

5 August 2009

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**Amendment to the Constitution of the  
Australian Leisure and Entertainment Property Trust**

Dear Sir or Madam

Australian Leisure and Entertainment Property Trust has amended its Constitution by way of Supplemental Deed Poll dated 5 August 2009, a copy of which is attached.

Yours sincerely



**Andrew Wilkinson**  
Managing Director  
ALE Property Group

Contact:

**Brendan Howell**  
Company Secretary  
ALE Property Group

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# Supplemental Deed Poll

Australian Leisure and Entertainment Property Trust  
(ARSN 106 063 049)

Australian Leisure and Entertainment  
Property Management Limited  
(ACN 105 275 278)

Amending the Constitution of Australian Leisure  
and Entertainment Property Trust

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<b>Date</b>	5 August 2009
<b>Party</b>	Australian Leisure and Entertainment Property Management Limited (ACN 105 275 278) of Level 7, 1 O'Connell Street, Sydney NSW 2000 (the <i>RE</i> ).
<b>Recitals</b>	
A	The RE is the responsible entity of the trust known as the Australian Leisure and Entertainment Property Trust (the <i>Trust</i> ).
B	The Trust has been registered pursuant to section 601EB of the <i>Corporations Act 2001</i> (Cth) (the <i>Corporations Act</i> ) as a managed investment scheme.
C	Clause 25 of the Constitution provides that, subject to the Corporations Act, the RE may amend the Constitution by deed.
D	The RE amends the Constitution to the extent set out in this Supplemental Deed Poll and considers such amendments will not adversely affect Unit Holders' rights.
E	Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll do not take effect until a copy has been lodged with ASIC.

**It is declared** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context requires otherwise.

**ASIC** means the Australian Securities & Investments Commission.

**Constitution** means the constitution constituting the Trust, dated 19 August 2003, as amended from time to time.

**Effective Date** means the date and time on which a copy of this Supplemental Deed Poll is lodged with ASIC under section 601GC(2) of the Corporations Act.

### 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.

- (b) Clauses 1.1 (Definitions), 1.2 (Interpretation), 36 (Listing Rules and Corporations Act) and 37 (ASIC Exemptions) of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

### 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the RE with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Unit Holders jointly and severally.

## 2. Amendment of Constitution

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- (a) With effect on and from the Effective Date, the Constitution is amended by:
  - (i) deleting those parts which correspond to the struck-out parts of annexure A (i.e. ~~delete~~); and
  - (ii) inserting, without underlining, the underlined parts of annexure A (i.e. insert) at the corresponding places in the Constitution.
- (b) The RE is bound by the Constitution as amended by this Supplemental Deed Poll.

## 3. No Resettlement

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The RE confirms that it is not by this Supplemental Deed Poll intending to:

- (a) resettle or redeclare the Trust under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

## 4. Remaining provisions unaffected

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Except as specifically amended by this Supplemental Deed Poll, all terms and conditions of the Constitution remain in full force and effect. With effect from the Effective Date, the Constitution as amended by this Supplemental Deed Poll is to be read as a single integrated document incorporating the amendments effected by this Supplemental Deed Poll.

## 5. Governing law and Jurisdiction

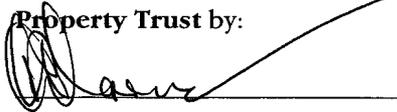
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This Supplemental Deed Poll Deed is governed by the law of New South Wales and each person affected by it submits to the non-exclusive jurisdiction of the courts of that place.

**Executed and delivered as a deed poll** in Sydney.

**Executed for and on behalf of Australian  
Leisure and Entertainment Property  
Management Limited** as responsible entity  
of **Australian Leisure and Entertainment**

Property Trust by:



Director Signature

PETER WARNE

Print Name



Director/Secretary Signature

ANDREW WILKINSON

Print Name

## **Annexure A**

## **Amendments**

---

# Constitution

**Australian Leisure and Entertainment Property  
Management Limited**

**Australian Leisure and Entertainment Property Trust**

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2 Chifley Square  
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<b>Date</b>	2003
<b>Parties</b>	<b>Australian Leisure and Entertainment Property Management Limited</b> (ACN 105 275 278) of Suite 4, Level 5, 65 Berry Street, North Sydney, NSW, 2060 (the <b>RE</b> ).

**It is declared** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Constitution the following definitions apply unless the context otherwise requires.

**Adviser** includes any adviser, consultant or expert including any architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, investment manager, broker, administrator or property manager and any other person appointed by the RE to provide advice in relation to the Trust.

**Approved Valuer** means any person, independent of the RE, who is duly qualified to value any Property of the Trust.

**ASIC** means the Australian Securities and Investments Commission and its successors.

**ASIC Exemption** means:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC, which relates to the RE or the Trust.

**Assets** means all the Property, Investments, rights, income and any other assets of the Trust from time to time.

**Asset Value** at any time means the value of the Trust Fund at that time, as most recently calculated in accordance with clause 18.

**ASX** means the Australian Stock Exchange Limited or the financial market operated by that company (whichever the context requires).

**Australian Accounting Standards** means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and

- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (b) or (c).

**Business Day** has the same meaning as in the Listing Rules.

**Calculation Date**, in relation to a Unit or an Option (as applicable), means:

- (a) where the Unit or Option (as applicable) is offered by way of a prospectus, product disclosure statement, information memorandum or other offer document, the date specified in that document; or
- (b) in any other case, the date of issue of the Unit or Option (as applicable).

**Cash** includes cheques.

**Class** means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only 1 Class.

**Class Order** means [Class Order \[CO 05/26\], or any supplement or amendment to it, or replacement of it.](#)

**Commencement Date** means the date on which the Trust commences in accordance with clause 2.2(b).

**Commodity** means any tangible personal property, currency, interest or other rate, financial or other index or indices (including any share index) and such other tangible or intangible thing determined by the RE to be a Commodity for the purposes of this definition.

**Compliance Officer** means the person from time to time appointed to that role within the RE.

**Compliance Plan Auditor** means the last person appointed under clause 26.1(b) to audit the Trust compliance plan as required by section 601HG of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified by any ASIC Exemption.

**Custodian** means a custodian or nominee appointed under clause 19.2.

**Derivatives** means:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the RE, for the purpose or anticipated or intended purpose of:

- (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
- (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
- (iii) securing a profit or avoiding a loss,  
associated with any Commodity, Property or Investment.

**Distributable Income** has the meaning given in clause 16.1.

**Expenses** includes any costs, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in schedule 1.

**Financial Instrument** has the meaning given in clause 4.4.

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

**Financial Year** means a year ending on 30 June in each year but:

- (c) the period commencing on the Commencement Date and ending on the following 30 June will be a Financial Year; and
- (d) the period commencing on 1 July immediately before the termination of the Trust and ending on the day on which the Trust terminates will be a Financial Year.

**Fund Value** at any time, means the aggregate of the following at that time as calculated by the RE:

- (a) The gross Asset Value; and
- (b) The amount of money held in the Trust Fund (to the extent not included in paragraph (a)).

**GST** has the meaning given in section 195–1 of the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

**Holder** means a Unit Holder, an Option Holder or a Financial Instrument Holder.

**Interim Distribution Period** means any period determined by the RE so long as the period commences and ends during the same Financial Year (but does not end on the last day of that Financial Year).

**Investment** means any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and includes:

- (a) (without limiting paragraph (b)) financial products; and
- (b) the pursuit of gain or the protection against loss by way of any of the following:
  - (i) acquiring or holding of any Property
  - (ii) making available financial accommodation; or
  - (iii) entering into any contract or a Derivative,and may involve incurring a liability or obligation of any kind.

**Issue Price** in relation to a Unit means the price at which that Unit is issued calculated in accordance with clause 7.1, or clause 6, in the case of a NIVUS.

**Land** includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity.

**Law** includes:

- (a) the Corporations Act and any statute; and
- (b) any rule of common law, rule of equity or judgement.

**Liabilities** means all present liabilities of the Trust including any provision which the RE decides should be taken into account in determining the liabilities of the Trust but excluding the amount representing Unitholders' capital, undistributed profits, interest attributable to Unitholders accruing on Unitholder 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** in relation to the Trust, has the meaning given by section 601KA(4) of the Corporations Act.

**Listing Rules** means the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

**Market Price** of a Security (where applicable, of a Class) on a particular day means:

- (a) the weighted average price per Security in that Class for sales of that Class on the ASX (excluding any special crossings) for the period of 10 Trading Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if Securities in that Class:
  - (i) have not been traded on the ASX for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the RE's opinion a determination under paragraph (a) would not provide a fair reflection of the current market value of the Security,  
the price per Security that an independent valuer determines to be the market price of the Security on the relevant day.

**Month** means a calendar month.

**Net Accounting Income** has the meaning given in clause 15.1.

**Net Fund Value** at any time, means the Fund Value less the Liabilities at that time.

**Net Income** has the meaning given in clause 15.2.

**NIVUS** means the Class known as No Income Voting Units which may be issued to the RE under clause 6.

**Official List** has the same meaning as in the Listing Rules.

**Officially Quoted** means quotation on the Official List, including when quotation is suspended for a continuous period of not more than 60 days.

