

ASX Release

BlackWall Property Trust (BWR) Change to Constitution

Today, unitholders approved changes to the Trust's Constitution as set out in the attached Ninth Supplementary Constitution.

A consolidated copy of the Constitution is also attached.

Caroline Raw
Company Secretary

BlackWall Fund Services Limited

BlackWall Property Trust

Ninth Supplementary Constitution

Date	This ninth supplementary constitution is made on the date noted on page 3 of this document.
Parties	<p>BlackWall Fund Services Limited ACN 079 608 825 of Level 1, 50 Yeo Street, Neutral Bay NSW 2089.</p> <p style="text-align: right;">(Trustee)</p> <p>and</p> <p>Those persons from time to time who hold a Unit in the Trust</p> <p style="text-align: right;">(Unitholders)</p>
Introduction	<p>A. The Trustee is the responsible entity of BlackWall Property Trust (Trust) which is a managed investment scheme. The Trust has been registered pursuant to the Act and has ARSN 109 684 773.</p> <p>B. The constitution for the Trust dated 23 June 2004 (Constitution) was previously amended by supplementary constitutions dated 31 August 2005, 31 October 2005, 1 August 2007, 14 December 2007, 16 April 2008, 17 February 2010, 11 April 2011 and 7 July 2015.</p> <p>C. This ninth supplementary constitution has been prepared to further amend the Constitution and will be lodged with ASIC pursuant to Section 601GC(2) of the Act.</p> <p>D. The changes made by this ninth supplementary constitution have been made by special resolution of Unitholders pursuant to Section 601GC(1)(a) of the Act.</p> <p>E. The terms of this ninth supplementary constitution follow.</p>

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TERMS

1. Definitions and interpretation

Schedules 1 and 2 of the Constitution apply to this ninth supplementary constitution unless otherwise specified or the context requires another meaning or interpretation to be applied.

2. Confirmation of the terms of the Constitution

- (a) This ninth supplementary constitution amends the Constitution and is binding on—
 - (i) all Unitholders (as they are constituted from time to time), and
 - (ii) the Trustee.
- (b) The Trustee confirms the terms of the Constitution except to the extent those terms are amended by this ninth supplementary constitution.
- (c) References in this ninth supplementary constitution to clauses and sections are references to clauses and sections in the Constitution.

3. Operative provisions

3.1 Clause 4.4(a)(ii) is amended as follows:

"If the Trust is registered as a managed investment scheme under the Act, then as permitted by the Act or any applicable ASIC Instrument. ~~in accordance with. clause 4.4(b), subject to the Trustee determining another Unit price in accordance with clauses 4.5 through to 4.7, or as otherwise permitted under the Act.~~"

3.2 Clause 4.4(b) is deleted and replaced with the words the words "*Intentionally deleted*".

3.3 Clauses 4.5, 4.6 and 4.7 are deleted in their entirety and replaced with the words, "*Intentionally deleted*".

3.4 Clause 14.8 is amended by inserting the following new sentence at the end of the clause:

"The Trustee may at any time determine that specific assets of the Trust (including securities in another entity) be in-specie distributed to the Unitholders."

- 3.5 A new Clause 34.12 is inserted as follows:

"34.12 Compliance with ASIC Instruments

If the Trust is a registered scheme and relief from the provisions of the Act granted by an ASIC Instrument requires that this document contain certain provisions, then those provisions are taken to be incorporated into this document at all times at which they are required to be included and prevail over any other provisions of this document to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Instrument (and the provisions it requires) will only be taken to be incorporated if the Trustee declares in writing that this is the case."

- 3.6 In Schedule 1, the definition for "Application Price" is amended by replacing the reference to "clauses 4.4 or 4.10" with a reference to "clause 4".

- 3.7 In Schedule 1, a new definition for "ASIC Instrument" is inserted as follows:

"ASIC Instrument *An exemption or modification granted by ASIC in accordance with the Act or any other instrument issued by ASIC under a power conferred on ASIC which relates to the Trustee or the Trust."*

Execution

This ninth supplementary constitution is made this 24th day of June 2016.

Executed as a deed

Executed by BlackWall Fund Services
Limited ACN 079 608 825 in
accordance with section 127 of the
Corporations Act by:



Secretary/Director

CAROLINE LAW

Name (please print)



Director

GRANT BROWN

Name (please print)

BlackWall Fund Services Limited

BlackWall Property Trust

Consolidated Constitution

Date	This (Consolidated) Constitution is a deed poll made this day of
Parties	BlackWall Fund Services Limited ACN 079 608 825 of Level 1, 50 Yeo Street, Neutral Bay NSW 2089. (the Trustee)
Introduction	<p>A. By a constitution dated 23 June 2004 (Constitution) the Trustee established the BlackWall Property Trust ARSN 109 684 773 (Trust).</p> <p>B. The Constitution has been amended by supplementary constitutions dated 31 August 2005, 31 October 2005, 1 August 2007, 14 December 2007, 16 April 2008, 17 February 2010, 11 April 2011 and 7 July 2015 (Supplementary Constitutions).</p> <p>C. As this Trust is registered as a managed investment scheme under the Act, the Trustee is the responsible entity.</p> <p>D. The terms of this Constitution follow.</p>
Schedules	<p>The following Schedules form part of this Constitution:</p> <p>A. Schedule 1—Dictionary.</p> <p>B. Schedule 2—Rules for interpretation.</p>

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OPERATIVE PROVISIONS

1. Constitution of the Trust

1.1 Constitution binding on the parties

This Constitution operates as a deed and is binding on—

- (a) all Unitholders (as they are constituted from time to time), and
- (b) the Trustee.

1.2 Confirmation of appointment

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

1.3 Benefits and obligations

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

2. Trust property

2.1 Trustee to hold the Assets for Unitholders

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

2.2 Appointment of a Custodian

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

3. Purpose and term of Trust

3.1 Name of the Trust

The Trust will be known as the BlackWall Property Trust. However, the Trustee may designate another name at any time in its complete discretion.

3.2 Purpose of the Trust

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

3.3 Establishment of Trust

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

3.4 Term of the Trust

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

- (a) the date the Trustee determines to wind up the Trust
- (b) the 80th anniversary of the day before the Trust commenced, and
- (c) the date on which the Trust terminates in accordance with another provision of this Constitution or the Act.

4. Creation and sale of Units

4.1 Units—division of beneficial interest

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

4.2 Further issues of Units

- (a) Subject to the Act, the Trustee may determine to create and issue further Units of the same class or of a different class to those already on issue.
- (b) The Trustee may make the issue of further Units in different classes subject to rights, obligations and restrictions the Trustee determines.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions attaching to a Unit of a class which they hold.
- (d) The Trustee may issue Options to subscribe for Units on terms and conditions it determines. On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

- (e) The Trustee must set out the terms of any rights, obligations, restrictions, terms or conditions it determines in relation to the issue of Units or Options in writing and must include a copy of those terms in the Register.

4.3 Fractions of Units

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

4.4 Issue price of a Unit

- (a) Until 1 March 2006, the issue price of a single Ordinary Unit is \$1.00. At all other times the issue price will be determined as follows:
 - (i) If the Trust is not registered as a managed investment scheme under the Act, then at a price determined by the Trustee in its absolute discretion.
 - (ii) If the Trust is registered as a managed investment scheme under the Act, then as permitted by the Act or any applicable ASIC Instrument.
- (b) Intentionally deleted
- (c) The Trustee will not issue a Unit except at a price calculated in accordance with the provisions of this Constitution.

4.5 Intentionally deleted

4.6 Intentionally deleted

4.7 Intentionally deleted

4.8 Time to calculate issue price

- (a) The Trustee must determine the Application Price on the later of –
 - (i) the day the Trustee receives the application for Units, or
 - (ii) the day the Trustee receives the application money or property against which Units are to be issued.

- (b) The Trustee may determine the Net Asset Value at a Valuation Date. Nothing in this clause 4 requires the Trustee to determine Net Asset Value more often than at a Valuation Date.

4.9 Satisfaction of application money

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

4.10 Issue Price of Class Units

- (a) The issue price of Class Units may be set out in the terms of issue of those Class Units.
- (b) The Trustee must not issue Class Units without the prior written approval of all existing holders of Class Units of that same class.

