

Supplemental deed

ASA Funds Management Limited as responsible entity of the ASA Diversified Property Fund

Supplemental deed

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Supplemental deed

Date

Made by

ASA Funds Management Limited ACN 079 538 499 in its capacity as responsible entity of the ASA Diversified Property Fund ARSN 106 724 038
(Trustee)

Recitals

- A The Trustee is the responsible entity of the Trust.
- B The Trust was registered as a managed investment scheme under Chapter 5C of the Corporations Act by ASIC on 28 October 2003.
- C Under clause 18 of the Constitution, subject to section 601GC of the Corporations Act, the Trustee may by deed modify, repeal or replace the Constitution.
- D Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution by special resolution of the members of the scheme or by the responsible entity if the responsible entity reasonably considers the changes will not adversely affect members' rights.
- E On [date], a special resolution of the members of the Trust was passed to approve the amendments to the Constitution set out in Annexure A. This deed amends the Constitution to give effect to that special resolution of members.
- F The modifications to the Constitution contained in this deed are intended to take effect when a copy of this deed is lodged with ASIC.

This deed poll witnesses as follows

1 Definitions and interpretation

1.1 Definitions

In this deed:

ASIC means the Australian Securities and Investments Commission.

Corporations Act means the *Corporations Act 2001* (Cth).

Constitution means the constitution of the Trust dated 13 October 2003 as amended from time to time.

Effective Time means the date and time at which a copy of this deed is lodged with ASIC in accordance with subsection 601GC(2) of the Corporations Act.

Trust means the ASA Diversified Property Fund ARSN 106 724 038 constituted under the Constitution.

1.2 Interpretation

- (a) Unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.
- (b) Clause 1.2 of the Constitution applies to this deed as though that clause was set out in full.

2 Modification of the Constitution

On and from the Effective Time, pursuant to clause 18 of the Constitution and section 601GC of the Corporations Act, the Constitution is amended by deleting the words, letters, numbers and symbols that have a line through them and inserting the underlined words, letters, numbers and symbols, in the manner set out in Annexure A.

3 Operation of this deed

3.1 No re-declaration, etc

The Trustee confirms that it is not, by clause 2 of this deed:

- (a) declaring the Trust or any other trust;
- (b) re-declaring the Trust;
- (c) settling the Trust or any other trust;
- (d) resettling the Trust;
- (e) rescinding the Trust;
- (f) causing the transfer, vesting or accruing of property in any person; or
- (g) entering into a new constitution.

3.2 Remaining provisions unaffected

Except as amended by this deed, all terms and conditions of the Constitution remain in full force and effect. With effect from the Effective Time, the Constitution amended by this deed is to be read as a single integrated document incorporating the modifications effected by this deed.

3.3 Binding provisions

The provisions of this deed are binding on and are made for the benefit of the Trustee, each member of the Trust and all persons claiming through them.

3.4 Governing law and jurisdiction

This deed is governed by the laws of the state of New South Wales. The Trustee irrevocably submits to the nonexclusive jurisdiction of the courts of New South Wales.

EXECUTED as a deed poll.

Supplemental deed

Signing page

EXECUTED by **ASA FUNDS MANAGEMENT LIMITED ACN 079 538 499** in its capacity as responsible entity of the **ASA DIVERSIFIED PROPERTY FUND** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director
(please print)

.....
Name of director/company secretary
(please print)

Supplemental deed

Annexure A - Modified Constitution

ASA Diversified Property Fund Constitution¹

ASA Diversified Property Fund
ASA Funds Management Limited

IMPORTANT

This document is a consolidated version of the ASA Diversified Property Fund Constitution for reference purposes only and is not a substitute for reviewing the source documents. This document is not legally enforceable and should not be relied upon as such.