**Option** means an option to subscribe for a Unit.

**Option Holder** means a person registered as the holder of an Option (including persons registered jointly).

**Property** means property of any description and includes:

- (a) land and any personal property;
- (b) any estate or interest in property;
- (c) any debt or chose in action or any other right or interest;
- (d) any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property; and
- (e) anything regarded as an asset for the purposes of Australian Accounting Standards.

**Quarter** means a period of 3 Months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or termination of the Trust) and **Quarterly** has a corresponding meaning.

**RE** means Australian Leisure and Entertainment Property Management Limited or any other person appointed as trustee of the Trust.

**Register** means each of the registers kept under clause 20.

**Restricted Security** has the same meaning as in the Listing Rules.

**Security** means while Units in a Class are Stapled, a Stapled Security and while the Units are not Stapled, a Unit.

**Security Interest** means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

**Stapled** means the state that results from Stapling.

**Stapled Company** means Australian Leisure and Entertainment Property Management Limited (ACN 105 275 278).

**Stapled Security** means a Unit in a Class and a Stapled Share which are Stapled together and registered in the name of the Unit Holder.

**Stapled Security Holder** means the Unit Holder of a Unit in a Class which is Stapled under this Constitution and the holder of a Stapled Share.

**Stapled Share** means a share, unit or unit of a share or unit in the Stapled Company. A reference to a Stapled Share includes a reference to the underlying share in relation to a unit of a share, where the context required.

**Stapling** means the linking together of all the rights and obligations which attach to a Stapled Security.

**Tax** means all income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

**Trading Day** means those Business Days on which buying and selling occurs through the Stock Exchange Automated Trading System.

**Transaction Costs** means:

- (a) when calculating the Issue Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time; and
  - (b) when calculating the Withdrawal Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time,
- (in each case excluding the actual cost of the Assets); or
- (c) in either case, to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the RE.

In estimating the total Expenses the RE may take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

**Trust** means the trust constituted by this Constitution.

**Trust Auditor** means the last person appointed under clause 26.1(a).

**Trust Fund** means all Assets of the Trust (including money paid to the RE for the issue of any Units).

**Unit** means a unit created under this Constitution and for the time being held by a Unit Holder.

**Unit Holder** means the person registered as the holder of a Unit (including persons registered jointly).

**Units on Issue** in relation to a Unit or Class means the total number of Units of that kind issued which have not been withdrawn.

**Valuation Time** means any time the Net Fund Value is determined.

**Withdrawal Offer** means an offer made by the RE in accordance with section 601KB of the Corporations Act.

**Withdrawal Price** in relation to a Unit means the price at which that Unit is to be withdrawn in accordance with clause 9, or clause 6, in the case of a NIVUS.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity and the converse also applies.
- (e) A reference to a *clause* or *schedule* is to a clause (or sub-clause) of or schedule to this Constitution.
- (f) A reference to a party to this Constitution or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to an agreement or document (including a reference to this Constitution) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document and includes the recitals and schedules to that agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *dollars* or *\$* is to Australian currency.
- (j) A word or phrase appearing in a certain context which, when used in a similar context in the Corporations Act or Australian Accounting Standards would have a particular meaning, has that meaning in this Constitution.
- (k) A reference to a *right* or *obligation* of any 2 or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each 2 or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (l) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (m) Mentioning anything after *includes*, *including*, *for example* or similar expressions, does not limit what else might be included.

## 1.3 Rounding and currency

- (a) Subject to clause 3.3, all calculations under this Constitution may be rounded up or down to the number of decimal places (or nearest whole number) determined by the RE.
- (b) Where total amounts payable to or by a person include a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the RE.
- (c) Where the RE needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units, Options or Financial Instruments to be issued to an applicant, the RE will disclose the method of calculating the conversion to the applicant.

## 1.4 Constitution binding

This Constitution as amended binds the RE, each Unit Holder, Option Holder, Financial Instrument Holder and any person claiming through any of them as if each of them had been a party to this deed.

## 2. The Trust

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### 2.1 Appointment of trustee

The RE agrees to act as trustee of the Trust.

### 2.2 Declaration of trust

- (a) The RE holds the Trust Fund on trust for the Unit Holders in accordance with this Constitution.
- (b) The Trust commences on the date Units are first issued.

### 2.3 Name of Trust

The name of the Trust is the Australian Leisure and Entertainment Property Trust or any other name that the RE determines.

## 3. Units and Unit Holders

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### 3.1 Units

The beneficial interest in the Trust Fund will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations, of Unit Holders under this Constitution.

### 3.2 Classes

Different Classes may be issued. If the RE determines in relation to particular Units, the terms of issue of those Units may:

- (a) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units;
- (b) provide for conversion of Units from one Class to another Class and, if the RE so determines, change the number of Units on such a conversion.

### **3.3 Fractions**

Subject to clause 3.6, fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit. Any excess application or other money becomes an Asset.

### **3.4 Equal value**

At any time, all the Units in a Class are of equal value.

### **3.5 Interest**

A Unit confers an interest in the Trust Fund as a whole. No Unit confers any interest in any particular Asset.

### **3.6 Consolidation and re-division**

- (a) Subject to clause 3.6(b), the RE may at any time consolidate or divide the Trust Fund into any number of Units other than the number into which the Trust Fund is for the time being divided.
- (b) A consolidation or division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on Issue in that Class.
- (c) While Stapling applies, Units in a Class which are Stapled may only be consolidated or divided if the related Stapled Shares are also consolidated or divided at the same time and to the same extent.

### **3.7 Rights attaching to Units**

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
  - (i) interfere with any rights or powers of the RE under this Constitution;
  - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
  - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

### **3.8 Directions**

Unit Holders may not give any directions to the RE if it would require the RE to do or omit doing anything which:

- (a) may result in the RE acting contrary to Law; or

- (b) would otherwise be within the scope of any discretion or power expressly conferred on the RE by this Constitution.

### 3.9 Stapling

The provisions of this Constitution relating to Stapling take effect on and from the date the RE determines that Units in a Class should be Stapled to an identical number of Stapled Shares, subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.

### 3.10 Number of Units

While Stapling applies, the number of issued Units in a Class which are Stapled at any time must equal the number of issued Stapled Shares.

## 4. Options and Financial Instruments

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### 4.1 Issue of Options

- (a) The RE may issue Options:
  - (i) on the basis that the price for a Unit of a particular Class to be issued on exercise of the Option (the **Exercise Price**):
    - (A) if the Units of that Class are Officially Quoted, is the Issue Price determined by the RE in accordance with clause 7.2; or
    - (B) if the Units of that Class are not Officially Quoted, is the Issue Price determined in accordance with the formula in clause 7.1(b), calculated as at the last Valuation Time before the Calculation Date; or
    - (C) subject to clause 4.1(b), is a price determined by the RE other than in accordance with paragraphs (A) or (B) of this clause;
  - (ii) for consideration or no consideration; and
  - (iii) on such other terms as the RE determines,  
subject to any requirements of the Listing Rules.
- (b) The RE may issue an Option on the basis that the Exercise Price is a price determined by the RE other than in accordance with clauses 4.1(a)(i)(A) or (B), to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms of that ASIC Exemption). The following conditions apply only to the extent they reflect the requirements of a relevant ASIC Exemption at the relevant time:
  - (i) the Options must be issued pursuant to offers made at substantially the same time to only and all the then Unit Holders in proportion to the value of their interests;
  - (ii) all the Options offered must be in the same class;

- (iii) the issue price and the Exercise Price of all the Options offered must be the same;
- (iv) the means of calculating the Exercise Price must be set out in the terms of issue of the Options;
- (v) if the Units of the Class to which the Option relates are Officially Quoted, the Exercise Price of an Option must not be less than 50% of the price determined under clause 4.1(a)(i)(A); and
- (vi) if the Units of the Class to which the Option relates are not Officially Quoted, the Exercise Price of an Option must not be less than 50% of the price determined under clause 4.1(a)(i)(B).

#### 4.2 Reorganisation of Options

Subject to the Listing Rules, the RE may at any time reorganise Options in accordance with their terms.

#### 4.3 Option exercise

- (a) Options may only be exercised in accordance with their terms.
- (b) The RE must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an application for Units but the RE must not refuse to issue any Units except if the terms of issue and, if applicable, the Listing Rules permit such refusal.
- (c) While Stapling in respect of a Class applies, an Option to acquire Units in that Class may only be exercised, if, at the same time the Units are acquired pursuant to the Option, the same person acquires the same number of Stapled Shares, which are then Stapled to the Units.

#### 4.4 Financial Instruments

Subject to the Corporations Act and the Listing Rules (if applicable):

- (a) the RE may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (**Financial Instruments**); and
- (b) Financial Instruments may be issued:
  - (i) for consideration or no consideration;
  - (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the RE determines.

#### 4.5 Rights attaching to Options and Financial Instruments

- (a) An Option will not confer any interest in, or any rights to participate in the income or capital of, the Trust Fund.
- (b) Each Option Holder and, subject to the term of the Financial Instrument, each Financial Instrument Holder agrees not to:
  - (i) interfere with any rights or powers of the RE under this Constitution;
  - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
  - (iii) require an Asset to be transferred to them (or any other person).
- (c) A Holder who is not a Unit Holder is entitled to attend any meeting of Unit Holders but is not entitled to receive notice of or speak or vote at such a meeting.