5. Application for Units

5.1 Form of application

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

5.2 Application payment

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

5.3 Holding application money

All application money must be held by the Trustee (or its agent) on trust for the Applicants.

5.4 Interest on application money

- (a) If application money is received and held for more than one month before Units are issued, then the Trustee will calculate each Unitholder's share of any interest earned on the application money (in proportion to the actual amount of the application money paid in or converted to cash by each

Unitholder), deduct any Tax and bank charges payable and then convert the interest to Units and issue those Units to the Unitholder.

- (b) Subject to the Act, if application money is received and held for more than one month before the application money is refunded, then the Trustee will calculate each Unitholder's share of any interest earned on the application money (in proportion to the actual amount of the application money paid in or converted to cash by each Unitholder), deduct any Tax and bank charges payable and the Trustee will account to each Unitholder.
- (c) The calculation of interest will be made from the date which is one month after the application money was received.

5.5 Trustee may refuse application form

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

5.6 Investment of the application money

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

5.7 Minimum application

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

5.8 Date Units issued

- (a) Units are issued on the day which is the later of—
 - (i) the day the Trustee accepts the application, or
 - (ii) the day the Trustee receives the application money in clear funds, or the property against which Units are to be issued is vested in the Trustee (or its agents).

- (b) However, if the Units are issued following a reinvestment pursuant to clause 15, then the Units are issued on the day after the end of the Distribution Period in which an application in respect of those Units is deemed to have been received.

5.9 Number of Units issued

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

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

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

6. Withdrawal Price for Units

6.1 Withdrawal price

Subject to clause 6.3, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{Units in Issue}}$$

6.2 Time to calculate Withdrawal Price

For clause 6.1, the Withdrawal Price must be calculated—

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

6.3 Withdrawal Price for other classes of Units

- (a) Founder Units may be redeemed at a Withdrawal Price of \$1.00 each.
- (b) The Withdrawal Price of Class Units may be set out in the terms of issue of those Class Units.

7. Withdrawal procedures

7.1 Right to withdraw

A Unitholder has no right to withdraw from the Trust other than—

- (a) where the Trust is not a registered managed investment scheme under the Act, as determined by the Trustee in its absolute discretion, or
- (b) on and from such registration, in accordance with remainder of this clause 7, the terms of which have effect on and from such registration.

7.2 Application of withdrawal provisions

- (a) Clauses 7.3 to 7.6 apply whether or not the Trust is Liquid.
- (b) Clause 7.7 applies while the Trust is Liquid.
- (c) Clause 7.8 applies while the Trust is not Liquid.

7.3 Requests for withdrawal

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

- (a) if the Trust is Liquid, in a manner approved by the Trustee and the Trustee must give effect to that request (subject to clauses 7.6 and 7.7), or
- (b) if the Trust is not Liquid, in accordance with a withdrawal offer made by the Trustee and the Act.

7.4 Compulsory withdrawal

The Trustee may, subject to any terms of issue, redeem the Units of any Unitholder without the need for a withdrawal request.

7.5 Transfer of Assets to satisfy withdrawal

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

7.6 Suspension of withdrawals

The Trustee need not give effect to a withdrawal request received between the date the Trust is terminated and the date the Trust is wound up. The Trustee may suspend withdrawals for a period of time if it is not in the best interests of Unitholders for withdrawals to be made.

7.7 Provisions which apply when the Trust is Liquid

- (a) If the Trustee gives effect to a withdrawal request, then the withdrawal request must be satisfied in respect of a Unit by payment from the Assets of the withdrawal. The payment must be made within 365 days of receipt of the request.
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding in the Trust.
- (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding in the Trust.
- (e) If the Trustee is not obliged to give effect to a withdrawal request, then it may redeem some or all of the Units which are the subject of the request.
- (f) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceeds the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in Section 601KD of the Act (as if the Trust was not Liquid). The Trustee may process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).

7.8 Provisions which apply when the Trust is not Liquid

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

7.9 On-market buy-back of Units

While the Trust is listed, the Trustee has the power to buy back Units on market subject to and in accordance with the Corporations Act and the terms of any applicable ASIC relief instrument. Units bought back under this clause must be cancelled.

8. Register of Unitholders

8.1 Trustee must maintain the Register

The Trustee must keep and maintain or cause to be kept and maintained an up to date Register of Unitholders. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept as required by the Act or any declaration, exemption or ruling granted under the Act. The Register may include other particulars, as the Trustee may from time to time consider appropriate.

8.2 Removing information from the Register

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

8.3 Register is evidence of who are Unitholders

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

8.4 Change of details

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

8.5 Limit to number of registered holders

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

9. Interests of Unitholders

9.1 Joint holders

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

9.2 Restrictions on Unitholders

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

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

10. Valuation of Assets

10.1 Periodic valuations

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

10.2 Net Asset Value

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

10.3 Valuation methodology

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

11. Trustee's powers and duties

11.1 General powers

Subject to this Constitution and the terms of any Class Units, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets acting in its personal capacity.

11.2 Specific powers

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

- (a) Acquire and invest in any property (whether real or personal) or assets.
- (b) Dispose of or otherwise deal with the Assets and Liabilities, provided that the Trustee may only dispose of a Class Asset with the prior written approval of all holders of corresponding Class Units.
- (c) Manage and administer the Assets and Liabilities.
- (d) Borrow or raise money, grant security, enter into ISDA Master Agreements and derivative transactions and incur all other types of obligations and liabilities, provided that the Trustee may only borrow, raise money or grant security in connection with or over any Class Asset with the prior written approval of all holders of corresponding Class Units.

- (e) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion with the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then—
 - (i) it may do so on terms the Trustee thinks fit, and
 - (ii) the agent or delegate may be an Associate of the Trustee; and
 - (iii) the Trustee may, by that appointment, fetter its discretion in relation to any matter or authorise that agent or delegate to fetter its discretion.
- (f) Staple the Units with any other financial product or security on terms the Trustee thinks fit.
- (g) Keep or cause to be kept separate proper books of account or records in relation to any Asset.
- (h) Fetter its discretion in relation to any matter.

11.3 Interested dealings by Trustee

- (a) Subject to the Law, the Trustee may—
 - (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property to the Trust or the purchase of property by the Trust
 - (ii) act in the same or similar capacity in relation to any other managed investment scheme
 - (iii) hold Units in the Trust in any capacity
 - (iv) hold or deal in or have any other interest in an Asset, or
 - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 11.3(a)—

- (i) it may retain and need not account for any benefit derived by it, and
- (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.

11.4 Exercise of discretion

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

11.5 Holding Units

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

12. Financial reports and tax returns

12.1 Tax returns

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completion of those part of the Unitholder's tax return for the relevant Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than three months after the last day of the Financial Year.

12.2 Preparation of Financial Statements

- (a) A financial report and directors' report for the Trust must be prepared for each Financial Year in accordance with the requirements of the Act.
- (b) The financial report for a Financial Year must comply with the Accounting Standards.
- (c) While the Trust is registered as a managed investment scheme, the financial reports must comply with any further requirements in the Act.
- (d) The Financial Statements and notes for each Financial Year must give a true and fair view of—
 - (i) the financial position and performance of the Trust, and

- (ii) if consolidated Financial Statements are required, then the financial position and performance of the consolidated entity.

12.3 Audit of annual financial report

If required, then the Trust must have the financial report for the Financial Year audited in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Act and obtain an Auditor's report.

12.4 Annual Financial Report to Unitholders

The Trustee must report to Unitholders for each Financial Year in accordance with the Act.

12.5 *Intentionally deleted*

13. Fees and expenses

13.1 Service fee

The Trustee is entitled, in respect of each application, to a fee of up to five percent of the application moneys for Ordinary Units. This fee is paid out of the application moneys upon the Units being issued. This fee is not payable on the reinvestment of distributions.

13.2 Acquisition fee

- (a) The Trustee is entitled to an acquisition fee in relation to each Direct Property Asset acquired by the Trust, calculated as follows:

$$\text{Acquisition Fee} = (0.02 \times \text{Total Acquisition Cost})$$

Where—

“Acquisition Fee” means the acquisition fee being calculated in relation to a particular Direct Property Asset

- (b) Each acquisition fee is payable out of the Trust, upon the later of—
 - (i) completion of acquisition of the Direct Property Asset by the Trust, or
 - (ii) completion of construction of any building or other structure on the Direct Property Asset (the occurrence of which will be determined by the Trustee).

