

## **ASX Announcement**

12 December 2014

### **CONSOLIDATED CONSTITUTION OF UNITY PACIFIC STAPLED TRUST**

In accordance with Listing Rule 15.4.2, Unity Pacific Investment Management Limited as responsible entity for Unity Pacific Stapled Trust (ASX: UPG) attaches the consolidated, amended constitution of Unity Pacific Stapled Trust.

The constitution has been amended to incorporate the trust's change of name from Trinity Stapled Trust and the responsible entity's change of name from Trinity Investment Management Limited.

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# Constitution of Unity Pacific Stapled Trust

[Consolidated version incorporating amendments made on 15 October 2004, 20 October 2004, 1 November 2004, 29 June 2005, 21 December 2005, 1 December 2006, 23 December 2010, 19 October 2012 and 5 December 2014]

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Date

By

**Unity Pacific Investment Management Limited** ACN 137 565 149 (**Responsible Entity**)

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## Background

The Responsible Entity wishes to establish a trust to be called the Unity Pacific Stapled Trust, on the terms and conditions of this document.

## Agreed terms

### 1 Interpretation

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#### 1.1 Definitions

In this document:

**Accounting Standards**

means:

- (a) the accounting standards as defined in the Corporations Act; and
- (b) other generally accepted accounting principles and practices in Australia which are not inconsistent with the accounting standards referred to in paragraph (a).

**Accounts**

means a statement of financial position, an operating statement and such other accounts and statements as are required by the Corporations Act or the Listing Rules to be prepared in respect of the Fund for a Financial Year.

**Applicant**

means a person who has made an application to the Responsible Entity for Units or Options.

**Application Moneys**

means any form of valuable consideration received by the Responsible Entity for the issue of a Unit or an Option.

**Application Date**

means the Pricing Day applicable to an application being:

- (a) if the application is accepted by the Responsible Entity on a Pricing Day on or before the Prescribed Application Time, that Pricing Day; or
- (b) otherwise, the next Pricing Day.

**Application Price**

means in relation to the issue of a Unit:

- (a) in the case of the issue of Units while the Fund is not a registered managed investment scheme under the Corporations Act, such price as is determined by the Responsible Entity;
- (b) in the case of Units issued under the first Disclosure

- Document issued by the Responsible Entity, \$0.99;
- (c) except where paragraph (d) applies, the amount calculated as at the close of business on the Application Date as follows:

$$\text{Application Price} = \frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Issued Units}}$$

- (d) while the Units are Officially Quoted, the Market Price of Units or, while Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities as determined by the Responsible Entity in accordance with clause 12.6;
- (e) in the case of Units issued to Benjamin McCarthy or a company controlled by Benjamin McCarthy (as determined in accordance with section 50AA Corporations Act) in connection with his employment by the Responsible Entity, the Stapled Company or a related body corporate of either of them, \$0.83;
- (f) in the case of Units issued to the persons set out in the schedule, the price set out beside their name in the schedule.

<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASIC relief</b>	means any declaration or modification made or exemption granted by ASIC at any time and continuing in force and applicable to the Fund.
<b>Asset</b>	includes all property, rights and income held by the Responsible Entity on trust in accordance with this document but does not include: <ul style="list-style-type: none"> <li>(a) any Application Moneys in respect of which Units have not been issued; or</li> <li>(b) any amount in a distribution account awaiting distribution to Unit Holders as entitlements to income or capital or proceeds of withdrawal.</li> </ul>
<b>Associate of the Responsible Entity</b>	includes any person who is an associate of the Responsible Entity by virtue of Division 2 of Part 1.2 Corporations Act and Associated has a corresponding meaning.
<b>ASX</b>	means Australian Stock Exchange Limited or the stock market operated by it, as the context requires.
<b>Attached Securities</b>	means a Stapled Share and any other security or securities that are from time to time Stapled or to be Stapled to a Unit.
<b>Attached Shares</b>	means Shares in the Stapled Company.
<b>Books Closing Date</b>	has the meaning given in clause 24.14(d).
<b>Certificate</b>	means a certificate for Units or Options issued in accordance with the Corporations Act.
<b>CHESS</b>	has the meaning given to that term in the Listing Rules.

<b>CHESS Approved Securities</b>	means Units or Options which are approved in accordance with the Operating Rules.
<b>Class</b>	means a class of Units or Options.
<b>Class Rights</b>	means the rights, obligations and restrictions attaching to any particular Units or Options or Classes of Units or Options, and the terms and conditions of issue of any Units or Options.
<b>Compliance Committee Member</b>	means a member of a compliance committee established by the Responsible Entity in connection with the Fund.
<b>Compliance Plan</b>	means the compliance plan for the Fund as required by section 601 HA Corporations Act.
<b>Constitution</b>	means the provisions of this document as amended from time to time.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth) and the Corporations Regulations made under it.
<b>CS Facility</b>	has the same meaning as prescribed CS facility in the Corporations Act.
<b>CS Facility Operator</b>	means the operator of a CS Facility.
<b>Disclosure Document</b>	means an information memorandum, product disclosure statement or other disclosure document issued by the Responsible Entity in relation to an offer of Units, Stapled Securities, Options or other promotion of the Fund or the Stapled Entities.
<b>Distributable Amount</b>	has the meaning given in clause 24.14(d).
<b>Distributable Income</b>	for a Financial Year is the amount determined in accordance with clause 24.4.
<b>Distribution</b>	means a distribution of income or capital in accordance with this document.
<b>Distribution Date</b>	means the date determined by the Responsible Entity, which must not be more than 90 days after the end of the Distribution Period.
<b>Distribution Period</b>	means each six month period commencing on 1 July and 1 January, but: <ul style="list-style-type: none"> <li>(a) the first Distribution Period will be the period between and including the date of establishment of the Fund to the next 30 June; and</li> <li>(b) the last Distribution Period will be the period that ends on the day on which the final Distribution is made under clause 31.4 and commences on the immediately preceding 1 July or 1 January, whichever last occurs before that day.</li> </ul>
<b>Expenses</b>	means all expenses in respect of the Fund (whether paid or unpaid, actual or contingent, present or future) incurred by the Responsible Entity in establishing the Fund, offering Units or Options, administering the Fund, winding up the Fund, in connection with the evaluation, acquisition, proposed acquisition, maintenance,

disposition, proposed disposition of Assets or otherwise incurred in performing its obligations under this document, including in connection with:

- (a) this Constitution and any modification or replacement of this Constitution and the establishment of the Fund (which, for the avoidance of doubt, includes costs incurred prior to the execution of this document including legal, accounting, tax and printing costs);
- (b) the preparation, review, printing and distribution of any Disclosure Document in respect of Units or Options and any material supplemental, or in replacement of, such document;
- (c) the admission of the Fund or Stapled Entities to the Official List of the ASX, compliance with the Listing Rules and Official Quotation of any Units, Stapled Securities or Options;
- (d) the sale, purchase, insurance, development, project management, leasing, custody of (including the fees of a related body corporate of the Responsible Entity), and any other dealing with, Assets;
- (e) any proposed investment or disposal (including any analysis or investigation of any potential or proposed acquisition, disposal or other dealing with any investment);
- (f) the operation, administration, management, investment or promotion (including in connection with any proposed or actual issue of Units, Options or Attached Securities) of the Fund, the Assets or the Liabilities, including any investment management, property and project management costs;
- (g) the engagement of delegates, underwriters, investment managers, agents, valuers, asset consultants, advisers and contractors of all kinds (including legal costs on a full indemnity basis);
- (h) computer and other facilities;
- (i) the preparation, printing and postage of distribution statements or any other communications with Unit Holders or Option Holders and the cost of any Unit Holder or Option Holder meeting and attendance at any meeting of the Stapled Entities;
- (j) any court proceedings, arbitration or other dispute concerning the Fund or any Asset including proceedings against the Responsible Entity;
- (k) any costs incurred in connection with, or as a result of, any agreement in connection with the Fund and any costs that any such agreement provides are to be borne by the Fund or paid for out of the Assets;
- (l) the establishment, operation and maintenance of the Register;
- (m) fees of external directors (including insurance

- premiums) of the Responsible Entity, or external members of the Responsible Entity's compliance committee;
- (n) the Liabilities;
  - (o) any costs (including an apportionment of such costs) in connection with the Responsible Entity being a member of an external complaints handling scheme to which a dispute may be referred under clause 30 (including as required by the terms of the Responsible Entity's licence, in applying for membership, application and ongoing membership fees, in maintaining membership and any costs in connection with any complaints or matters to be, or proposed to be, dealt with by, the manager of such a scheme in accordance with the terms of such a scheme);
  - (p) valuation fees;
  - (q) any costs in connection with borrowings or raisings and other financial accommodation (including capital repayments, interest and discount and other bank fees) and any other bank account or services offered by any financial institution (including electronic funds transfer and other electronic banking or payment services or any other method of making payments to Unit Holders) in connection with the Fund;
  - (r) expenses incurred in the termination of the Fund and the retirement or removal of a Responsible Entity and the appointment of a new Responsible Entity;
  - (s) all expenses in connection with the preparation and audit of the accounts of the Fund including accountants' fees and disbursements;
  - (t) expenses incurred in ongoing regulatory compliance including the preparation and lodgement of accounts, applications and returns with the ASIC and the Australian Taxation Office and the costs of preparing, amending and auditing the Compliance Plan;
  - (u) all allowances for prepayments, doubtful debts and bad debts;
  - (v) all amounts allocated to a provision or reserve account;
  - (w) all Tax payable by the Responsible Entity in respect of the Fund;
  - (x) all underwriting expenses incurred in respect of the issue of Units or Options; and
  - (y) such other provisions and expenses that in the opinion of the Responsible Entity should be deducted.

**Financial Year**

means a period of 12 months ending on 30 June or such other period determined by the Responsible Entity. When

	the Fund is terminated, the last Financial Year of the Fund will end on the date the Fund is terminated.
<b>Fully Paid Unit</b>	means a Unit on which the Application Price has been fully paid.
<b>Fund</b>	means the trust constituted in accordance with this document.
<b>Gross Asset Value</b>	of an Asset means the value of the Asset excluding debt incurred by the Fund in respect of the Asset.
<b>GST</b>	has the meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
<b>Holder</b>	means a Unit Holder or an Option Holder (as applicable).
<b>Issued Units</b>	means all Units of the Fund for the time being created and issued in accordance with this document.
<b>Liabilities</b>	<p>means all present liabilities of the Fund, including liabilities accrued but not yet paid and any provision that the Responsible Entity decides should be taken into account in determining the liabilities of the Fund, but does not include:</p> <ul style="list-style-type: none"> <li>(a) any Application Moneys in respect of which Units have not been issued;</li> <li>(b) any amount in a distribution account awaiting distribution to Unit Holders as entitlements to income or capital or proceeds of withdrawal; or</li> <li>(c) any amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not able to be withdrawn, regardless of whether characterised as equity or debt in the accounts of the Fund.</li> </ul>
<b>Liquid</b>	has the same meaning as in section 601 KA(4) of the Corporations Act
<b>Listing Rules</b>	means 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.
<b>Market Price</b>	<p>in relation to Unit, Stapled Security or an Option means:</p> <ul style="list-style-type: none"> <li>(a) the Weighted Average Market Price of Units, Stapled Securities or Options of the relevant Class during the ten ASX trading days prior to the date of the calculation; or</li> <li>(b) if the Responsible Entity does not believe that the calculation in paragraph (a) provides a fair reflection of the market price of a Unit, Stapled Security or Option, an amount as determined by an independent expert whose identity and instructions are to be determined by the</li> </ul>

	Responsible Entity.
<b>Market Transfer</b>	means: <ul style="list-style-type: none"> <li>(a) a transfer of Units or Options pursuant to or connected with a transaction entered into on the stock market operated by ASX and includes a Proper ASTC Transfer; or</li> <li>(b) an issue of Units as a result of the exercise of any rights, Options or convertible notes where such rights, Options or notes are traded on a market operated by ASX.</li> </ul>
<b>Marketable Parcel</b>	means the number of Units, or while Stapling applies, the number of Stapled Securities, which in aggregate constitutes a marketable parcel of securities, or while Stapling applies, Stapled Securities, within the meaning of the Listing Rules.
<b>Minority Holder</b>	has the meaning given to that term in clause 26.
<b>Net Asset Value</b>	means the value of the Assets less liabilities.
<b>Net Income</b>	for a Financial Year means the net income of the Fund calculated in accordance with the Accounting Standards.
<b>Notice</b>	has the meaning given to that term in clause 26.
<b>Notice Date</b>	has the meaning given to that term in clause 26.
<b>Official Quotation</b>	in respect of Units or Options means quotation on the official list of ASX and <b>Officially Quoted</b> has a corresponding meaning.
<b>Option</b>	means an option to subscribe for an unissued Unit.
<b>Option Holder</b>	means a person recorded in the Register as the holder of an Option.
<b>Ordinary Unit</b>	means a Unit that has not been issued in a specific class of Units.
<b>Partly Paid Unit</b>	means a Unit on which the Application Price has not been paid in full.
<b>Prescribed Application Time</b>	means 3:00pm (Brisbane time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time.
<b>Prescribed Withdrawal Time</b>	means 3:00pm (Brisbane time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time.
<b>Pricing Day</b>	means the day of the week prescribed by the Responsible Entity from time to time as the day as at which the Net Asset Value is determined for the purposes of calculating the Application Price and the Withdrawal Price and where such day has not been prescribed by the Responsible Entity means each Business Day.
<b>Proper ASTC Transfer</b>	has the meaning given to the term proper ASTC transfer in the <i>Corporations Regulations 2001</i> .
<b>Property Acquisition Fee</b>	has the meaning given to it in clause 20.3.