### 5. Offer of Units, Options and Financial Instruments

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#### 5.1 Offer and minimum subscription

The RE may at any time offer Units, Options or Financial Instruments for subscription or sale. The RE may determine a minimum amount which must be lodged with an application for Units, Options or Financial Instruments. The RE may invite persons to make offers to subscribe for or buy Units, Options or Financial Instruments.

#### 5.2 Form of application

Each application for Units, Options or Financial Instruments will, unless the RE approves otherwise:

- (a) conform with the form and content requirements of any relevant disclosure document; and
- (b) be accompanied by application moneys as required by any relevant disclosure document; or
- (c) if there is no relevant disclosure document, be made in such manner as the RE approves.

While Stapling applies in respect of Units in a Class, an applicant for Units in that Class must, at the same time, make an application for an identical number of Stapled Shares.

#### 5.3 Acceptance or rejection

The RE may, without giving any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of the application.

While Stapling applies, the RE must reject an application for Units in a Class which are Stapled (including an application consequent on the exercise of an Option) if the applicant

does not apply at the same time for an identical number of Stapled Shares and if an identical number of Stapled Shares will not be issued to the applicant at the same time as the Units.

## 5.4 Uncleared funds

Units, Options or Financial Instruments issued against application money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not cleared within 5 Business Days of being presented for payment.

## 5.5 Issue of Units, Options and Financial Instruments

Units, Options or Financial Instruments are taken to be issued when:

- (a) the RE accepts the application and the Units, Options or Financial Instruments are entered in the Register; or
- (b) the application money is received by (or Property which is acceptable to the RE against which Units, Options or Financial Instruments are to be issued is transferred to) the RE,

whichever is the later, or at such other time as the RE determines.

## 5.6 Number of Units issued

Subject to clause 5.7 and the terms of any Option or Financial Instrument, the number of Units issued at any time in respect of an application for Units will be calculated as follows:

- (a) by deducting the Initial Fee (if any) from the relevant application moneys or Property paid;
- (b) by dividing the balance of the application moneys or the value of the Property paid by the applicable Issue Price at that time;
- (c) by rounding down to the nearest Unit,

and any balancing amount will become an Asset.

## 5.7 Units as consideration

Where an Investment is acquired for consideration which includes the issue of Securities, the number of Units created and issued by the RE is determined in accordance with the following formula.

$$\frac{\text{MVA} - \text{C}}{\text{IP}}$$

Where:

- MVA = the value of the Investment being acquired as determined in accordance with this Constitution
- C = the amount of the cash consideration paid in respect of the Investment (if any)
- IP = the Issue Price of the Units being issued (as determined in

accordance with clause 7.3)

## **5.8 Certificates**

No certificates will be issued for Units, Options or Financial Instruments (unless the RE determines otherwise in relation to some Units, Options or Financial Instruments, a Class or all Units).

## **5.9 Holding Statements**

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, the RE may issue a joint holding statement to evidence the holding of Stapled Securities.

## **6. Issue of NIVUS**

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### **6.1 Issue to RE**

The RE may apply for and issue to itself NIVUS on the terms set out in this clause.

### **6.2 Issue Price**

Despite clause 7.1, each NIVUS shall be issued at an Issue Price of \$1.

### **6.3 Withdrawal Price**

Despite clause 9, the Withdrawal Price for a NIVUS is \$1.

### **6.4 No participation in income distributions**

Despite clause 16, a NIVUS shall not entitle its Holder to participate in any distribution of Distributable Income and shall not be taken into account in calculating the entitlements of other Unit Holders to the Distributable Income under clause 16.

### **6.5 No Stapling**

A NIVUS may not be Stapled to a share in the Stapled Company.

### **6.6 Repayment on termination**

Despite clause 30.3, on termination of the Trust, the Holder of a NIVUS may not participate in the Net Proceeds From Realisation (as defined in clause 30.3(b)) to an extent greater than \$1 per NIVUS.

### **6.7 Rights and obligations which attach to a NIVUS**

Subject to this clause 6, all the rights and obligations which attach to a Unit and its Holder also attach to a NIVUS and its Holder.

## 7. Issue Price

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### 7.1 Issue Price while Units are not Officially Quoted

- (a) The Issue Price for the Units issued before the issue of the first disclosure document and for the Units issued under the first disclosure document is 90 cents.
- (b) Subject to clause 7.1(c), after the first issue and for Units that are not Officially Quoted, the Issue Price for any Unit will be equal to:

$$\frac{\text{Net Fund Value} + \text{Transaction Costs}}{\text{number of Units on Issue}}$$

all calculated as at the first Valuation Time after the RE receives:

- (i) the application for Units; or
  - (ii) the application money (if applicable) or the Property to be transferred to the RE,  
whichever happens later.
- (c) However, for Units that are not Officially Quoted, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms of that ASIC Exemption). The following apply to the extent they reflect the requirements of a relevant ASIC Exemption. In the case of:
- (i) offers made at substantially the same time to only and all the then Unit Holders on a pro rata basis, the Issue Price must not be less than 50% of the Issue Price for the Units in that Class (calculated in accordance with clause 7.1(a)) on the Business Day preceding the date on which the intention to make the offer or issue is announced; and
  - (ii) a distribution reinvestment arrangement referred to in clause 16.7, the Issue Price must not be less than 50% of the Issue Price of a Unit (calculated in accordance with clause 7.1(a)) as at the date determined by the RE under clause 16.7 for the reinvestment of entitlements to income.

Subject to any relevant ASIC Exemption the RE is not required to offer Units under paragraphs (i) and (ii) above Unit Holders whose address on the Register is outside Australia.

- (d) If Units are Stapled, any offer of Units referred to in this clause must be accompanied by a contemporaneous and corresponding offer of Stapled Shares by the Stapled Company, which offer is capable of acceptance only if the recipient takes up an identical number of Stapled Shares to the number of Units taken up under this clause.

## 7.2 Issue Price while Units are Officially Quoted

- (a) Subject to clause 7.3 and clause 7.2(b), for Units that are Officially Quoted, the Issue Price for any Unit will be the Market Price on the Calculation Date.
- (b) However, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by an ASIC Exemption (subject to the terms of that ASIC Exemption) and the Listing Rules. The following apply to the extent they reflect the requirements of a relevant ASIC Exemption. In the case of:
- (i) offers made at substantially the same time to only and all the then Unit Holders on a pro rata basis, the Issue Price must not be less than 50% of the Market Price for the Units in that Class or, if Stapling applies, the Issue Price of the Stapled Securities must not be less than 50% of the Market Price for the Securities, on the Business Day preceding the date on which the intention to make the offer or issue is announced to the ASX; ~~and~~
  - (ii) a distribution reinvestment arrangement referred to in clause 16.7, the Issue Price must not be less than 50% of the Market Price of a Unit or, if Stapling applies, the Issue Price of the Stapled Securities must not be less than 50% of the Market Price for the Securities, as at the date determined by the RE under clause 16.7 for the reinvestment of entitlements to income;
  - (iii) [an offer by way of placement, the offer meets the conditions in any relevant ASIC Exemption, including as set out in section 601GAA\(2\) of the Corporations Act as inserted by the Class Order;](#)
  - (iv) [an offer of interests in a scheme for issue, or an issue of interests in a scheme, under a purchase plan, the offer or issue meets the conditions in any relevant ASIC Exemption, including as set out in section 601GAA\(4\) of the Corporations Act as inserted by the Class Order;](#)
  - (v) [a negotiated fee with a wholesale client, the fee meets the conditions in any relevant ASIC Exemption, including as set out in section 601GAA\(6\) of the Corporations Act as inserted by the Class Order;](#)
  - (vi) [a scheme where there is limited pooling, the scheme meets the conditions in any relevant ASIC Exemption, including as set out in section 601GAA\(7\) of the Corporations Act as inserted by the Class Order; and](#)
  - (vii) [a sale of interests that have been forfeited to the RE, the sale meets the conditions in any relevant ASIC Exemption, including as set out in section 601GAA\(8\) of the Corporations Act as inserted by the Class Order.](#)

Subject to any relevant ASIC Exemption the RE is not required to offer Units under paragraphs (i) and (ii) above to Unit Holders whose address on the Register is outside Australia.

- (c) If Units are Stapled, any offer of Units referred to in this clause must be accompanied by a contemporaneous and corresponding offer of Stapled Shares by the Stapled company, which offer is capable of acceptance only if the recipient takes up an identical number of Stapled Shares to the number of Units taken up under this clause.