13.3 Asset disposal fee

- (a) The Trustee is entitled to an asset disposal fee of up to one percent of the gross consideration (net of GST) received by the Trust (or where applicable, by its wholly owned sub-trust) for the disposal of a Direct Property Asset, provided the consideration received exceeds the total of the following amounts:
 - (i) The Total Acquisition Cost in relation to the Direct Property Asset.
 - (ii) The costs and expenses incurred by the Trust (or where applicable, by its wholly owned sub-trust) to acquire the Direct Property Asset.
 - (iii) The component of all capital growth fees previously paid or payable to the Trustee, which was directly attributable to an increase in or increases in the value of the Direct Property Asset.
- (b) Each asset disposal fee is payable out of the Trust upon completion of the disposal of the Direct Property Asset.
- (c) If payment of the asset disposal fee under this clause 13.3 would reduce the consideration received for the disposal of the Direct Property Asset to an amount less than the total of the amounts specified in clauses 13.3(a)(i), 13.3(a)(ii) and 13.3(a)(iii), then the fee will be reduced to an amount which means the consideration received less the fee is equal to that total.

13.4 Removal fee

- (a) If Reed Funds Management Limited ACN 107 352 821 (RFML) is removed as the trustee of the Trust, or if the Trust is merged with or acquired by another managed investment scheme, then the following applies:
 - (i) In consideration for work done in acquiring and managing the Assets and operating the Trust up until the removal, merger or acquisition, RFML is entitled to a fee equal to two percent of the gross value of the Assets (other than any Class Assets) in the Trust (as determined under clause 10).
 - (ii) The fee in clause 13.4(a)(i) becomes due and payable on the day before the removal, merger or acquisition is to take effect.
 - (iii) Any Trustee of the Trust which succeeds RFML—

- A. is not entitled to any benefit under this clause 13.4 at any time, and
 - B. must deduct from a fee which is due to it under clause 13.3(a), any amount paid or payable to RFML under this clause 13.4.
- (b) Any fee under this clause 13.4 is payable out of the Trust and is referable to the Assets other than the Class Assets.

13.5 Ongoing management fee

The Trustee is entitled to an ongoing management fee of up to 0.65 percent per annum of the gross value of the Assets (other than any Class Assets). This fee must be calculated monthly and is payable in arrears out of the Assets from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Date. This fee is referable to the Assets other than the Class Assets.

13.6 Intentionally deleted

13.7 Performance fee

- (a) Subject to the rest of this clause 13.7, the Trustee is entitled to a performance fee (Performance Fee) for each Financial Year, as determined in accordance with this clause 13.7.
- (b) The Performance Fee is to be calculated by the Trustee after the end of each Financial Year and is payable out of the Assets. The Performance Fee is referable to the Assets other than the Class Assets.
- (c) Subject to the other provisions of this clause 13.7, the amount of the Performance Fee for any Financial Year is calculated as follows:
 - (i) $PF = 0.125 \times (\text{Trust Return} - \text{Benchmark Return})\% \times \text{Weighted Monthly Average Gross Asset Value}$

Where for the purposes of this clause 13.7 –

- (ii) “PF” means the Performance Fee
- (iii) “Trust Return” means the indicative total return of the Trust for the relevant Financial Year, as calculated by the Trustee by subtracting the Net Asset Value per Unit at the commencement of the first day of that Financial Year from the Adjustment Net Asset Value per

Unit, and expressing the resulting amount as a percentage of the Net Asset Value per Unit at the commencement of the first day of that Financial Year

- (iv) “Adjusted Net Asset Value per Unit” means the Net Asset Value per Unit at the end of the last day of the relevant Financial Year, adjusted by adding the Distributed Amount
- (v) “Distributed Amount” means that share of the aggregate of all Distributable Income (which for the sake of clarity includes any capital amounts) declared during the relevant Financial Year, paid (or owing but not yet paid) to the holder of one Qualifying Unit (but disregarding whether these amounts are/were reinvested or form/formed part of a savings plan)
- (vi) “Net Asset Value per Unit” means the Net Asset Value at the relevant time (calculated ex-distribution and prior to the payment of any Performance Fee), divided by the number of Ordinary Units in Issue at the relevant time.
- (vii) “Benchmark Return” means, for the relevant Financial Year, the greater of –
 - A. the annual movement of the IPD Australian All Fund Universe Index (as that index may be known by any other name from time to time; or, if that index is no longer published or if the Trustee reasonably believes, that index is no longer a reasonable basis for comparison with the Trust, then any other similar index published on a regular basis, as determined by the Trustee) for the relevant Financial Year, expressed as a percentage, and
 - B. the annual movement of the Mercer Unlisted Property Funds Index (as that index may be known by any other name from time to time, or, if that index is no longer published or if the Trustee reasonably believes that index is no longer a reasonable basis for comparison with the Trust, then any other similar index published on a regular basis, as determined by the Trustee) for the relevant Financial Year, expressed as a percentage

plus, where "Trust Return - Benchmark Return" for the immediately preceding Financial Year was a negative number, that amount (but expressed as a positive number)

(viii) "Weighted Monthly Average Gross Asset Value" means the amount equal to the combined sum of the Weighted Monthly Gross Asset Value for each month during the relevant Financial Year, then divided by twelve

(ix) "Weighted Monthly Gross Asset Value" means for each month of the relevant Financial Year an amount calculated as follows:

$$\text{WMGAV} = \text{GAV} \times (D_1 \div D_2)$$

Where -

"WMGAV" means the Weighted Monthly Gross Asset Value of the Trust for the particular month being calculated

"GAV" means the total gross value of the Assets (including for the avoidance of any doubt the assets of any wholly-owned sub-trust but excluding any Class Assets) as calculated on the last day of that month

"D₁" means the number of days remaining in the relevant Financial Year calculated from (but not including) the last day of that month

"D₂" means the number of days in the relevant Financial Year

(x) "Qualifying Unit" means a single ordinary Unit issued at the commencement of the first day of the relevant Financial Year (and not redeemed), and

(xi) A performance fee is only payable if "PF" is a positive number.

(d) If for any Financial Year the Performance Fee payable would exceed one percent of the Weighted Monthly Average Gross Asset Value (as defined in this clause 13.7) in relation to that Financial Year, then the amount of the Performance Fee payable will be equal to one percent of the Weighted Monthly Average Gross Asset Value (as defined in this clause 13.7).

13.8 Waiver of fees and expenses

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

13.9 Fees and costs

(a) All costs, charges and expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by

the Trustee, or the performance of its duties under this Constitution will be paid out of the Assets. If the Trustee pays such costs, charges and expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such costs, charges and expenses, together with any GST payable in respect of those costs, charges and expenses.

- (b) Without limiting clause 13.9(a), this includes costs, charges and expenses connected with the following:
- (i) The acquisition, custody, management, transfer, financing, disposal of or dealing with the Assets.
 - (ii) The proposed acquisition, custody, management, transfer, financing, disposal of or dealing with the Assets.
 - (iii) The appointment of any consultant, agent, broker, underwriter or delegate by the Trustee, including a custodian.
 - (iv) The administration or management of the Trust or its Assets and Liabilities.
 - (v) Bank charges on the operation of bank accounts.
 - (vi) Borrowing money, raising finance or granting security on behalf of the Unitholders under this Constitution.
 - (vii) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust.
 - (viii) Fees and charges of any regulatory or statutory authority.
 - (ix) Convening and holdings meetings of Unitholders.
 - (x) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
 - (xi) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.

- (xii) Keeping and maintaining of the accounting records and registers.
- (xiii) Retirement and the appointment of a substitute trustee.
- (xiv) The initiation, conduct and settlement of any court proceedings—
 - A. to enforce any provisions of this Constitution, or
 - B. in relation to the Trust or its Assets.
- (xv) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan.
- (xvi) Acquiring, establishing and developing computer software systems required for the administration of the Trust.
- (xvii) Reasonable travelling and accommodation expenses of the Trustee.
- (xviii) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xix) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xx) The establishment, management and maintenance of any listing on any exchange or secondary market of the Trust and the performance of the functions and duties of the Trustee under the Constitution.
- (xxi) Costs, charges and expenses related to any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust relating to or including the appropriate portion of compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums for those members.
- (xxii) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.

- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the directors of the Trustee.
- (d) If the Trustee determines that any expenses of the Trust are attributable to more than one Distribution Period, then the Trustee may apportion the expenses between the Distribution Periods as the Trustee considers appropriate.
- (e) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

13.9A Apportionment of costs

All cost, charges and expenses must be paid out of the Pool to which they are referable. If any costs, charges and expenses incurred by the Trustee are referable to more than one Pool, they must be apportioned between each Pool to which they are referable in proportion to the total value of the Assets of each Pool. In this clause, “Pool” means either the Class Assets in respect of a relevant Class of Units, or the Assets other than those Class Assets.

13.10 Performance of duties

- (a) Despite anything else in this Constitution, the Trustee is not entitled to any fees, recovery of costs or indemnity from the Assets in circumstances where the Trustee has not properly performed its role under the Constitution or the Act.
- (b) The lack of entitlement to these payments pursuant to clause 13.10(a) is only in respect of that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 13.10 means the Trustee is not entitled to be paid fees and costs for work performed properly.

13.11 Goods and Services Tax

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

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the Unitholders an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee’s GST remittance liability in respect of

each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.

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

14. Income of the Trust

14.1 Trustee will collect in all money

- (a) The Trustee must collect or cause to be collected all Income generated from the Assets and pay this into an account in the name of the Trustee (or if a custodian is appointed into an account in the name of the custodian) on behalf of the Trust. The Trustee will make all payments relating to the Trust from this account.
- (b) If a custodian has been appointed, then the custodian will attend to all payments relating to the Trust as authorised by the Trustee from this account and will provide regular reconciliation and account to the Trustee in accordance with the custodian agreement.
- (c) The Trustee (or Custodian) may maintain a separate account for the purpose of clause 14.1(a) in relation to any income generated from Class Assets.

14.1A Calculation of Net Income

The Net Income of the Trust for a Distribution Period will be such amount as the Trustee determines in its absolute discretion. If for a period ending on the last day of a Distribution Period the Trustee has not made a determination for the purpose of this clause 14.1A, then the Net Income of the Trust for the relevant period will be the net income of the Trust as the term “net income” is defined in Section 95 of the Tax Act.

14.2 Calculation of Distributable Income

The Distributable Income of the Trust for a Distribution Period will be such amount as the Trustee determines. If for a period ending on the last day of a Distribution Period the Trustee has not made a determination for the purpose of this clause 14.2, then the Distributable Income of the Trust for the relevant period will be the Net Income of the Trust for that period.

14.3 Persons who will receive Distributable Income

The Distributable Income or capital of the Trust may be transferred to a separate account to be held on trust, and after payment of all Tax, will be distributed to persons who are Unitholders on the last day of the Distribution Period for which the Distributable Income is determined.

14.4 Time for distribution of Distributable Income

The Distributable Income for a Distribution Period must be distributed by the Trustee to those entitled to receive it within three months after the Distribution Calculation Date. In distributing the Distributable Income, the Trustee must take account of any preference or other priority in payment under the terms of issue of any Class Units.

14.5 Distribution equalisation reserve

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

14.6 Unitholders presently entitled to Distributable Income

At the end of each Distribution Period the persons who are Unitholders on that day will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period.

14.7 Nature of distribution to Unitholders

If any question arises as to whether distributions to those entitled to receive them are of a capital or income nature or whether a particular expense is chargeable against capital or Income, then the question will be resolved by the Trustee having regard to the following points in this order of priority:

- (a) The terms of this Constitution.
- (b) The provisions of the Tax Act.
- (c) Generally accepted accounting principles.

14.8 Other distributions

The Trustee may at any time determine that capital or Income be distributed to the Unitholders. The distribution may be by way of cash or additional Units. The Trustee may at any time determine that specific assets of the Trust (including securities in another entity) be in-specie distributed to the Unitholders.

14.9 Separate accounts

The Trustee may—

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

14.10 Class Units - Distributions

The Trustee must make distributions to Class Unitholders on the terms set out in the terms of issue of the Class Units.

15. Distribution reinvestment

15.1 Reinvestment

The Trustee may permit holders of Ordinary Units to reinvest some or all of their Distributable Income by acquiring Units.

15.2 Notice to Unitholders

If the Trustee permits reinvestment of Distributable Income, then it must notify all holders of Ordinary Units of that fact, together with the terms on which the reinvestment may be made.

16. Deductions from Distributions

16.1 Deduction of Taxes

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

16.2 Indemnity

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

17. Money owing by Unitholders

17.1 Interest payable

- (a) Any amount of money due to the Trustee on account of the Trust or to the Trustee on its own account by any Unitholder will attract interest on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee. The rate of interest will be the rate charged by the ANZ Bank on overdrafts in excess of \$100,000. Nothing in this clause obliges the Trustee to seek payment of interest from any Unitholder.
- (b) Any interest received must be paid into the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

17.2 Non-payment of money

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then subject to the Act, the Trustee is entitled to be indemnified out of the Assets. However, in exercising this right of indemnity, the Trustee may only do either of the following:

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

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

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

17.4 Trustee may require information from Unitholders

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 17.4(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.

- (c) If any Unitholder fails to provide information required by clauses 17.4(a) or 17.4(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 17.4(a) or 17.4(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

18. Transfer of Unitholder's Units

18.1 Right to transfer Units

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

18.2 Form of transfer

Any transfer must be made by way of a form approved by the Trustee and be stamped (if applicable).

18.3 Trustee's discretion to enter transfer

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

18.4 Transfer effective when registered

The transferor Unitholder remains the owner of the Unitholder's Units until the name of the transferee is entered in the Register.

18.5 Suspension prior to end of year

The Trustee may decline to register any transfer of a Unitholder's Units during the 14 Business Days immediately preceding 1 July in any Financial Year.

18.6 Listing on a secondary market or exchange

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

19. Transmission of Unitholder's Units

19.1 Death or legal disability—sole Unitholder

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

19.2 Death or legal disability—joint Unitholder

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

20. Winding up of the Trust

20.1 Events which cause a winding up

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

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) The Trust is without a trustee.
- (c) A court orders the Trust be wound up.
- (d) If the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in Section 601NC.
- (e) If the Trust is registered as a managed investment scheme, then any of the circumstances set out in Section 601NE apply such that the Trustee is required to wind up the Trust.

20.2 Process of winding up

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (ab) The Trustee must convert any Class Assets to money and distribute to the holders of any Class Units that are redeemable an amount as if it was a redemption of those Class Units, in satisfaction of Unitholder's entitlements.

- (b) The Trustee must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Unitholders according to the beneficial interest of each Unitholder in the Trust. The Trustee may make interim distributions (i.e. Income or capital) during the winding up process as it sees fit.
- (c) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.

20.3 Trustee may withhold proceeds of realisation

The Trustee may retain money from the proceeds of realisation of the Assets—

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

20.4 Auditor's certificate

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

21. Indemnity and liability

21.1 Liability of the Trustee

Subject and to the extent the Act imposes liability—

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

21.2 Indemnity from the Trust

- (a) The Trustee has a right of indemnity out of the Assets in respect of—

- (i) any liability incurred by the Trustee in the performance of its duties in respect of the Trust, and
 - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution.
- (b) However, this indemnity does not apply where there has been any negligence, deceit, breach of duty, fraud or breach of trust on the part of the Trustee.
- (c) In exercising its right of indemnity out of the Assets, the Trustee must first recover any amount referable to:
 - (i) Class Assets or Class Units from the corresponding Class Assets; and
 - (ii) Assets (other than the Class Assets) or Ordinary Units from the Assets other than the Class Assets,

before recovering against any other Assets.

21.3 Payment of taxes

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

21.4 Reliance on others

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

- (a) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust.
- (b) Advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted.

- (c) The document which the Trustee believes in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust.
- (d) Any document provided to the Trustee in connection with Trust upon which it is reasonable for the Trustee to rely.

