

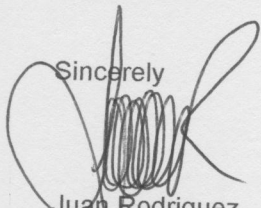
ASX RELEASE

2 September 2011

**COMPLETION OF COMPULSORY ACQUISITION PROCESS AND
AMENDMENTS TO THE EDT CONSTITUTION**

EDT Retail Management Limited (ABN 16 101 743 926) ("ERML") as the responsible entity of EDT Retail Trust (ARSN 106 570 352) ("EDT") advises that the compulsory acquisition process in connection with the off-market takeover offer from EPN EDT Holdings II LLC for units in EDT has been completed.

In accordance with ASX Listing Rule 15.4.2, ERML herewith provides a copy of the consolidated, amended constitution of EDT. A copy of the unitholder information notice relating to the amendments is also attached.

Sincerely

Juan Rodriguez
Company Secretary

About EDT Retail Trust:

EDT Retail Trust (ASX:EDT) is a listed real estate investment trust focused on investing predominately in US community shopping centres giving investors exposure to a premium quality portfolio of US retail real estate in the value and convenience sector. It currently holds interests in 48 assets covering approximately 10.9 million square feet in 20 states.

EDT Retail Management Limited, the Responsible Entity of the Trust, is jointly owned by Developers Diversified Realty Corporation (DDR) and EPN GP LLC (EPN). DDR is a self-administered and self-managed REIT operating as a fully integrated real estate company listed on the NYSE which operates and manages over 570 retail properties covering 132 million square feet. EPN is a real estate investment venture jointly formed by Elbit Plaza USA, L.P. (a subsidiary of Elbit Imaging Ltd. and Plaza Centers N.V.) and Eastgate Property LLC.

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EDT RETAIL TRUST - UNITHOLDER INFORMATION NOTICE

1. Background

This Unitholder Information Notice is dated 1 September 2011 and is issued by EDT Retail Management Limited (ABN 16 101 743 926) ("ERML") in its capacity as the responsible entity of EDT Retail Trust (ARSN 106 570 352) ("EDT").

The constitution of EDT ("Constitution") provides that EDT will terminate on the earliest of certain events, including but not limited to, the "Date of Delisting".

The "Date of Delisting" is the earliest of:

- (a) the date on which the Responsible Entity receives notification from the Australian Stock Exchange ("ASX") of the removal of EDT from its official list ("Delisting"); and
- (b) where the units in EDT ("Units") are suspended from quotation on the official list of ASX by ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

On 3 August 2011, ASX suspended the Units from quotation on its official list following notification that EPN EDT Holdings II LLC ("EPN") had exercised its statutory rights of compulsory acquisition in respect to the Units.

ASX has agreed to delay delisting EDT until it is notified by ERML that the compulsory acquisition has been completed.

On 1 September 2011, the compulsory acquisition was completed with EPN and EPN GP, LLC being the only members of EDT ("Members").

ERML intends to notify ASX that the compulsory acquisition has been completed on 2 September 2011.

2. Proposed amendment to the Constitution

Subject to receiving the written consent of all Members, ERML proposes to amend EDT's Constitution by deleting the Date of Delisting as a termination event, such that termination of the Scheme will not occur on Date of Delisting ("Constitution Amendment").

3. Consent required prior to implementing the Constitution Amendment

The Scheme is governed by the Constitution, and is registered as a managed investments scheme under Chapter 5C of the *Corporations Act 2001* (Cwth) ("Act").

Under the Constitution, the Responsible Entity may, if the Act allows, amend the Constitution by deed.

Section 601GC(1) of the Act (as varied by ASIC relief instrument dated 26 August 2011) provides that ERML in its capacity as responsible entity of EDT may amend the Constitution by deed, if:

- (a) the responsible entity provides each Member, the auditor of EDT, and the auditor of EDT's compliance plan, with all the information that the responsible entity reasonably expects to be material to the decision whether to consent to the Constitution Amendment; and
- (b) after the information in paragraph (a) has been provided, each Member provides their written consent to the Constitution Amendment.

Having regard to the information known to the Members, ERML considers that the information in this notice contains all the information that is material to each Member's decision whether to consent to the Constitution Amendment.

Accordingly, ERML seeks the consent of each Member to the Constitution Amendment.

4. What are the consequences if the Constitution Amendment is made?

If the Constitution Amendment is made then EDT will not terminate on the receipt of notification from ASX that the Scheme has been removed from the official list of ASX.

5. What are the consequences if the Constitution Amendment is not made?

If the Constitution Amendment is not made, EDT will terminate on the date the Responsible Entity receives notification from ASX that EDT has been removed from the official list of ASX. The responsible entity will initiate a sale process for the assets of EDT. Under the Constitution, the sale process must be completed in 180 days of termination if practical and in any event as soon as possible after that.

In acting in the best interests of Members, the Responsible Entity will conduct an orderly sale process of EDT's entire property portfolio by selling either properties or corporate structures owning properties which may take longer than 180 days and possibly several years.

6. Member consent

A copy of the consent, attaching the Constitution Amendment, accompanies this Unitholder Information Notice.

Consents should be provided to Mr Juan Rodriguez, the ERML Company Secretary, no later than 9.00am (Sydney time) on 2 September 2011.

A handwritten signature in black ink, appearing to be 'JR', with a large circular flourish on the left and a long, sweeping stroke on the right.

Juan Rodriguez
Company Secretary
1 September 2011

Consent to amendment of EDT Retail Trust Constitution

EPN EDT Holdings II LLC and EPN GP, LLC (together “**Members**”) are the only members in the EDT Retail Trust (ARSN 100 375 479) (“**Trust**”) established under the constitution dated 29 September 2003 (as amended) (“**Constitution**”).

Clause 22.1(b) of the Constitution provides that, if the Corporations Act 2001 (Cwlth) (“**Corporations Act**”) allows, EDT Retail Management Limited (“**Manager**”) may by deed amend the Constitution. Section 601GC(1) of the Act (as varied by ASIC relief instrument dated 26 August 2011) provides that the Constitution may be modified if each and every member of the Trust consents to the amendment in writing.

By executing this consent the Members consent to the amendments of the Constitution as set out in the Supplemental Deed in the form, or substantially in the form, of the Annexure.

This consent may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Date: _____

[insert execution block for EPN EDT Holdings II, LLC]

[insert execution block for EPN GP, LLC]

Annexure – Supplemental Deed

MALLESONS STEPHEN JAQUES

EDT Retail Trust Supplemental deed

Dated

EDT Retail Management Limited (ACN 101 743 926) ("**Manager**")

Mallesons Stephen Jaques

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com

Supplemental deed

Details

Responsible Entity	Name	EDT Retail Management Limited
	ABN/ACN	101 743 926
	Capacity	Responsible Entity of the Trust
	Address	Darling Park Tower 2 Level 20, 201 Sussex Street SYDNEY NSW 2000

Recitals	A	The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	B	Section 601GC(1) of the Corporations Act (as varied by ASIC relief instrument dated 26 August 2011) provides that the Constitution may be modified if each and every member of the Trust consents to the amendment in writing.
	C	Under clause 22.1(b) of the Constitution, the Responsible Entity may, if the Corporations Act allows, amend the Constitution by supplemental deed.
	D	The Responsible Entity wishes to modify the Constitution as set out in this deed.
	E	Under ASIC relief instrument dated 26 August 2011, the Responsible Entity may amend the Constitution by deed, if each and every member of the Trust consents to the amendment in writing.
	F	The Members have each consented to the amendment of the Constitution as set out in this deed.

Governing law	New South Wales
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Date of deed	See Signing page
---------------------	------------------

Supplemental deed

General terms

1 Interpretation

1.1 Definitions

In this deed, these words and phrases have the following meanings and any other words and phrases have the meaning given to them in the Constitution, unless the contrary intention appears:

Constitution means the deed dated 29 September 2003 under which the Trust is governed as amended from time to time.

Effective Date means the date that a copy of this deed is lodged with the Australian Securities and Investments Commission.

Trust means the registered managed investment scheme currently named EDT Retail Trust (ARSN 106 570 352).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed.

2 Modifications to the Constitution

The Constitution is modified from the Effective Date by deleting sub-clause 20.2(a).

3 No redeclaration etc

The Responsible Entity declares that it is not, by this deed:

- (a) redeclaring the Trust; or
- (b) causing the transfer, vesting or accruing of property in any person.

4 Governing law

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

EXECUTED as a deed

Supplemental deed

Signing page

DATED: _____

EXECUTED by **EDT RETAIL**)
MANAGEMENT LIMITED in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cwlth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable

Consolidated Constitution EDT Retail Trust

Manager: EDT Retail
Management Limited
(ACN 101 743 926)

This document is a consolidated copy of the trust deed dated 29 September 2003 for EDT Retail Trust (“Original Constitution”), as amended by the Supplemental Deed dated 10 October 2005, the Supplemental Deed dated 11 December 2006, the Supplemental Deed dated 21 December 2006 the Supplemental Deed dated 8 June 2007, the Supplemental Deed dated 22 April 2010, the Supplemental Deed dated 6 May 2010, the Supplemental Deed dated 18 June 2010, the Supplemental Deed dated 26 October 2010, the Supplemental Deed dated 24 June 2011, and the Supplemental Deed dated 2 September 2011.