### 7.3 Issue of Units to acquire an Asset

- (a) Where Units that are not Officially Quoted are consideration (in whole or in part) for the acquisition of an Investment, the Issue Price for those Units must be calculated in accordance with clause 7.1(a) calculated on the date of the agreement under which there will be an issue of the Units.
- (b) Where Units that are Officially Quoted are consideration (in whole or in part) for the acquisition of an Investment, the Issue Price for those Units must be the Market Price calculated on the day which is 5 Business Days prior to the day on which the RE publicly announces the proposed transaction under which there will be an issue of the Units (or if there is no such announcement, 5 Business Days prior to the date of the agreement under which there will be an issue of the Units). Where Units are Stapled, any issue of Units must be accompanied by an issue of an equal number of Stapled Securities.
- (c) However, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent permitted by and in accordance with an ASIC Exemption and the Listing Rules.

### 7.4 Issue of Units as Bid Consideration

- (a) The RE may issue a Unit as consideration, or part of the consideration, to acquire securities or financial products of a target entity under a takeover bid (**Bid**) made in accordance with Chapter 6 of the Corporations Act (**Bid Consideration**).
- (b) If the RE determines it is in the best interests of Unit Holders to issue a Unit as, or as part of, the Bid Consideration at a particular Issue Price, the RE may amend this Constitution to specify in Schedule 3 the Issue Price for that Bid and may issue Units at the specified Issue Price. Where Units are Stapled, any issue of Units must be accompanied by an issue of an equal number of Stapled Securities.

### 7.5 Issue Price while Stapling applies

Subject to clauses 7.2(b), 7.3 and 7.4 while the Units are Officially Quoted and Stapling applies, the RE may issue Units at an Issue Price equal to:

- (a) the Market Price of the Security on the Calculation Date minus the issue price of the Stapled Share; or
- (b) the amount the RE determines in accordance with clause 7.7.

### 7.6 Satisfaction of Issue Price

The Issue Price may be satisfied by payment of Cash or by transfer to the RE of Property acceptable to the RE (or by a combination of both). If the RE accepts Property other than

Cash, it may determine that some or all of the costs associated with the valuation or transfer of the Property are payable or reimbursable out of the Trust Fund or by the applicant.

#### **7.7 Determination of Issue Price where Stapling applies**

Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (c) this Constitution contains a provision for the calculation or determination of the Issue Price for the Stapled Security but not for the Unit,

the RE must determine what part of the Issue Price of a Stapled Security is to represent the Issue Price of a Unit for the purposes of this Constitution.

#### **7.8 Rule against perpetuities**

The Trustee cannot issue any units after the 80<sup>th</sup> anniversary from the day before the Trust commenced if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. The preceding sentence prevails over all other provisions of this deed.

### **8. Withdrawal of Units**

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#### **8.1 Withdrawal request while Trust is Liquid**

Subject to clause 8.3, while the Trust is Liquid, any Unit Holder may request that some or all of their Units be withdrawn. Each request must:

- (a) satisfy the form and content requirements prescribed by the RE; and
- (b) be delivered to the RE at its registered office (or other place nominated by the RE).

Upon making such a request, the Unit Holder will have no right to deal with the Units (unless and until the request is denied by the RE).

#### **8.2 Action following request**

Within a reasonable time of receiving a withdrawal request under clause 8.1, the RE must consider that request and, in the RE's absolute discretion:

- (a) deny the request (but it must then notify the Unit Holder accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Unit Holder referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Trust Fund; or
- (c) subject to the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the withdrawal request at a price agreed between the Unit Holder and the purchaser; or

- (d) partially effect the withdrawal in the manner described in clause 8.2(b) and partially purchase (or arrange for Units to be purchased) in the manner described in clause 8.2(c).

### **8.3 Suspension of withdrawal request right**

Unless the RE determines otherwise, the right to make a withdrawal request under clause 8.1 is suspended while the Trust is admitted to the Official List.

### **8.4 Withdrawal while Trust is not Liquid**

- (a) While the Trust is a registered scheme but is not Liquid the RE may make a Withdrawal Offer to all Unit Holders or to Unit Holders in a Class. A Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Unit Holder has no right to request that some or all of the Unit Holder's Units be withdrawn.
- (b) A Withdrawal Offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The Withdrawal Offer may be made by:
  - (c) publishing it (for example, in a national newspaper or on the internet); or
  - (d) giving a copy to all Unit Holders (or Holders in a Class).
- (e) Subject to the Corporations Act and the Listing Rules, the RE may determine the terms of a Withdrawal Offer in its absolute discretion but the means of effecting the withdrawal must be one of those permitted under clause 8.2 (subject to the Corporations Act and the Listing Rules).
- (f) The RE may cancel a Withdrawal Offer in accordance with the Corporations Act.

### **8.5 Minimum holding**

If the RE has established a minimum number of Units which must be held at any time, then the RE may treat a withdrawal request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Unit Holder to hold fewer Units than that minimum number, as a request for the withdrawal of all that Unit Holder's Units. If there is more than 1 Class, this clause only applies to Units in the same Class. If the Units are Stapled, a deemed withdrawal request will be taken to be given if an equivalent number of Stapled Shares are able to be cancelled or transferred.

### **8.6 Sums owed**

The RE may deduct from the proceeds of withdrawal of Units any money due to the RE in relation to the Unit Holder.

### **8.7 Transfer of Assets to effect a withdrawal**

Rather than pay Cash to effect a withdrawal in whole or in part, the RE may transfer any Assets to a Unit Holder (or the Unit Holder's nominee). The RE must satisfy itself that the value of the Assets (together with any Cash paid) will equal the total amount of Cash otherwise payable. The RE may do this on the basis of a valuation of the relevant Assets obtained within 1 month of the withdrawal date.

## 8.8 Liquid or not Liquid

The RE will determine whether or not the Trust is Liquid. Such a determination is binding on Holders and no Holder will challenge it.

## 8.9 Cooling off

Nothing in this clause 8 prevents the RE from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the RE or the Trust.

## 8.10 Stapling

While Stapling applies, the RE may not cause a Unit to be redeemed or purchased unless:

- (a) in the case of a redemption, the Stapled Shares are redeemed by the Stapled Company or the Stapled Share is unstapled from the Unit to be redeemed; or
- (b) in the case of a purchase, the Stapled Share is purchased at the same time as the Unit, by the same person.

## 9. Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

$$\frac{\text{Net Fund Value} - \text{Transaction Costs}}{\text{number of Units on Issue}}$$

While the Trust is Liquid, each of these variables will be calculated as at the next Valuation Time after the RE received (or is taken to have received) the withdrawal request. If the Trust is a registered scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes. The RE may adjust any variable where the calculation is in respect of a particular Class.

## 9A. Buy-back of Units

**9A.1** While the Trust is admitted to the official list of ASX the RE may, subject to and in accordance with the Corporations Act and any requirements under the Listing Rules, purchase Units, or where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. Where the Units comprise part of Stapled Securities the RE may only buy back and cancel the Units if the Stapled Security is also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the RE must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

**9A.2** The purchase price payable under clause 9A.1 for the Unit, or where Stapling applies, Stapled Securities shall be determined by the RE as follows:

- (i) during any period in which a purchase may be made, the RE (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the price paid must satisfy the following requirements:
  - (A) the maximum purchase price on any day cannot exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess to be determined by the RE (or its nominee); and
  - (B) the minimum purchase price on any day cannot be less than the Buy-Back Market Price for that day by more than 15%, the amount of that reduction to be determined by the RE (or its nominee); and
- (ii) the purchase price must otherwise satisfy the conditions of any ASIC Exemption.

For the purposes of this clause 9A.2:

**Buy-Back Market Price:** in respect of the relevant Units, or where Stapling applies, Stapled Securities means the average of the market prices (as that term is defined in the Listing Rules) for the Unit, or Stapled Security for the last 5 Business Days in which the Unit or Stapled Security was traded on the ASX, determined on (and including) the Business Day immediately preceding the day on which a purchase is to be made.

## 10. Transfers

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### 10.1 Transferability

- (a) Subject to this Constitution and their terms of issue, a Unit, Option or Financial Instrument may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the RE approves.
- (b) A transferor of Units, Options or Financial Instruments remains the Holder of the Units, Options or Financial Instruments (as the case may be) transferred until the transfer is registered.

### 10.2 Uncertificated system

Units, Options or Financial Instruments may be transferred in any manner permitted by an applicable uncertificated trading system. The RE may require before registration of any such transfer that there be provided to the RE any documents which the rules of the uncertificated system require or permit the RE to require be provided to it to authorise registration.

### 10.3 Registration of transfers

- (a) Where Units, Options or Financial Instruments are transferred other than in accordance with an applicable uncertificated trading system, the following

documents must be lodged for registration at the registered office of the RE or the location of the Register:

- (i) the instrument of transfer (duly stamped if relevant);
  - (ii) the certificate (if any) for the Units, Options or Financial Instruments; and
  - (iii) any other information that the RE may require to establish the transferor's right to transfer the Units, Options or Financial Instruments.
- (b) On compliance with clause 10.3(a), the RE will, subject to the powers or obligations of the RE to refuse registration, register the transferee as a Holder.
- (c) The RE may waive compliance with clause 10.3(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

#### **10.4 Where registration may be refused**

Subject to the Corporations Act, the Listing Rules or the rules of any applicable uncertificated trading system, the RE may refuse to register any transfer of Units, Options or Financial Instruments. When the Listing Rules apply, the RE may also apply a holding lock (or ask that a holding lock be applied) to the extent permitted by the Listing Rules.