21.5 Trustee not liable for good faith error

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

21.6 Limit of indemnity

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

21.7 Limitation of liability of Unitholders

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

22. Meetings of Unitholders

22.1 Trustee's Power to call Unitholders' Meeting

The Trustee may call a meeting of the Unitholders, or of the holders of any class of Units, at any time.

22.2 Unitholders power to call a meeting

- (a) The Trustee must call and arrange to hold a meeting of the Unitholders or Class Unitholders to consider and vote on a proposed Special Resolution or Extraordinary Resolution on the request of—
 - (i) Unitholders with at least five percent of the votes that may be cast on the resolution, or
 - (ii) at least 100 Unitholders who are entitled to vote on the resolution.
- (b) The request by the Unitholders must—

- (i) be in writing
 - (ii) state any resolution to be proposed at the meeting, and
 - (iii) be signed by the Unitholders proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Unitholders making the request.
 - (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Unitholders if the wording of the request and statement (if any) is identical in each copy.
 - (e) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the request is given to the Trustee.
 - (f) The Trustee must call the meeting within 21 days after the request is given to it. The meeting must be held not later than two months after the request is given to the Trustee.
 - (g) The Trustee must give to each of the Unitholders a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Trustee must distribute the copies in the same way in which it gives notice of the meeting.
 - (h) The Trustee does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
 - (i) The Trustee is responsible for the expenses of calling and holding the meeting and making the distribution. The Trustee may meet those expenses from the Assets.

22.3 Failure of Trustee to call meeting of the Unitholders

- (a) Unitholders with more than 50 percent of the votes carried by Units held by the Unitholders who make a request under Section 252B of the Act may call and arrange to hold a meeting of the Unitholders and distribute the statement (if any) if the Trustee does not do so within 21 days after the request is given to the Trustee.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Unitholders may be called by the Trustee and information is distributed to Unitholders by the Trustee. The meeting must be held not later than three months after the request is given to the Trustee.

- (c) To call the meeting the Unitholders requesting the meeting may ask the Trustee for a copy of the Register. The Trustee must give the Unitholders requesting the meeting the copy of the Register without charge.

22.4 Calling of meetings of Unitholders, by Unitholders

- (a) Unitholders who hold Units carrying at least five percent of the votes that may be cast at a meeting of Unitholders or Class Unitholders may call and arrange to hold a meeting of the Unitholders or Class Unitholders respectively to consider and vote on a proposed Special Resolution or a proposed Extraordinary Resolution. The Unitholders calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Unitholders may be called by the Trustee.
- (c) The percentage of the votes carried by Units that Unitholders hold is to be worked out as at the midnight before the meeting is called.

22.5 Calling of meeting by the Court

The Court may order a meeting of Unitholders or Class Unitholders to be called to consider and vote on a proposed Special Resolution or Extraordinary Resolution if it is impracticable to call the meeting in any other way. The Court may make the order on application by—

- (a) the Trustee, or
- (b) any Unitholder who would be entitled to vote at the meeting.

23. How to call meetings of Unitholders

23.1 Notice of meetings

At least 21 days' notice must be given of a meeting of Unitholders.

23.2 Notice of meetings of Unitholders to Unitholders, directors and auditors

- (a) Written notice of a meeting of Unitholders must be given to—
 - (i) each Unitholder entitled to vote at the meeting
 - (ii) each director of the Trustee
 - (iii) the Auditor, and

- (iv) the auditor of the compliance plan if one has been appointed.
- (b) If Units are held jointly, then notice need only be given to one of the Unitholders.
- (c) Notice to joint Unitholders must be given to the joint Unitholder named first in the Register.
- (d) The Trustee may give notice of the meeting to a Unitholder—
 - (i) personally
 - (ii) by sending it by post to the address for the Unitholder in the Register or an alternative address (if any) nominated by the Unitholder, or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the Unitholder.
- (e) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (f) A notice of meeting sent by post is taken to be given three days after it is posted. A notice of meetings sent by fax, or other electronic means is taken to be given on the Business Day after it is sent.

23.3 Auditors entitled to other communications

The Trustee must give the Auditor and the auditor of the compliance plan all communications relating to the meeting that a Unitholder is entitled to receive.

23.4 Contents of notice of meetings of a Unitholder

A notice of a meeting of Unitholders must—

- (a) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places, then the technology that will be used to facilitate this)
- (b) state the general nature of the meeting's business
- (c) if a Special Resolution or an Extraordinary Resolution is to be proposed at the meeting, then set out an intention to propose the Special Resolution or an Extraordinary Resolution and state the resolution, and
- (d) contain a statement setting out the following information—

- (i) that the Unitholder has a right to appoint a proxy
- (ii) that the proxy does not need to be a Unitholder, and
- (iii) that if the Unitholder appoints two proxies the Unitholder may specify the proportion or number of votes the proxy is appointed to exercise.

23.5 Notice of adjourned meetings

When a meeting is adjourned, new notices of the adjourned meeting must be given if the meeting is adjourned for one month or more.

24. Unitholders' Rights to put resolutions at meetings of Unitholders

24.1 Unitholders' resolutions

- (a) The following Unitholders may give the Trustee notice of a Special Resolution or an Extraordinary Resolution that they propose to move at a meeting of Unitholders:
 - (i) Unitholders with at least five percent of the votes that may be cast on the resolution.
 - (ii) At least 100 Unitholders who are entitled to vote at a meeting of Unitholders.
- (b) The notice must—
 - (i) be in writing
 - (ii) set out the wording of the proposed resolution, and
 - (iii) be signed by the Unitholders giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Unitholders if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the Unitholders give the notice.

24.2 Trustee giving notice of Unitholders' resolutions

- (a) If a Trustee has been given notice of a Special Resolution or an Extraordinary Resolution, then the resolution is to be considered at the next

meeting of Unitholders or Class Unitholders (as appropriate) that occurs more than two months after the notice is given.

- (b) The Trustee must give all the Unitholders entitled to vote at the meeting notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Trustee is responsible for the cost of giving Unitholders notice of the resolution if the Trustee receives the notice in time to send it out to Unitholders with the notice of meeting.
- (d) The Unitholders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Trustee in giving Unitholders notice of the resolution if the Trustee does not receive the Unitholders' notice in time to send it out with the notice of meeting.
- (e) The Trustee need not give notice of the resolution—
 - (i) if it is more than 1,000 words long or defamatory, or
 - (ii) if the Unitholders making the request are to bear the expenses of sending the notice out, unless the Unitholders give the Trustee a sum reasonably sufficient to meet the expense that it will reasonably incur in giving the notice.

24.3 Unitholders' statements to be distributed

- (a) Unitholders may request a Trustee to give to all its Unitholders entitled to vote at a meeting a statement provided by the Unitholders making the request about—
 - (i) a resolution that is proposed to be moved at the meeting of Unitholders, or
 - (ii) any other matter that may be properly considered at the meeting of Unitholders.
- (b) The request must be made by—
 - (i) Unitholders with at least five percent of the votes that may be cast on the resolution, or
 - (ii) at least 100 Unitholders who are entitled to vote at the meeting.
- (c) The request must be—

- (i) in writing
 - (ii) signed by the Unitholders making the request, and
 - (iii) given to the Trustee.
- (d) Separate copies of a document setting out the request may be used for signing by Unitholders if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the request is given to the Trustee.
- (f) After receiving the request, the Trustee must distribute to all the Unitholders entitled to vote at the meeting a copy of the statement at the same time or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Trustee is responsible for the cost of making the distribution if the Trustee receives the statement in time to send it out to Unitholders with the notice of meeting.
- (h) The Unitholders making the request are jointly and individually liable for the expenses reasonably incurred by the Trustee in making the distribution if the Trustee does not receive the statement in time to send it out with the notice of meeting.
- (i) The Trustee need not comply with the request—
- (i) if the statement is more than 1,000 words long or defamatory, or
 - (ii) if the Unitholders making the request are responsible for the expenses of the distribution, unless the Unitholders give the Trustee a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

25. Holding meetings of Unitholders

25.1 Time and place for meeting of Unitholders

A meeting of Unitholders must be held at a reasonable time and place.