This is not a legally binding document. Reference should be made to the Original Constitution and each amending deed for the operative provisions. Section headings, indices and the provisions in square brackets do not form part of the text.

Level 61
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1 Farrer Place
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Telephone (61 2) 9296 2000
Fax (61 2) 9296 3999
DX 113 Sydney
Ref: BMcW

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Consolidated Constitution of the EDT Retail Trust

Date: 29 September 2003

Operative provisions:

This deed poll is declared by EDT Retail Management Limited (ACN 101 743 926) (“MDML”) to be the constitution of the EDT Retail Trust.

1 Name of Trust

- 1.1 The Trust is called the EDT Retail Trust or by such other name as the Manager determines from time to time¹.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business, or with Macquarie Bank or DDR².

2 Assets held on trust

- 2.1 The Manager declares that it will hold the Assets upon Trust for the Members and act in the interests of the Members on and subject to the term and conditions of this constitution³.
- 2.2 Any Assets held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires⁴.

3 Units and Options

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit each Fully Paid Unit confers an equal undivided interest and, unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature less the amount remaining to be paid up on the Unit.
- 3.3 Subject to the rights, obligations or restrictions attaching to any particular Unit a Unit confers an interest in the Assets as a whole,

¹ See Corporations Regulation 5C.1.02

² DDR itself could not enforce this, but the retiring Manager could (but is not required to) do so for the benefit of DDR.

³ See section 601FC(2) of the Corporations Act

⁴ See section 601FC(1)(i)

subject to the Liabilities. It does not confer an interest in a particular Asset.

Options

- 3.4 The Manager may create and issue Options on such terms and conditions as the Manager determines and offer them for subscription, but only to Members who:
- (a) have received an offer to subscribe for a specified number of Options and a specified number of Units; or
 - (b) were Members on a date determined by the Manager which may not be more than 30 days before the date of the offer.
- 3.5 An offer made under clause 3.4(b):
- (a) must be expressed as a proportion of the number of Units held by the Member on the date determined by the Manager, with Partly Paid Units regarded as a fraction of a Unit, calculated by dividing the instalments paid or due but unpaid by the Application Price of the Unit. The Manager may ignore fractions and adjust an entitlement as follows:
 - (i) if the last number of the entitlement is 5 or more, by rounding it up to the nearest multiple of 10; or
 - (ii) if the last number of the entitlement is less than 5, by rounding it down to the nearest multiple of 10;
 - (b) may be renounced in favour of another person unless the offer is expressed as non-renounceable.
- 3.6 Subject to this constitution, the Corporations Act (and the conditions of any applicable relief from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:
- (a) for consideration or no consideration;
 - (b) pursuant to *pari passu* offers to all existing Members on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager provided that the exercise price is not less than the price that would otherwise apply under this constitution if the Unit was issued on the date of issue of the Option by a percentage exceeding 20%; and
 - (c) conferring on the Option Holder such other entitlement under this constitution as the Manager determines,

and otherwise on terms and conditions and with such entitlements as determined by the Manager.

Subject to the Listing Rules while the Units are Officially Quoted and the conditions of any applicable ASIC relief, if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is

in a place other than Australia, New Zealand and such other jurisdiction (if any) as the Manager may in its absolute discretion determine.

- 3.7 On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate, provided that the Option Holder has given notice to the Manager in accordance with the terms upon which the Option was granted together with payment in full of the exercise price.

An Option lapses on the termination or winding up of the Trust, in which case the liability of the Manager ceases in respect of the Option.

Rights attaching to Units and Options

- 3.8 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. An Option Holder holds an Option subject to the terms and conditions attaching to that Option.

Partly Paid Units

- 3.9 The Application Price of Units may be payable by instalments as set out in clauses 3.10 to 3.14.
- 3.10 The Manager may determine at any time that Units to be offered for subscription in accordance with clause 4 are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines. All the terms and conditions of such an offer must be set out in the product disclosure statement or other document offering the Units for subscription.
- 3.11 Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale on terms and conditions determined and set out in accordance with clause 3.10, those terms and conditions may be varied or compliance therewith waived only with the consent of the Manager. The variation or waiver must not take effect during the currency of the product disclosure statement or other document pursuant to which the Units were offered for sale.
- 3.12 The Manager may not waive an instalment which is due and payable.
- 3.13 Despite anything in this constitution or in any offer of Partly Paid Units, the whole of the unpaid Application Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- 3.14 The Manager must serve each holder of a Partly Paid Unit with a notice not later than 14 days before the payment of an instalment is due unless the terms of the offer for the Partly Paid Unit otherwise provide. The omission to give such a notice or the non-receipt of notice by the holder does not affect the obligation of the holder to pay the instalment.

Failure to pay instalments

- 3.15 If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager must serve a notice on that Member not later than 14 days after the due date requiring payment of so much of the instalment as is unpaid and any interest calculated from the due date until payment of the instalment at a fair market rate as determined by the Manager. The notice must specify a further time and day (not earlier than 7 days from the date of service of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non-payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.
- 3.16 If the requirements of any notice issued under clause 3.15 are not complied with:
- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice, be forfeited if the Manager so determines; and
 - (b) all voting rights and entitlements to the distribution of income in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Manager.

Sale of forfeited Units

- 3.17 If the Manager offers a forfeited Unit for sale it does so as agent for the holder of the forfeited Unit.
- 3.18 A forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:
- (a) at a price that is no less than a price calculated in accordance with clause 4.1(f); or
 - (b) while the Units are Officially Quoted, at a price determined by the Manager where the sale of the forfeited Unit is in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), (10) and (13) as if the Units were shares, the scheme was the company and the responsible entity was the directors of the company; or
 - (c) in accordance with any applicable ASIC relief in relation to the sale of forfeited units, if the Manager complies with the conditions of the relief; or
 - (d) subject to the Corporations Act and while Units are Officially Quoted, on the ASX.

The Manager is not liable to a Member for any loss suffered by the Member as a result of the sale.

-
- 3.19 At any time before a sale or disposition the forfeiture may be cancelled if the holder of the forfeited Unit pays the Manager the full amount of the instalment due together with any other amounts in respect of the forfeiture.
- 3.20 The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by the Member to the Manager in respect of the forfeited Units (including costs associated with the forfeiture and all proceedings instituted against the Member to recover the amount due) but the Member's liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.
- 3.21 A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.
- 3.22 Where a Partly Paid Unit is forfeited under clauses 3.17 to 3.21 the Manager may receive the consideration, if any, given for a forfeited Unit on its sale or disposal, and the Manager may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of and that person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which he has paid for the Unit is paid to the former holder of the Unit nor shall his title to that Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.
- 3.23 Where forfeited Units are sold or disposed of for cash, the Manager must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any costs associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.
- 3.24 Income and distributions of capital in accordance with clause 9.29 to which the holder of a forfeited Unit has become entitled and which have not been paid prior to forfeiture must be paid to the holder of the forfeited Unit as if it formed part of the proceeds of sale of a forfeited Unit.
- 3.25 Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

Fractions of Units

- 3.26 Fractions of a Unit (calculated to 2 decimal places) may be issued by the Manager, however, while the Units are Officially Quoted fractions of a Unit may not be issued.
- 3.27 The provisions of this constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

Consolidation and division of Units and Options

- 3.28 Units and Options may be consolidated or divided as determined by the Manager⁵.

Transfer of Units and Options

- 3.29 Subject to clause 3.30, Members may transfer Units and, subject to their terms and conditions, Options.
- 3.30 While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.31 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and, if the Manager requires, be presented for Registration duly stamped.
- 3.32 A transfer is not effective until Registered.
- 3.33 Subject to the Listing Rules while the Listing Rules apply⁶, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.30.

Joint tenancy

- 3.34 Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

Death, legal disability of Member

- 3.35 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.
- 3.36 A person who becomes entitled to a Unit or an Option because of the death, bankruptcy, insanity or other disability of a Member or Option Holder is entitled to receive and may give a discharge for all money payable in respect of the Unit or Option but is not entitled to receive notices of or to attend or vote at any meetings of Members or Option Holders until that person is Registered as the holder of the Unit or Option.

⁵ Refer Listing Rules, Chapter 7 - reorganisations of capital.

⁶ Listing Rule 8.10 restricts the Manager's ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

Income entitlement of Units

- 3.37 The Manager may in its discretion issue Units on terms that such Units:
- (a) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
 - (b) do not entitle the holder of such Units to receive a distribution of Distributable Income in respect of the Distribution Period in which such Units are issued; or
 - (c) entitle the holder of such Units to receive a distribution of Distributable Income in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period is entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

Manager may request holding lock or refuse to register transfer

- 3.38 If the Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:
- (a) request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
 - (b) refuse to Register a transfer of other Units or Options to which paragraph (a) does not apply.

