Distribution Period for which the calculation is made.</p>
Law	The Corporations Act 2001 (Cth) for the time being in force together with the regulations of the Corporations Act.
Liabilities	All present liabilities of the Fund, including liabilities accrued but not yet paid and any provision which the Entity decides should be taken into account in determining the liabilities of the Fund. To the extent the Accounting Standards require any amounts representing Members' funds to be classified as a liability, then for the purpose of calculating Net Asset Value for this Fund, Members' funds are not to be treated as a liability.
Liquid	Has the meaning given in section 601KA of the Corporations Act.
Listing Rules	The Listing Rules of ASX and any other rules of ASX which are applicable while the Fund is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
Member	A person who has an interest in the Fund.
Mortgagee	A mortgagee or chargee of Units entered in the Register of Members pursuant to clause 19 and any employee, officer or agent of the Mortgagee appointed by the Mortgagee.
Net Assets	The Assets less the Liabilities.
Net Asset Value	The value of the Net Assets.

NAV Price	In respect of a Unit, means a price calculated in accordance with clause 8.1(c) and in respect of an Attached Security a price calculated in accordance with the equivalent provision in the constitution of the Stapled Entity.
Official List	Has the same meaning as in the Listing Rules.
Option	Means an option to subscribe for a Unit.
Option Holder	Means a person registered as the holder of an Option (including persons jointly registered).
Property	Any legal or equitable estate or interest in real or personal property other than cheques or cash equivalents acceptable to the Entity.
Qualified Valuer	A person competent to make a required valuation, recommendation or report having regard to the particular type of Assets the subject of the valuation, recommendation or report and who is independent from the Entity and approved by the Entity (having first satisfied itself on reasonable grounds of the qualifications of such person).
Register of Members	A register of Members of the Fund kept by the Entity.
Relevant Person	A person who at any time is, was, or becomes a Member and that person's executors, administrators and successors.
Required Majority	Except where this Constitution or any applicable law provides otherwise, means a simple majority and where this Constitution or any applicable law provides otherwise means that majority specified in this Constitution or applicable law.
Resolution	Means: <ul style="list-style-type: none"> (a) a resolution passed at a meeting of Members: <ul style="list-style-type: none"> (i) if a poll is required by the Corporations Act or is duly demanded, by the Required Majority of the number of Units held by Members present and voting on the poll, in person or by proxy, or (ii) on a show of hands, by the Required Majority of Members present in person or by proxy, or (b) where the Corporations Act allows, a resolution or counterpart resolutions in writing signed by Members holding the Required Majority of the Units.
Restricted Securities	Has the same meaning as in the Listing Rules.

Sale Facility	The facility under which Designated Foreign Investors are required to transfer their existing Units or Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register of Members in respect of those Units, and will receive the Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Members.
Sale Consideration	The average price (net of transaction costs including without limitation any applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held by and sold by the Sale Nominee for the relevant Designated Foreign Investor.
Security	Has the meaning given to that term in section 92(1) of the Corporations Act.
Staple, Stapled or Stapling	In relation to a Unit and an Attached Security or Attached Securities, means being linked together so that one may not be dealt with without the other or others.
Stapled Entity	Any trust (and where the context permits means the trustee of the trust), corporation, managed investment scheme (and where the context permits means the responsible entity of the managed investment scheme) or other entity the Securities in which are Stapled to Units.
Stapling Provision	The meaning given by clause 24.2(a).
Stapled Security	A Unit and each Attached Security which are Stapled together.
Stapled Security Holder	The holder of a Stapled Security.
Stapled Security Register	The register of Stapled Securities to be established and maintained by or on behalf of the Entity in accordance with clause 24.7.
Stapling Date	The date determined by the Entity to be the day on which all Units will be Stapled to an Attached Security or Attached Securities.
Tax	The actual or anticipated taxes, duties, deductions and charges government, together with interest and penalties.
Taxation Amount (in relation to a Relevant Person)	<p>(a) An amount of Tax, bank fees or charges referable to the Relevant Person; and.</p> <p>(b) An amount of Tax which the Relevant Person is or is expected to be primarily liable to pay.</p>

Transaction Costs

- (a) When calculating the application price of a Unit or the redemption price of a Unit under clause 8.2(a), an estimate (which is independently verifiable) by the Entity of:
- (i) the total transaction costs the Fund would incur to acquire afresh the Assets, or
 - (ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total transaction costs, which may be zero.

If the Entity makes no estimate, then the Transaction Costs are zero.

- (b) When calculating the redemption price of a Unit under clause 8.2(b), an estimate (which is independently verifiable) by the Entity of:
- (i) the total transaction costs the Fund would incur to sell the Assets, or
 - (ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the withdrawal, a portion of the total transaction costs, which may be zero.

If the Entity makes no estimate, then the Transaction Costs are zero.

Unit

An undivided share in the beneficial interest in the Fund as provided in this Constitution.

Unstapled

In relation to a Unit, means not being Stapled to a Security.

Unstapling Date

The date the Stapling Provisions cease to apply or are suspended in accordance with clause 24.3(b).

Withdrawal Offer

A withdrawal offer in accordance with sections 601KB-601KE of the Corporations Act.

Withdrawal Request

A withdrawal request in accordance with sections 601KB-601KE of the Corporations Act.

Arena REIT No. 2 Constitution

Schedule 2 - Rules for interpretation

Unless the contrary appears, in this Constitution:

- (a) Terms defined in the Corporations Act are used with their defined meaning.
- (b) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements.
- (c) The singular includes the plural and vice versa.
- (d) The words "including" and "for example" when introducing a list of items does not exclude a reference to other items, whether of the same class or genus or not.
- (e) Amend includes delete or replace.
- (f) Person includes a firm, a body corporate, an unincorporated association or an authority.
- (g) Headings and marginal notes are for convenience only and do not affect interpretation of this Constitution.