The following documents were consolidated in preparing this reference constitution:

1. *FAL Property Trust Constitution dated 13 October 2003 (Document 1)*
2. *DPF Constitution dated 26 October 2006 (Document 2)*
3. *Supplemental Deed (change of name) dated 30 September 2010 (Document 3)*
4. *Supplemental Deed dated 25 October 2010 (Document 4)*
5. *Supplemental Deed (change of name) dated 30 July 2015 (Document 5)*
6. *Supplemental Deed_(Deceased_Member) dated 2 September 2015 (Document 6)*
7. *Supplemental Deed_(SWF Class A) dated 2 September 2015 (Document 7)*
8. *Supplemental Deed dated 13 June 2017 (Document 8)*
9. *Supplemental Deed dated 23 October 2019 (Document 9)*
10. *Supplemental Deed dated 4 November 2021 (Document 10)*
11. *Supplemental Deed dated [\[#\] 2024 \(Document 11\)](#)*

¹ All references to "~~Australian Unity~~ASA Diversified Property" Fund were inserted by Supplemental Deed dated [\[#\] 2024](#) and replaced "~~Australian Unity Diversified Property Fund~~" (Document 11). Supplemental Deed dated 30 July 2015 changed the name from ~~and replaced~~ "AUDPF No. 1 Trust" to "~~Australian Unity Diversified Property Fund~~" (Document 4). Supplemental Deed dated 30 September 2010 changed the name from "WDPF No. 1 Trust" to "AUDPF No.1 Trust" (Document 3).

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Date

Parties

ASA Funds Management Limited (ABN 58 079 538 499) of Level 27, 101 Collins Street, Melbourne VIC 3000 (**Entity**)

Recitals

- A -The establishment of a Fund to be known as ASA Diversified Property Fund (or such other name as the Entity may from time to time determine) (**Fund**) of which the Entity is trustee and, on registration of which as a managed investment scheme under the Corporations Act, the Entity will be the responsible entity, on the terms of this Constitution.
- B This deed poll is made for the benefit of the Members, jointly and severally, and is legally enforceable as between the members and the Entity.

The parties agree

1 Definitions and Interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this agreement.

1.3 Persons Bound

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

1.4 Governing Law

This ~~deed~~ Constitution is governed by the laws of ~~New South Wales~~ Victoria.

1.5 Jurisdiction

The parties to this ~~deed~~ Constitution irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of ~~New South Wales~~ Victoria.

2 Corporations Act

2.1 Conditions included

- (a) Subject to clause (b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, that provision does not have any force or effect to the extent of the inconsistency.
- (b) If the Corporations Act requires that this Constitution contain certain covenants or if ASIC makes a declaration or grants an exemption on condition that this Constitution contains covenants other than or inconsistent with those which are otherwise included in this

Constitution, then for so long as that Corporations Act requirement remains current or that declaration or exemption remains current in respect of or applicable to the Fund those covenants are deemed to be incorporated in this Constitution and, to the extent of any inconsistency, prevail over those covenants otherwise included in this Constitution.

2.2 Covenant to comply with conditions

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

2.3 Clause 2 prevails

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

2.4 ~~ASIC Class Order 98/1808~~ [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#)

In accordance with [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#) ~~ASIC Class Order 98/1808~~ or its equivalent and for so long as it applies to the Fund, a change in the text of this Constitution because of the operation of clause 2.1 is not a modification of, or the repeal and replacement of, the Constitution for the purposes of sections 601GC(1) and (2) of the Corporations Act.

3 The Fund

3.1 Name

The Fund formed under this Constitution is called the “ASA Diversified Property Fund” or such other name as the Entity may from time to time determine.

3.2 Entity as trustee and responsible entity

ASA Funds Management Limited (ABN 58 079 538 499) is and agrees to act as responsible entity and trustee of the Fund.

3.3 Assets vest in Entity

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

3.4 Exclusion of other obligations

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

4 Duration of Fund

4.1 Initial settlement

The Fund commences when the Entity issues the first Units.

4.2 Termination

The Fund terminates on the earliest of:

- (a) while the Fund is not a Registered Scheme, a date which the Members determine by extraordinary resolution (as defined in the Corporations Act);

- (b) while the Fund is a Registered Scheme, the date specified by the Entity as the date of termination of the Fund in a notice given to Members; and
- (c) the date on which the Fund terminates in accordance with another provision of this Constitution or by law.

4.3 Restriction on issue and redemption of Units

Despite any other provision in this Constitution, no Units may be issued or redeemed after the 80th anniversary of the date preceding the day the Fund commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity relating to the duration of trusts.

5 Interest of Members

5.1 Units

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

5.2 Fractions

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

5.3 Consolidation and division

Units may be consolidated or divided as determined by the Entity.