<b>Property Disposal Fee</b>	has the meaning given to it in clause 20.4.
<b>Real Property</b>	means real property (including anyone or more pieces of real property) acquired, and held, as an Asset.
<b>Register</b>	means the record maintained by the Responsible Entity of details of the Unit Holders and Option Holders.
<b>Restricted Securities</b>	has the meaning given to that term in the Listing Rules.
<b>Restriction Agreement</b>	has the meaning given to that term in the Listing Rules.
<b>Sale Consideration</b>	has the meaning given to that term in clause 26.
<b>Security</b>	means any financial product within section 764A Corporations Act acquired, and held, as an Asset
<b>Share</b>	means an ordinary share in the capital of the Stapled Company.
<b>Specified Date</b>	has the meaning given to that term in clause 11.1.
<b>Stapled</b>	means the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which are quoted on the ASX jointly as a "Stapled Security" or such other term as the ASX permits.
<b>Stapled Company</b>	means Unity Pacific Limited ACN 110 831 288.
<b>Stapled Entity</b>	means the Stapled Company and any other trust, corporation or managed investment scheme whose securities are Stapled to the Units.
<b>Stapled Security</b>	means a Unit and each Attached Security that are Stapled together and registered in the name of the Unit Holder.
<b>Stapled Share</b>	means an ordinary share in the Stapled Company.
<b>Stapling</b>	means the process that results in Units and Attached Securities being and remaining Stapled to each other.
<b>Stapling Commencement Date</b>	means the date upon which Stapling of the Units to Attached Securities is to commence as determined by the Responsible Entity but, if it is determined that Stapling will occur in stages, means the date upon which the last stage occurs.
<b>Stapling Provisions</b>	means the provisions of this Constitution relating to, referring to or connected with Stapling and, for avoidance of doubt, includes those provisions relating to, referred to or connected with Stapling contained in clauses 2, 6.2, 6.3, 6.4, 6.6, 6.9, 7, 10.10, 11.1, 11.2, 7.3, 11.4, 11.5, 11.7, 11.8, 11.9, 11.10, 12.2, 12.3, 12.4(b), 12.5, 12.6, 13.2, 14.8, 16.5, 19.2, 20.10, 22.7, 24.9(b), 26.8, 28.13, 30.3, 31.6 and <b>Stapling Provision</b> has a corresponding meaning.
<b>Subsidiary</b>	has the meaning given to that term in the Corporations Act.
<b>Takeover</b>	has the meaning given to that term in clause 26.
<b>Tax</b>	means all forms of taxes, duties and governmental imposts including income tax, tax on the acquisition of any

	Asset, debits tax, land tax, financial institutions duty, stamp duty and goods and services tax together with interest, penalties, charges, fees and other amounts payable on or in respect of them, other than taxes on income received by the Responsible Entity beneficially.
<b>Tax Act</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth), whichever is applicable.
<b>Termination Event</b>	means an event that causes the term of the Fund to end in accordance with clause 31.1.
<b>Transaction Costs</b>	means when calculating, as at any date: <ul style="list-style-type: none"> <li>(a) the Application Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total costs that would be reasonably expected to result from the acquisition of investments by the Fund as a consequence of the increase in the Fund's cash resources resulting from the issue of Units (excluding the purchase price of the investments); and</li> <li>(b) the Withdrawal Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total costs that would be reasonably expected to result from the disposal of investments by the Fund as a consequence of the reduction in the Fund's cash resources resulting from the withdrawal of Units (excluding the disposal price of the investments).</li> </ul>
<b>Unit</b>	has the meaning set out in clause 6.1.
<b>Unit Holder</b>	means a person recorded in the Register as the holder of a Unit in relation to a Unit, not being Stapled to an Attached Valuer means a qualified valuer authorised in writing by the Responsible Entity to value any Assets.
<b>Unstapled</b>	means, in relation to a Unit, not being Stapled to an Attached Security.
<b>Valuer</b>	means a qualified valuer authorised in writing by the Responsible Entity to value any Assets.
<b>Weighted Average Market Price</b>	means: <ul style="list-style-type: none"> <li>(a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the relevant period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by ASX; or</li> <li>(b) if no such sales occurred, the price at which the last recorded sale of a relevant Unit, Stapled Security or Option occurred prior to the</li> </ul>

commencement of the relevant period.

**Withdrawal Date**

the Pricing Day applicable to Units the subject of a withdrawal request being:

- (a) if the withdrawal request is accepted by the Responsible Entity on a Pricing Day or before the Prescribed Withdrawal Time, that Pricing Day; or
- (b) otherwise, the next Pricing Day.

**Withdrawal Price**

means, the means the price of Units the subject of a withdrawal request, being the amount calculated as follows:

- (a) in the case of a Partly Paid Unit that is not Officially Quoted, the price calculated in accordance with the formula in paragraph (b), less the amount of the Application Price of the Unit that has not been paid or called under this Constitution;
- (b) except where paragraph (c) or (d) applies, the amount calculated at the close of business on the Withdrawal Date as follows:

$$\text{Withdrawal Price} = \frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{Issued Units}}$$

- (c) except where paragraph (d) applies, while Units are Officially Quoted, the Market Price of Units or, while Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities as determined by the Responsible Entity in accordance with clause 12.6; and
- (d) in the case of a withdrawal request made in response to any withdrawal offer approved by Unit Holders at a meeting held on 19 October 2012 (and any adjournment or postponement of that meeting), 31 cents per Unit.

**1.2 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) terms defined in the Corporations Act are used with their defined meanings;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (g) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Brisbane;
  - (vii) '\$' or 'dollars' is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- (j) a document does not become a part of or included in this document only because it is referred to in this document.

### **1.3 Headings**

Headings do not affect the interpretation of this document.

### **1.4 Severance and reading down**

- (a) Subject to clause 1.4(b), if a provision of this document is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this document.
- (b) Clause 1.4(a) does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this document; or

- (B) the relative commercial or financial positions of the parties; or
- (ii) would be contrary to public policy.

### **1.5 Consistency with the Corporations Act**

- (a) If any part of this document is inconsistent with the Corporations Act, the provision will continue in effect but will be interpreted so that its operation is consistent with the Corporations Act.
- (b) If at any time the Corporations Act requires that this document contain certain provisions, then those provisions are deemed to be incorporated into this document at all times they are required to be included and prevail over any other provision of this document to the extent of any inconsistency.

### **1.6 Relief**

If at any time relief from the provisions of the Corporations Act has been granted by ASIC that affects the Fund, this document will be taken to be modified to the extent necessary to enable the Responsible Entity (and if relevant, each Unit Holder) to avail itself of that relief, including to incorporate any condition or obligation that must be met for the relief to apply in respect of the Fund.

### **1.7 Constitution**

The Responsible Entity declares that this Constitution is the constitution of the Fund for the purposes of the Corporations Act at any time that the Fund is a registered managed investment scheme under the Corporations Act.

### **1.8 Listing Rules**

While the Fund is on 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 requires 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 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; and
- (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.

## **2 Stapling Provisions**

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### **2.1 Application of Stapling Provisions**

If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the Operating Rules, the Corporations Act or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

### **2.2 Effective time for Stapling**

The Stapling Provisions only apply and come into effect in accordance with this clause. Each Unit will be Stapled to a Stapled Share on the Stapling Commencement Date and the Stapling Provisions will apply and come into effect from that time. The Responsible Entity may, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.

### **2.3 Intentions concerning issue and transfer of Stapled Securities**

The Units are intended to be Stapled to Stapled Shares and any other Attached Securities in the ratio of one Unit to one Stapled Share and one of each other category of Attached Securities (if any). It is the intention of the Responsible Entity (and as more specifically set out in this Constitution) that:

- (a) the Unit Holders shall be identical to the members holding Stapled Shares in the Stapled Company and the holders of other Attached Securities (if any);
- (b) as far as the law permits, a Unit and one of each of the Attached Securities that are Stapled together shall be treated as one security;
- (c) no transfer of a Unit is to occur without one of each of the Attached Securities being transferred at the same time from the same transferor to the same transferee; and
- (d) no Unit is to be issued unless one of each of the Attached Securities is issued at the same time to the same person.

### **2.4 Power to Unstaple Units**

- (a) Subject to the Corporations Act, the Listing Rules and approval by Special Resolutions of the Unit Holders and the members of the Stapled Company holding Stapled Shares respectively, the Responsible Entity may determine that the Stapling Provisions will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to an Attached Security and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Responsible Entity determines to Unstaple the Stapled Securities, this does not prevent the Responsible Entity from (subject to the same resolutions of the Unit Holders and the members of the Stapled Company holding Stapled Shares) doing the following:
  - (i) subsequently determining that the Stapling Provisions should recommence; and
  - (ii) Stapling an Unstapled Unit to a security that is not Stapled.

## **2.5 Variation of Stapling Provisions**

While Stapling applies, the consent of the Stapled Company and any other Stapled Entity must be obtained to any amendment to this Constitution that does either of the following:

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

## **3 Duration of the Fund and effect of this document**

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### **3.1 Constitution**

The Fund commences on the date on which the Responsible Entity accepts the first Application for issue of a Unit.

### **3.2 Fund Constitution and its enforceability**

This document and its provisions shall be legally enforceable by the Unit Holders and Option Holders against the Responsible Entity and by the Responsible Entity against each Unit Holder and each Option Holder and all persons claiming through a Unit Holder or Option Holder as if they were parties to this document.

## **4 Name of Fund**

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### **4.1 Fund name**

The Fund is called **Unity Pacific Stapled Trust** or such other name as the Responsible Entity determines from time to time.

### **4.2 Change of name of Fund**

If the Responsible Entity retires or is removed then its replacement as Responsible Entity must, unless agreed by the former Responsible Entity, change the name of the Fund so that it does not imply an association with the former Responsible Entity.

## **5 Assets held on trust**

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### **5.1 Responsible Entity to hold Assets on trust**

The Assets of the Fund will be vested in and held by the Responsible Entity on trust for the Unit Holders on the terms of this document.

### **5.2 Assets held separately**

The Assets must be clearly identified as property of the Fund and must be held separately from the assets of the Responsible Entity.

## **6 Units and Options**

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### **6.1 Units in the Fund**

- (a) The beneficial interest in the Fund will be divided into Units.
- (b) Each Unit represents an equal, undivided part of the beneficial interest in the Fund.

### **6.2 Issue of Units**

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may create and issue Units, including classes of Units with such Class Rights as it determines. Except to the extent specified in the terms of issue of Units all Units will rank pari passu.
- (b) The Responsible Entity may alter the Class of a Unit whether by converting that whole Class of Units to another Class or by re-allocating any particular Units to another Class.

### **6.3 Number of Units**

While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category but disregarding Units held by the Stapled Company and its Subsidiaries.