Manager must request holding lock or refuse to register transfer

- 3.39 The Manager must:
- (a) request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
 - (b) refuse to register any transfer of Units or Options to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Trust to do so or the transfer is in breach of clause 3.30.

Notice of holding locks and refusal to register transfer

- 3.40 If, in the exercise of its rights under clauses 3.38 and 3.39, the Manager requests application of a holding lock to prevent a transfer of Units or Options or refuses to Register a transfer of Units or Options, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

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- (a) the holder of the Units or Options;
 - (b) the transferee; and
 - (c) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Manager.

4 Application Price for Units⁷

- 4.1 Subject to clause 20.1, a Unit must only be issued at an Application Price calculated as:
- (a) in the case of Units offered pursuant to the First PDS at a price of \$1.00 payable either in full on application or by such instalments as the Manager may determine;
 - (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 4.4;
 - (c) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.6;
 - (d) in the case of reinvestment of income, in accordance with clauses 4.7 and 4.8;
 - (e) in the case of Units issued pursuant to the exercise of an Option, a price calculated in accordance with clause 3.6;
 - (f) if Units are to be issued in accordance with any of the Exchange Agreements, then the Units will be issued at an Application Price equal to the consideration per Unit to be provided pursuant to the relevant Exchange Agreement;
 - (g) subject to paragraphs (a), (b), (c), (d), (e) and (f) in all other cases while Units are Officially Quoted, the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated; and
 - (h) while Units are not Officially Quoted, in accordance with the following formula:
$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid-up Proportion}};$$
 - (i) in the case of a Unit issued under the 2010 Placement in accordance with clause 4.9; and
 - (j) in the case of a Unit issued under the 2010 Entitlement Offer, in accordance with clause 4.10.

⁷ Required to be included by Section 601GA(1)(a)

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- 4.2 Each of the variables in clause 4.1(h) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
 - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager
- whichever happens later.
- 4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset of the Trust.

Pro rata rights issues

- 4.4 The Manager may (subject to the terms of any applicable ASIC relief instrument) offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 20 Business Days immediately prior to the date of the offer, provided that:
- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
 - (b) either:
 - (i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with clause 4.1(h); or
 - (ii) where Units are Officially Quoted, the Application Price is not less than 50% of the Market Price as at the date not more than 5 Business Days prior to the date on which the product disclosure statement under which the offer is made is lodged with ASIC,

but, subject to the Listing Rules and any applicable ASIC relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia,⁸ New Zealand and such other jurisdiction (if any) as the Manager may in its absolute discretion determine.

Terms of pro rata issues

- 4.5
- (a) Any offer made under clause 4.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.4, provided that the Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole

⁸ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

- (b) Any Units offered for subscription under clause 4.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.4, such underwriter may take up any Units not subscribed for by Members.

Placements and other issues

4.6 While Units are Officially Quoted and not suspended from quotation, the Manager may at any time issue Units to any person other than the Manager or its associates by way of a placement:

- (a) at the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which the Units are offered; or
- (b) at a price which is not less than 85% of the weighted average market price as referred to in clause 4.1(g) and on terms determined by the Manager,

provided that the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC relief.

Reinvestment

4.7 While Units are Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is the weighted average trading price of Units during the 10 Business Days from and including the date upon which the Units go ex the distribution entitlement for the period ending on the last day of the Distribution Period or Quarter to which the distribution relates less such discount, if any, not exceeding 10% as the Manager may determine.

4.8 While Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment is the Application Price on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

2010 Placement

4.9 Notwithstanding any other provisions of this constitution, the Manager may issue Units under the 2010 Placement at an Application Price of \$0.067 per Unit.

2010 Entitlement Offer

4.10 Notwithstanding any other provision of this constitution, the Manager may issue Units under the 2010 Entitlement Offer at an Application Price of \$0.055 per Unit.

5 Application procedure

Application form

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

Payment

- 5.2 Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application;
 - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Option or Partly Paid Unit contemplate; or
 - (c) comprise a reinvestment of distribution in accordance with clause 9.21.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable by the Member concerned. The Manager agrees to accept the consideration payable pursuant to the Exchange Agreements without the need for any valuation of that consideration.

Manager may reject

- 5.3 The Manager may reject an application in whole or in part without giving any reason for the rejection⁹.

Minimum amounts

- 5.4 The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time¹⁰.

Issue date

- 5.5 Units are taken to be issued when:
- (a) the Manager accepts the application; or
 - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,
- whichever happens later.

Uncleared funds

- 5.6 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the

⁹ Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

¹⁰ While Units are Officially Quoted, see clause 26 regarding the sale of small holdings.

funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

6 Redemption Price of Units¹¹

Redemption Price

- 6.1 While the Units are not Officially Quoted, a Unit must only be redeemed at a Redemption Price calculated as:
- $$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid-up Proportion}}$$
- less any amount called but unpaid on the Unit.
- 6.2 Each of the variables in clause 6.1 must be determined:
- (a) while the Trust is a Registered Scheme and is Liquid, and at all times when the Trust is not a Registered Scheme, as at the close of business on the day before the payment of the Redemption Price; or
 - (b) while the Trust is a Registered Scheme and is not Liquid, at the time the withdrawal offer closes.
- 6.3 The Redemption Price must be rounded down to the nearest whole cent.
- 6.4 While the Units are Officially Quoted, the Redemption Price pursuant to a withdrawal offer is the average of the Daily VWAP for each of the 10 Business Days immediately prior to the date upon which the withdrawal offer is announced by the Manager. For this purpose the Daily VWAP is the volume weighted average of the prices for that Business Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units.
- 6.5 The Manager may (subject to the terms of any applicable ASIC relief instrument) purchase a Unit under clause 7.16 provided that the purchase price does not exceed 105% of the average market price (as “market price” is defined in the Listing Rules on 23 April 2007) of Units calculated over the last 5 days in which Units were traded on the ASX before the day on which the Units were purchased.

¹¹ Required to be included by Section 601GA(4) if a right of redemption is to be offered.

7 Redemption procedures¹²

Officially Quoted

- 7.1 While Units are Officially Quoted, none of the provisions of this clause 7 apply except this clause and clauses 7.11 to 7.16¹³.

Request for redemption

- 7.2 A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager, and the Manager must give effect to that request at the time and in the manner set out in this clause 7 if:

- (a) the Trust is a Registered Scheme and the Trust is Liquid; or
- (b) the Trust is not a Registered Scheme.

- 7.3 A Member may not withdraw a redemption request unless the Manager agrees.

When Trust is Liquid¹⁴

- 7.4 Clauses 7.5 to 7.11 apply only while the Trust is Liquid¹⁵.

- 7.5 Subject to the Corporations Act and the Listing Rules (if the Listing Rules apply) the Manager must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 7.6. The day of receipt of the redemption request is:

- (a) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
- (b) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.

- 7.6 If the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.

- 7.7 The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.

¹² These procedures must be fair to all Members: Section 601GA(4)

¹³ Refer Listing Rule 1.1 condition 5.

¹⁴ Required to be included by Section 601GA(4)(b)

¹⁵ For definition of a liquid scheme see Section 601KA

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- 7.8 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.
- 7.9 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.
- 7.10 If the Manager increases the minimum holding amount, the Manager may, after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount, redeem that Member's holding without the need for a redemption request.

Discretionary redemption

- 7.11 Subject to the Corporations Act and the Listing Rules, if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request¹⁶. If the Trust is a Registered Scheme the discretion conferred on the Manager by this clause may only be exercised while the Trust is Liquid.

When Trust is not Liquid¹⁷

- 7.12 While the Trust is not Liquid¹⁸, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind¹⁹. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.13 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
 - (b) giving a copy to all Members.
- 7.14 If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Sums owed to Manager

- 7.15 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member. This clause applies whether or not the Trust is Liquid.

Buy-back of Units

- 7.16 While Units are Officially Quoted the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing

¹⁶ See section 601FC(1)(d) and Chapter 5C.6.

¹⁷ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹⁸ For definition of a liquid scheme see Section 601KA(1)

¹⁹ Refer sections 601KB to 601KE

Rules, purchase Units at a price that complies with clause 6.5 and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

8 Valuation of assets and accounts, audit and reports

Periodic valuations

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.²⁰
- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value²¹.
- 8.4 While the Trust is a Registered Scheme and the Units are Officially Quoted, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation or the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price in a manner that is independently verifiable.

Accounts, audit and reports

- 8.5 While the Trust is not a Registered Scheme, the Manager must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Trust, as if the Trust were a Registered Scheme.

9 Income and distributions to Members²²

Collection of Income

- 9.1 The Manager must receive and collect all income of the Trust.