#### **10.5 Restricted Securities**

- (a) When Units are Officially Quoted and the Listing Rules or a restriction agreement requires, the RE must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any restriction agreement entered into by the RE under the Listing Rules in relation to the Restricted Securities.
- (b) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any distribution or (subject to the Corporations Act) voting rights in respect of the Restricted Securities.

#### **10.6 Stapling**

While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:

- (a) the RE must not register any transfer of Units unless it is a single transfer of Stapled Securities and any provision of clauses 10.1 to 10.5 inclusive of this Constitution referring to a transfer of Units will be deemed to be a reference to such a transfer; and
- (b) a reference in clauses 10.1 to 10.5 inclusive of this Constitution to a Unit will be deemed to be a reference to a Stapled Security.

## 11. Transmission of Units, Options and Financial Instruments

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### 11.1 Entitlement to Units on death

- (a) If a Holder dies:
- (i) the survivor (or survivors) where the Holder was a joint Holder; and
  - (ii) the legal personal representatives of the deceased, where the Holder was a sole holder,
- will be the only persons recognised by the RE as having any title to the Holder's interest in the Units, Options or Financial Instrument (as the case may be).
- (b) The RE may require evidence of a Holder's death as it thinks fit.
- (c) This clause does not release the estate of a deceased joint Holder from any liability in respect of a Unit, Option or Financial Instrument that had been jointly held by the Holder with other persons.

### 11.2 Registration of persons entitled

- (a) Subject to the *Bankruptcy Act 1966* (Cth), the Corporations Act and to the production of any information that is properly required by the RE, a person becoming entitled to a Unit, Option or Financial Instrument in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Holder may elect to:
- (i) be registered personally as a Holder; or
  - (ii) have another person registered as the Holder.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
- (i) the right to transfer;
  - (ii) the registration of the transfer of; and
  - (iii) the issue of certificates for,
- Units, Options or Financial Instruments apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.

### 11.3 Distributions and other rights

- (a) If a Holder dies or suffers a legal disability, the Holder's legal personal representative or the trustee of the Holder's estate (as the case may be) is, on the production of all information as is properly required by the RE, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Holder would have been entitled to if the Holder had not died or suffered a legal disability.
- (b) Where 2 or more persons are jointly entitled to any Unit, Option or Financial Instrument as a result of the death or legal disability of a Holder, they will, for the

purposes of this Constitution, be taken to be joint Holders of the Unit, Option or Financial Instrument (as the case may be).

## 12. Transfer of Unit Holders – RE’s Right to Transfer

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- (a) Subject to the Law, the RE may, in relation to specific Unit Holders or all Unit Holders, in full discharge of those Unit Holders’ rights in respect of Units and rights arising under this Constitution:
- (i) transfer Assets of the Trust Fund having a value equal (as nearly as practicably possible) to the value of the Units of the relevant Unit Holders to another unit trust (**Successor Fund**) in exchange for the issue to those Unit Holders of units in the Successor Fund with an equivalent total issue price (as nearly as practicable); or
  - (ii) cause the Units of those Unit Holders to be transferred to the trustee or custodian of the Successor Fund in exchange for the issue to the relevant Unit Holders of units in the Successor Fund with an equivalent total issue price (as nearly as practicable),
- if having regard to any reasonably foreseeable material benefits and detriments to Unit Holders the RE believes that to do so is in the interests of the Unit Holders as a whole, or is not materially adverse to those Unit Holders and to the Unit Holders as a whole. If Stapling applies, the transfer of Units must be accompanied by the transfer of an equal number of Stapled Shares or the Stapled Shares must be unstapled from the Units.
- (b) The RE is authorised to complete any application for units or other documents reasonably required in relation to the issue of units in the Successor Fund, and any form of transfer or other documents reasonably required in relation to the transfer of Units to the trustee or custodian of the Successor Fund, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.
- (c) The RE must give notice to the affected Unit Holders not less than 21 days before the date of the proposed transfer which must contain information about the Successor Fund considered appropriate by the RE.

## 13. Exchange of Units for Units in Another Trust

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- (a) Subject to the Law, if, with the approval of the RE, an offer is made to Unit Holders, or to 1 or more specific Unit Holders to transfer some or all of their Units in consideration of any or all of:
- (i) the issue or transfer of units in another trust, or interests of whatever nature in another entity;
  - (ii) a cash payment; and
  - (iii) a transfer of Assets,

and at least 21 days notice is given to Unit Holders to accept the offer, then at the end of the period of notice if no election has been made by any Unit Holder, the Unit Holder will be taken to have accepted the offer. Where the offer is of cash and 1 or more other alternatives, the Unit Holder is taken to have elected to accept the cash alternative; and where there are 1 or more non-cash alternatives, the Unit Holder is taken to have elected to accept the alternative determined by the RE. If Stapling applies, the transfer of Units must be accompanied by the transfer of an equal number of Stapled Shares or the Stapled Shares must be unstapled from the Units.

- (b) The RE is authorised to complete any application for units, forms of transfer or other documents reasonably required for the purposes of this clause, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.

#### 14. Small Holdings

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- (a) Subject to the provisions of this clause 14, the RE may in its discretion from time to time sell or redeem any Units (and if Stapling applies, sell or buy back an equivalent number of Stapled Shares) held by a Unit Holder which comprise less than a marketable parcel as notified by the RE to Unit Holders from time to time without request by the Unit Holder.
- (b) The RE may only sell or redeem Units (and if Stapling applies, sell or buy back an equivalent number of Stapled Shares) pursuant to this clause 14 on 1 occasion in any 12 Month period. The RE must notify the Unit Holder of its intention to sell or redeem Units (and sell or buy-back the Stapled Shares, if applicable) under this clause 14.
- (c) The RE will not sell or redeem the relevant Units (or sell or buy-back the Stapled Shares, if applicable):
  - (i) before the expiry of 6 weeks from the date of the notice given under this clause 14; or
  - (ii) if, within the 6 weeks allowed under paragraph (i), the Unit Holder advises the RE that the Unit Holder wishes to retain the Units (and Stapled Shares, if applicable).
- (d) The RE's power to sell or redeem the Units (and sell or buy-back the Stapled Shares, if applicable) lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.
- (e) The RE or the purchaser of the Units (and Stapled Shares, if applicable) must pay the costs of the sale as the RE decides. The proceeds of the sale or redemption will not be sent until the RE has received the certificate (if any) relating to the Units (and Stapled Shares, if applicable), or is satisfied that it has been lost or destroyed.

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## 15. Net Accounting Income

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### 15.1 Net Accounting Income

The RE will determine (or cause to be determined) the **Net Accounting Income** for each Financial Year in accordance with applicable Australian Accounting Standards adjusted by:

- (a) adding any amount which the RE transfers from a reserve; and
- (b) deducting any amount which the RE:
  - (i) credits to a reserve; or
  - (ii) applies against accumulated losses determined in accordance with applicable Australian Accounting Standards.

### 15.2 Net Income

The RE will determine (or cause to be determined) the **Net Income** for each Financial Year in accordance with section 95(1) of the *Income Tax Assessment Act 1936* (Cth).

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## 16. Distributions

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### 16.1 Distributable Income

- (a) Subject to clause 16.1(b), **Distributable Income** of the Trust for each Financial Year is the Net Accounting Income (as determined in accordance with clause 15.1) for that Financial Year.
- (b) The RE may determine that the Distributable Income for a Financial Year will be:
  - (i) the Net Income (as determined in accordance with clause 15.2) if it exceeds the Net Accounting Income for that Financial Year; or
  - (ii) some other amount not less than the Net Accounting Income for that Financial Year.

### 16.2 Present entitlement

On and from the last day of each Financial Year, the Unit Holders on the Register at the end of the last day of the Financial Year have a vested and indefeasible interest in the Distributable Income of the Trust for that Financial Year (other than any part of the Distributable Income which has previously been distributed in that Financial Year as permitted by this clause 16) in the proportion specified in clause 16.3(c).

### 16.3 Distribution of Distributable Income

- (a) The RE may determine to make an interim distribution out of Net Accounting Income for any Interim Distribution Period (an **Interim Distribution**). An Interim Distribution cannot exceed, but can be less than, the amount of the Net Accounting Income for the relevant Interim Distribution Period. The RE must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Unit

Holders on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in clause 16.3(c).

- (b) Within 90 days of the end of the Financial Year subject to clause 16.11(a), the RE must pay to the Unit Holders on the Register at the end of the last day of that Financial Year an amount equal to the Distributable Income of the Trust for the Financial Year less any amounts previously distributed during that Financial Year under clause 16.3(a), in the proportion specified in clause 16.3(c).
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder on the Register at the end of the last day of the Financial Year or Interim Distribution Period:
  - (i) for the purposes of clause 16.2, has a vested and indefeasible interest in, and is presently entitled to;
  - (ii) for the purposes of clause 16.3(b) subject to clause 16.11(a), is entitled to a distribution of; and
  - (iii) for the purposes of clause 16.3(a), is entitled to an Interim Distribution out of Net Accounting Income of,

the proportion of the Distributable Income, or such Interim Distribution of Net Accounting Income which the RE determines to make, as is equal to the number of Units held by that Unit Holder on that date as at the end of the day divided by the number of Units on Issue on that date as at the end of the day.