### **6.4 Options**

- (a) The Responsible Entity may, subject to the terms of this Constitution, the Corporations Act and the Listing Rules create and issue Options on such terms and conditions as the Responsible Entity determines.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.
- (c) Subject to any applicable Class Rights, on exercise of an Option, the holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

### **6.5 Partly Paid Units**

The Responsible Entity may offer Units for subscription on terms that the Application Price is payable by one or more instalments of such amounts payable at such times as the Responsible Entity determines. All the terms and conditions of such an offer must be set out in the document offering the Units for subscription.

### **6.6 Partly Paid Units while Stapling applies**

While Stapling applies, Units may not be issued partly paid unless there is, at the same time, a corresponding issue of Attached Securities, which are also partly paid. A call will not be regarded as having been validly paid unless any amount payable at the same time in relation to partly paid Attached Securities is also paid.

### **6.7 Liability of joint holders**

Joint Holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.



## **6.8 Fractions**

The Responsible Entity may not issue fractions of a Unit or an Option. Where any calculation under this document would result in a fraction of a Unit or an Option being issued, the number of Units or Options will be rounded down to the nearest whole Unit or whole Option. Any excess due to rounding is an Asset of the Fund.

## **6.9 Underwriting of issue**

- (a) The Responsible Entity may arrange for:
- (i) an offer for subscription or issue of Units or Options;
  - (ii) the payment of instalments in respect of Partly Paid Units;
  - (iii) if Stapling applies, an offer for subscription or issue of Stapled Securities or Options; or
  - (iv) the exercise of Options,
- to be underwritten by an underwriter on terms determined by the Responsible Entity.
- (b) The underwriter may, subject to the Corporations Act and the Listing Rules:
- (i) be the Responsible Entity or a related body corporate of the Responsible Entity (within the meaning in the Corporations Act);
  - (ii) take up any Units (or Stapled Securities, if Stapling applies) or Options not subscribed for;
- (c) The Responsible Entity may issue Units (or Stapled Securities, if Stapling applies) and Options to an underwriter under this clause 6.9 at an Application Price equal to the Application Price at which the underwritten Units (or Stapled Securities, if Stapling applies) or Options were or would have been issued to persons other than the underwriter or underwriters.

## **6.10 Consolidation and division**

The Responsible Entity may consolidate or divide Units and Options.

## **6.11 Consolidation and division while Stapling applies**

While Stapling applies, Units may only be consolidated or divided if the related Attached Securities are also consolidated or divided at the same time and to the same extent.

## **6.12 Commission and brokerage**

- (a) The Responsible Entity may make payments by way of brokerage or commission to a person in consideration for the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or Options or procuring or agreeing to procure subscriptions, whether absolute or conditional, for Units or Options.
- (b) The brokerage or commission may be satisfied by payment in cash, by issue of fully or partly paid Units, by issue of debentures or a combination of all or any of such ways.

### **6.13 Registered Holder**

The Responsible Entity is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Unit or Option or (except as otherwise provided by this Constitution or by law) any other right in respect of a Unit or Option except an absolute right of ownership in the registered Holder of the Unit or Option.

### **6.14 Multiple Holders**

- (a) If more than three persons are registered as the joint Holders of any Unit or Option (or a request is made to register more than three persons), only the first three persons so registered will be regarded as the joint Holders of the Unit or Option, and all other names will be disregarded by the Responsible Entity for all purposes.
- (b) Where two or more persons are registered as the joint Holders of any Unit or Option, they are deemed to hold the Unit or Option as joint tenants with rights of survivorship, subject to the provisions of this Constitution as to joint holdings and the following provisions:
  - (i) they and their respective legal personal representatives are jointly and severally liable to pay all calls, interest or other amounts payable in respect of the Unit or Option; and
  - (ii) anyone of them may give effectual receipts for any distribution, interest or other amounts payable in respect of the Unit or Option.

### **6.15 Death of Holder**

In the case of the death of:

- (a) a sole registered Holder of a Unit or Option, the legal personal representatives of the deceased; and
- (b) joint registered Holders of a Unit or Option, subject to clause 6.14(b)(i), the survivor or survivors,

are the person or persons whom the Responsible Entity will recognise as having any title to the Unit or Option, and for this purpose, the Responsible Entity may require reasonable evidence of death. Nothing in this Constitution releases the estate of a joint Holder from any liability in respect of any Unit or Option which has been jointly held with any other person.

### **6.16 Certificates**

- (a) If the Responsible Entity participates in a computerised or electronic security transfer system conducted in accordance with the Listing Rules (e.g. CHESS), the Responsible Entity is not required to issue a Certificate for the Units or Options held by a Holder and may cancel a Certificate without issuing a duplicate Certificate where the non issue of a Certificate is permitted by the Listing Rules or the Operating Rules.
- (b) Where Units or Options are not subject to a computerised or electronic share transfer system, a Certificate (including a duplicate Certificate) for the Units or Options must be issued in accordance with the provisions of the Corporations Act, this Constitution and the Listing Rules.

- (c) Where the Responsible Entity has determined not to issue Certificates or to cancel existing Certificates, a Holder will have the right to receive such statements of holdings as are required to be distributed to a Holder under the Corporations Act, the Listing Rules or the Operating Rules.

### **6.17 Ceasing to be a Unit Holder or Option Holder**

A person ceases to be a Unit Holder or Option Holder (as the case may be) in respect of a Unit or Option when their name is removed from the Register as the holder of that Unit or Option (as applicable).

## **7 Issue of Stapled Securities**

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### **7.1 Paramountcy**

The provisions of this clause 7.1 apply notwithstanding any other provision of the Constitution. Clauses 7.3 to 7.5 apply from the Stapling Commencement Date.

### **7.2 Stapling**

- (a) From the Stapling Commencement Date, each Unit will be Stapled to one Share in the Stapled Company to form a Stapled Security.
- (b) Each Unit (if any) allotted and issued before Stapling applies will from the Stapling Commencement Date become Stapled to one Share in the Stapled Company to form a Stapled Security.
- (c) If further Attached Securities are from time to time Stapled to the Unit the intention is that, so far as the law permits, a Unit and one of each of the Attached Securities that are stapled together shall be treated as one security.
- (d) While Stapling applies, the number of issued Units must equal the number of issued Attached Securities at that time.
- (e) This clause 7 does not restrict the issue of Units that are not Ordinary Units. Only Ordinary Units will be Stapled to Attached Shares or other Attached Securities.

### **7.3 Registration**

The Stapled Securities must be registered in the Stapled Security Register. Subject to clauses 6.13 and 6.14, the Responsible Entity must issue a certificate or a holding statement in accordance with the requirements of the CHESS system, in respect of the Stapled Securities, identifying the Stapled Securities to which the certificate or holding statement relates.

### **7.4 No issue without corresponding issue of Attached Securities**

The Responsible Entity may not allot or issue any Unit unless there is an issue at the same time, and to the same person, of Attached Securities to form a Stapled Security.

### **7.5 Units to remain Stapled**

Subject to clause 2.4 and clause 31.6, each issued Unit will remain Stapled for so long as the Unit remains on issue. The Responsible Entity must not do any act, matter or thing (and must 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 to the relevant Attached

Security to form a Stapled Security. In particular, the Responsible Entity must not reorganise any Units unless at the same time there is a corresponding reorganisation of the relevant Attached Securities that are Stapled to those Units to form Stapled Securities so that the person holding Units holds an equal number of Attached Securities. For the purposes of this clause 7.5 the term reorganise has the meaning given in Listing Rules 7.18 to 7.24 and the term reorganisation has a corresponding meaning and includes any consolidation, division, cancellation, subdivision, buy-back or reduction of any unit capital.

## **8 Rights and liabilities of Unit Holders and Option Holders**

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### **8.1 Limited entitlement of Unit Holders and Option Holders**

Neither a Unit Holder nor an Option Holder is entitled to:

- (a) interfere with the exercise of the Responsible Entity's powers or discretions;
- (b) an interest in any particular Asset or to exercise any rights in relation to any Asset;
- (c) lodge any caveat or other notice affecting any Asset;
- (d) claim an interest in any Asset; or
- (e) require the transfer to the Unit Holder of any Asset.

### **8.2 Benefits and obligations of Unit Holders and Option Holders**

- (a) Except where expressly provided in this Constitution to the contrary, all benefits and obligations in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.
- (b) Except where expressly provided in this Constitution to the contrary, all obligations in this Constitution bind each Option Holder to the extent provided in this Constitution. The benefits in this Constitution only apply for the benefit of Option Holders where expressly provided in this Constitution. Subject to the Corporations Act, where the interests of Option Holders and Unit Holders conflict, the Responsible Entity must prefer the interests of Unit Holders.

### **8.3 Liability of Unit Holders and Option Holders**

- (a) A Unit Holder or Option Holder must indemnify the Responsible Entity to the extent that the Responsible Entity incurs any liability for Tax as a result of a Unit Holder's or an Option Holder's action or inaction.
- (b) The Responsible Entity may deduct from any payment to a Unit Holder or Option Holder any amount of Tax (or a reasonable estimate of the amount) that the Responsible Entity is required or authorised to deduct by law or by this document or which the Responsible Entity considers should be deducted.
- (c) A Unit Holder or Option Holder is not otherwise under any obligation to make any payment to or to indemnify the Responsible Entity or any creditor of it for any liabilities in connection with the Fund. This paragraph does not affect the liability of the Holder of a Partly Paid Unit to pay the Application Price unpaid on the Partly Paid Unit.

## **8.4 Joint Holders**

- (a) Joint Holders of Units or Options hold as joint tenants unless the Responsible Entity agrees otherwise.
- (b) Joint Unit Holders and joint Option Holders are counted as one for the purposes of determining the number of Unit Holders or Option Holders (as applicable).
- (c) For communications to joint Unit Holders or joint Option Holders the Responsible Entity need only use the address and other details recorded in the Register for the first named Unit Holder or Option Holder (as applicable).
- (d) Obligations of joint Unit Holders and Joint Option Holders bind them jointly and severally.
- (e) The Responsible Entity discharges its obligation to make a payment to Joint Unit Holders or joint Option Holders by making a payment to any one of them.

## **9 Lien on Units**

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### **9.1 Lien**

The Responsible Entity will have a first and paramount lien on the Units registered in the name of a Holder:

- (a) where the Responsible Entity has issued Partly Paid Units and a call is due but unpaid on those Units, or where the issue price of Units is payable by instalment and an instalment is due but unpaid on those Units;
- (b) if the Units were acquired under an employee incentive scheme however described and an amount is outstanding in relation to them; or
- (c) where the Responsible Entity is required by law to pay (and has paid) an amount in respect of the Units whether by way of taxation or otherwise.

### **9.2 Lien on Distributions**

In each case, the lien extends to all Distributions from time to time payable in respect of the Units and to interest (at such rate as the Responsible Entity may determine) and expenses incurred because the amount is not paid.

### **9.3 Protection of lien**

The Responsible Entity may do all things necessary or appropriate for it to do under the Listing Rules and the Operating Rules to protect any lien or other right to which it may be entitled under any law or this Constitution.

### **9.4 Rights at law**

Nothing in this Constitution prejudices or affects any right or remedy which any law may confer or purport to confer on the Responsible Entity, and as between the Company and every Holder, the Holder's executors, administrators and estate, any such right or remedy will be enforceable by the Company.

## **9.5 Exemption from lien**

The Responsible Entity may at any time, exempt a Unit wholly or in part from the provisions of this clause 9.

## **10 Calls on Units**

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### **10.1 Power to make calls**

- (a) The Responsible Entity may, subject to any conditions of issue, from time to time make such calls as they think fit upon the Holders of Units in respect of any monies unpaid on the Units held by them.
- (b) The Responsible Entity may determine that a call may be payable by instalments.
- (c) A call is made when the resolution of the directors of the Responsible Entity authorising the call is passed.
- (d) Subject to the Listing Rules, the Responsible Entity may revoke, postpone or extend a call.

### **10.2 Notice of call**

- (a) The Responsible Entity must send notice of a call to the Holders of Units upon whom a call is made as required by the Listing Rules or, if the Listing Rules do not apply, at least ten Business Days (or such other period of notice as provided by any terms of issue affecting the relevant Units) before the due date for payment. The notice must specify the time or times and place of payment and such other information as the Responsible Entity determines.
- (b) The accidental omission to give notice of a call to, or the non-receipt of any such notice by, any of the Holders does not invalidate the call.