Nature of Receipts

- 9.2 The Manager may determine whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Distribution Period is or is not to be treated as being on income or capital account and whether and the extent to which any provisions and reserves need to be made for the Distribution Period.

Determination of Distributable Income

- 9.3 The Manager must determine the Distributable Income for each Distribution Period.

²⁰ See section 601FC(j) for Manager's obligations concerning valuation

²¹ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

²² Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

Distributable Income

- 9.4 If no determination is made or to the extent to which no determination is made under clause 9.3 prior to the end of a Distribution Period, then the Distributable Income of the Trust for that Distribution Period is equal to the Net Income for that Distribution Period.

Accounting standards

- 9.4A Notwithstanding the manner in which the Distributable Income of the Trust may, in accordance with clause 9.3 or 9.4, be calculated, the accounts of the Trust are to be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 9.3.

Entitlement

- 9.5 At the end of each Distribution Period the Members are presently entitled to the Distributable Income together with any further amount which the Manager determines in accordance with clause 9.16 or clause 9.29 to distribute to the Members in respect of that Distribution Period.

Apportionment

- 9.6 The Manager is empowered but not bound to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income. The Manager may allocate to a Member all or part of the Distributable Income to which the Member is entitled from a particular category or source of income in which case the Manager must advise the Member of the extent to which income allocated to the Member consists of income from a particular category and/or source.

Distribution Account

- 9.7 The Distributable Income in respect of a Distribution Period is to be transferred to a special account in the name of the Manager or the name of a custodian appointed to hold the Trust's assets and designated a Distribution Account. Any amount in the Distribution Account does not form part of the Trust but must be held by the Manager, subject to clause 9.12, on trust for distribution among the persons who are Members as at the close of business on the last Business Day of the Distribution Period. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets of the Trust. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly. If the Manager has exercised its power under clause 9.6 the separate categories and sources of income must be shown in the Manager's records of the Distribution Account.

Postponement of distribution

- 9.8 In determining the Distributable Income for a Distribution Period (but not the Taxable Period Income) if any income is received in a

Distribution Period when, in the opinion of the Manager, it is not practicable to distribute it in the distribution for that Distribution Period, it may be treated by the Manager as having accrued during the next following Distribution Period and be distributed accordingly.

Interim distributions

- 9.9 The Manager may determine to make interim distributions to Members of the estimated Distributable Income for the Quarters ending on a day which is not a Distribution Calculation Date. If the Manager determines to make a distribution in respect of such a Quarter the estimated Distributable Income in respect of that Quarter is to be transferred to the Distribution Account and the provisions of this clause 9 will apply in relation to the distribution of that income to the Members as at the end of that Quarter in the same manner as Distributable Income is distributed in relation to a Distribution Period as if that Quarter were a Distribution Period. If an amount is transferred to the Distribution Account pursuant to this clause 9.9 there is to be an equivalent reduction in the amount required to be transferred to the Distribution Account pursuant to clause 9.7 in respect of the relevant Distribution Period and the provisions of clause 9.10 will apply in relation to the balance of the Distributable Income transferred to the Distribution Account.

Participation in distribution of income

- 9.10 Subject to clauses 9.11 and 25 a Member is entitled to receive a distribution of the Net Income credited to the Distribution Account in accordance with the following formula:

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

where:

- A = the amount credited to the Distribution Account in respect of the relevant Distribution Period calculated to one decimal place of one cent and rounded down to the nearest cent;
- B = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on issue held by any Member;
- C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the last Business Day of the Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate

number of such Units held by that Member multiplied by the relevant proportion;

D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on that last Business Day of that Distribution Period; and

E = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution period as a consequence of the characteristics of the Member including the number or percentage of Units in issue held by the Member.

9.11 A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:

- (a) the proportion or different proportions of the Application Price paid up on the Unit; and
- (b) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Trust, that Unit may be eligible for increased participation in income at a date determined by the Manager but at the latest from the first day of the month immediately following the date set for payment of the instalment.

Deduction of Tax

9.12 The deduction of the following amounts from the part of the Distribution Account to which a particular Member is entitled is authorised:

- (a) Tax which is paid or anticipated to be payable by the Manager on account of or in respect of the Member on the amount of the Distributable Income otherwise distributable to that Member;
- (b) if it is determined by the Manager, a charge made by a person on account of Tax imposed on the deposit in an account of the Trust or of the Manager of all amounts received from that Member during the relevant Distribution Period or any Tax imposed on the Manager in respect of the receipt by the Manager of those amounts;

(c) if it is determined by the Manager, a charge made by a person on account of Tax imposed on or in respect of the debiting in an account of the Trust of the amount of Distributable Income otherwise distributable to that Member; and

(d) any other amount required to be deducted by law,

and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

Distribution of income

9.13 Subject to any deductions made under clause 9.12 and provided that a Member has not given notice to the Manager that the Member's entitlement to income for each Unit is to be reinvested under clause 9.23 at the end of the then current Distribution Period, the Manager must distribute to that Member the Member's entitlement to the Distributable Income in accordance with clause 9.10 within two months of the last Business Day of the Distribution Period.

Fractions

9.14 If the Member's entitlement to Distributable Income includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent becomes an Asset of the Trust.

Reserves

9.15 If so determined by the Manager, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to a Reserve Account.

Distributions from Reserve Account

9.16 The Manager may distribute to the Member from time to time by way of cash or other Assets of the Trust as at a date determined by the Manager an amount equal to so much of the net realised capital gains credited to a Reserve Account as the Manager may determine. The Manager must adjust the Reserve Account for the amount so distributed.

Calculation of distributions from Reserve Account

9.17 The distribution of cash or other Assets to each Member under clause 9.16 is to be calculated in accordance with the following formula or in any other manner determined by the Manager:

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

where:

A = the amount of cash or the value of Assets (determined by the Manager) to be distributed;

B = the aggregate of the number of Units held by the Member as at the close of business on the date of calculation; and

C = the aggregate of the total number of Units on issue as at the close of business on the date of calculation.

Capitalisation

9.18 Any amount standing to the credit of a capital reserve account may be capitalised by a determination of the Manager. Subject to clause 9.19, the capitalisation is to be effected by dividing the number of Units held by Members by a proportion determined by the Manager which takes into account the number of Units held by the Member, the amount to be capitalised and other matters in relation to the particular Member determined by the Manager. Following the capitalisation:

- (a) the number of Units in issue will increase accordingly;
- (b) the Manager must cause the Register to be amended and take any other steps which the Manager considers necessary to amend the records of the Trust to reflect the capitalisation;
- (c) the Manager may ignore fractions and round each Member's entitlement to the nearest whole Unit;
- (d) the sum capitalised must be debited to the Reserve Account and thereafter be treated in the same manner as funds subscribed by Members; and
- (e) the additional Units created will rank for distribution of income and for all other purposes from a date determined by the Manager.

9.19 The number of additional Units created under clause 9.18 must not be less than the number calculated in accordance with the following formula:

$$\frac{A}{B}$$

where:

A = the amount standing to the credit of the Reserve Account which is to be capitalised; and

B = the Application Price applicable on the day upon which the capitalisation is to take place,

and each Unit created upon the capitalisation must be issued at the same price which may be less than the Application Price on that date.

9.20 For the purposes of clauses 9.17, 9.18 and 9.19 a Partly Paid Unit is treated as a fractional Unit, calculated by dividing the total amount

of instalments paid in respect of that Partly Paid Unit by the Application Price of that Partly Paid Unit.

Member reinvestment

- 9.21 The Manager may in its discretion from time to time by notice to all Members confer upon Members of the Trust the right of reinvestment of income in further Units during such period as the Manager may determine. This right if conferred by the Manager may be exercised by the Member by giving notice in writing to the Manager (in the form determined by the Manager from time to time) to request that the Manager retain and reinvest in Units the money or part of the money to be distributed to the Member under clauses 9.9, 9.10, 9.16 and 9.29.
- 9.22 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period cancel any notice given under clause 9.21. The Member is entitled to give a further notice under clause 9.21 at any time in respect of any subsequent Distribution Period.
- 9.23 In the event that a notice under clause 9.21 has been given to the Manager by a Member no later than the last day of the relevant Distribution Period and has not been cancelled under clause 9.22 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member at the date of distribution, to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in additional Units.
- 9.24 If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member has cancelled any previous notice under clause 9.21 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the current Distribution Period.
- 9.25 Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

Notice of reinvestment

- 9.26 Where a Member has made a request under clause 9.21, the Member is to be provided by the Manager with a notice to the effect that the whole or part (as the case may be) of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Manager. The notice is to be given by the Manager upon the issue of the additional Units.
- 9.27 For all purposes the Distributable Income to be distributed to a Member is deemed to have been received by the Member on a

reinvestment of that income in additional Units under the terms of this clause 9.

Liability

- 9.28 The Manager does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 9 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Distributions of capital

- 9.29 The Manager may determine to distribute capital to Members in addition to any other distributions to be made to Members in respect of a Distribution Period. The Manager must transfer capital to the Distribution Account for this purpose of enabling a distribution to Members. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Distributable Income.