25.2 Technology

A Trustee may hold a meeting of the Unitholders at two or more venues using any technology that gives the Unitholders as a whole a reasonable opportunity to participate.

25.3 Quorum

- (a) The quorum for a meeting is two persons present in person or by proxy, together holding at least 10 percent of all Units. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they will only be counted as one individual.
- (c) A meeting of Unitholders which does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things unless clause 25.3(d) applies, then the meeting is adjourned to—
 - (i) if the date is not specified—the same day in the next week
 - (ii) if the time is not specified—the same time, and
 - (iii) if the place is not specified—the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, then the persons present at the resumed meeting are deemed to constitute a quorum and the meeting may proceed.

25.4 Chairing meetings of Unitholders

- (a) The Trustee may, in writing, appoint an individual to chair a meeting.
- (b) The Unitholders present at a meeting called under sections 252A or 252B of the Act must elect a Unitholder present to chair the meeting (or part of it) if—
 - (i) a chair has not previously been appointed to chair the meeting, or

- (ii) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).
- (c) The Unitholders present at a meeting called under sections 252C, 252D or 252E of the Act must elect a Unitholder present to chair the meeting. This is not so if the meeting is called under section 252E of the Act and the Court has directed otherwise under section 1319.

25.5 Auditors' right to be heard at meetings of Unitholders

- (a) The Auditor and the auditor of the compliance plan (if one has been appointed) are entitled to attend any meeting of the Unitholders.
- (b) An Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) An Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Unitholders.

25.6 Adjourned Meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

26. Proxies and body corporate representatives

26.1 Who can appoint a proxy

- (a) A Unitholder who is entitled to attend and cast a vote at a meeting of Unitholders may appoint a person as the Unitholder's proxy to attend and vote for the Unitholder at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Unitholder may appoint one or two proxies. If the Unitholder appoints two proxies and the appointment does not specify the proportion or number of the Unitholder's votes, then each proxy may exercise half of the votes.
- (d) Any fractions of votes resulting from the application of clauses 26.1(b) or 26.1(c) must be disregarded.

26.2 Rights of proxies

- (a) A proxy appointed to attend and vote for a Unitholder has the same rights as the Unitholder—
 - (i) to speak at the meeting, and
 - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on show of hands.
- (c) A proxy's authority to speak and vote for a Unitholder at a meeting is suspended while the Unitholder is present at the meeting.

26.3 Sending appointment forms or lists of proxies to all Unitholders

If the Trustee sends a Unitholder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting—

- (a) if the Unitholder requested the form or list, then the Trustee must send the form or list to all Unitholders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting, or
- (b) otherwise, the Trustee must send the form or list to all its Unitholders entitled to appoint a proxy to attend and vote at the meeting.

26.4 Appointing a proxy

- (a) An appointment of a proxy is valid if it is signed by the Unitholder making the appointment and contains the following information—
 - (i) the Unitholder's name and address
 - (ii) the Trust's name
 - (iii) the proxy's name or the name of the office held by the proxy, and
 - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph 26.4(a) is not strictly complied with, provided in the reasonable opinion of the Trustee the intentions of the Unitholder are clear.
- (c) An undated appointment is taken to have been dated on the day it is given to the Trustee.

- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does—
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, then the proxy must vote that way
 - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution—then the proxy must not vote on show of hands
 - (iii) if the proxy is the chairperson—then the proxy must vote on a poll, and must vote that way, and
 - (iv) if the proxy is not the chairperson—then the proxy need not vote on a poll, but if the proxy does so, then the proxy must vote that way.
- (e) If a proxy is also a Unitholder, then this clause does not affect the way the person can cast any votes they hold as a Unitholder.
- (f) The appointment of a proxy does not have to be witnessed.
- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

26.5 Proxy documents

- (a) For an appointment of a proxy for a meeting of Unitholders to be effective, the following documents must be received by the Trustee at least 48 hours (or such shorter time agreed to by the Trustee) before the meeting:
 - (i) The proxy's appointment.
 - (ii) If the appointment is signed by the appointor's attorney, then the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Unitholders has been adjourned, an appointment and any authority received by the Trustee at least 48 hours (or such shorter time agreed to by the Trustee) before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Trustee receives an appointment authority when it is received at any of the following:

- (i) The Trustee's registered office.
 - (ii) A fax number at the Trustee's registered office.
 - (iii) A place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if the Trustee receives either or both the appointment or authority at a fax number or electronic address, and there is a requirement (if any) in notice of meeting that—
- (i) the transmission be verified in a way specified in the notice, or
 - (ii) the proxy produce the appointment and authority (if any) at the meeting.

26.6 Validity of proxy vote

- (a) Unless the Trustee has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes—
- (i) the appointing Unitholder dies
 - (ii) the Unitholder is mentally incapacitated
 - (iii) the Unitholder revokes the proxy's appointment
 - (iv) the Unitholder revokes the authority under which the proxy was appointed by a third party, or
 - (v) the Unitholder transfers the Units in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Unitholder may vote as a proxy for another Unitholder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

27. Body corporate representative

- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Unitholders. The appointment may be a standing one.

- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, then the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
- (d) Unless otherwise specified in the appointment, the representative may exercise, on behalf of the body corporate, all of the powers that the body could exercise at a meeting or in voting on a resolution.

28. Voting at meetings of Unitholders

28.1 How many votes for a Unitholder

- (a) On a show of hands, each Unitholder has one vote.
- (b) On a poll, each Unitholder has one vote for each Unit the Unitholder holds.

28.2 Jointly held interests

If Units are held jointly and more than one Unitholder votes in respect of these Units, then only the vote of the Unitholder whose name appears first in the Register counts.

28.3 Trustee and Associates cannot vote if interested in resolution

While the Trust is registered as a managed investment scheme, the Trustee and its Associates are not entitled to vote their Units on a resolution at a meeting of Unitholders if they have an interest in the resolution or matter other than as a Unitholder. Otherwise the Trustee and its Associates may vote their Units.

28.4 Objections to a right to vote

A challenge to a right to vote at a meeting of Unitholders—

- (a) may only be made at the meeting, and
- (b) must be determined by the chairperson, whose decision is final.

28.5 Votes need not all be cast in the same way

On a poll a person voting who is entitled to two or more votes—

- (a) need not cast all their votes, and

- (b) may cast their votes in different ways.

28.6 How voting is carried out

- (a) A Special Resolution or an Extraordinary Resolution put to the vote at a meeting of Unitholders must be decided on a poll.
- (b) Any other resolution put to the vote at a meeting of Unitholders must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50 percent of the votes cast by Unitholders entitled to vote on the resolution.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

28.7 Matters on which a poll may be demanded

- (a) Subject to clause 28.7(b), a poll may be demanded on any resolution.
- (b) A poll cannot be demanded on any resolution concerning—
 - (i) the election of the chairperson of a meeting, or
 - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

28.8 When a poll is effectively demanded

- (a) At a meeting of Unitholders, a poll may be demanded by—
 - (i) at least five Unitholders present and entitled to vote on the resolution
 - (ii) Unitholders present with at least five percent of the votes that may be cast on the resolution on a poll, or
 - (iii) the chairperson.
- (b) The poll may be demanded—
 - (i) before a vote is taken
 - (ii) before the voting results on a show of hands are declared, or

- (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Unitholders have is to be worked out as at close of business on the day before the poll is demanded.

29. Minutes and Unitholders' access to minutes

29.1 Minutes

- (a) A Trustee must keep minute books in which it records within one month—
 - (i) proceedings of meetings of Unitholders, and
 - (ii) resolutions of meetings of Unitholders.
- (b) The Trustee must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Trustee must keep the minute books at—
 - (i) its registered office
 - (ii) its principal place of business in Australia, or
 - (iii) another place approved by ASIC.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

29.2 Unitholders' access to minutes

- (a) The Trustee must ensure the minute books for the meetings of Unitholders are open for inspection by Unitholders free of charge.
- (b) A Unitholder may ask the Trustee in writing for a copy of any minutes of a meeting of the Unitholders or an extract of the minutes.
- (c) The Trustee is entitled to charge a Unitholder a copying fee of not more than the amount prescribed by the Act.
- (d) If the Trustee requires payment for the copy, then the Trustee must send the copy—
 - (i) within 14 days after the Trustee receives the payment, or

- (ii) within any longer period that ASIC approves.