### **10.3 Interest on calls**

If a sum called in respect of a Unit is not paid on or before, the day specified for payment of the call, the Holder from whom the sum is due must pay interest on the sum (or on so much as remains unpaid from time to time) from the day specified for the payment of the call until the time of actual payment at such rate as the Responsible Entity determines. The Responsible Entity may waive such interest wholly or in part.

### **10.4 Deemed call**

Subject to any notice requirements set out in the Listing Rules, any sum that, by the terms of issue of a Unit or otherwise, becomes payable on issue or at a fixed date, is for the purposes of this Constitution, deemed to be a call duly made and payable on the date on which, the sum becomes payable. If the sum is not paid on or before that date, the provisions of this Constitution as to payment of interest, expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **10.5 Differentiation between calls**

The Responsible Entity may, on the issue of Units, differentiate between the Holders of those Units as to the amount of calls to be paid and the times of payment.

## **10.6 Recovery of unpaid calls**

- (a) In the event of non-payment of any call, the Company may proceed to recover the sum payable with interest and expenses (if any), by action, suit or otherwise. This right is without prejudice to the right under clause 11 to forfeit the Unit of any Holder in arrears and either or both of such rights may be exercised by the Responsible Entity in its discretion.
- (b) On the trial of any action for the recovery of any call, or of any interest or expenses in respect of any call it is sufficient to prove that:
  - (i) the name of the Holder sued is entered in the Register as the Holder or one of the Holders of the Units in respect of which such debt accrued;
  - (ii) the resolution making the call is duly recorded in the minute book;
  - (iii) notice of such call was duly given to the registered Holder of the Units under this Constitution, or in the case of calls or instalments payable at fixed times, by the terms of issue of any Unit; and
  - (iv) such sum or call has not been paid.
- (c) Proof of the matters described in clause 10.6(b) is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors of the Responsible Entity who made the issue or call, the passing of the resolution or any other matters whatsoever.

## **10.7 Payment of calls in advance**

The Responsible Entity may accept from any Holder all or any part of the amount unpaid on a Unit even if no part of that amount has been called up. The directors of the Responsible Entity may authorise payment by the Responsible Entity of interest upon the whole or any part of an amount so accepted until the amount becomes payable, at such rate as is determined by the Responsible Entity. Any amount paid in advance of calls is to be treated as an unsecured loan until a call is due and until that time is not to be included or taken into account in determining the amount of any Distribution payable upon the Units in respect of which such advance has been made. Money received in advance of a call will not be accepted subject to repayment or be claimable by any Holder. The Responsible Entity may repay the amount so advanced at any time, after giving the Holder one month's written notice.

## **10.8 Extinguishment of liability on calls**

Subject to the Listing Rules and the Corporations Act, the Responsible Entity may at any time enter into contracts with any or all of the Holders holding Partly Paid Units, to extinguish the liability of those Holders to pay to the Responsible Entity any amount unpaid on the Partly Paid Units held by them.

## **10.9 Conversion of securities**

The Responsible Entity must comply with any Corporations Act and Listing Rule requirements relating to Partly Paid Units if its Units are converted into a larger or smaller number.

## **10.10 Calls on Stapled Securities**

While Stapling applies, any issue of Partly Paid Units will be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

## **11 Forfeiture**

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### **11.1 Failure to pay call or instalment on Partly Paid Unit**

If a Unit Holder fails to pay in full any call or instalment due on any Partly Paid Unit on or by the due date, the Responsible Entity may, while any part of the call or instalment remains unpaid, notify the Unit Holder that, if the call or instalment is not paid in full on or by a specified time and day (not earlier than 14 days from the date of service of the notice) (**Specified Date**), the Partly Paid Units in respect which the call or instalment remains unpaid will be liable to be forfeited and, if Stapling applies, an equal number of Attached Securities will also be liable to be forfeited.

### **11.2 Forfeiture of Partly Paid Unit**

If any part of the call or instalment remains unpaid after the Specified Date:

- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities if Stapling applies) may, at any time after the Specified Date and before the required call or instalment has been paid, be forfeited if the Responsible Entity so determines effective at such time as the Responsible Entity determines; and
- (b) if the Partly Paid Unit is so forfeited all entitlements to the Distribution of income and capital in connection with any Partly Paid Unit, which have not been paid before forfeiture, must be applied in accordance with clause 11.8 as if they formed part of the proceeds of sale of the forfeited Unit.

### **11.3 Unit Holder's rights on forfeiture**

From the date of forfeiture:

- (a) the holder of the Partly Paid Unit and, if Stapling applies, Attached Securities ceases to be a Unit Holder of the Fund and of each Stapled Entity in respect of the Attached Securities and has no claims against the Responsible Entity or the Fund or the Stapled Entities in respect of the forfeited Unit and the forfeited Attached Securities; and
- (b) if required in order for ASIC relief to be effective, the Responsible Entity holds the Partly Paid Unit on trust for the Unit Holder.

### **11.4 Sale of forfeited Unit**

A forfeited Partly Paid Unit and, if Stapling applies, any Attached Securities may, subject to compliance with the Corporations Act and the conditions of any ASIC relief and the Listing Rules, be sold or otherwise disposed of:

- (a) at a price equal to that received from the sale of the Partly Paid Units and if Stapling applies, any Attached Securities in the normal course of business on ASX; or
- (b) by public auction; or
- (c) by private treaty.

### **11.5 Cancellation of forfeiture**

At any time before sale or disposition under this clause 11.1 the forfeiture may be cancelled on such terms as the Responsible Entity thinks fit and shall be cancelled when the Unit Holder pays



to the Responsible Entity the full amount owing in respect of such Units and, if Stapling applies, to the Stapled Entities the full amount owing in respect of the Attached Securities.

#### **11.6 Continuing liability of former holder**

The former holder of a Partly Paid Unit that has been forfeited remains liable to pay to the Responsible Entity on demand:

- (a) all money that at the date of forfeiture was payable by the Unit Holder to the Responsible Entity in respect of the forfeited Partly Paid Unit; and
- (b) all costs incurred in connection with the forfeiture, including any costs incurred in connection with any proceedings brought against the former holder to recover the call or instalment.

#### **11.7 Evidence of forfeiture**

A statement signed by an authorised officer of the Responsible Entity that a Partly Paid Unit and, if Stapling applies, the relevant Attached Securities have been forfeited on a stated date is conclusive evidence of the fact as against all persons claiming to be entitled to the forfeited Partly Paid Unit and the Attached Securities.

#### **11.8 Proceeds of sale of forfeited Unit**

- (a) Where a Partly Paid Unit and the relevant Attached Securities are forfeited pursuant to clause 11.2, the Responsible Entity may:
  - (i) receive the consideration, if any, given for the forfeited Partly Paid Unit and relevant Attached Securities on the sale or disposal (or the Responsible Entity may determine that the consideration will be received in whole or in part by the Stapled Entities);
  - (ii) execute (or procure that the Stapled Entities execute) a transfer of such Partly Paid Unit and relevant Attached Securities in favour of the person to whom the Partly Paid Unit and relevant Attached Securities are sold or disposed of and that person must then be registered as the holder of that Partly Paid Unit and relevant Attached Securities.
- (b) The Responsible Entity and the person acquiring the Partly Paid Units and relevant Attached Securities are not obliged to ensure that any part of the money that has been paid for the Partly Paid Units and relevant Attached Securities is paid to the former holder of the Partly Paid Unit and relevant Attached Securities. The persons entitled to that Partly Paid Unit or relevant Attached Securities will not be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Partly Paid Unit or the relevant Attached Securities.

#### **11.9 Costs in connection with forfeiture**

- (a) Subject to the conditions of any applicable ASIC relief, where forfeited Partly Paid Units and relevant Attached Securities are sold or disposed of for cash, the Responsible Entity must deduct from the cash received:
  - (i) all moneys that at the date of forfeiture were payable to the Responsible Entity in respect of the forfeited Partly Paid Units;

- (ii) all costs incurred in connection with the forfeiture including any costs incurred in connection with any proceedings brought against the former holder to recover the call or instalment;
  - (iii) all amounts that have been or will be incurred for commissions, taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Partly Paid Unit.
- (b) The Responsible Entity may retain the amounts so deducted as Assets, but the balance remaining (if any) must be paid to the Unit Holder whose Partly Paid Units were forfeited.

### **11.10 Responsible Entity not liable**

The Responsible Entity is not liable to any former or current holder of Partly Paid Units and Attached Securities for any loss incurred in relation to the sale or disposal of the forfeited Partly Paid Units and Attached Securities.

## **12 Application Price of Units and Options**

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### **12.1 Application Price of Units**

The Responsible Entity may issue Units at the Application Price; however, Units may be issued at a price other than the Application Price in the following cases:

- (a) in the case of a proportionate offer (including a rights issue), at a price calculated in accordance with clause 12.2;
- (b) in the case Of a non-proportionate offer (such as a placement of Units), at a price calculated in accordance with clause 12.3;
- (c) in the case of a reinvestment of a Distribution, at a price calculated in accordance with clause 12.4; and
- (d) in the case of Units issued pursuant to the exercise of an Option, at a price calculated in accordance with clause 12.5.

### **12.2 Proportionate offers**

- (a) The Responsible Entity may ,offer Units for subscription at a price determined by the Responsible Entity to those persons who were Unit Holders of a Class (whether or not the right to acquire those Units is renounceable), on a date determined by the Responsible Entity not being more than 30 days immediately prior to the date of the offer, if:
  - (i) the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions of any ASIC relief applicable to the issue; and
  - (ii) the issue price is not less than 50% of the Application Price of the Units that would otherwise apply under this Constitution.
- (b) Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Responsible Entity is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia.

### **12.3 Non-proportionate offers**

The Responsible Entity may at any time issue Units to any person, whether by way of a placement or otherwise (other than an issue of a kind referred to in clause 12.2, clause 12.4 or clause 12.5), at a price and on terms determined by it, provided the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions of any ASIC relief applicable to the issue.

### **12.4 Reinvestment**

- (a) Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Responsible Entity may from time to time offer Units for subscription at a price determined by the Responsible Entity under an arrangement (Reinvestment Arrangement) provided the terms of the Reinvestment Arrangement include that:
  - (i) at the election of the Unit Holder, the whole or part of any money payable to a Unit Holder under this Constitution, whether Distributable Income or capital, is to be applied in payment for the subscription of Units under the Reinvestment Arrangement;
  - (ii) the price of each Unit issued under the Reinvestment Arrangement at substantially the same time, is the same and not less than 90% of the Application Price that would otherwise apply under this Constitution; and
  - (iii) the Responsible Entity will be deemed to have received an application for Units and Application Money on the day the issue occurs.
- (b) While Stapling applies, no reinvestment may occur under a Reinvestment Arrangement unless, contemporaneously with the reinvestment in additional Units, the Unit Holder subscribes for an identical number of Attached Securities which, when issued, are then Stapled to the additional Units. The Responsible Entity may make provision for and make payment of the subscription price for such Attached Securities out of the Distributable Income or capital (as applicable) that is otherwise available for reinvestment. Part of the subscription price of the Units may come from distributions or dividends paid on the Attached Securities.
- (c) Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Responsible Entity is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia.

### **12.5 Options**

- (a) Subject to this Constitution, the Corporations Act, the conditions of ASIC relief applicable to the issue and, if relevant, the Listing Rules. the Responsible Entity may issue Options:
  - (i) for a consideration determined by it (which may include nil consideration);
  - (ii) on the basis that the issue price for a Unit to be issued on exercise of the Option is one of the following (as specified in the terms of issue of the Option):
    - (A) the Application Price of a Unit on or about the date of issue of the Option; or
    - (B) a price determined by the Responsible Entity, being not less than 50% of the relevant price that would otherwise apply as the Application Price of a Unit under this Constitution on the date of exercise of the Option.

- (b) Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Responsible Entity is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.