Trust taxed as company

- 9.30 If the Trust is to be taxed as if it were a company, the Manager may determine that this paragraph headed “Trust taxed as company” applies to a Distribution Period instead of the preceding paragraphs 9.3 to 9.14 of this clause. If it does so:
- (a) As soon as practicable after the end of the Distribution Period the Manager must determine the income in respect of the Distribution Period. Unless the Manager determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with normal accounting principles.
 - (b) The Manager must provide for, and pay from the Assets of the Trust when appropriate, all taxation attributable to the income of the Trust.
 - (c) The Manager may, in its discretion from time to time, determine to pay such amount or amounts of income (if any) as a distribution in respect of the Distribution Period (each a “**Distributable Amount**”) to the Members on the register on any date determined by the Manager (“**Books Closing Date**”).
 - (d) In respect of a Distributable Amount being paid to Members pursuant to this clause 9.30:
 - (i) the Manager must comply with the provisions of the Tax Act and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
 - (ii) the Manager must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.

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- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

- A = the Distributable Amount;
- B = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on issue held by any Member;
- C = the aggregate of the number of Units held by the Member as at the close of business on the Books Closing Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the Books Closing Date for that Distributable Amount Units which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution plus, if Units have been issued which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the Books Closing Date for that Distributable Amount; and
- E = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution period as a consequence of the characteristics of the Member including the number or percentage of Units in issue held by the Member.

The Distributable Amount must be paid to Members within two months after the Books Closing Date.

10 Payments

- 10.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.

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- 10.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 10.3 Where the Manager attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 10.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 10.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 10.6 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) or any other amount owed by the Member to the Manager or any other person which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

11 Powers of the Manager

General powers

- 11.1 Subject to this constitution, the Manager 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 and acting in its personal capacity.

Contracting powers²³

- 11.2 Without limiting clause 11.1 but subject to clause 11.3, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities.

Borrowing

- 11.3 The Manager must not incur a borrowing or raise money in respect of the Trust if to do so would, at the time of incurring the borrowing or raising the money cause a contravention of the Financial Risk Management Policy.

Investment powers

- 11.4 Without limiting clause 11.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.²⁴

²³ Required to be included by Section 601GA(3)

²⁴ Subject to Section 601FC(4)

Power of delegation²⁵

- 11.5 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 11.6 The Manager may include provisions in the authorisation to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 11.7 The agent or delegate may be an associate of the Manager.²⁶

Exercise of discretion

- 11.8 The Manager may in its absolute discretion decide how and when to exercise its powers.

Underwriting

- 11.9 Subject to the Corporations Act, the Manager may enter into an arrangement with a person (including an associate of the Manager) to underwrite the subscription or purchase of Units on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

Principal Investment Policy

- 11.10 The principal investment policy of the Manager in relation to the Trust is investment directly or indirectly in real property and the making of such other investments with the Assets which in the Manager's opinion are not from time to time required for investing in real property. The Manager must not vary the principal investment policy of the Trust unless notice is given to Members within such period before the variation takes effect as is adequate in the reasonable opinion of the Manager to enable Members to dispose of their units if they see fit.

Manager to act on directions

- 11.11 This clause 11.11 applies while the Trust is not a Registered Scheme and no application is with ASIC to register the Trust as a Registered Scheme. Notwithstanding any other provision of this constitution, the Manager must act in relation to the Trust in accordance with the directions given by the sole Member or jointly by all Members from time to time so as to allow the Members acting together to have day-to-day control over the operation of the Trust. The Manager may seek directions of the Members on any matter.

12 Retirement of Manager²⁷

Voluntary retirement

- 12.1 While the Trust is a Registered Scheme, the Manager may retire as the responsible entity of the Trust as permitted by law²⁸.

²⁵ See also Section 601FB.

²⁶ Subject to Part 5C.7

²⁷ Refer to Listing rule 3.16.2(a)

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- 12.2 While the Trust is not a Registered Scheme, the Manager may retire on not less than 1 month's notice to Members (or such shorter period as they agree). On retirement, the Manager may appoint in writing another person to be the Manager.

Compulsory retirement

- 12.3 While the Trust is a Registered Scheme, the Manager must retire as the responsible entity of the Trust when required by law²⁹.
- 12.4 While the Trust is not a Registered Scheme, the Manager must retire from the office it holds under this constitution if required by law.

New Manager

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

Release

- 12.6 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.³⁰

Retirement benefit

- 12.7 Subject to the Corporations Act³¹, the Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:
- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement; or
 - (b) its retirement as Manager

and is not required to account to Members for such remuneration or benefit.

13 Notices to Members and Option Holders³²

- 13.1 Subject to the Corporations Act if the Corporations Act applies, a notice or other communication required to be given to a Member or Option Holder in connection with the Trust must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option Holder at the Member's or Option Holder's physical or electronic address last advised to the Manager for delivery of notices.

²⁸ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

²⁹ See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

³⁰ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

³¹ See sections 601FC(1)(c) and 601FD(1)(c).

³² While Units are Officially Quoted, notices to Members must be copied to ASX - refer Listing Rule 3.17.

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- 13.2 A cheque payable to a Member or Option Holder may be posted to the Member's or Option Holder's physical address or handed to the Member or Option Holder or a person authorised in writing by the Member or Option Holder³³.
- 13.3 In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option Holder first named in the Register.
- 13.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act³⁴ if the Corporations Act applies, the Manager may determine³⁵ the time at which other forms of communication will be taken to be received.

14 Notices to the Manager

- 14.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member or Option Holder³⁶ unless the Manager dispenses with this requirement.

15 Meetings of Members

Convening of meetings

- 15.1 The Manager may at any time convene a meeting of Members or Option Holders, and must do so if required by the Corporations Act.³⁷

Member's request for meeting

- 15.2 While the Trust is not a Registered Scheme:
- (a) the Manager must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 20% of the votes that may be cast on the resolution; and
 - (b) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in subparagraph (a) as if the Trust were a Registered Scheme.

³³ See Clause 16.3(c)

³⁴ See Section 601FC(1)(d)

³⁵ See Section 252G(4)

³⁶ See Clause 16.3(c)

³⁷ Refer Part 2G.4

	15.3	While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.
Notice period	15.4	While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.
	15.5	While the Trust is a Registered Scheme, the requirements for notice of meetings of Members is governed by the Corporations Act
Manager may determine	15.6	Subject to this clause 15 and the Corporations Act (if the Corporations Act applies) and the Listing Rules while the Listing Rules apply, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted
	15.7	A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.
Quorum	15.8	The quorum for a meeting of Members is 2 Members present in person or by proxy together holding or representing at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.
No quorum	15.9	If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is: <ul style="list-style-type: none"> (a) if convened on the requisition of Members - dissolved; or (b) otherwise - adjourned to such place and time as the Manager decides. <p>At any adjourned meeting, those Members present in person or by proxy constitute a quorum.</p>
Chairman	15.10	Subject to the Corporations Act ³⁸ if the Corporations Act applies, the Manager may appoint a person to chair a meeting of Members
	15.11	The decision of the chairman on any matter relating to the conduct of the meeting is final.
Adjournment	15.12	The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting

³⁸ Refer Part 2G.4 and Section 601FC(1)

or to an adjourned meeting at the place and time as the chairman thinks fit.

15.12A In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

15.12B Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Notice of adjourned meeting

15.12C It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

Proxies and voting

15.13 Subject to clause 15.15, the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust³⁹.

15.14 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act⁴⁰.

15.15 A poll may be demanded by Members present in person or by proxy holding at least 20,000 Units.

Resolutions binding

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

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

Non-receipt

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

Option Holders

15.19 The provisions of this clause relating to meetings of Members also apply to meetings of Option Holders with any necessary modifications.

Postponement or cancellation

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

Notice of Cancellation or postponement of meeting

15.21 Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

³⁹ This provision is included for completeness - the law operates of its own force.

⁴⁰ Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

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- (a) to each Member individually; and
 - (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

Contents of notice or postponement of meeting

15.22 A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

Number of clear days for postponement of meeting

15.23 The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

Business at postponed meeting

15.24 The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

Proxy, attorney or representative at postponed meeting

15.25 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause 15.25, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

16 Rights and liabilities of Manager

Holding Units

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity⁴¹.

Other capacities

- 16.2 Subject to the Corporations Act⁴² if the Corporations Act applies, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity) or with any Member;
 - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

Manager may rely

- 16.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
 - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
 - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
 - (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

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

⁴¹ See Section 601FG, Section 253E and Part 5C.7

⁴² Refer Part 5C.7, and see also Listing Rule 10.1

17 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 17.1 While the Trust is a Registered Scheme, the Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.
- 17.2 While the Trust is not a Registered Scheme, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 17.3 Subject to the Corporations Act if the Corporations Act applies, the liability of the Manager to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

Indemnity in favour of Manager

- 17.4 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust⁴³.
- 17.5 To the extent permitted by the Corporations Act⁴⁴ (if the Corporations Act applies, and otherwise without limitation), the indemnity under clause 17.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.6 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

Indemnity unaffected by unrelated breach of trust

- 17.7 The Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Manager (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Manager or by any delegate or agent appointed by the Manager.