#### **16.4 Capital distributions**

The RE may distribute capital of the Trust to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the RE divided by the number of Units on the Register on that date as at the end of the day. A distribution may be in Cash or of Assets.

#### **16.5 Grossed up Tax amounts**

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Income for a Financial Year or an Interim Distribution, as the case may be, which is referable to a dividend or other income in which they have a vested and indefeasible interest.

#### **16.6 Excess distribution**

If at the end of a Financial Year, the auditor of the Trust determines that the amount distributed as Distributable Income under this clause 16 of the Trust exceeds the aggregate of the Net Accounting Income for such Financial Year, the excess will be taken to be a distribution of capital.

### 16.7 Reinvestment

A Unit Holder may, if the RE approves, elect to reinvest some or all of any distribution by acquiring Units in the Trust and the amount of the distribution must be applied on behalf of the Unit Holder to acquire the additional Units in the Trust. In those cases, the RE is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 6.1. The procedure for reinvestment of distributions is to be determined by the RE and notified to Unit Holders from time to time.

### 16.8 Reinvestment while Stapling applies

While Stapling applies:

- (a) no reinvestment may occur unless, contemporaneously with the reinvestment in additional Units, the Unit Holder subscribes for or purchases an additional number of Stapled Shares which, when issued or acquired are then Stapled to the additional Units;
- (b) the RE may make provision for, and make payment of, the subscription and purchase price for such Stapled Shares out of the distribution or income (as applicable) which is otherwise available for reinvestment;
- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Trust and the Stapled Company in such proportions as the RE and the Stapled Company may determine;
- (d) whenever under this Constitution or by Law money is held on behalf of a Unit Holder, for future reinvestment, the money so held may be aggregated and on each occasion on which the aggregated amount equals the Issue Price of a Unit, the amount will be applied to purchase a new Unit for issue to the Unit Holder; and
- (e) a new Unit may not be so purchased until the reinvested money is sufficient for and is applied to a subscription for or purchase of a Stapled Share which is then Stapled to the Unit.

### 16.9 Unit Holder's rights

For the removal of doubt and despite anything in this clause 16, the rights of a Unit Holder under this clause 16 are subject to the rights, obligations and restrictions attaching to the Units which they hold.

### 16.10 Withholding Tax and Closely-held Trusts

The RE may deduct tax from, or pay Tax on, any amount dealt with under this clause that it is required by Law to deduct or pay. Each Unit Holder irrevocably directs the RE to deduct or pay such Tax as an application of income on their behalf.

**16.11 Distribution not permitted to be paid to Unit Holders**

- (a) If the terms of a Financial Instrument prohibit the payment of any distribution to a Unit Holder at any time, the distribution will not be paid to the Unit Holder but will be treated as an interest free loan by that Unit Holder to the RE. The RE shall repay the loan to the Unit Holder to the extent possible as soon as permissible under the terms of the relevant Financial Instrument.
- (b) Despite clause 16.11(a), the Unit Holders will continue to have a vested and indefeasible interest in the Distributable Income of the Trust for that Financial year in accordance with clause 16.2.

**17. Powers of RE**

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**17.1 Powers**

The RE has all the powers:

- (a) in respect of the Trust that it is possible under the Law to confer on a trustee;
- (b) as though it were the absolute owner of the Assets and acting in its personal capacity; and
- (c) necessary for fulfilling its obligations under this Constitution and at Law.

For example, the RE's powers include the following:

- (i) to purchase Property or dispose of Assets for cash or other consideration;
- (ii) to develop and otherwise deal with (including lease) any Assets;
- (iii) to borrow or obtain financial accommodation (for example, for the purposes of paragraphs (i) and (ii));
- (iv) to create Security Interests over the Trust Fund or any Asset (for example, for the purposes of paragraphs (iii) and (v));
- (v) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (vi) to apply for listing of the Trust, and quotation of the Units, Options or Financial Instruments ( or any other financial product), on any stock exchange, including the ASX;
- (vii) to make any kind of Investment (including entering into Derivatives);
- (viii) to delegate its investment powers and discretions, in whole or in part, to an investment advisory committee;
- (ix) to buy-back Units;
- (x) to fetter future discretions, such as by the granting of options; and
- (xi) to enter into any arrangement or agreement with underwriters in relation to the Trust.

## 17.2 Delegation

- (a) The RE may appoint delegates or agents (including Custodians) to perform any act or exercise any power of the RE (including a power in turn to appoint its own agent or delegate).
- (b) An agent or delegate may be an associate or employee of the RE.
- (c) An appointment may be joint.
- (d) Subject to section 601FB of the Corporations Act, the RE will not be liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting the delegate. The RE may include provisions in the delegate's appointment to protect and assist those dealing with the delegate as the RE thinks fit.

## 17.3 Advisers

Without limiting clause 17.1, the RE may engage Advisers to assist it with its duties and functions under this Constitution. An Adviser may be an associate or employee of the RE.

## 17.4 Rights in relation to Stapling

Despite any other provision of this Constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the RE may, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Unit Holders and the members of the Stapled Company as a whole and not only the interests of the Unit Holders alone.

## 18. Valuations

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### 18.1 Valuation of an Asset

Subject to clause 18.2, the RE may cause an Asset to be valued at any time.

### 18.2 Valuation if required

The RE must cause an Asset to be valued if required by ASIC or under the Corporations Act and the valuation must be undertaken in accordance with those requirements.

### 18.3 Periodic valuation

The RE may determine and vary valuation methods and policies for each category of Asset. Unless the RE determines otherwise, the value of an Asset will be its market value. Where the RE values an Asset at otherwise than its market value, the valuation methods and policies applied by the RE must be capable of resulting in the calculation of an Issue Price that is independently verifiable.

### 18.4 Determination of Net Fund Value

The RE may determine the Net Fund Value at any time in its discretion, including more than once a day.

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## 19. Holding Assets

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### 19.1 How held

Subject to clauses 19.2 and 19.3, all Assets will be held in the name of the RE.

### 19.2 Other Custodian

If the RE considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the RE and acting as agent for the RE.

### 19.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the RE (while the Trust is a registered scheme, to the extent permitted by the Corporations Act or an ASIC Exemption).

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## 20. The Register

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### 20.1 Keeping Registers

The RE must establish and keep a Register of Unit Holders, a Register of Option Holders and a Register of Financial Instrument Holders. If Stapling applies the RE may establish and keep a single Register for the Stapled Securities.

### 20.2 Information in Registers

To the extent applicable, the Registers must be kept in accordance with, and contain the information required by, the Corporations Act. Otherwise, the RE may decide what information is included in the Registers. If the Corporations Act applies, the RE has the powers conferred under the Corporations Act in relation to the Register.

### 20.3 Changes

Every Holder must promptly notify the RE of any change of name or address and the RE must alter the relevant Register accordingly.

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## 21. The RE's Limitation of Liability

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### 21.1 General

Subject to the Corporations Act, the RE is not liable for any loss or damage to any person (including any Unit Holder, Option Holder or Financial Instrument Holder) arising out of any matter unless, in respect of that matter, it acted both:

- (a) otherwise than in accordance with this Constitution; and

- (b) without a belief held in good faith that it was acting in accordance with this Constitution.

In any case, subject to the Corporations Act, the liability of the RE in relation to the Trust is limited to the Assets, from which the RE is entitled to be, and is in fact, indemnified.

## 21.2 Specific

In particular, subject to the Corporations Act, the RE is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the RE; or
- (b) it acted as required by Law; or
- (c) it relied in good faith upon any signature, marking or documents.

## 22. Indemnities

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### 22.1 RE's indemnity

In addition to any indemnity under any Law but subject to the Corporations Act, the RE has a right of indemnity out of the Trust Fund on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.

### 22.2 RE's indemnity continuing

Such right of indemnity in respect of a matter (an *Indemnified Matter*) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of trust or in breach of this Constitution or where the RE has acted negligently or fraudulently in relation to that separate matter. Also, the right of indemnity continues to be available after the RE retires or is removed as trustee of the Trust.

### 22.3 Payment

The RE may pay out of the Trust Fund any amount for which it would be entitled to be indemnified under clause 22.1 or clause 23.

### 22.4 The RE not to incur liability

The RE is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

### 22.5 Compliance committee

If any member of a compliance committee established by the RE in connection with the Trust incurs a liability in that capacity in good faith, the RE may indemnify the compliance committee member out of the Trust Fund, to the extent permitted by the Corporations Act.

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## **23. The RE's Indemnity by Holders for Tax Liability**

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### **23.1 Liability limited**

The RE is entitled to be indemnified by a Holder to the extent that it incurs any liability for Tax as a result of the Holder's action or inaction.

### **23.2 Joint Holders**

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 23.1 applies.

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## **24. Change of RE**

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### **24.1 Voluntary retirement while a registered scheme**

While the Trust is a registered scheme, the RE may retire as the responsible entity of the Trust as permitted by the Corporations Act.