5.4 Restrictions

A Member must not:

- (a) interfere with any rights or powers of the Entity under this Constitution;
- (b) exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interests in an Asset; or
- (c) require an Asset to be transferred to the Member.

5.5 Waiver of certain rights by Members

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

5.6 Members to provide information

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

5.7 Classes

- (a) Subject to paragraph (b), the Entity may create and issue Units of different Classes with such rights, obligations and restrictions attaching to the Units of such Classes as it determines in accordance with the Corporations Act and, if relevant, the Listing Rules.
- (b) The Entity may not create and issue Units of different Classes if to do so would affect existing Members vested and indefeasible entitlement to the Assets.

6 Applications for Units

6.1 Issue of Units

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

6.2 Property contributions

If the Entity intends to accept Property [as consideration for the issue of Units](#), the Entity must obtain:

- (a) an effective transfer to the Entity of title to the Property, confirmed in a manner approved by the Entity; and
- (b) a valuation acceptable to the Entity stating the Market Value of the Property, and the Entity may determine what costs, if any, incurred in valuing and transferring the Property must be deducted from the Market Value of the Property (as stated in the valuation) before the number of Units to be issued is calculated.

6.3 Payment

Payment in respect of an application, in a form acceptable to the Entity must:

- (a) accompany the application; or
- (b) be received or made available to the Entity within such period before or after the Entity receives the application as the Entity determines from time to time.

6.4 Uncleared Funds

- (a) An issue of Units is void if:
 - (i) the application money is not in cleared funds or subsequently cleared within 5 Business Days of receipt (or such longer period determined by the Entity); or
 - (ii) the transfer of the Property is not effective, or the Property is not transferred free of encumbrances.
- (b) Where an issue of Units is void by the operation of clause 6.4(a):
 - (i) the Units are deemed for all purposes not to have been created or issued; and
 - (ii) the Entity may cause the Register of Members to be rectified.

6.5 Entity may reject

The Entity may in its absolute discretion reject an application in whole or in part without giving any reason for doing so.

6.6 Minimum application

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

6.7 Minimum Subscription

- (a) The Entity may set a minimum subscription amount for the Fund, and alter that amount at any time.
- (b) If the minimum subscription is not subscribed, or the Entity otherwise decides not to proceed with the issue of Units, the full amount paid by each subscriber (less any applicable tax) will be reimbursed to the subscriber. Interest will not be paid on any reimbursements under this clause 6.7(b).

6.8 Issue date

Units are taken to be created and issued when the later of the following events occurs:

- (a) the time when the Entity accepts the application; or
- (b) the time when the application moneys are in cleared funds or Property against which Units are to be issued is transferred to the Entity.

6.9 Nomination of holder

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

6.10 Number of Units

When determining the number of units to be issued to a Member in relation to an application, the number of Units is that number calculated by the Entity by dividing the Application Amount by the Application Price of a Unit.

7 Withdrawal from the Fund

7.1 No right to withdraw from Fund

A Member has no right to withdraw from the Fund other than in accordance with this clause 7 or clause 7A²:

- ~~(a) until registration of the Fund as a managed investment scheme under the Corporations Act, as determined by the Entity in its absolute discretion;~~
- ~~(b) on and from such registration, in accordance with this clause 7 or clause 7A³ the terms of which have effect on and from such registration.~~

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

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

² The words 'or clause 7A' were inserted by supplemental deed dated 2 September 2015 (Document 7).

³ ~~The words 'or clause 7A' were inserted by supplemental deed dated 2 September 2015 (Document 7).~~

7.3 Withdrawal Offer

Subject to sections 601KB-KE of the Corporations Act, if a Withdrawal Offer is made by the Entity, then a Unit must only be redeemed at its Redemption Price determined in accordance with clause 8.9 at the time the Withdrawal Offer closes.

7.4 Cancellation of Withdrawal Offer

The Entity may, without notice to any of the Members, at any time before a Withdrawal Offer closes, decide to cancel the offer pursuant to section 601KE of the Corporations Act, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Entity will give written notice of the cancellation to the Members to whom the Withdrawal Offer was made. Any withdrawal request made in response to that Withdrawal Offer which has not been satisfied at the time of the Entity's decision to cancel the Withdrawal Offer will be taken to be withdrawn at that time.