18 Liability of Members

Liability limited

- 18.1 Subject to clauses 18.3 and 18.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

⁴³ See Section 601GA(2)

⁴⁴ See Sections 601FB(2) and 601GA(2)

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- 18.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 18.3 applies.

Recourse

- 18.5 In the absence of separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

Restrictions on Members

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

19 Remuneration and expenses of Manager

Base fee

- 19.1 The Manager's entitlement to fees for managing the Trust is calculated on a half yearly basis as at 30 June and 31 December in each year at the rate of 0.45% per annum of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end of the relevant Half Year
- 19.2 The fee under clause 19.1 is payable to the Manager at the end of each Quarter. Payments in respect of the Quarters ending 31 March and 30 September will be based on the value of the properties and assets at the end of the previous Half Year and will represent a part payment on account for the fee for the current Half Year. The calculation is to be made in US Dollars and paid to the Manager in US Dollars unless the Manager agrees to accept that sum converted into Australian currency.
- 19.3 The Manager's entitlement to fees under clauses 19.1, 19.5 and 19.5A in respect of a given period will be reduced by the equivalent in Australian currency (calculated in accordance with clause 27.8) of:
- (a) the sum in United States Dollars that the US Manager receives in respect of the given period from the US LLC or the US LLC II distributions of the Base Amount which is based on the value of the proportion of the assets which the Trust indirectly owns in it or distributions of the Performance Amount based on the performance of the Trust respectively; and

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- (b) the amount in United States Dollars of any management fees or performance fees (but not any other fees, such as disposition fees, financing fees or acquisition fees) that are paid in respect of the given period to the US Manager pursuant to any operating agreements with the US LLC, the US LLC II, the PS LLC or any direct or indirect subsidiary of the US LLC, the US LLC II or the PS LLC.

19.3A The US Manager may directly or indirectly apply distributions of the Performance Amount that it receives from the US LLC or the US LLC II to subscribe for shares in the REIT or the REIT II (“Performance Shares”). The US Manager may at its discretion convert Performance Shares under the Exchange Agreements for that number of Units which the Manager would have been entitled to be issued under clauses 19.5 and 19.5A had the US Manager not received the distribution of the Performance Amount from the US LLC or the US LLC II.

Waiver of fees

19.4 The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

Manager’s Performance Units

19.5 While the Units are Officially Quoted, subject to clause 19.5A, the Manager, in addition to its remuneration under clause 19.1, will be entitled to have a certain number of Units issued to it in respect of each Half Year if the performance of the Trust for the Half Year exceeds a stated benchmark. The formula for determining the number of Units (if any) to be issued to the Manager in respect of a Half Year is set out below. If the TR (as defined below) for the Trust for a Half Year is negative, the Performance Units (if any) to which the Manager would have been entitled will not be issued to the Manager until the end of the first succeeding Half Year in which the TR is positive:

Number of Performance Units to be issued to the Manager =

$$\frac{(PF + EPF)}{Pc}$$

where

PF (Tier 1 Performance Fee) = $NPc \times MCo \times 5\%$, but equals zero if NPc is not greater than zero;

EPF (Tier 2 Performance Fee) = $(NPc - EPb) \times MCo \times 15\%$ but equals zero if NPc is not greater than EPb ;

NPc = $TR - BM$ (expressed as a percentage);

NPo (Opening Net Performance) = NPc of prior Half Year except in the first Half Year when $NPo = 0$;

TR (Trust Return expressed as a percentage) = $\frac{(Tc - To)}{To}$

where

Tc = Trust Index at the close of the Half Year; and

To = Opening Trust Index being the Trust Index at close of the prior Half Year or if NPo<0 then To = the Trust Index used as the opening Trust Index (To) for the previous period;

BM (Benchmark Return expressed as a percentage)
= $\frac{(Bc - Bo)}{Bo}$

Bo
where

Bc = Benchmark Index at the end of the Half Year; and

Bo = Opening Benchmark Index being the Benchmark Index at close of the prior Half Year or if NPo<0 the Bo = the Benchmark Index used as the opening Benchmark Index (Bo) for the previous period;

MCo (Market capitalisation) = Po x Uo

where

Po = the weighted average trading price of all Units traded on the ASX during the ten Business Days from and including the date upon which the Units trade ex the distribution entitlement for the period ending on the last day of the prior Half Year; and

Uo = Units on issue at the close of the last day of the prior Half Year;

EPb (Tier 2 Performance Benchmark) = 2% nominal per annum outperformance for the Half Year; and

Pc = the greater of the weighted average trading price of all Units traded on the ASX during the ten trading days from and including the date upon which the Units trade ex the distribution entitlement for the relevant Half Year and the net tangible asset backing per Unit at the end of the Half Year. This will be the issue price of the relevant Performance Units.

If a Trigger Event occurs within a Half Year, the Manager is entitled to payment in cash in lieu of Units with the amount of the cash payment to be calculated in accordance with clause 19.5.

19.5A

- (a) Except as provided in clause 19.5A(c) the maximum fees to be paid to the Manager in respect of any Financial Year including the Base Fee and the Performance Fees is to be an amount equal to 0.8% of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end

of the Financial Year, except in the case where a Financial Year is only six months, the maximum fees to be paid to the Manager for that Financial Year of six months will be 0.4% of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end of that Financial Year. In applying this limit, if a Performance Fee becomes payable in respect of the Half Year ending 31 December the maximum amount which may be paid in respect of that Half Year comprising both the Base Fee and the Performance Fee for that Half Year will be an amount equal to 0.4% of the value of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end of that Half Year and will represent a part payment on account of the total fees payable in respect of the Financial Year up to the limit for that Financial Year calculated in accordance with this clause 19.5A(a).

- (b) If the amount of the total fees for a Financial Year as calculated in accordance with clauses 19.1 and 19.5 exceeds the limit for the Financial Year specified in clause 19.5A(a) the Base Fee for that Financial Year shall be payable and only that number of Performance Units with an aggregate value, based on the issue price under clause 19.5, equal to the balance of the fees up to that limit will be issued to the Manager and the remaining Performance Units which would otherwise have been issued in respect of that Financial Year if the limit in clause 19.5A(a) did not apply ("Excess Performance Units") will not be issued at that time. The number of Excess Performance Units and their issue price or issue prices determined in accordance with clause 19.5 must be recorded as a liability of the Trust payable to the Manager and those Excess Performance Units shall be issued to the Manager in future Half Years if, and to the extent, that the total fees payable to the Manager in relation to any future Half Year are less than the limit referred to in clause 19.5A(a). The number of Excess Performance Units to be issued in relation to a Financial Year shall be that number having an aggregate value, based on the issue price or prices under clause 19.5, equal to the difference between the total fees for that Financial Year before the issue of Excess Performance Units and the limit for that Financial Year under clause 19.5A(a). In carrying forward Excess Performance Units into future Half Years to supplement the Manager's total fees up to the limit under clause 19.5A(a) the Excess Performance Units which may be issued in any future period shall be calculated at the same rate at which they accrued as a liability.
- (c) If at the end of any Half Year there shall be any Excess Performance Units which accrued as a liability at least three years prior to the end of that Half Year and which have not been issued to the Manager those Excess Performance Units will be issued to the Manager, and disregarded for the purpose of calculating the limit under clause 19.5A(a) in relation to the

Financial Year in which they are issued if the accumulated return of the Trust for that three year period expressed as a percentage exceeds the movement in the Benchmark Index over that three year period expressed as a percentage. If MDML ceases to be the Manager of the Trust, MDML shall be entitled to a cash payment in lieu of all Excess Performance Units which have not previously been issued to it on the date upon which it ceases to be the Manager or within seven days thereafter. If a Trigger Event occurs at a time when there are any Excess Performance Units which have not been issued then the Manager is entitled to a cash payment in lieu of those Excess Performance Units. These cash payments are to be based on the number of Excess Performance Units and their respective issue prices determined under clause 19.5. Any cash payment under this clause 19.5A(c) will be disregarded for the purposes of clause 19.5A(a).