## **12.6 Stapled Securities price allocation**

- (a) Where:
  - (i) Stapling applies;
  - (ii) as a consequence, a Unit is to be issued, redeemed or bought-back as part of the Stapled Security; and
  - (iii) this Constitution contains a provision for the calculation or determination of the application price for the Stapled Security from which the price for the Unit is to be derived, the Responsible Entity must, in accordance with paragraph (b), determine what part of the application price for a Stapled Security is to be allocated respectively to a Unit and each Attached Security for the purpose of this Constitution.
- (b) Subject to paragraph (c), the application price for a Stapled Security will be allocated between the Application Price for the Unit and for the application prices for the Attached Securities on the basis of fair value as agreed between the Responsible Entity and the Stapled Entities or, failing agreement, determined by an independent accountant based on fair market value as determined by the accountant having regard to the respective net tangible asset backing of each of the Unit and the Attached Securities immediately prior to the issue, redemption or buyback of the Stapled Security and any other factors that the accountant believes should be taken into account.
- (c) Where the Unit is being issued pursuant to the exercise of an Option and the terms of the Option specified the Application Price of the Unit, the application price of the Unit and each of the Attached Securities must be determined in accordance with any relevant provisions of the terms of the Option.

## **13 Application procedure**

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### **13.1 Application form**

- (a) An Applicant must complete such forms and documentation and provide such other information required by the Responsible Entity.
- (b) The Responsible Entity has an absolute discretion in considering applications and may reject an application in whole or in part without giving any reason for the rejection.
- (c) Applications may not be withdrawn unless the Responsible Entity agrees.

### **13.2 Application for identical number of Attached Securities**

- (a) While Stapling applies, an Applicant for Units must at the same time apply for an identical number of Attached Securities.
- (b) While Stapling applies, the Responsible Entity must reject an application for Units if the Applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the Applicant.

### **13.3 Application Moneys**

- (a) The Application Price may be satisfied in such manner as the Responsible Entity determines including by instalments, by payment of cash, by transfer to the Responsible Entity at their market value of assets acceptable to the Responsible Entity, or by a combination of these methods.
- (b) The Responsible Entity may determine that an issue of Units or Options is void if:
  - (i) funds paid for an application for Units or Options are not cleared; or
  - (ii) the Responsible Entity does not receive clear title to any other consideration given for the issue of Units or Options,

within one month of the application or such earlier date specified by the Responsible Entity.

- (c) The Responsible Entity may deduct its reasonable expenses from any Application Moneys it must return to an Applicant.
- (d) If the Responsible Entity accepts property other than cash for the issue of Units or Options, any costs associated with the valuation or transfer of the property must be paid by the Unit Holder or Option Holder (as applicable) directly or by deducting them from the market value of the property before the number of Units or Options to be issued is calculated by the Responsible Entity.

### **13.4 Minimum amounts**

The Responsible Entity may set a minimum application amount and a minimum holding amount for the Fund and may vary these amounts from time to time.

### **13.5 Time of issue**

A Unit or Option is taken to be issued to a Unit Holder or Option Holder (as applicable) when the name of the Unit Holder or Option Holder is recorded in the Register in relation to that Unit or Option or when the Responsible Entity receives the Application Money or the Application Money is vested in the Responsible Entity, whichever occurs later.

### **13.6 Refusal to issue Units or Options**

- (a) Notwithstanding anything expressed or implied to the contrary in this document, if the Responsible Entity determines that it is desirable for the protection of the Fund or in the interests of the Unit Holders or Option Holders that whilst:
  - (i) any relevant stock market or foreign exchange market is closed;
  - (ii) trading on any such market is restricted;
  - (iii) an emergency (including an emergency caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price;
  - (iv) during the existence of any state of affairs as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price; or

- (v) any moratorium declared by a government of any country with which a significant proportion of the Fund is invested exists,
- (b) Units and/or Options should not be issued, or the Application Price or Withdrawal Price should not be calculated, or the proceeds of any withdrawal need not be paid for any period determined by the Responsible Entity, the Responsible Entity shall not issue Units and/or Options or calculate the Application Price or Withdrawal Price or make any payment for the withdrawal of Units and/or Options for the period so determined and the Application Price and the Withdrawal Price for the Fund for that period shall be the Application Price and the Withdrawal Price next determined.

### **13.7 Perpetuity period and restriction on issue and withdrawal of Units**

The perpetuity period for the purposes of section 209 of the *Property Law Act 1974 (Qld)* is the period of 80 years from the day immediately preceding the commencement of the Fund. Despite any other clause of this Constitution, no Unit may be issued and the Responsible Entity may not give effect to the withdrawal of a Unit after the 80<sup>th</sup> anniversary of the day immediately preceding the day the Fund commenced, if that issue or withdrawal would cause a contravention of the rule against perpetuities or any other rule of law or equity. The specification of a perpetuity period in this clause 13.7 does not require that the Fund terminate on the expiration of that period.

## **14 Transfer of securities**

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### **14.1 Participation in computerised or electronic systems**

The Responsible Entity may do anything it considers necessary or desirable and that is permitted under the Corporations Act and the Listing Rules to facilitate the Fund's participation in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in Units or Options.

### **14.2 Form of transfers**

- (a) Subject to this Constitution, a Holder may transfer all or any of the Holder's Units or Options by:
  - (i) any computerised or electronic system established or recognised by the Listing Rules or the Corporations Act for the purpose of facilitating dealings in securities, including a transfer that may be effected under the Operating Rules or other electronic transfer process; or
  - (ii) an instrument in writing in any usual or common form or in any other form that the Responsible Entity approves.
- (b) Except in the case of a Proper ASTC Transfer, the transferor remains the Holder of the Units or Options until the name of the transferee is entered in the Register.
- (c) In the case of a Market Transfer, the Responsible Entity must comply with the obligations imposed on it by the Listing Rules and the Operating Rules and any applicable legislation in connection with any transfer of Units or Options.
- (d) Restricted Securities cannot be disposed of during the escrow period that applies in relation to those securities except as permitted by the Listing Rules or ASK

### **14.3 Registration procedure**

Where an instrument of transfer referred to in clause 14.2 is used by a Holder to transfer Units or Options, the following provisions apply:

- (a) the instrument of transfer must be executed by or on behalf of both the transferor and the transferee unless it is a Proper ASTC Transfer;
- (b) the instrument of transfer must be left at the security registry of the Responsible Entity for registration accompanied by the Certificate for the securities to be transferred (if any) and, subject to the Listing Rules, such other evidence as the Responsible Entity may require to prove the title of the transferor and the transferor's right to transfer the securities;
- (c) a fee must not be charged on the registration of a transfer of securities; and
- (d) on registration of a transfer of securities, the Responsible Entity must cancel the old Certificate (if any).

### **14.4 Transfers and Certificates**

Securities will be transferred and, subject to clause 6.16, Certificates relating to them will be issued and delivered in accordance with the Corporations Act and the Listing Rules.

### **14.5 Responsible Entity's powers to apply a holding lock and to decline to register**

- (a) If permitted to do so by the Listing Rules or the Operating Rules, the Responsible Entity may:
  - (i) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of CHESS Approved Securities registered on the CHESS sub register; or
  - (ii) decline to register a transfer of Units or Options.
- (b) The Responsible Entity must:
  - (i) request any applicable CS Facility Operator to apply a holding lock to prevent transfer of CHESS Approved Securities registered on the CHESS subregister; or
  - (ii) decline to register any transfer of other Units or Options; if:
  - (iii) the Listing Rules require the Responsible Entity to do so;
  - (iv) the transfer is in breach of the Listing Rules or a Restriction Agreement; or
  - (v) clause 14.8(b) requires the Responsible Entity not to register the transfer.
- (c) If in the exercise of its powers under clauses 14.5(a) or 14.5(b), the Responsible Entity requests the application of a holding lock to prevent a transfer of CHESS Approved Securities or refuse to register a transfer of a Unit or Option, they must give written notice to the Holder of the security and the broker lodging the transfer, if any, of the refusal to transfer. Failure to give such notice does not invalidate the decision of the Responsible Entity.

## **14.6 Non-interference with registration**

Subject to clause 14.5, the Responsible Entity may not prevent, delay or interfere with the generation of a Proper ASTC Transfer or the registration of a paper-based transfer of Units or Options in registrable form.

## **14.7 Instruments of transfer retained**

All registered instruments of transfer will be retained by the Responsible Entity but any instrument of transfer which the Responsible Entity declines to register will, except in the case of fraud, or alleged fraud, upon demand in writing be returned to the party presenting it. When any instrument of transfer is registered, the Responsible Entity may authorise the destruction of the instrument of transfer, subject to the provisions of any applicable legislation and after at least three months from the date of registration of the instrument of transfer has passed.

## **14.8 Effect of Stapling**

While Stapling applies:

- (a) a transfer of an Ordinary Unit will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this clause 14 or clause 16, as the case may be, the transfer relates to or is accompanied by a transfer or a copy of a transfer of the relevant Attached Securities to which the Unit is Stapled in favour of the same transferee;
- (b) subject to the applicable Operating Rules and the Listing Rules, the Responsible Entity must not register a transfer of an Ordinary Unit unless the relevant Attached Securities are also to be transferred, or are capable of transfer, simultaneously; and
- (c) the same rules as for the transfer of Ordinary Units and Attached Securities apply to Options over Stapled Securities.

## **15 Closure of transfer books and Register**

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Subject to the Corporations Act, the Listing Rules and the Operating Rules, the transfer books and the Register may be closed during such time (not exceeding in aggregate 30 Business Days in each year) as the Responsible Entity thinks fit.

## **16 Transmission of securities**

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### **16.1 Death or bankruptcy**

A person entitled to a Unit or Option in consequence of the death or bankruptcy of a Holder or a vesting order may, upon producing such evidence as is properly required by the Responsible Entity to establish such entitlement, be registered as the Holder of the Unit or Option.

### **16.2 Estates**

Subject to clause 6.13, a person lawfully administering the estate of a Unit Holder or an Option Holder under the provisions of a law relating to mental health or the administration of the estates of patients or infirm persons may, upon producing such evidence as is properly required by the Responsible Entity, either be registered as the Holder of the Unit or Option or subject to the provisions of this Constitution as to transfers, transfer the Unit or Option to some other person nominated by that person.



### **16.3 Effect of death, bankruptcy or infirmity**

A person entitled to a Unit or Option under clause 16.1 is, upon the production of such evidence as is properly required by the Responsible Entity to establish the person's entitlement, entitled to the same distributions and other advantages, and to the same rights and obligations (whether in relation to meetings, or to voting, or otherwise), as the registered Holder would have been. Where two or more persons are jointly entitled to any security in consequence of the death of the registered Holder they are, for the purposes of this Constitution, deemed to be joint Holders of the security.

### **16.4 Operating Rules**

The provisions of this clause 16 are subject to any provisions of the Operating Rules which deal with notification of transmission on death or by operation of law.

### **16.5 Stapling**

Notwithstanding any other provision of this Constitution, no person may, under this clause 16, become a registered Holder of Ordinary Units unless that person is also entitled to become (and does become) the registered holder of Attached Securities to which those Ordinary Units are Stapled.

## **17 Compliance with Operating Rules**

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The Responsible Entity must, notwithstanding anything to the contrary in this Constitution, comply with the Operating Rules in relation to any Units or Options which are CHES Approved Securities.

## **18 Withdrawal procedures**

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### **18.1 While the Fund is Officially Quoted**

While Units are Officially Quoted, then despite any other provision of this clause 18, Unit Holders do not have the right to withdraw from the Fund or to apply for the withdrawal of their Units.

### **18.2 Request for withdrawal**

A Unit Holder may make a request for the withdrawal of some or all of their Units in any manner approved by the Responsible Entity and the Responsible Entity may give effect to that request at the time and in the manner set out in this clause 18.

### **18.3 While the Fund is Liquid**

- (a) While the Fund is Liquid, the Responsible Entity may decide to satisfy a withdrawal request either in relation to all or some of the Units the subject of the request.
- (b) While the Fund is Liquid, if the Responsible Entity decides to satisfy a withdrawal request in respect of a Unit it must pay from the Assets the Withdrawal Price calculated in accordance with this document. The payment must be made within 30 days of the Responsible Entity's decision.
- (c) The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.

- (d) While the Fund is Liquid, if compliance with a withdrawal request would result in the Unit Holder holding Units with an aggregate Withdrawal Price that is less than the then current minimum holding amount, the Responsible Entity may treat the withdrawal request as relating to the balance of the Unit Holder's holding.
- (e) While the Fund is Liquid, if the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount, redeem that Unit Holder's holding without the need for a withdrawal request.