7.5 When Fund is not Liquid

- (a) This clause ~~9.57.5~~ applies only while the Fund is not Liquid.
- (b) A Member may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Entity under the Corporations Act and this Constitution regulating offers of that kind.
- (c) If there is no Withdrawal Offer currently open for acceptance by Members, a Member has no right to withdraw from the Fund.
- (d) The Entity may make a Withdrawal Offer by:
 - (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet); or
 - (ii) giving a copy to the Members.However, the Entity is not at any time obliged to make a Withdrawal Offer.
- (e) The Entity may cancel a Withdrawal Offer by:
 - (i) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet); or
 - (ii) notice in writing to the Members to whom the Withdrawal Offer was made.
- (f) If the Entity receives a Withdrawal Request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the Withdrawal Offer effective as at the time the offer is made.

7.6 Provisions applicable to all withdrawals

- (a) The Entity is not obliged to pay any part of the Redemption Price out of its own ~~F~~Funds.
- (b) The Entity may at any time cause the redemption of any or all of a Member's Units.
- (c) A Member may not withdraw a Withdrawal Request unless the Entity agrees.
- (d) Unless the Entity decides otherwise, the first Units issued to a Member are the first redeemed.
- (e) If compliance with a Withdrawal Request would result in the Member holding fewer Units than the then current minimum application amount, the Entity may treat the Withdrawal Request as relating to a Member's entire holding of Units.

- (f) The Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer or Withdrawal Request any unpaid moneys due by the Member to the Entity.
- (g) The Entity may transfer Assets to a Member, or hold Assets on trust solely for a Member on such terms as the Entity requires, rather than pay cash in satisfaction of all or part of a Withdrawal Request or pursuant to a Withdrawal Offer or in payment of a distribution. These Assets together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the Withdrawal Request, Withdrawal Offer or distribution. If the Entity requires, some or all of the costs involved in the transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

7.7 Discretionary ~~W~~Withdrawal

If the Entity is not obliged to give effect to a Withdrawal Request, it may in any event, redeem some or all of the Units which are the subject of the request.

7.8 Redemption Request⁴

- (a) Where the Entity permits Members to make withdrawals, Members can, prior to the termination of the Fund, make Redemption Requests in the form specified by the Entity.
- (b) A Redemption Request is irrevocable unless the Entity at its absolute discretion consents to its revocation.
- (c) In no circumstances is the Entity obliged to pay any part of the Redemption Price out of its own funds.
- (d) The Entity may determine more than one date with effect from which a Unit is to be redeemed pursuant to a Redemption Request and such Units will be redeemed over those days in such proportions as the Entity determines, provided that all such Units are redeemed within the period specified in clause 7.8(e).
- (e) If, pursuant to this clause 7.8, Units the subject of a Redemption Request are to be redeemed:
 - (i) the Redemption Request must be satisfied by paying the Redemption Price calculated in accordance with clause 8.9 multiplied by the number of Units the subject of the Redemption Request;
 - (ii) payment must be made within 365 days of the receipt or deemed receipt of the Redemption Request; and
 - (iii) the Units the subject of the Redemption Request are taken to be redeemed at the time at which both the applicable Redemption Price is calculated and the Redemption Request is processed, and from that time until payment, the former Member of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Fund in respect of the redemption proceeds.
- (f) While the Fund is a ~~R~~registered ~~S~~scheme, and is not Liquid, withdrawals may only be permitted in accordance with Part 5C.6 of the Corporations Act and the applicable provisions of this clause 7 relating to Withdrawal Offers.
- (g) If a Redemption Request would leave a holding worth, at the Redemption Price, less than the current minimum balance set by the Entity, the Entity may treat the Redemption Request as applicable to all Units held by that Member.
- (h) The Entity may determine the portion of the Redemption Price for a Unit which represents Distributable Income to which the Member is entitled, for the accounting period in which

⁴ Clause 7.8 was inserted by supplemental deed dated 2 September 2015 (Document 7).

the Unit was redeemed. Any remaining amount of the Redemption Price will represent a return of Fund capital attributable to that Unit. The Entity must advise the Member in respect of any Unit redeemed pursuant to this clause 7 of the extent to which the Redemption Price represents a return of Fund capital attributable to that Unit and a distribution of Distributable Income.