Payment in lieu of Performance Units

19.6 If a Trigger Event occurs, the Manager is entitled to be paid in addition to the Base Fee a cash payment calculated as follows in lieu of Performance Units which might otherwise have been issued to the Manager in respect of the Half Year in which the Trigger Event occurs, such payment to be made to the entity which was the Manager on the day upon which the Trigger Event occurred notwithstanding that the entity may have ceased to be the Manager or that the Trust has terminated:

- (a) the cash payment is to be equal to the Performance Fees calculated in accordance with clause 19.5 as if the end of the Half Year was the date of the occurrence of the Trigger Event but in determining the Trust Index at the close of the period there is to be substituted for the market price of the Units:
 - (i) in the case of a takeover bid, the price per Unit which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);
 - (ii) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Members in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the Manager;
 - (iii) in the case of delisting, the weighted average market price of the Units traded on the Australian Stock Exchange during the 10 Business Days prior to the Date of Delisting; or
 - (iv) in the case of termination of the Trust, the amount per Unit to be received by the Members after accruing the amount payable to the Manager for Performance Fees;

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- (b) the cash payment is payable as soon as it can be calculated. If there has been any accrual of the Performance Fee from any prior Half Year whether due to the Trust Return (TR) being negative although exceeding the Benchmark Return (BM) or otherwise, the amount accrued shall be paid in cash rather than Units on the date of occurrence of the Trigger Event.

19.7 If for any reason it is not permissible for the Manager to have Performance Units issued to it in accordance with this clause 19 or if the issue would require express approval at a meeting of Members then the Manager may require a cash payment in lieu of Performance Units being issued to it such payment to be calculated based on the number of Performance Units (including Excess Performance Units) which would otherwise have been issued to the Manager and the relevant issue price of those Performance Units determined in accordance with clause 19.5.

Expenses

- 19.8 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust⁴⁵ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes the expenses connected with the following:
- (a) this constitution, the formation of the Trust and the formation of entities in which the Trust is expected to have a direct or indirect interest, substantially in proportion to the extent of that proposed interest;
 - (b) the preparation, review, distribution and promotion of any product disclosure statement or offering memorandum in respect of Units or other promotion of the Trust including any offering of securities by any controlled company or sub-trust in order to qualify as real estate investment trusts under the United States Internal Revenue Code of 1986, as amended;
 - (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (d) any proposed acquisition, disposal or other dealing with an investment;
 - (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register and any dealings with Units;
 - (f) any costs of the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
 - (g) underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence,

⁴⁵ Refer Section 601GA(2)(b)

fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;

- (h) the sponsor fee payable by the Manager to the US Manager when the Units in the Trust become officially quoted in consideration of the US Manager facilitating the initial offer of Units in the Trust through sourcing investment opportunities, provision of market research, and other assistance, being an amount equal to 1% of the Trust's pro-rata indirect interest in the assets of the US LLC;
- (i) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (j) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (k) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (l) accounting and compliance with taxation laws and procedures (whether internal expenses of the Manager or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.9(n) must be repaid;
- (o) in relation to any real property, real estate agent fees;
- (p) managing agents fees (whether any real property is managed by the Manager, an associate of the Manager or independent managing agent);
- (q) while the Trust is a Registered Scheme, the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums⁴⁶ in respect of Compliance Committee Members;
- (r) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose

⁴⁶ See Section 601JG

appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;

- (s) fees payable to the audit committee for the Trust appointed in accordance with ASX corporate governance guidelines;
- (t) the preparation, implementation, amendment and audit of the compliance plan;
- (u) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (v) complying with any law, and any request or requirement of the ASIC; and
- (w) custodian fees.

GST

- 19.9 If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. In relation to fees that are expressed as GST inclusive in this constitution, this clause applies only to the extent to which there has been an increase in the rate of GST whereby the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the prevailing rate of GST.
- 19.10 In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.
- 19.11 While the Trust is a Registered Scheme an amount may only be paid or reimbursed out of the Assets under clauses 19.9, 19.10 and 19.11 if it relates to the proper performance of the Manager's duties.
- 19.12 Subject to the Listing Rules if the Listing Rules apply, the Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

20 Duration of the Trust

Initial settlement

- 20.1 The Trust commences when the Manager's nominee subscribes \$10 for Units in the Trust. The Manager's nominee must be issued with 10 Fully Paid Units in return for that payment. The beneficial interest in

the Trust as constituted by the settlement of the sum of \$10 shall be divided into 10 Units issued at \$1.00 each.

Termination

- 20.2 The Trust terminates on the earliest of:
- (a) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); and
 - (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law⁴⁷.

Restriction on issue and redemption of Units

- 20.2A Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.
- 20.3 If at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Manager may summon a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Trust shall be wound up.

21 Procedure on termination

Realisation of Assets

- 21.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

Audit of winding up

- 21.2 If, at the time it is to be wound up, the Trust is a Registered Scheme and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

- 21.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) including income entitlements of Members and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members, in accordance with the following formula:

$$\frac{(A + X) \times B}{C} - Y$$

Where:

A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 21.3;

⁴⁷ See Part 5C.9 on winding up

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- B = the aggregate of the number of Units held by the Member as at the date determined by the Manager as the record date for the distribution, including both Fully Paid Units and Partly Paid Units; and
- C = the aggregate of the total number of Units in issue as at the date determined by the Manager as the record date for the distribution, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any) as at the date determined by the Manager as the record date for the distribution; and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at the date determined by the Manager as the record date for the distribution.

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 21.3 results in a negative dollar amount, then that Member must pay to the Manager within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Manager may distribute proceeds of realisation in instalments, in which case the distribution is to be made to Members at the record date for the interim distribution.

Subject to the Corporations Act if the Corporations Act applies and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 21.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member and the Manager is under no obligation to process redemption requests received after the date of termination.

22 Amendments to this constitution

Manager may amend

- 22.1 While the Trust is a Registered Scheme, this constitution may be amended, if the Corporations Act allows⁴⁸:
- (a) by Resolution⁴⁹; or
 - (b) by deed executed by the Manager.

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

⁴⁸ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁴⁹ The required majority for such a resolution under section 601GC(1)(a) is 75%.

22.2 While the Trust is not a Registered Scheme, the Manager may by deed amend this constitution.

Statutory requirements

- 22.3 If:
- (a) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (“**Required Provisions**”); or
 - (b) any part of this constitution (a “**Required Part**”) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

22.3A The Members:

- (a) authorise the Manager to make the amendments referred to in clause 22.3 in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (b) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of clause 22.3.

22.3B Where clause 22.3 and clause 22.3A operate to automatically amend this constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

22.4 If the Manager is of the opinion that as a result of clause 22.3 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

Listing Rules

22.5 While the Trust is admitted to the official list of the ASX, the following applies.

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done.

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- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
 - (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
 - (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
 - (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

22.6 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 22.5 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

23 Compliance committee

While the Trust is a Registered Scheme, and a compliance committee is acting in that capacity for the Trust, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁵⁰.

24 Complaints

While the Trust is a Registered Scheme, if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;

⁵⁰ See section 601JF

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- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
 - (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

25 Restricted Securities

- 25.1 Clause 25.2 only operates:
 - (a) while Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 25.2; and
 - (b) to the extent that it is not inconsistent with the Corporations Act.
- 25.2 During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

26 Small holdings

- 26.1 This clause 26 applies while the Units are Officially Quoted.
- 26.2 Subject to the provisions of this clause 26, the Manager may in its discretion from time to time sell or redeem any Units held by a Member without request by the Member where the Units held by a Member comprise less than a marketable parcel as provided in the Listing Rules. The Manager may only sell or redeem Units on one occasion in any 12 month period.
- 26.3 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26, and give the Member at least 6 weeks from the date of the notice in which to tell the manager that the Member wishes to retain the Units.

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- 26.4 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.3; or
 - (b) if, within the 6 weeks allowed by clause 26.4(a):
 - (i) the Member advises the Manager that the Member wishes to retain the Units; or
 - (ii) the market value of the Units held by the Member increases to at least a marketable parcel as provided in the Listing Rules.
- 26.5 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.6 The Manager or the purchaser of the Units must pay the costs of the sale or redemption as the Manager decides.
- 26.7 The proceeds of the sale or redemption will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.8 The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 26.

27 Interpretation

Definitions

- 27.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:
- 2010 Entitlement Offer:** means the offer of Units under the proposed pro rata renounceable entitlement offer announced on or around 6 May 2010.
- 2010 Placement:** means the offer of Units under the proposed placement announced on or around 22 April 2010.
- Application Price:** the Unit price calculated in accordance with clause 4.
- ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.
- ASIC Relief:** an exemption or declaration granted by ASIC which gives relief from certain provisions of the Corporations Act.
- Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid, any amount to which a Member is presently entitled or uncalled amounts on Partly Paid Units.

ASX: Australian Stock Exchange Limited.

Base Fee: the fees payable to the Manager pursuant to clause 19.1.

Benchmark Index: the average of the S & P ASX 200 Property Accumulation Index as calculated by Standard & Poor's, or other suitable body as determined by the Manager from time to time and notified to Members, as at the close of normal trading on each of the ten ASX trading days from and including the date upon which the Units trade ex the entitlement for the relevant Half Year. If the S & P ASX 200 Property Accumulation Index ceases to be published or reasonably able to be calculated there shall be substituted a comparable index reasonably selected by the Manager.

Business Day: a day which is a business day for the purposes of the Listing Rules.

Commission: ASIC.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

CS Facility: has the same meaning as in the Corporations Act.