#### **18.4 When Fund is not Liquid**

- (a) While the Fund is not Liquid, a Unit Holder may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Fund.
- (b) Where, in accordance with a withdrawal offer made pursuant to clause 18.4(a), the Responsible Entity satisfies a withdrawal request in respect of a Unit, it must pay from the Assets the Withdrawal Price calculated in accordance with this document.
- (c) The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (e) If the Responsible Entity receives a withdrawal request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

#### **18.5 Clauses applicable whether or not the Fund is Liquid**

Clauses 18.6 and 18.7 apply whether or not the Fund is Liquid.

#### **18.6 Sums owed to Responsible Entity**

The Responsible Entity may deduct from the proceeds of withdrawal or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Unit Holder.

#### **18.7 Transfer of Assets**

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

#### **18.8 Cooling off**

If a Unit Holder has the right by law to return Units issued to it, the Responsible Entity is permitted to cancel the Units and to repay to the Unit Holder the money that it is required to pay under the law.

## 18.9 Buy-back of Units

While the Units or Options are Officially Quoted, the Responsible Entity may, subject to and in accordance with the Corporations Act and any requirements under the Listing Rules, purchase or cause to be purchased Units or where Stapling applies, Stapled Securities and cause the Units that in part comprise those Stapled Securities to be cancelled. No withdrawal Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Responsible Entity may only buy back and cancel Units if the Attached Securities are also the subject of contemporaneous of buy back and cancellation by the respective Stapled Entities. Where Units are purchased as part of a Stapled Security pursuant to a buy back arrangement, the Responsible Entity must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Fund.

## 18A Voluntary cancellation of units

- (a) Despite clause 18, the Responsible Entity may, within 10 Business Days after receipt of a written request for cancelling its Units from a Unit Holder (**Departing Holder**) accompanied by the Certificate (if any) for its Units cancel those units if:
- (i) the Application Price for each of those Units the subject of the request (**Cancelled Units**) has been fully paid as at the date of the request;
  - (ii) no Withdrawal Price or other cash consideration is, by agreement between the Departing Holder and the Responsible Entity, payable to the Departing Holder in respect of the requested cancellation of those Cancelled Units;
  - (iii) the Departing Holder provides a release to the Responsible Entity in a form acceptable to the Responsible Entity in respect of all and any Claims the Departing Holder may have against the Responsible Entity in respect of the cancellation of those Cancelled Units; and
  - (iv) the Attached Shares (if the Cancelled Units comprise a Stapled Security) are contemporaneously cancelled in accordance with the procedure set out under part 2J.1 Corporations Act.
- (b) Upon acceptance of the request from a Departing Holder under clause 18A(a):
- (i) the Departing Holder's name will be removed from the Register in respect of, or in connection with, the Cancellation Units; and
  - (ii) the Responsible Entity must cancel the old Certificate (if any) in respect of the Cancelled Units.

## 19 Register

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### 19.1 Corporations Act register

The Responsible Entity must maintain in accordance with the Corporations Act a register of Unit Holders and Option Holders recording details of any Units or Options issued by the Fund.

### 19.2 Stapled Security Register

- (a) The Responsible Entity must maintain or cause to be maintained the Stapled Security Register, which records the names and addresses of the Unit Holders, the number of

Units held, the number of relevant Attached Securities held by the Unit Holders and any additional information required by the Corporations Act, the Listing Rules or by the Responsible Entity from time to time.

- (b) The Stapled Security Register (together with the register referred to in clause 19.1) will comprise the Register. All provisions of this Constitution applicable to the Register will apply only to the Register as a whole or the relevant part of it as the context may require.

### **19.3 Register and ownership**

- (a) The Responsible Entity is not required to record notice of any trust or equitable interest on the Register, and may treat the registered holder of a Unit or Option as the absolute owner of the Unit or Option (as applicable) for all purposes.
- (b) The recording of a person's name on the Register in relation to Units or Options is the sole evidence of title to those Units or Options (as applicable).

## **20 Fees and Expenses**

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### **20.1 Management fee**

- (a) Subject to clause 20.11, the Responsible Entity is entitled to be paid out of the Assets, a management fee equal to the sum of:
  - (i) 0.80% per annum of the Gross Asset Value of the Real Property of the Fund; and
  - (ii) 0.40% per annum of the Gross Asset Value of the Securities of the Fund.
- (b) Such fee will be calculated and payable monthly in advance.
- (c) The Responsible Entity's fee will continue to be paid up to the date of completion of the termination of the Fund.

### **20.2 Property management fees**

In addition to the fee in clause 20.1, but subject to the extent (if any) the Responsible Entity is paid or reimbursed under clause 20.9, the Responsible Entity is entitled to property management fees for conducting property management and related services in relation to the Real Property of the Fund, including the insurance, custody, development, project management and leasing of any Real Property of the Fund, up to an amount which, if it had been an Expense, would be payable or reimbursable under clause 20.9.

### **20.3 Property Acquisition Fee**

- (a) Subject to clause 20.11, the Responsible Entity is entitled to be paid a fee (the Property Acquisition Fee) out of the Assets when it acquires Real Property for the Fund.
- (b) The Property Acquisition Fee will be an amount equal to 0.1% of the price paid by the Fund for the Real Property, excluding Transaction Costs.
- (c) The Property Acquisition Fee is payable on settlement of the acquisition of the Real Property.

#### **20.4 Property Disposal Fee**

- (a) Subject to clause 20.11, the Responsible Entity is entitled to be paid a fee (the Property Disposal Fee) out of the Assets when it sells or otherwise disposes of Real Property for the Fund.
- (b) The Disposal Fee will be an amount equal to 0.1% of the sale price of the Real Property, excluding Transaction Costs.
- (c) The Property Disposal Fee is payable on settlement of the sale or other disposal of the Real Property.

#### **20.5 Waiver**

The Responsible Entity may waive or accept a lower amount of fees than it is entitled to receive under this document, or may defer payment for a period.

#### **20.6 GST**

- (a) The fees and other amounts payable to the Responsible Entity are exclusive of GST.
- (b) If the Responsible Entity is or becomes liable to pay GST in respect of any supply made under or in connection with this document (including the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible 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 by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- (c) Words and expressions used in this clause that are defined in the A New Tax System (Goods and Services Tax Act) 1999 have the same meaning in this clause.

#### **20.7 Form of remuneration**

The Responsible Entity may elect to be issued Units in any Class at the then Market Price of Units in lieu of some or all of any fee to which it is entitled under this Constitution.

#### **20.8 Priority of Responsible Entity's remuneration**

The remuneration of the Responsible Entity has priority over the payment of all other amounts payable from the Assets of the Fund.

#### **20.9 Indemnity for Expenses**

In addition to any other right of indemnity that it may have under this Constitution or at law, but subject to clause 20.11, the Responsible Entity is indemnified and entitled to be reimbursed out of the Assets for, or entitled to have paid from the Assets, all Expenses.

#### **20.10 Effect of Stapling**

While Stapling applies, the Responsible Entity may in its absolute discretion agree the apportionment of Expenses incurred in connection with both the Fund and the Stapled Company or with any other Stapled Entity, as between the Fund and the Stapled Company and any other Stapled Entity. Any such apportionment could result in the Fund bearing the entirety of the

Expenses or it being shared with the Stapled Company or any other Stapled Entity or borne totally by the Stapled Company or any other Stapled Entity.

### **20.11 Proper performance of duties**

The rights of the Responsible Entity to be paid fees out of the Assets of the Fund, or to be indemnified out of the Assets of the Fund for Expenses, are available only in relation to the proper performance by the Responsible Entity of its duties.

## **21 Valuation of Assets**

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- (a) The Responsible Entity must ensure that the Assets of the Fund are valued at regular intervals appropriate to the nature of the Assets of the Fund, having due regard to the Accounting Standards, the Corporations Act and any current Disclosure Document.
- (b) The Responsible Entity must record the most recently determined value of an Asset of the Fund.
- (c) The Responsible Entity may determine Net Asset Value or the value of an Asset at any time, including more than once on each day.
- (d) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value or any other purpose will be its market value. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price or Withdrawal Price that is independently verifiable.

## **22 Powers of the Responsible Entity**

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### **22.1 General powers**

Subject to the terms of this document, the Responsible Entity has all the powers in respect of the Fund that it is legally possible to give a trustee and may deal with the Assets of the Fund in any manner it determines as if it were the absolute and beneficial owner of the Assets of the Fund.

### **22.2 Responsible Entity's powers**

Without limiting the generality of clause 22.1, the Responsible Entity may:

- (a) borrow and raise money and incur liabilities and obligations of any kind, including guarantees;
- (b) encumber or otherwise deal with any Assets of the Fund;
- (c) institute, prosecute and compromise legal proceedings;
- (d) undertake any activity (including carrying on or participation in a business); and
- (e) exercise any right attaching to any Assets of the Fund,

as if the Responsible Entity were the absolute and beneficial owner of the Assets of the Fund.

### **22.3 Delegation**

The Responsible Entity may appoint any person:

- (a) as its agent, delegate or nominee to perform some or all of its duties, with or without the power to sub-delegate; and
- (b) to provide advice or any other service which the Responsible Entity requires in relation to the Fund.

### **22.4 Exercise of discretion**

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

### **22.5 Responsible Entity's interest in the Fund and transactions**

- (a) The Responsible Entity and its Associates may hold Units or Options or both of them.
- (b) Nothing in this document restricts the Responsible Entity or its Associates from:
  - (i) dealing with the Fund, any Unit Holder, and Option Holder, the Stapled Company or any other Stapled Entity; or
  - (ii) being interested in any contract or transaction with the Fund, any Unit Holder, and Option Holder, the Stapled Company or any other Stapled Entity or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
  - (iii) entering a contract or transaction in relation to which the Fund may become liable to pay fees, costs, brokerage, commissions or other remuneration to an Associate of the Responsible Entity or an Associate of any of the directors of the Responsible Entity; or
  - (iv) acting in the same or a similar capacity in relation to any other trust.
- (c) Without limiting the effect of paragraph 22.5(b), the Responsible Entity may deal with itself in relation to the Assets of the Fund where in relation to such dealings it is acting in different capacities.

### **22.6 No exclusivity**

The functions and duties of the Responsible Entity will not be exclusive and the Responsible Entity or any Associate of the Responsible Entity may perform similar functions and duties for others and, without limitation, may act as a responsible entity or investment adviser or engage in any other commercial, financial or related activity.

### **22.7 Responsible Entity's duties while Stapling applies**

Notwithstanding any other provision of this constitution, or any rule or law or equity to the contrary, in exercising any power or discretion conferred on it, the Responsible Entity must, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Unit Holders and Option Holders of the Fund and the members of the Stapled Entities as a whole and not only to the interests of the Unit Holders of the Fund alone.

## **23 Retirement of the Responsible Entity**

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### **23.1 Removal of Responsible Entity**

Subject to clause 24.3, the Responsible Entity must retire as Responsible Entity of the Fund when required by law.

### **23.2 Retirement of Responsible Entity**

The Responsible Entity may retire as the responsible entity of the Fund as permitted by law.

### **23.3 Retirement payment**

The Responsible Entity will, in consideration of its retirement as a Responsible Entity, be entitled to agree with an incoming Responsible Entity to be remunerated by or to receive a benefit from, the incoming Responsible Entity and will not be required to account to Unit Holders for such remuneration or benefit.

### **23.4 Release**

The retiring Responsible Entity will, to the extent permitted by law and with effect from the date of retirement, be released from any further obligations under this document. The retirement of the Responsible Entity will not affect any right of indemnity that it may have in relation to the performance and exercise of its obligations and powers as Responsible Entity.

## **24 Distribution of income and capital**

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### **24.1 Income and Expenses**

The Responsible Entity must collect all income of the Fund and pay all Expenses of the Fund.

### **24.2 Determination of income and reserves**

The Responsible Entity may determine whether any item is income or capital of the Fund and may maintain any reserves or provisions that it considers appropriate.

### **24.3 Distribution of income**

The Responsible Entity must calculate and distribute the Distributable Income in accordance with this clause 24.

### **24.4 Distributable Income**

Unless the Responsible Entity otherwise determines, the Distributable Income of the Fund for a Financial Year is the Net Income of the Fund for that period or such other amount determined by the Responsible Entity as necessary to avoid the Responsible Entity being assessed on any income or gains of the Fund under the Tax Act.