7.9 Deceased Member⁵

- (a) Subject to any applicable ASIC Instrument or other relief, the legal personal representative of a deceased Member may at any time request ~~w~~Withdrawal of all or any of the Units held by the Member and the Entity may, at its discretion, redeem those Units in accordance with the provisions of this clause 7 and the requirements or conditions of any such ASIC Instrument or other relief.
- (b) Where there is no applicable ASIC Instrument or other relief available under clause 7.9(a), the Entity may at the request of the legal personal representative of a deceased Member withdraw any or all of the deceased Member's Units in accordance with the provisions of this clause 7, unless the Entity acting reasonably considers that such withdrawal would adversely affect the remaining Members.
- (c) Where the Entity determines to withdraw all or any of the Units held by a deceased Member in accordance with clause 7.9(b), such Units will automatically convert to a separate class of Unit designated by reference to the legal personal representative of a deceased Member. Such Units will continue to rank equally with all Units other than in respect of the operation of this clause 7.9.

7A Withdrawal Window Facility⁶

- 7A.1 The Entity may allow Members the opportunity to withdraw from the Fund on the basis set out in this clause and on terms and conditions specified by the Entity (**Withdrawal Window Facility** or **WWF**).
- 7A.2 In order to fund the payment of redemption requests received pursuant to the WWF, the Entity may only utilise moneys received from each application for Class A Units pursuant to the Offer specified in clause 8A.
- 7A.3
 - (a) The Redemption Price payable to Members whose Units are redeemed pursuant to the WWF under this clause 7A will be the Redemption Price calculated in accordance with clause 8.9 except that the Transaction Cost Allowance shall be excluded from the calculation and an amount of 5% shall be deducted from the resulting Redemption Price (this formula is, for the purposes of the Withdrawal Window Facility, referred to as the **Withdrawal Window Redemption Price** or the **WWRP**).
 - (b) The WWRP will be calculated at the time specified in clause 8.10. The reference to Valuation Time in clause 8.10 is to be taken as a reference to Valuation Time applicable to the Specified Redemption Date referred to in clause 7A.4(c)(i).
- 7A.4 Where the Entity permits withdrawal pursuant to the Withdrawal Window Facility, the procedures relating to those withdrawals must include the following:
 - (a) The Entity will permit the Withdrawal Request to be received by a time (**Prescribed Time**) or within a period (**Prescribed Period**) nominated by the Entity for this purpose.

⁵ Clause 7.9 was inserted by supplemental deed dated 2 September 2015 (Document 6).

⁶ Clause 7A was inserted by supplemental deed dated 2 September 2015 (Document 7).

- (b) The Prescribed Period must not exceed 30 days from the date the Entity sends to Members a notice of availability of the Withdrawal Window Facility.
 - (c) The Entity may process Withdrawal Requests that have been received by the Prescribed Time and/or within the Prescribed Period (and otherwise meet any notice or other requirements specified) on the following basis:
 - (i) At the end of each calendar month or such other day as shall be specified by the Entity (**Specified Redemption Period**) during the Class A Units Offer period (specified in clause 8A, the Entity will process redemptions up to the value equivalent to the aggregate value of the net application moneys received in respect of Class A Units within the same Specified Redemption Period.
 - (ii) On a pro rata basis (to the extent of cash available) in proportion to the number and value of Withdrawal Requests received.
 - (iii) By payment within such period after the Specified Redemption Date as the Entity shall determine provided that payment for redemption requests processed must be satisfied within 365 days of the close of the Withdrawal Window Facility (being the last day of the Prescribed Period).
- 7A.5** Where a Withdrawal Request of a Member has not been accepted in full on a Specified Redemption Date, the balance remaining under that Withdrawal Request will be included in the redemptions to be processed at the next Specified Redemption Date in accordance with the priority arrangements specified in clause 7A.4. This clause will continue to apply to any unmet balances as at every Specified Redemption Date.
- 7A.6** To the extent of any inconsistency between this clause 7A and any other provision of this constitution, this clause 7A prevails.
- 7A.7** This clause 7A does not limit the power of the Entity to suspend redemptions in circumstances permitted under this constitution or permitted or required by law.
- 7A.8** The Entity may cancel or suspend the WWF at any time. In the case of cancellation, any unmet redemption requests will be taken to be withdrawn and cancelled.