30. Complaints handling

30.1 Complaints handling while registered as a managed investment scheme

This clause 30 applies only while the Trust is registered as a managed investment scheme under the Act.

30.2 Complaints handling officer

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

30.3 A Unitholder may make a complaint

- (a) Any Unitholder may make a complaint about any aspect of the Trust to the Trustee (in writing or otherwise) at any place where the Trustee has an office from time to time.
- (b) The complaint must specify—
 - (i) the name and contact details of the Complainant making the complaint, and
 - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 30.
- (c) If the complaint does not meet the requirement in clause 30.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder—
 - (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint, or

- (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (*e.g. because of a physical disability*).

30.4 Acknowledgment of a complaint

- (a) If any Unitholder makes a complaint, and unless that complaint is resolved to the complainants satisfaction by the close of the next business day and the complainant has not requested a response in writing, then the Trustee must, within five Business Days after receiving the complaint, write to the Complainant either to—
 - (i) acknowledge the complaint, or
 - (ii) respond fully to the Complainant in respect of the complaint made.
- (b) The Trustee must include in its written response to the Complainant—
 - (i) the procedure used by the Trustee upon receiving a complaint
 - (ii) the name, title and contact details of the present complaints handling officer, and
 - (iii) if the complaint is not fully dealt with in the letter, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the complaint.

30.5 Consideration of complaints

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

30.6 Resolving a complaint

- (a) The Trustee must act reasonably in attempting to resolve a complaint, however nothing in this clause 30 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) If within 45 days of receiving the complaint the Trustee believes it has either resolved the complaint, or it has not resolved the complaint but can do nothing more to satisfy the Complainant, then the Trustee must—
 - (i) inform the Complainant of the view the Trustee has reached, setting out clear and concise reasons, and
 - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

30.7 Further avenues open to Unitholders

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

- (a) if the Trustee is a member, lodge a complaint with an external complaints resolution body, or
- (b) take what ever other action is open to the Complainant under the general law.

30.8 Recording complaints

The Trustee must make a record of complaints.

30.9 Disclosure of existence of complaints handling procedure

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

31. Changing the constitution

31.1 Power to amend

- (a) While the Trust is not registered as a managed investment scheme under the Act, the Trustee may amend this Constitution at its absolute discretion on terms it sees fit.

- (b) While the Trust is registered as a managed investment scheme, then the Constitution may be modified, or repealed and replaced with a new constitution—
 - (i) by Special Resolution of the Unitholders, or
 - (ii) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.
- (c) The Trustee has power to amend the terms of issue of any Class Units, subject to the terms of issue.
- (d) The Trustee must not exercise its rights under clause 31.1(c) without the prior approval by a Special Resolution of the relevant Class Unitholders.

31.2 Lodgement of amendment

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

32. Compliance plan and compliance committee

32.1 Compliance plan

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

32.2 Compliance committee

- (a) This clause 32.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

33. Restrictions on Relevant Interests

33.1 Relevant Interest

A person (whether or not a Unitholder) has a Relevant Interest in a Unit if the person has any right, power, authority, interest or understanding which confers upon the person the power or ability to—

- (a) exercise, or control the exercise of, the right to vote attached to a Unit; or
- (b) dispose of, or exercise control over the disposal of, a Unit.

33.2 Maximum Relevant Interest

A person may not (without the Trustee's prior written approval which, subject to the Act, may be granted or withheld in the Trustee's absolute discretion) acquire by any means or become entitled in any way to a Relevant Interest in Units if as a result of the acquisition or entitlement that person would—

- (a) have a Relevant Interest in excess of the Maximum Permissible Relevant Interest, or
- (b) increase the amount by which the person's Relevant Interest exceeds the Maximum Permissible Relevant Interest.

33.3 Disclosure of Relevant Interest

A Unitholder must immediately inform the Trustee if a Relevant Interest in excess of the Maximum Permissible Relevant Interest has, or may have, been acquired by any, or any combination of, the following:

- (a) the Unitholder
- (b) a Related Entity of the Unitholder
- (c) an Associate of the Unitholder, or
- (d) an Associate of a Related Entity of the Unitholder.

33.4 Notice to Disclose Identity of Relevant Interest Holder

The Trustee may by written notice (Notice to Disclose Identity of Relevant Interest Holder) require a Unitholder to provide to the Trustee within five Business Days, or such longer period as the Trustee in its absolute discretion specifies, details of all persons (each a Relevant Interest Holder) who have a

Relevant Interest in any of the Units held by the Unitholder and the nature of their interest.

33.5 Refusal to register

The Trustee may decline to issue, or enter any transfer or transmission of, any Units in the Register if the Trustee considers the issue or entry in the Register, as applicable, would or might cause a Relevant Interest Holder to have a Relevant Interest exceeding, or increase the amount by which a Relevant Interest Holder's Relevant Interest exceeds, the Maximum Permissible Relevant Interest. Without limitation to its rights under clause 33, the Trustee is under no liability to any person for any action it takes (or does not take) pursuant to this clause.

33.6 Suspension of voting rights

Subject to the Act, the Trustee may by written notice to a Unitholder (Notice of Suspension of Voting Rights) suspend the voting rights attaching to all or any of the Unitholder's Units if—

- (a) the Unitholder fails to disclose the information required by a Notice to Disclose Identity of Relevant Interest Holder within the time allowed
- (b) the Trustee considers the information provided by a Unitholder in Response to a Notice to Disclose Identity of Relevant Interest Holder is false or misleading or omits a material matter, or
- (c) a Relevant Interest Holder has acquired a Relevant Interest in Units held by the Unitholder and the aggregate of all Relevant Interests held by the Relevant Interest Holder exceeds, without the Trustee's prior written consent, the Maximum Permissible Relevant Interest.

33.7 Compulsory divestiture of Relevant Interests

- (a) The Trustee may by written notice to a Relevant Interest Holder (Notice to Divest) direct the Relevant Interest Holder to divest, within 14 Business Days (or such longer time as the Trustee in its absolute discretion specifies) a Relevant Interest in some or all of the Units in which the Relevant Interest Holder has or is believed to have a Relevant Interest.
- (b) If the Relevant Interest Holder does not comply with the Notice to Divest to the Trustee's satisfaction within the time specified, then—
 - (i) the Trustee may take such action as it considers appropriate to reduce the Relevant Interest of the Relevant Interest Holder below

the Maximum Permissible Relevant Interest. Without limitation, the Trustee may do either or both of the following:

- A. Sell some or all of the relevant Units at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder.
 - B. Redeem the relevant Units.
- (c) The proceeds of any sale or redemption of Units in accordance with this clause 33.7 will be applied—
- (i) first, in payment of all reasonable expenses in relation to the sale or redemption (including the giving of any notice under this clause 33.7), and
 - (ii) secondly in payment of the balance (if any) to the relevant Unitholder.
- (d) Without limitation to its rights under this Constitution, the Trustee is under no liability to any Unitholder or any other person as a consequence of any action taken (or not taken) by it under this clause 33.

33.8 Class Units

This clause 33 does not apply in relation to any holding or entered in any Class Units.

33.9 While Trust is admitted to Official List of ASX

Clauses 33.1 to 33.7 (inclusive) do not apply while the Trust is admitted to the official list of ASX.

34. Miscellaneous Provisions

34.1 Form of notice

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

34.2 Address for service

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

Trustee	BlackWall Fund Services Limited
Address	Po Box 612, Neutral Bay NSW 2089
Facsimile	(02) 9033 8600

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

34.3 Deemed date of receipt

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

34.4 Notice to joint Unitholders

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

34.5 Payments

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by—

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

34.6 Discharge of Trustee

The Trustee will receive a good discharge on—

- (a) payment of every cheque if duly presented and paid, or

- (b) in the case of money credited to any account with a financial institution, the receipt of the financial institution of the amount paid.

34.7 Retention of documents

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

34.8 Relationship between Trustee and Unitholders

Each and every Unitholder and the Trustee agree —

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and the Constitution are in every case several and not joint or joint and several
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other
- (c) each Unitholder does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder, and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

34.9 Rounding

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.

- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the manager determines. The amount of rounding must not be more than one percent of the Application Price or Withdrawal Price.