### **24.5 Distribution ranking of Partly Paid Units**

Subject to any Class Rights, in the case of a Unit that is a Partly Paid Unit for the whole or part of a Distribution Period, subject to clause 10.7 the Unit participates in the Distributable Income in respect of that Distribution Period according to the proportion or different proportions of the Application Price that has been paid up on such Unit. For the purposes of that calculation, where



an instalment of the Application Price of the Partly Paid Unit is paid into the Fund, the Partly Paid Unit in respect of which the payment is made is entitled to rank for an increased participation in the Distributable Income from the first day immediately following the day during which the payment was received.

#### **24.6 Unit Holder's entitlement to income**

Subject to clause 24.5 and any Class Rights, each person registered as a Unit Holder at the end of the last day of a Distribution Period is presently entitled to the Distributable Income for that Distribution Period in the proportion that the number of Units held by the Unit Holder bears to the total number of Issued Units but excluding from this calculation Units that do not rank for Distributions.

#### **24.7 Income distributions for a Distribution Period**

- (a) The Responsible Entity may calculate and make Distributions to Unit Holders in respect of a Distribution Period (other than a Distribution Period ending at the end of a Financial Year) in accordance with this paragraph 24.7(a):
  - (i) the Responsible Entity will estimate the Distributable Income referable to a Distribution Period, adjusted as applicable for any under or overestimate of Distributable Income calculated for a preceding Distribution Period in the same Financial Year and deducting any distributions of income already included in the Withdrawal Price for Units withdrawn during that Distribution Period; and
  - (ii) subject to clause 24.5 and to any Class Rights, the Responsible Entity will distribute in respect of each Distribution Period, the amount of the Distributable Income for that period calculated in accordance with paragraph 24.7(a)(i) to Unit Holders pro rata according to the number of Units held at the end of the last day of the Distribution Period.
- (b) The Responsible Entity may calculate and make distributions to Unit Holders in respect of a Distribution Period ending at the end of a Financial Year in accordance with this paragraph 24.7(b):
  - (i) the Responsible Entity will calculate the Distributable Income referable to the Financial Year, and deduct all distributions made in preceding Distribution Periods in the same Financial Year including any distributions of income already included in the Withdrawal Price for Units withdrawn during that Financial Year; and
  - (ii) subject to clause 24.5 and to any Class Rights, the Responsible Entity will distribute in respect of that Distribution Period, the amount of the Distributable Income for that period calculated in accordance with paragraph 24.7(b)(i) to Unit Holders pro rata according to the number of Units held at the end of the last day of the Distribution Period.

#### **24.8 Distribution of capital**

The Distributable Income of the Fund for a Distribution Period may also include any additional amount (including capital) that the Responsible Entity determines is to be distributed for that period.

#### **24.9 Other distributions**

- (a) Without limiting any other provision of this clause 24, the Responsible Entity may, subject to clause 24.5 and to any Class Rights, at any time distribute any amount of capital or

income to Unit Holders pro rata according to the number of Units held at a time decided by the Responsible Entity. Subject to paragraph 24.9(b) the distribution may be in cash or by way of the issue of additional Units.

- (b) While Stapling applies, the Responsible Entity may not make a distribution by way of additional Units in accordance with paragraph 24.9(a) unless, at the same time as the increase in the number of Units, Unit Holders are also issued an identical number of Attached Securities, which when issued are then Stapled to the Additional Units issued.

#### **24.10 Restricted Security Holders**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to the Restricted Securities, the Holder of the Restricted Securities is not entitled to any Distribution in relation to the Restricted Securities.

#### **24.11 Distribution accounts**

The Responsible Entity:

- (a) must maintain a Distribution account; and
- (b) may maintain separate accounts for different categories and sources of income and may allocate income from any category or source to any Unit Holder.

#### **24.12 Payment of Distributions**

The Responsible Entity must pay to each Unit Holder its entitlement to any part of the Distributable Income for a Distribution Period on or before the relevant Distribution Date.

#### **24.13 Withdrawal Price including Distributable Income**

- (a) The Responsible Entity may determine the extent, if any, to which any component of the Withdrawal Price represents Distributable Income of the Fund.
- (b) The Responsible Entity must notify the recipients within 90 days of the end of the relevant Financial Year of that amount of Distributable Income.
- (c) The Unit Holders are presently and absolutely entitled to Distributable Income determined to be a component of the Withdrawal Price.

#### **24.14 Fund Taxed as company**

If in any Distribution Period:

- (a) the Responsible Entity as trustee of the Fund; or
- (b) the Fund,

becomes taxable as if it were a company under the Tax Act, then notwithstanding any other provision of this clause 24, the Responsible Entity:

- (c) will determine the income in respect of each Distribution Period and each Financial Year in accordance with Accounting Standards, the Corporations Act and any current Disclosure Document;

- (d) has an absolute discretion as to the level of distribution to be made in the relevant Distribution Period (Distributable Amount) provided that the amount of the distribution to which a Unit Holder is entitled will be determined having regard to the number of Units held by the Unit Holder as shown on the Register on any date determined by the Responsible Entity (Books Closing Date) and clause 24.5;
- (e) will pay the Distributable Amount to Unit Holders within 90 days after the Books Closing Date;
- (f) must provide for and pay from the Assets any Taxes attributable to the Fund; and
- (g) must take any steps as may be reasonably required to comply with the requirements of the Tax Act as are applicable to trusts taxed as companies or to distributions made by trusts taxed as companies (including the requirements concerning the franking of distributions).

## **25 Indemnity and limitation of liability**

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### **25.1 Limitation on Responsible Entity's liability**

- (a) Subject to the Corporations Act, if the Responsible Entity acts in good faith and without negligence, it is not liable in contract, tort or otherwise to Unit Holders or Option Holders for any Loss suffered in any way relating to the Fund.
- (b) Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Unit Holder or Option Holder in respect of the Fund, including any liability under any contracts which it enters into as trustee of the Fund or in relation to any Assets, is limited to the Responsible Entity's ability to be indemnified out of the Assets.

### **25.2 Indemnity in favour of the Responsible Entity**

- (a) The Responsible Entity is entitled to be fully indemnified out of the Assets against any liability incurred by it or on its behalf, to the extent to which such liability is incurred in relation to the proper performance of the Responsible Entity's duties.
- (b) To the extent permitted by the Corporations Act, the indemnity in paragraph 25.2(a) includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply in respect of any person who was the Responsible Entity after that person retires or is removed as Responsible Entity of the Fund.

### **25.3 Transactions**

The Responsible Entity is not required to enter into any transaction unless its personal liability is excluded or limited to its satisfaction.

### **25.4 Responsible Entity may rely**

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors in relation to this document or generally in connection with the Fund;

- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity;
- (c) a document that the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Unit Holder or an Option Holder of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Responsible Entity in connection with the Fund, upon which it is reasonable for the Responsible Entity to rely,

and to the extent permitted by the Corporations Act, the Responsible Entity will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

## 25.5 Compliance Committee Members

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act. This indemnity is a continuing obligation and is enforceable even when a person has ceased to be a Compliance Committee Member.

## 25.6 Operation of clause

- (a) This clause 25 operates to the maximum extent permitted by the law. The indemnities and limitations of liability given in this clause are in addition to any given by law.
- (b) The benefits of this clause 25 survive the termination of this document and removal or retirement from an office.

## 26 Sale of non-marketable parcels

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### 26.1 Definitions

In this clause 26:

Term	Definition
<b>Minority Holder</b>	means any Unit Holder who from time to time holds less than a Marketable Parcel.
<b>Notice</b>	means the notice given to Minority Holders in accordance with clause 26.4.
<b>Notice Date</b>	means the date of the Notice sent by the Responsible Entity under clause 26.4(a).
<b>Sale Consideration</b>	means the proceeds of any sale or other disposal of Units under this clause 26.
<b>Takeover</b>	means: <ul style="list-style-type: none"> <li>(a) a takeover bid (within the meaning of the Act); or</li> <li>(b) a similar bid under a foreign regime.</li> </ul>

## **26.2 Application**

This clause 26 applies while the Units or Stapled Securities are Officially Quoted.

## **26.3 Power to sell non-marketable parcels**

- (a) Subject to the Listing Rules, the Responsible Entity may, and is authorised to, dispose of Minority Holders' Units in the manner set out in this clause 26. Subject to clause 26.3(b), this clause 26 may be invoked only once in any twelve month period.
- (b) Clause 26.2 ceases to have effect following the announcement of a Takeover and begins to have effect once more after the close of the offers made under the Takeover.

## **26.4 Notice**

- (a) The Responsible Entity must not sell the Units of a Minority Holder unless it has, not less than 42 days prior to the sale, given a Notice in writing to the Minority Holder of its intention to dispose of the Minority Holder's Units.
- (b) Each Minority Holder on whom a Notice has been served, may by notice in writing addressed to the Responsible Entity and delivered to the office of the Responsible Entity within 42 days after the Notice Date, request the Responsible Entity to exempt the Minority Holder's Units from this clause 26.4, in which event the provisions of this clause 26 will not apply to that Minority Holder.

## **26.5 Procedure**

- (a) For the purposes of the sale of Units under this clause 26.5, each Minority Holder:
  - (i) appoints the Responsible Entity as the Minority Holder's agent, to sell, within a reasonable period after the period ending 42 days after the Notice Date, all of the Minority Holder's Units in the ordinary course of trading on the stock market conducted by the ASX and acting in good faith and to receive the sale consideration on behalf of the Minority Holder; and
  - (ii) appoints the Responsible Entity as the Minority Holder's attorney in the name and on behalf of the Minority Holder to effect all transfers and execute all deeds or other documents or instruments necessary to transfer the Units from the Minority Holder to the transferee.
- (b) The transferee of Units sold under this clause 26 is not responsible for the regularity of proceedings or to the application of the purchase money in respect of the sale of a Minority Holder's Units. After the transferee's name has been entered in the Register in respect of such Units, the validity of the sale or other disposal may not be impeached by any person and the remedy of any person aggrieved by the sale or other disposal will be in damages only and against the Responsible Entity exclusively.
- (c) The title of the transferee to Units sold under this clause 26 will not be affected by any irregularity in connection with the sale or disposal of the Units to the transferee.
- (d) If the relevant Units are certificated, the Company must cancel the certificates of all Minority Holders whose Units are sold under this clause 26.
- (e) If all the Units of two or more Minority Holders to whom this clause 26 applies are sold to one purchaser the transfer may be effected by one transfer document.

## **26.6 Sale Consideration**

- (a) The Sale Consideration must be received by the Responsible Entity and paid to the Minority Holder or as the Minority Holder may direct. The Responsible Entity must bear all costs as a result of the sale or disposal of Units under this clause 26.
- (b) Payment by the Responsible Entity of any consideration under this clause 26 is at the risk of the Minority Holder to whom it is sent.
- (c) The Sale Consideration so received by the Responsible Entity must be paid into a bank account opened and maintained by the Responsible Entity for that purpose only.
- (d) The Responsible Entity must hold the Sale Consideration so received in trust for a Minority Holder whose Units are sold under this clause 26 pending distribution of the Sale Consideration. The Responsible Entity must, as soon as practicable after the sale of the Units of a Minority Holder, and to the extent that it may reasonably do so, distribute the Sale Consideration received to such Minority Holder provided that the Responsible Entity has received any certificates issued to the Minority Holder with respect to the Unit or, in the case of loss or destruction of any such certificate, any additional documentation required by the Corporations Act.
- (e) Where the Sale Consideration is held in trust by the Responsible Entity for a Minority Holder under this clause 26 and has been held for not less than two years, the Responsible Entity must pay the money in accordance with applicable legislative requirements.

## **26.7 Certificates**

A certificate in writing under the hand of any two officers of the Responsible Entity that:

- (a) any notice required to be served by or on the Responsible Entity was or was not served, as the case may be;
- (b) any advertisement required to be published was published; and
- (c) any resolution of the Responsible Entity required to be made was made,

is, for the purpose of this clause 26, sufficient evidence of the facts stated as against all persons claiming to be entitled to such Units and to the right and title of the Responsible Entity to dispose of such Units.

## **26.8 While Stapling applies**

While Stapling applies, no sale or transfer of Units under this clause 26 may occur unless, at the same time as the Units are sold and transferred, an identical number of each category of Attached Securities are also sold and transferred.