8 Unit Price and Valuation

8.1 Application price

Subject to any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Application Price calculated as follows:

- (a) in the case of the issue of the first Units, and in the case of the issue of Units pursuant to the first product disclosure statement under the Corporations Act for the Fund, at the Application Price of \$1.00;
- (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 8.5;
- (c) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 8.7;
- (d) in the case of reinvestment of income, in accordance with clause 11.14, as applicable;
- (e) subject to paragraphs (a), (b) and (c) in all other cases while Units are Officially Quoted, the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated; ~~and~~

- (f) ~~Subject to paragraph (h)~~⁷ while Units are not Officially Quoted, in accordance with the following formula:

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

- (g) the Entity may, to the fullest extent permitted by law (including in any of the circumstances set out or permitted by an ASIC Instrument), issue a Unit, at an Application Price set by ASIC (including calculated in accordance with an applicable ASIC Instrument).

- ~~(g) — A Unit issued during the Public Offer must only be issued at an Application Price for the Unit that is 90% of the Application Price for a Unit calculated under paragraph (f) which would otherwise apply.⁸~~

8.2 Time for calculation

Each of the variables in clause 8.1(f) must be determined as at the next Valuation Time after:

- (a) the Entity receives the application for Units; or
- (b) one of the following occurs:
 - (i) the Entity receives the application money; or
 - (ii) the application money is paid at the direction of the Entity; or
 - (iii) the Property against which Units are to be issued is vested in the Entity, whichever happens later.

8.3 Rounding

The Application Price may be rounded up or down as the Entity determines.

8.4 Time of receipt

Where an application for Units is received:

- (a) before the Prescribed Time on a Business Day, it is taken to be received immediately before the Prescribed Time on that Business Day; and
- (b) on or after the Prescribed Time on a Business Day, it is taken to be received immediately before the Prescribed Time on the next Business Day following actual receipt.

8.5 Pro rata rights issues

The Entity may (subject to the terms of any applicable ASIC Instrument) offer Units for subscription at a price determined by the Entity to those persons who were Members on a date determined by the Entity not being more than 30 days immediately prior to the date of the offer, provided that:

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) either:

⁷ The words 'Subject to paragraph (h)' were inserted by supplemental deed dated 25 October 2010 (Document 4).

⁸ Clause 8.1(h) was inserted by supplemental deed dated 25 October 2010 (Document 4).

- (i) where Units are not Officially Quoted, the Application Price is not less than 90% of the price calculated in accordance with clause 8.1(f); or
- (ii) where Units are Officially Quoted, the Application Price is not less than 90% of the weighted average Market Price as at the date not more than 5 Business Days prior to the date on which the product disclosure statement under which the offer is made is lodged with ASIC.

However, subject to the Listing Rules and any applicable ASIC Instrument, the Entity is not required to offer Units under this clause to persons whose address on the Register of Members in a place other than Australia and such other jurisdiction (if any) as Entity may in its absolute discretion determine.

8.6 Terms of pro rata issues

- (a) Any offer made under clause 8.5 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Entity under clause 8.5. However, the Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 8.5 which are not subscribed for within the period for acceptance set by the Entity may be offered for subscription by the Entity to any person. The Application Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If any underwriter has underwritten any offer for subscription of Units under clause 8.5, the underwriter may take up any Units not subscribed for by Members.

8.7 Placements and security purchase plan

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

- (a) at the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which the Units are offered; or
- (b) at a price and on terms determined by the Entity, provided that the Entity complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC Instrument and that the price is not less than 90% of the price determined under (a).

8.8 No Issue other than to Qualified Investor

The Entity must ensure that no Units are issued to any person other than a Qualified Investor unless Members together holding 75% or more of Units on issue consent in writing to the issue.