34.10 Applicable law

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

34.11 Change of Trustee

Upon any change in Trustee of the Trust, the outgoing trustee and incoming trustee must enter into a deed pursuant to which the parties agree to novate all of the existing rights and obligations of the outgoing trustee under the Deed of Appointment dated on or about 17 February 2010 between RFML Limited, APG Asset Management Pty Ltd ACN 141 854 515 and Pelorus Property Group Limited.

34.12 Compliance with ASIC Instruments

If the Trust is a registered scheme and relief from the provisions of the Act granted by an ASIC Instrument requires that this document contain certain provisions, then those provisions are taken to be incorporated into this document at all times at which they are required to be included and prevail over any other provisions of this document to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Instrument (and the provisions it requires) will only be taken to be incorporated if the Trustee declares in writing that this is the case.

Executed

DO NOT SIGN

Signed by BlackWall Fund Services
Limited ACN 079 608 825 in
accordance with section 127
Corporations Act by:

Secretary/Director

Director

Full name (please print)

Full name (please print)

Schedule 1—Dictionary

Accounting Standards	Has the meaning given to that term in Section 9 of the Act.
Act	The Corporations Act 2001 (Commonwealth) for the time being in force, together with the regulations.
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Price	The price determined in accordance with clause 4 of this Constitution.
ASIC	The Australian Securities and Investments Commission.
ASIC Instrument	An exemption or modification granted by ASIC in accordance with the Act or any other instrument issued by ASIC under a power conferred on ASIC which relates to the Trustee or the Trust.
Assets	<p>This includes all property, rights and income of the Trust, but excludes—</p> <ul style="list-style-type: none">(a) application money or property paid in respect of which Units have not been issued(b) proceeds from redemption which have not yet been paid, and(c) Distributable Income awaiting payment to Unitholders.
Associate	Means an associate as defined in Division 2 of Part 1.2 of the Act.
ASX	Australian Stock Exchange Limited.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or managed investment scheme registered under the Act.
Business Day	Any day other than a Saturday, Sunday or public holiday in Brisbane.
Class Assets	Those assets specified as “Class Assets” in the terms of issue of any Class Units.
Class Unitholder	A holder of Class Units.
Class Units	A class of Units in the Trust created by the Trustee in accordance

	with clause 4.2 of this Constitution, other than Ordinary Units.
Complainant	A Unitholder who has sent a written complaint to the Trustee pursuant to clause 30.
Constitution	This document (including its schedules) as it may from time to time be amended and in force.
Direct Property Asset	Any real property acquired by the Trust, including a beneficial interest in real property held by the Trust through a wholly-owned sub-trust but does not include any Class Assets.
Disclosure Document	A document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in respect of the disclosure document.
Distributable Income	Any amount determined by the Trustee from time to time to be distributed to Unitholders, including— <ul style="list-style-type: none"> (a) the Net Income of the Trust (b) other Income of the Trust, and (c) any amount of capital of the Trust.
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee, provided that if any Class Units are on issue then the Trustee must first obtain the consent of the holders of the Units (which must not be unreasonably withheld) before designating any such day.
Distribution Period	<ul style="list-style-type: none"> (a) For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date. (b) For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust. (c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.
Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is registered as a managed investment scheme, then the Act) and that has been passed by at least 50 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are

not present in person or by proxy).

Financial Statements	Has the meaning given to that term in Section 9 of the Act.
Financial Year	The period of twelve months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
Foreign Unitholder	A Unitholder who has a registered address outside of Australia.
Founder Units	The separate class of Units of that name, created and issued by the Trustee.
GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Income	All amounts which are, or would be recognised as, income by the application of generally accepted accounting principles.
Legal Personal Trustee	An executor or administrator of the estate of a deceased Applicant or Unitholder or, the trustee of the estate of an Applicant or Unitholder under a legal disability or a person who holds a power of attorney granted by an Applicant or Unitholder.
Liabilities	All liabilities of the Trust, including any provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purpose of calculating Net Asset Value for the Trust, Unitholders' funds are not to be treated as a liability.
Liquid	Has the same meaning as in Section 601KA of the Act.
Maximum Permissible Relevant Interest	A Relevant Interest in more than 15 percent of the Units in Issue.
Net Asset Value	The total value of the Assets calculated in accordance with clause 10, less the Liabilities.

Net Income	Net income as determined by clause 14.1A.
Notice of Suspension of Voting Rights	Has the meaning given to it in clause 33.6.
Notice to Disclose Identity of Relevant Interest Holder	Has the meaning given to it in clause 33.4.
Notice to Divest	Has the meaning given to it in clause 33.7.
Option	An option to subscribe for a Unit.
Option Holder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Units	Units in the Trust created by the Trustee in accordance with clause 3.3 or 4.2 of this Constitution, and not subject to any right, obligation or restriction determined by the Trustee under clause 4.2(b) (other than those set out in this Constitution).
Register	The register of Unitholders required to be kept according to clause 8.
Related Entity	<p>In relation to a Unitholder any of the following:</p> <ul style="list-style-type: none"> (a) a director or member of a Unitholder that is a body corporate (b) a relative, or defacto spouse, of a director or member of a Unitholder that is a body corporate (c) a relative of a person referred to in paragraph (b) hereof (d) a body corporate that is related to a Unitholder that is a body corporate (e) a beneficiary under a trust of which the Unitholder is or has at any time been a trustee (f) a relative or defacto spouse of a beneficiary of a trust of which the Unitholder is or has at any time been a trustee, and (g) a trustee of a trust under which the Unitholder is a beneficiary.
Relevant Interest	Has the meaning given to it in clause 33.1.
Relevant Interest Holder	Has the meaning given to it in clause 33.4.

Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is registered as a managed investment scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
Tax	<p>This term includes, but is not limited to—</p> <ul style="list-style-type: none"> (a) stamp duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Assets or the Trust itself- (b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution (c) taxes imposed or assessed upon— <ul style="list-style-type: none"> (i) any application money or property (ii) the Assets, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself, or (iii) the Trustee in respect of its capacity as trustee of the Trust (d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust, and (e) every kind of tax, duty, rate, levy, deduction and charge including any GST.
Tax Act	The Income Tax Assessment Act 1936, Income Tax Assessment Act 1997, or both as appropriate.
Total Acquisition Cost	<p>In relation to a Direct Property Asset, means the total of the following amounts:</p> <ul style="list-style-type: none"> (a) The gross purchase price paid by the Trust (or where applicable, by its wholly owned sub-trust) for the Direct Property Asset (net of any GST). (b) Any fees, costs or expenses paid by the Trust (or where

applicable, by its wholly owned sub-trust) in relation to the development or construction of any building or other structure (including any fixtures or fittings) upon the Direct Property Asset (net of any GST).

Transaction Costs

- (a) For the purposes of calculating the Application Price of a Unit, an estimate (which is independently verifiable) of the total transaction costs the Trust would incur to acquire afresh the Assets, or if appropriate having regard to the actual cost which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), the Trustee's estimate of a portion of the total costs, which may be zero.

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

- (b) When calculating the Withdrawal Price of a Unit, an estimate (which is independently verifiable) by the Trustee of the total transaction costs the Trust would incur to sell the Assets, or if appropriate having regard to the actual costs which would be incurred because of the withdrawal, the Trustee's estimate of a portion of the total costs, which may be zero.

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

Trust

The trust constituted by this Constitution.

Trustee

Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.

Unit

An undivided share in the beneficial interest in the Assets as provided in this document.

Unitholder

A person for the time being registered under the provisions of this Constitution as a holder of Units and who holds a beneficial interest in the Assets.

Units in Issue

The number of Units that have been issued less the number that have been redeemed.

Valuation Date

The date on which the Trustee calculates the Net Asset Value.

Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause 6.
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Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention—

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

Schedule 3 —While the Trust is admitted to the Official List of ASX

- (a) Clauses (b) to (h) of this Schedule 3 apply only while the Trust is admitted to the Official List of ASX.
- (b) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (c) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- (d) 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).
- (e) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (f) 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.
- (g) 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.
- (h) In this Schedule 3:
 - (i) “ASX” means ASX Limited.
 - (ii) “Listing Rules” means the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust 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.