## **27 Notices**

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### **27.1 Notices to Unit Holders and Option Holders**

A notice or other communication to be given to Unit Holders or Option Holders must be in writing and may be given personally, by post, by facsimile or by any other electronic means determined by the Responsible Entity. The notice will be delivered or sent to the last physical address,

facsimile number or other electronic address last notified by the Unit Holder to the Responsible Entity.

### **27.2 Receipt of notices by Unit Holders and Option Holders**

A notice sent by post to a Unit Holder or Option Holder is taken to be given on the Business Day after it is posted. A notice sent by facsimile or other electronic means to a Unit Holder is taken to be given one hour after transmission unless the Responsible Entity determines otherwise. Proof of receipt by the Unit Holder or Option Holder is not required.

### **27.3 Notices to Responsible Entity**

Any notice to be given to the Responsible Entity must be in writing and may be given personally, by post or by such other means as agreed by the Responsible Entity. The notice will be delivered or sent to the registered office of the Responsible Entity.

### **27.4 Receipt of notices by Responsible Entity**

A notice given to the Responsible Entity is taken to be given on receipt.

## **28 Meetings of Unit Holders and Option Holders**

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### **28.1 Meetings while Fund not a registered scheme**

While the Fund is not a registered managed investment scheme under the Corporations Act, the Responsible Entity may at any time convene a meeting of Unit Holders or a meeting of Option Holders in the manner determined by the Responsible Entity, and may make such rules for the conduct of such meetings as the Responsible Entity thinks fit.

### **28.2 Meetings while Fund is a registered scheme**

While the Fund is a registered managed investment scheme under the Corporations Act, the provisions of the Corporations Act in relation to meetings of members of the Fund will apply, in addition to the provisions in clauses 28.3 to 28.13.

### **28.3 Convening meetings**

Subject to the specific provisions of this Constitution relating to meetings of members of the Fund and to the Corporations Act:

- (a) the Responsible Entity may at any time convene a meeting of Unit Holders and will convene a meeting of Unit Holders if required by the Corporations Act;
- (b) the Responsible Entity may convene a meeting of Option Holders and must do so if required by the Corporations Act. If it does so, the provisions of this clause 28 apply as if they referred to Option Holders rather than Unit Holders; and
- (c) the Responsible Entity may determine the time and place for a meeting and the manner in which it will be convened.

### **28.4 Proxies**

- (a) A Unit Holder may appoint another person as their proxy, attorney or representative for any question to be considered at a Unit Holders' meeting and must give notice to the

Responsible Entity of that appointment in the manner and no later than such period as is advised in the notice of Unit Holders' meeting.

- (b) A proxy is valid:
  - (i) for such period as is advised in the notice of Unit Holders' meeting; and
  - (ii) after the Unit Holder who gave it dies or becomes subject to a legal disability or becomes bankrupt or goes into liquidation, unless the Responsible Entity has received written notice of that fact before the relevant Unit Holders' meeting.
- (c) A proxy will be in such form as the Responsible Entity determines.
- (d) The Responsible Entity is not obliged to enquire whether the appointment of a proxy, attorney or representative has been validly made.
- (e) While Stapling applies, unless the Corporations Act requires otherwise, the form of proxy used may be the same form as the Unit Holder uses to appoint a proxy to vote on their behalf in respect of the Attached Securities that they hold.

### **28.5 Chairperson**

Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Unit Holders.

### **28.6 Adjournment**

The chair may adjourn any Unit Holders' Meeting for any reason to such time and place as it thinks appropriate.

### **28.7 Quorum**

The quorum for a meeting is two Unit Holders present in person or by proxy together holding at least 10% of all Units or if there is only one Unit Holder, the sole Unit Holder. In determining where a quorum is present, a person attending personally or as a proxy or representative for a Unit Holder, and also attending as the proxy or representative of another Unit Holder, will be counted separately for each Unit Holder that the person represents (including him or herself). If a Unit Holder has appointed more than one proxy, the proxy holders shall together be counted as one.

### **28.8 No business unless quorum present**

No business will be transacted at a Unit Holders' meeting unless a quorum is present and if a quorum is not present within half an hour of the time for commencement of the meeting, the meeting:

- (a) if convened by or on the requisition of a Unit Holder, will be dissolved; and
- (b) in any other case, will as far as practicable adjourn to such place and time as the Responsible Entity decides, and at that meeting the Unit Holders present in person or by proxy, attorney or representative will constitute a quorum.



## **28.9 Resolutions binding**

A resolution binds all Unit Holders, whether or not they are present at the meeting. No objection may be made to any vote cast unless the objection is made at the meeting. The decision of the chair on any matter is final.

## **28.10 Voting by Restricted Security Holders**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to the Restricted Securities, the Holder of the Restricted Securities is not entitled to any voting rights in respect of the Restricted Securities.

## **28.11 Voting by Responsible Entity and its Associates**

Subject to the Corporations Act, the Responsible Entity and its Associates are entitled to vote and to be counted as part of the quorum.

## **28.12 Other attendees**

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

## **28.13 Joint meetings**

While Stapling applies, a meeting of Unit Holders may be held in conjunction with meetings of the holders of Attached Securities and the Responsible Entity may, subject to the Corporations Act, make such rules for the conduct of such meetings as the Responsible Entity thinks fit.

# **29 Financial reports and audit**

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## **29.1 Financial reports and audit**

The Responsible Entity must:

- (a) maintain, in accordance with the Corporations Act, accounting records for the Fund, which correctly record and explain the transactions and financial position of the Fund;
- (b) prepare financial reports for the Fund; and
- (c) appoint an auditor to audit the financial reports for the Fund and have those financial reports audited.

## **29.2 Reporting to Unit Holders and Option Holders**

The Responsible Entity will use its reasonable endeavours to provide to Unit Holders and Option Holders who so request a copy of the audited financial reports for the Fund.

## **30 Complaints**

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### **30.1 Handling of complaints**

If a Unit Holder or Option Holder submits to the Responsible Entity a complaint alleging that the Unit Holder or Option Holders has been adversely affected by the Responsible Entity's conduct in its management or administration of the Fund, the Responsible Entity:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error that is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Unit Holder or Option Holder as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:
  - (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Unit Holder or Option Holder; and
  - (iii) information regarding any further avenue for complaint.

### **30.2 Assistance and information**

- (a) The Responsible Entity must provide a Unit Holder or Option Holder with all reasonable assistance and information that the Unit Holder or Option Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Responsible Entity.
- (b) A Unit Holder or Option Holder lodging a complaint in relation to the Fund must provide the Responsible Entity with all information the Responsible Entity may require in order to deal with and resolve the complaint in a proper manner.

### **30.3 The effect of Stapling**

While Stapling applies, the Responsible Entity may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 30 to ensure an efficient and equitable resolution of the complaint.

## **31 Termination of the Fund**

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### **31.1 Termination Event**

The term of the Fund ends on the earliest date to occur of:

- (a) a date specified by the Responsible Entity in a notice to Unit Holders and Option Holders as the date on which the Fund is to be terminated;
- (b) the date on which the Fund terminates in accordance with another provision of this document or the law; and
- (c) [deleted].

### **31.2 Procedures**

As soon as reasonably practicable after the term of the Fund, the Responsible Entity will cause the Fund to be wound up in accordance with this document and the Corporations Act.

### **31.3 Applications on termination**

After a Termination Event, the Responsible Entity must not accept any further applications.

### **31.4 Winding up**

After a Termination Event the Responsible Entity must:

- (a) sell and realise the Assets of the Fund;
- (b) apply the Assets of the Fund, or the proceeds of their realisation, to pay any Expenses (including Expenses associated with its remuneration, the remuneration of any service provider acting in connection with the termination of the Fund, any other Expenses associated with the termination of the Fund and any anticipated Expenses of the Termination);
- (c) subject to clause 31.5(a), distribute the remaining Assets of the Fund or the net proceeds to Unit Holders in proportion to the number of Units of which they are the registered holder on the Termination Event, but the Responsible Entity may retain Assets of the Fund or their proceeds for contingent Expenses and Liabilities; and
- (d) prepare or cause to be prepared accounts for the Fund, which correctly record and explain the winding up of the Fund, appoint a registered company auditor (within the meaning of the Corporations Act) to audit those accounts, and send a copy of the auditor's report to each Unit Holder.

### **31.5 Partly Paid Units**

- (a) In the event of a distribution under clause 31.4(c), each holder of a Partly Paid Unit at the date of a Termination Event will be entitled to receive a fraction of the distribution payable to the holder of a Fully Paid Unit, the fraction to be determined by dividing the amount of the Application Price paid in respect of the Partly Paid Unit (excluding any amount paid in advance of a call or any other amount credited in respect of the Partly Paid Unit) by the Application Price of the Partly Paid Unit.

- (b) In the event of there being any deficiency in the Assets of the Fund as compared with the Liabilities of the Fund, each holder of a Partly Paid Unit at the date of a Termination Event will be liable to pay to the Responsible Entity upon demand by the Responsible Entity, the balance of the Application Price unpaid on the Partly Paid Unit or such lesser amount as is so demanded and is necessary to meet such deficiency, and in the latter case, the amount payable for a Partly Paid Unit will be calculated on the basis that the amount of deficiency is divided and payable amongst all Partly Paid Units in proportion to the respective proportions of the Application Price unpaid on those Partly Paid Units.

### **31.6 Consequences for Stapling**

On the happening of a Termination Event, the Responsible Entity must give the Stapled Company written notice of the Termination Event. Notwithstanding any other terms of this Constitution, should the Stapled Company be wound up, the Stapling Provisions will cease to apply.

## **32 Amendment**

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### **32.1 Amendment by Responsible Entity**

Subject to clause 2.5, the Responsible Entity may vary, amend, add to, delete from or replace this document by amending deed provided that where, in the opinion of the Responsible Entity, the rights of Unit Holders may be adversely affected by any amendment, addition or deletion, the Responsible Entity may only make the amendment, addition or deletion if the Unit Holders by Special Resolution consent to the amendment, addition or deletion.

### **32.2 Amendment due to Listing Rules**

In accordance with ASIC Class Order 9811808 or its equivalent, and for so long as it applies to the Fund, a change in the text of this Constitution because of the operation of clause 1.8 is not a modification of, or the repeal or replacement of the Constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Clause 32.1 does not apply to changes in the text of the Constitution because of the operation of clause 1.8.

## **33 General**

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### **33.1 No agency**

The relationship between the Responsible Entity and the Unit Holders and any Option Holders is not one of agency or partnership.

### **33.2 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A person is not liable for any loss, cost or expense of any other person caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **33.3 Rights cumulative**

Except as expressly stated otherwise in this document, the rights of any person under this document are cumulative and are in addition to any other rights of that person.

### **33.4 Further assurance**

The Unit Holders must do all things reasonably required by the Responsible Entity to effect, perfect or complete the provisions of this document and any matter contemplated by it.

### **33.5 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts having jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## Schedule

<b>Applicant</b>	<b>No. of Ordinary Units</b>	<b>Total Application Price</b>	<b>Special Unit</b>	<b>Total Application Price</b>	<b>Non-participating Converting Units</b>	<b>Total Application Price</b>
Lindstro Pty Ltd	6,616,000	\$10	-	-	1	\$1
Panamericano Pty Ltd	1,654,000	\$10	-	-	1	\$1
PB Lewis & Co Pty Ltd as trustee of the Lewis Family Trust	4,642,262	\$10	-	-	1	\$1
Airville Investments Pty Ltd	518,825	\$10	-	-	1	\$1
Kruger Consulting Pty Ltd	1,338.079	\$10	-	-	1	\$1
Archer Rural Pty Ltd	1,216,218	\$10	-	-	1	\$1
Archer Management Pty Ltd as trustee of the Archer Super Fund	21,719	\$10	-	-	1	\$1
Kinabalu Holdings Pty Ltd as trustee of the Kinabalu Trust	955,259	\$10	-	-	1	\$1
NBC Capital Pty Ltd	-	-	1	\$1	-	-
Mellon Nominees Limited as trustee of the Queensland Development Fund	-	-	1	\$1	-	-

## Execution

EXECUTED as a deed

Executed by  
Unity Pacific Investment Management Limited  
ACN 137 565 149 by:

▲ \_\_\_\_\_  
Director

▲ \_\_\_\_\_  
Director/Secretary

▲ \_\_\_\_\_  
Full name of Director

▲ \_\_\_\_\_  
Full name of Director/Secretary