8.9 Redemption Price

Subject to any rights, obligations and restrictions attaching to any particular Units or Class, and clause 7.5, a Unit must only be redeemed at Redemption Price calculated as:

$$\text{(a)} \quad \frac{\text{Net Asset Value}}{\text{number of Units on issue}} + \text{Transaction Costs Allowance}$$

8.10 Time for calculation

Each of the variables in clause 8.9 must be determined:

- (a) while the Fund is a Registered Scheme and is Liquid, and at all times when the Fund is not a Registered Scheme, as at the most recent Valuation Time preceding the redemption; or
- (b) while the Fund is a Registered Scheme and is not Liquid, at the time the Withdrawal Offer closes.

8.11 Rounding

The Redemption Price may be rounded up or down as the Entity determines.

8.12 Time of receipt

Where an application for redemption of Units is received:

- (a) before the Prescribed Time on a Business Day, it is taken to be received immediately before the Prescribed Time on that Business Day; and
- (b) on or after the Prescribed Time on a Business day, it is taken to be received immediately before the Prescribed Time on the next Business Day following actual receipt.

8.13 Periodic valuations

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

8.14 Net Asset Value

The Entity may determine Net Asset Value at any time in its absolute discretion, including more than once on each day.

8.15 Valuation of Assets

While the Fund is a Registered Scheme, the value of an Asset for the purpose of calculating Net Asset Value is its Market Value.

8A Class A Units Offer⁹

8A.1 This clause 8A applies despite any provision in clause 8 and prevails to the extent of any inconsistency.

8A.2 Where the Entity establishes or proposes to establish a Withdrawal Window Facility pursuant to clause 7A, it must, within 30 days of the establishment of the Withdrawal Window Facility establish an offer of [Class A](#) Units which include those terms specified in this clause 8A.

8A.3 The Class A Units Offer must:

- (a) remain open for not more than 12 months (however the Entity can cancel it at any time); and

⁹ Clause 8A was inserted by supplemental deed dated 2 September 2015 (Document 7).

- (b) state that the net application moneys received in respect of the issue of Class A Units are to be used exclusively to fund the redemption of ordinary Units pursuant to the Withdrawal Window Facility.

8A.4 Class A Units will have identical rights and interests as all other Units in the Fund except that each Class A Unit will be subject to a 2 year escrow period commencing from the day following the date of closing of the Withdrawal Window Facility during which the Members of Class A Units will not be entitled to request redemption (while the Fund is Liquid) or ~~accept~~ any participate in a Withdrawal Offer ~~made~~ (while the Fund is not Liquid) during that period.

8A.5 The Application Price for each Class A Unit will be calculated in accordance with clause 8.1(f) except that:

- (a) the Transaction Cost Allowance shall not be included in the calculations; and
- (b) an amount of 5% shall be deducted from the resulting Application Price to determine the Class A Unit Application Price.

8A.6 The time for calculation of the variables relating to the Application Price and all other provisions relating to applications for Units, as provided in clause 8 and in other relevant provisions of this constitution, will apply with such changes as are deemed necessary or appropriate.

9 Entity's powers

9.1 Powers

- (a) Subject to this Constitution, the Entity has all the powers in respect of the Fund that it is possible under the law to confer on an Entity and as though it were the absolute owner of the Assets and acting in its personal capacity.
- (b) Without limiting paragraph (a) the Entity has power to enter into all types of contracts and other arrangements including, without limitation:
 - (i) to borrow and obtain all types of financial accommodation (whether or not on security);
 - (ii) to grant guarantees;
 - (iii) to enter into derivative contracts (including for speculative purposes);
 - (iv) to enter into securities lending contracts; and
 - (v) to incur all types of obligations and liabilities as Entity of the Fund.
- (c) The Entity must manage the Fund, including the assets and liabilities of the Fund, until it retires or is removed.

9.2 Delegation

- (a) The Entity may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Assets, perform any act or obligation or exercise any discretion or power of the Entity including, without limitation, the power to sub-delegate.
- (b) Subject to the terms of the delegate's appointment, the delegate may appoint a sub-delegate without reference to the Entity.
- (c) The authorisation must be written.

- (d) The Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be responsible for the Fund.
- (e) The Entity remains liable for the acts and omissions of a delegate (and any subdelegate).
- (f) The Entity may include provisions to protect and assist those dealing with the delegate in the authorisation as the Entity thinks fit.
- (g) Subject to any consent required by law, the delegate or any sub-delegate may be the Entity (acting in another capacity), or an associate of the Entity.