### **24.2 Voluntary retirement while not a registered scheme**

While the Trust is not a registered scheme, the RE may retire on not less than 2 months' notice to Unit Holders (or such shorter period as they agree). On retirement, the RE may appoint in writing another person to be the trustee.

### **24.3 Compulsory retirement**

The RE must retire as the responsible entity of the Trust when required by Law.

### **24.4 New RE**

Any replacement trustee must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it. While the Trust is not a registered scheme the RE must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of trustee.

### **24.5 Release**

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

### **24.6 Retirement benefit**

Subject to the Listing Rules and the Corporations Act, the RE is entitled to agree with the incoming trustee that it will be paid by, or receive a benefit from, the incoming trustee for:

- (a) agreeing to submit a proposal for its retirement to a meeting of Unit Holders, and nominating to the Unit Holders the incoming trustee as its replacement; or
- (b) retiring as trustee,

and is not required to account to Unit Holders for such payment or benefit.

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## 25. Amendments to Constitution

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Subject to the Corporations Act, the RE may amend this Constitution (including this clause) by deed or as otherwise permitted by the Corporations Act.

## 26. Statements, Accounts and Audit

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### 26.1 Appointment of auditors

- (a) The RE must appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under the Corporations Act.
- (b) While the Trust is a registered scheme the RE must appoint a Compliance Plan Auditor.

### 26.2 Retirement of auditors

While the Trust is a registered scheme, the Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act. Otherwise, the Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with their terms of engagement or as agreed with the RE.

### 26.3 Remuneration of auditors

The remuneration of the Trust Auditor and Compliance Plan Auditor will each be fixed by the RE.

### 26.4 Accounts and reports

- (a) The financial statements of the Trust must be kept and prepared by the RE in accordance with applicable Australian Accounting Standards.
- (b) The RE must report to Holders concerning the affairs of the Trust and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.

### 26.5 Audit

The RE will cause:

- (a) the Trust Auditor to audit and report on the financial statements; and
- (b) while the Trust is a registered scheme the Compliance Plan Auditor to audit and report on the compliance plan,

each in the manner required by the Corporations Act to the extent it applies.

## 27. Meetings of Holders

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### 27.1 Convening meetings

The RE may at any time convene a meeting of Unit Holders and must convene a meeting of Unit Holders when required to do so by the Corporations Act.

### 27.2 Calling and holding meetings while a registered scheme

While the Trust is a registered scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) **(Section 252G(4))** A notice of meeting sent by post is taken to be given the day after it is posted.
- (b) **(Section 252R(2))** If, at any time, there is only 1 Unit Holder who may vote on a resolution, the quorum for a meeting is 1.
- (c) **(Section 252R(3))** If an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the RE may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once.
- (d) **(Section 252W(2))** A proxy is entitled to vote on a show of hands.
- (e) **(Section 252W(3))** A proxy is entitled to speak and vote for a Unit Holder (to the extent allowed by the appointment) even if the Unit Holder is present, but only so long as the Unit Holder does not speak or vote, as the case may be.
- (f) **(Section 252Y(2))** An appointment of proxy:
  - (i) is valid even if it does not specify the Unit Holder's address; and
  - (ii) may be a standing one.
- (g) **(Section 252Z(5))** The RE may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting.

### 27.3 Adjournment

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

### 27.4 Non-receipt

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

### 27.5 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

**27.6 Written resolution**

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of members, a resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by 1 or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by the Unit Holder.

**27.7 Option Holders and Financial Instrument Holders**

This clause 27 applies to meetings of Option Holders and Financial Instrument Holders with any necessary modifications.

**27.8 Meetings while Stapling applies**

While Stapling applies:

- (a) the RE, the Trust Auditor and representatives of the Stapled Company may attend and speak at any meeting and may invite any other person to attend and speak; and
- (b) meetings may be held in conjunction with meetings of the holders of the Stapled Shares and, subject to the Corporations Act, the RE may make such rules for the conduct of such meetings as the RE determines.

**28. Notices**

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**28.1 Notice to Holders**

- (a) Subject to the Corporations Act, a notice or other communication from the RE to a Holder must be given in writing and may be sent to the Holder's physical or electronic address (which includes fax numbers and e-mail addresses) specified in the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the RE to a Holder sent by:
  - (i) post, is taken to be received on the Business Day after it is posted;
  - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
  - (iii) other means, is taken to be received at the time the RE determines.

**28.2 Notice to joint Holders**

The RE may give a notice or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.

## **28.3 Notice to successor**

The RE may give a notice or other communication to the persons entitled to a Unit, Option or Financial Instrument in consequence of the death or legal disability of a Holder by sending it to the representatives or trustee of the Holder at the address supplied for the purpose by the representatives or trustee. Until such an address has been supplied notice may be given by sending the notice or other communication to the address specified in the Register.

## **28.4 Signature on notice**

If any notice or communication is required by be signed by the RE, the signature may be written, printed, stamped or produced electronically and the signature may be that of the RE or of any director or secretary of the RE.

## **28.5 Notices to the RE**

Notices to the RE by Holders must be given in writing or in any other manner the RE determines. A notice is effective when it is received by the RE. A notice must be signed by the Holder or a duly authorised representative (unless the RE waives this requirement).

## **29. Termination of the Trust**

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### **29.1 Trust termination date**

The Trust will terminate on the earliest of:

- (a) a date specified by the RE as the date the Trust will terminate in a notice given to Unit Holders; and
- (b) the date on which the Trust is terminated in accordance with another provision of this Constitution or by operation of Law.

### **29.2 Corporations Act**

The RE may terminate the Trust when permitted to do so, and must terminate it when required to do so, by the Corporations Act.

## **30. Procedure on Termination**

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### **30.1 Notice of termination**

Within a reasonable time before, or as soon as practicable after, termination of the Trust the RE must give to each Unit Holder notice of the termination and of its intention to distribute the Trust Fund.

### **30.2 Realisation of Trust Fund**

Subject to clauses 30.4 and 30.5, as soon as practicable after giving of the notice under clause 30.1 the RE must sell or realise the Assets in such manner as the RE considers appropriate.

### 30.3 Final distribution

- (a) Subject to the terms of issue of any Unit, Class or Financial Instrument, the Net Proceeds From Realisation must be distributed among the Unit Holders in proportion to the number of Units they hold.
- (b) For the purposes of clause 30.3(a), **Net Proceeds From Realisation** means the proceeds from sale or other realisation of the Assets after paying or providing for:
  - (i) all Liabilities of the Trust;
  - (i) any unpaid fees payable (or to be payable) to the RE;
  - (ii) the Expenses of termination.
- (c) This clause does not limit clause 30.6.

### 30.4 Transfer of Assets

Despite clause 30.3, the RE may transfer Assets to any Unit Holder holding Units in satisfaction of that Unit Holder's entitlement in the Trust Fund. The value of the Assets transferred will be calculated at market value, as determined by the RE, and will be equal to the value of the relevant Units. The Expenses incurred in transferring the Assets will be borne by the Unit Holder or Unit Holders to whom the Assets are transferred.

### 30.5 Postponement of realisation

The RE may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Unit Holders. The RE will not be responsible for any loss attributable to the postponement.

### 30.6 Retention of property

The RE may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any outgoings or Liabilities (actual or contingent) in respect of the Trust. If any Asset retained is ultimately found not to be required, then it must be distributed to the Unit Holders in accordance with this clause 30.

### 30.7 Continuation of powers

The powers, duties and rights of the RE (including the rights to remuneration and to any indemnities under this Constitution or the Law) continue following termination to the extent to which they are not inconsistent with this clause 30.

### 30.8 Cancellation of Units

Unless the RE determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date the final distribution of the Net Proceeds From Realisation is made.

### 30.9 Audit

If, at the time it is wound up, the Trust is a registered scheme and ASIC policy requires it, the RE will provide for an independent review or audit by a registered company auditor of the final accounts of the Trust after termination.

## 31. Fees

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### 31.1 Management fees

From the Commencement Date until the Trust Fund is distributed under clause 30, the RE is entitled to receive the fees set out in schedule 2 for managing the Trust (the **Management Fee**).

### 31.2 Waiver of fees

The RE may waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it is entitled to receive under this Constitution.

### 31.3 Establishment Costs

- (a) The RE, or an associate of the RE, may pay, on behalf of the Trust, any or all Expenses incurred in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first disclosure document (the **Establishment Costs**).
- (b) In such a case, the RE or the associate (as the case may be) will be entitled to be reimbursed out of the Trust Fund for all Establishment Costs that were reasonably and properly incurred.
- (c) The RE or the associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Trust Fund in a year or years later than the year in which the Establishment Cost was incurred.

### 31.4 Expenses

All Expenses reasonably and properly incurred by the RE in connection with the Trust or in performing its obligations under this Constitution are payable or can be reimbursed out of the Trust Fund. Amounts payable under this clause 31.4 are in addition to fees payable under this clause 31 and rights to indemnification or reimbursement conferred under this Constitution or by Law.

### 31.5 Waiver of Expenses

The RE may waive or postpone reimbursement of any or all Expenses under clause 31.4.