CS Facility Operator: the operator of a prescribed CS Facility.

Date of Delisting: whichever is the first to occur of the following:

- (a) the date upon which the Manager receives notification from the ASX of the removal of the Trust from the official list of the ASX; or
- (b) where the Units are suspended from quotation on the official list of the ASX by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

DDR: Developers Diversified Realty Corporation, an Ohio corporation.

Distributable Income: the distributable income of the Trust for a Distribution Period determined in accordance with clause 9.3.

Distribution Account: the account established in accordance with clause 9.7.

Distribution Calculation Date: the last day of each Financial Year or such other days as the Manager designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment 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; and

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

Exchange Agreements: each of the following agreements:

- (a) the exchange agreement to be entered into between DDR and the Manager pursuant to which DDR may convert shares in Macquarie DDR Trust Inc. (“**REIT**”) into Units;
- (b) the exchange agreement to be entered into between the US Manager and the Manager pursuant to which the US Manager may exchange shares in the REIT for Units;
- (c) the exchange agreement to be entered into between Macquarie MDT Holdings Inc. (“**MMHI**”) and the Manager pursuant to which MMHI may exchange shares in the REIT for Units;
- (d) the exchange agreement to be entered into between Macquarie MDT Holdings Trust (“**MBL US**”) and the Manager pursuant to which MBL US may convert shares in Macquarie DDR US Trust II Inc. (“**REIT II**”) into Units; and
- (e) the exchange agreement to be entered into between DDR MDT Holdings II Trust (“**DDR Trust**”) and the Manager pursuant to which DDR Trust may convert shares in REIT II into Units,

as may be modified from time to time, provided that:

- (f) the Manager reasonably considers that the modification is not adverse to the interests of the Members; or
- (g) the modification is approved by a special resolution of Members.

Financial Risk Management Policy: the policy in relation to debt, to be applied on a consolidated basis for the Trust and its controlled sub-trusts and companies, disclosed in the initial product disclosure statement for the Trust..

Financial Year:

- (i) the period from 1 July 2010 to 31 December 2010;
- (ii) from 1 January 2011, each period of 12 months ending on 31 December of each year;
- (iii) the period to the date of the final distribution on the winding up of the trust from the immediate preceding 1 January.

First PDS: the product disclosure statement in relation to the initial public offering for the Trust.

Fully Paid Unit: a Unit on which the Application Price has been fully paid.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Half Year: a period of six months ending 30 June or 31 December, except that:

- (a) for all purposes other than the calculation of the Performance Units under clauses 19.5 to 19.7, the first Half Year is the period from the date on which the Units are first Officially Quoted to 31 December 2003;
- (b) for the purpose of calculating the Performance Units under clauses 19.5 to 19.7, the first Half Year is the period from the date on which the Units are first Officially Quoted to 30 June 2004, and the expression “last day of the prior Half Year” means the day prior to the commencement of that Half Year.

Liabilities all present liabilities of the Trust including any provision which the Manager decides should be taken into account in accordance with accounting principles in determining the liabilities of the Trust, but excluding any amount representing Members’ capital, undistributed profits (except distributable income to which the Members have obtained a present entitlement), interest attributable to Members accruing on Members’ capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Liquid: has the same meaning as in the Corporations Act⁵¹.

Listing Rules: 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 of ASX.

Manager:

- (a) while the Trust is not a Registered Scheme, EDT Retail Management Limited (ACN 101 743 926); and
- (b) while the Trust is a Registered Scheme, the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

Market Price: of a Unit in respect of any Business Day while the Units are Officially Quoted means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that

⁵¹ Refer Part 5C.6

Business Day (whether or not a sale is recorded on that Business Day); or

- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Net Asset Value: the value of the Assets calculated in accordance with clause 8 less the Liabilities.

Net Income: the gross income realised by the Trust from its operations, including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income and less Tax with respect to that income, including but not limited to:

- (a) property outgoings;
- (b) hedging costs;
- (c) interest and other borrowing costs;
- (d) fees paid to the Manager; and
- (e) dividend withholding tax;

and any other amount that the Manager considers prudent or appropriate to take into account as income, an expense or Tax having regard to the determination made by the Manager under clause 9.2 with respect to the treatment of an amount as being on income or capital account and the extent of any provisions and reserves that need to be made.

Official List: the Official List of ASX as defined in the Listing Rules.

Officially Quoted: quoted on the official list of the ASX, including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Option: an option granted under this constitution to subscribe for unissued Units.

Option Holder: the person Registered in the register of option holders or, if no such register is kept, the holder of an Option.

Paid-up Proportion: the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid or due but unpaid in respect of all Partly Paid Units in issue as at the date of calculation by the total of the Application Prices of those Partly Paid Units.

Partly Paid Unit: a Unit on which the Application Price has not been paid in full.

Performance Amount: an amount received by the US Manager in performance based fees from the US LLC or the US LLC II.

Performance Fees: the fees (if any) payable to the Manager pursuant to clause 19.5 being both PF and EPF as defined in that clause.

Performance Units: Units issued to the Manager pursuant to clause 19.

PS LLC: DDR MDT PS LLC, a Delaware limited liability company.

Quarter: a calendar quarter and any period between the end of the last Quarter prior to the date of termination of the Trust and the date of termination of the Trust.

Redemption Price: the Unit price calculated in accordance with clause 6.

Register: the register of Members kept by the Manager under the Corporations Act.

Registered: recorded in the Register.

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

Registrar: the person appointed to maintain the Register from time to time.

Registration: recording in the Register.

Reserve Account: the account established under clause 9.15.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁵².

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

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

Tax Act: the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate.

Transaction Costs:

- (a) when calculating the Application Price of a Unit, the Manager’s estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager’s estimate of the total cost of selling the Assets;

provided that subject to the Corporations Act⁵³ the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trigger Event: Any of the following:

- (a) a resolution is passed at a meeting of Members removing or replacing the Manager without the recommendation of the existing Manager.
- (b) the Trust terminates;
- (c) a Date of Delisting occurs;
- (d) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (e) the Members approve a formal or informal scheme of arrangement pursuant to which the Trust is to merge with any other managed investment scheme or entity or pursuant to which there is a material change in the ownership or control of the Trust.

Trust: the trust constituted under or governed by this constitution.

Trustee: the person appointed as the trustee of the Trust for the time being and the Manager when acting as the Trustee in accordance with the provisions of this constitution.

⁵² Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

⁵³ See section 601FC(1)(d)

Trust Index: the accumulation index for the Trust as calculated by Standard & Poor's, or other suitable body as determined by the Manager from time to time and notified to Members, using closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the ten day volume weighted average trading price from and including the date upon which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 on the date upon which Units shall first become Officially Quoted utilising the initial amount paid for each Unit pursuant to the First PDS.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

Unit Holder: has the same meaning as Member.

US Dollars: lawful currency of the United States of America.

US LLC: DDR Macquarie Fund LLC, a Delaware limited liability company.

US LLC II: DDR MDT MV LLC, a Maryland real estate investment trust.

US Manager: Macquarie DDR Management LLC, a Delaware limited liability company.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.

Valuation Time: a time at which the Manager calculates Net Asset Value.

Interpretation

27.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;

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- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
 - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
 - (h) a reference to a year (other than a Financial Year), half-year quarter or month means a calendar year, calendar half-year calendar quarter or calendar month respectively;
 - (i) a reference to a monetary amount means an amount in the lawful currency of Australia unless otherwise specified; and
 - (j) any schedule to this constitution is an operative part of it.

Other documents

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

Constitution legally binding⁵⁴

- 27.4 This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Severance

- 27.5 If all or part of any provision of this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

Governing law

- 27.6 This constitution is governed by the law in force in New South Wales.

Other obligations excluded

- 27.7 Except as required by the Corporations Act (if the Corporations Act applies) all restrictions on the exercise of the Manager's powers or obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any such restriction or obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

Currency Conversion

- 27.8 Where it is necessary to convert an amount in one currency ("Currency A") to another currency ("Currency B") the conversion is to be calculated on the basis of the rate at which Currency B can be purchased with Currency A as quoted to the Manager in good faith by the Manager's principal bank in relation to the Trust.

EXECUTED as a deed

⁵⁴ Refer Section 601GB

Finding list

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

Corporations Act	Constitution
601GA	
(1)(a)	4.1 - 4.8
(1)(b)	11.1 - 11.4, 11.10
(1)(c)	24
(1)(d)	21
(2)	17.4 - 17.6, 19.1 - 19.13
(3)	11.2, 11.3
(4)(a)	7.2 - 7.15, but not a right while listed (7.1)
(4)(b)	7.4 - 7.11, 7.15, 6.1 - 6.3
(4)(c)	7.12 - 7.15, 6.1 - 6.3
601GB	27.4

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

Listing Rules	Constitution
1.1, condition 2	22.5, 22.6
1.1, condition 5	7.1
15.12.1	3.30
15.12.2	3.33
15.12.3	25
15.13	26
15.14	N/A