### 31.6 GST

The fees payable to the RE under this Constitution do not include any amount referable to GST. If the RE 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 consideration payable

to the RE in respect of the supply, the RE is entitled to be paid an additional amount on account of GST. The additional amount is 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, and the RE will be entitled to be reimbursed or indemnified for such amount of GST out of the Trust Fund.

## **32. Holders**

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### **32.1 Unit Holder bound**

Each person who becomes registered as a Holder is taken to have agreed to be bound by this Constitution.

### **32.2 Liability**

Subject to this Constitution and to the extent permitted by Law, no Holder will, in its capacity as Holder, be personally liable for any obligation of, or liability incurred by, the RE.

### **32.3 Limitation of liability**

Subject to this Constitution and to the extent permitted by Law, each Holder's liability to the RE or the Trust is limited to the amount if any which remains unpaid in relation to the Holder's subscription for their Units, Options or Financial Instruments (as applicable).

## **33. Other Activities and Obligations of the RE**

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### **33.1 Other activities**

Subject to the Corporations Act, nothing in this Constitution restricts the RE (in its personal capacity or in any other capacity) or its associates from:

- (a) dealing with the RE (as trustee and responsible entity of the Trust, the Stapled Company or in another capacity) or any Holder;
- (b) being interested in any contract, transaction, or matter with the RE (as trustee and responsible entity of the Trust, the Stapled Company or in another capacity) or with any Holder; or
- (c) acting as trustee or responsible entity in relation to any other trust or managed investment scheme,

and in each such case the RE (or any associate) may retain for its own benefit all profits or benefits derived from that activity.

### **33.2 Other obligations**

Subject to the Corporations Act, all obligations of the RE or restrictions on its power which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

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## 34. Payments

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### 34.1 Money payable

Money payable by the RE to a Holder may be paid in any manner the RE decides.

### 34.2 Cancel cheques

The RE may cancel cheques drawn by the RE that are not presented within 6 months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Holder, the money may be:

- (a) in the case of a Unit Holder, reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled; or
- (b) held by the RE; or
- (c) paid by the RE in accordance with applicable unclaimed money legislation.

The same applies where the RE attempts to make a payment to a Holder by electronic transfer of funds and the transfer is unsuccessful 3 times. However, the RE may also then draw a cheque in favour of the Holder.

### 34.3 Joint Holders

A payment to any 1 of joint Holders will discharge the RE for the payment.

### 34.4 Deductions for Tax

The RE may deduct from any amount payable to a Holder (or received from a Holder) any amount of Tax (or an estimate of it) which the RE reasonably believes it must or should deduct in respect of that Holder.

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## 35. Complaints

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### 35.1 Procedure

While the Trust is a registered scheme, if a Holder submits to the RE a complaint in relation to the Trust or its operation, the RE must:

- (a) **(Acknowledge complaint)** acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) **(Consider complaint)** consider the complaint in accordance with clause 35.2;
- (c) **(Communicate)** communicate in writing to the complainant the determination and the reasons for that determination in relation to the complaint as soon as practicable and in any event not more than 90 days after the RE received the complaint;
- (d) **(Further avenues)** if the complainant is dissatisfied with the outcome of the determination:

- (i) refer the complainant to (and provide reasonable details of) an independent external dispute resolution body of which the RE is a member; and
  - (ii) provide general guidance (without any obligation to provide legal advice) on further avenues available to the complainant; and
- (e) **(Inspection of documents)** if the complainant so requests, provide the complainant with an opportunity to inspect the material referred to in clause 35.2(d).

### 35.2 Consideration of complaint

In considering a complaint, the RE will take into account such of the following factors as are relevant to that complaint:

- (a) the alleged breach of the Corporations Act, this Constitution or breach of trust;
- (b) legal advice (if any) it has received in relation to that alleged breach;
- (c) the supporting material provided by the Holder in relation to the alleged breach;
- (d) any material held by the RE in relation to the alleged breach; and
- (e) any other relevant information.

### 35.3 Referral of complaint

The RE must consider a complaint by referring it to either:

- (a) the RE's Compliance Officer; or
- (b) if the Compliance Officer considers the complaint to be of a material nature, the board of directors of the RE.

## 36. Listing Rules and Corporations Act

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### 36.1 Listing Rules

If and for so long as the Trust is admitted to the Official List, the following applies:

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

- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

This is despite clause 25.

### 36.2 Corporations Act and Listing Rules

Despite any other clause of this Constitution, a clause of this Constitution which is expressed to apply subject to:

- (a) the Listing Rules, is only so subject while the Trust is admitted to the Official List (and the clause is to be read accordingly); and
- (b) the Corporations Act, is only so subject while the Trust is a registered scheme (and the clause is to be read accordingly).

### 36.3 Agreed amendments

Despite clause 25, if any part of this Constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act, the Listing Rules, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the RE determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement), and authorise the RE to make that amendment in a deed made for that purpose (a **Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

## 37. ASIC Exemptions

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If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, despite clause 25, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the RE declares in writing that this is the case. This declaration may be made at any time.

## 38. Stapling

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### 38.1 Paramountcy of Stapling provisions

Subject to clauses 25 and 36.1, the provisions of this Constitution relating to Stapling prevail over all other provisions of this Constitution including any that are expressed to

prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other Law.

## **38.2 Maintenance of Listing and consistency with constitution of the Stapled Company**

The RE must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Officially Quoted as one joint security, that the Units are dealt with under this Constitution in a manner consistent with the provisions relating to Stapled Shares in the constitution of the Stapled Company.

## **38.3 Stapling - general intention**

While Stapling applies, the Units are intended to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share. The intention is that, so far as the law permits, a Unit and a Stapled Shares which are Stapled together shall collectively be treated as one security.

## **38.4 Commencement of Stapling provisions**

The provisions of this constitution relating to Stapling commence on the date the RE in its absolute discretion determines.

## **38.5 Cessation of Stapling Provisions**

The provisions in this deed relating to Stapling continue until the RE in its absolute discretion determines that they cease to apply and the Unit Holders, at a meeting of Unit Holders and the Stapled Shareholders, have approved the cessation of stapling.

## **39. Governing Law**

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This Constitution is governed by the laws of New South Wales. The RE and the Holders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **40. Severability**

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If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable then so much of it as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this Constitution remains in full force and effect.

## Schedule 1

### Expenses

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The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Trust and the RE and any supplemental deed amending this Constitution or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) preparation, printing, review, distribution and promotion of any disclosure document, offering memorandum for Units, Stapled Securities, Options or Financial Instruments or marketing material (in particular, all amounts disclosed in the first disclosure document);
- (c) the sale or proposed sale, purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (d) the investigation, negotiation or acquisition of any proposed investment;
- (e) the administration, management, promotion or valuation of the Trust or its Assets and Liabilities, including:
  - (i) the establishment and maintenance of accounts and Registers;
  - (ii) issuing of Units, Stapled Securities, Options or Financial Instruments by the RE or any sales of Units, Stapled Securities, Options or Financial Instruments by one or more Holders, including underwriting costs, including marketing and roadshow costs, brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units, Stapled Securities, Options or Financial Instruments;
  - (iii) computer operation and development and data processing;
  - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Holder under this Constitution;
  - (v) dealing with Holder enquiries;
  - (vi) communications with Holders (written or otherwise);
  - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;
  - (viii) purchasing or leasing premises for the RE; and
  - (ix) salaries of the employees of the RE;

- (f) admission of the Trust to the ASX or any other stock exchange, quotation of any Financial Instrument, the Units or Stapled Securities on the ASX or any other exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Trust from the Official List of the ASX or any other exchange or the suspension of any Units, Stapled Securities, Options or Financial Instruments from trading by the ASX or any other exchange;
- (g) fees payable to ASIC, the ASX and any other regulatory body in relation to the Trust, Units, Stapled Securities, Options or Financial Instruments;
- (h) the assigning or maintenance of a credit rating to the Trust;
- (i) convening and holding meetings of Holders, holders of Stapled Securities or of directors of the RE and the implementation of any resolutions;
- (j) Tax and bank fees;
- (k) the engagement of Custodians, Advisers and others;
- (l) preparation, lodgement and audit of the taxation returns and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the RE and the appointment of a new RE;
- (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the RE;
- (o) raising money or otherwise obtaining financial accommodation for the Trust, including a capital raising by the Trust, including fees payable to any underwriter or broker;
- (p) the establishment and operation of the board of directors of the RE, including the payment of fees and associated insurance premiums and travel and accommodation costs, regardless of where the directors live; and
- (q) operation of the compliance committee, including fees payable to or insurance premiums payable in respect of any compliance committee member and travel and accommodation costs, regardless of where the compliance committee members live.

Schedule 2

## **Management Fees**

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The RE is entitled to receive 2% per annum of the Net Asset Value for managing the Trust, plus GST. This fee is calculated on the Net Asset Value as at the last day of the relevant Quarter. This fee is payable to the RE of the Trust Fund on the final day of each Quarter (or such later time as the RE determines).

Schedule 3

**Issue Price - Bid**

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**Executed** and delivered as a **Deed** in Sydney

**Signed Sealed and Delivered by  
Australian Leisure and Entertainment  
Property Management Limited:**

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name