9.3 Exercise of discretion

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

9.4 Indemnities and GST

- (a) The Entity is entitled to be indemnified out of the Assets for any liability incurred by the Entity in properly performing or exercising any of its powers or duties in relation to the Fund. This indemnity is in addition to any indemnity allowed by law.
- (b) If the Entity must pay GST on any supply under or in connection with this Constitution made in the proper performance or exercise of any of its powers, duties or rights in relation to the Fund, the Entity may recover the amount of that GST out of the Assets. However, the Entity must not recover out of the Assets any amount for GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.
- (c) Any amounts stated under this Constitution are stated exclusive of GST (if any).

9.5 Underwriting

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

9.6 Voluntary retirement

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

9.7 Registration and listing of the Fund

- (a) Without limiting the effect of clause 9.1, the Entity may in its capacity as Entity of the Fund apply for registration of the Fund as a registered scheme and for listing of the Fund, and quotation of the Units, in any stock exchange (including the ASX).

- (b) For the purposes of paragraph (a) above, the Entity is authorised on its own behalf and on behalf of each Member, to do all things necessary to effect the registration, listing and/or quotation [of the Fund](#).

9.8 Compulsory retirement

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

9.9 Release

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

9.10 Covenant of proposed new Entity

If the Fund is registered under the Corporations Act as a managed investment scheme, any proposed new responsible entity of the Fund must execute a deed under which it covenants in favour of the current responsible entity of the Fund in the same terms as clauses 9.9(a) and 9.9(b) which covenants must be expressed to take effect on and from the time of alteration of ASIC's record of registration.

9.11 Agents and advisers

Subject to clause 9.2 and the Corporations Act:

- (a) the Entity may engage any agent, adviser, valuer, broker, underwriter or other contractor to assist the Entity to transact any business or do any act required to be transacted or done in connection with the Fund;
- (b) the Entity may engage any adviser to advise the Entity regarding any matter relevant to the exercise of its powers or duties as Entity;
- (c) in either case described in paragraphs (a) and (b) above, the Entity must ensure that the terms of any such engagement allow the engagement to be terminated by the Entity (without penalty or liability for damages) if the Entity ceases to be the responsible entity for the Fund;
- (d) the Entity will not be responsible for the default of any person referred to in paragraphs (a) and (b) above if engaged by the Entity in good faith; and
- (e) this clause extends, without limitation, to dealing with Assets through a clearing, settlement, transfer or other similar system.

9.12 Name of Fund

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

10 Investment

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

11 Income and distributions

11.1 Standing principles for determining income

The Entity must determine the income of the Fund for each Financial Year (**Distributable Income**). The Entity may do this by way of a standing determination of principles for calculating the Distributable Income of the Fund, the application of which is capable of independent verification, and may change the principles from time to time.

11.2 If no other determination

Unless the Entity determines otherwise prior to the end of the Financial Year, Distributable Income for the Financial Year will be:

- (a) subject to (b), income according to ordinary concepts (being, for the avoidance of doubt, income determined on a net basis taking into account items of income and outgoings and expenses); and
- (b) not less than the amount which, if distributed, would prevent the Entity being liable to tax on the income of the Fund.

11.3 Fund accounts

The preparation of the accounts of the Fund in accordance with current accounting standards or generally accepted accounting principles is not to be regarded as determination of the method for calculating the income of the Fund under clauses 11.1 or 11.2.

11.4 Present entitlement to Income

A Member of the Fund is presently entitled to the Distributable Income of the Fund for a Financial Year in the proportion that the sum of the Income Entitlements for that Member for the Financial Year bears to the sum of the Income Entitlements for all Members for the Financial Year.

11.5 Income Entitlement

The Income Entitlement of a Member for a Distribution Period is an amount calculated by the Entity as follows:

- (a) in respect of a Distribution Period ending on a Calculation Date other than the last day of a Financial Year, an amount calculated as follows:

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

where:

- A is the Income Entitlement;
- B is the number of Units held by a Member at the end of the Distribution Period;
- C is the number of Units held by all Members at the end of the Distribution Period;
- D is an estimate of the Distribution Income for the Distribution Period calculated as if the Distribution Period were a Financial Year, or such lesser amount as determined by the Entity; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year, an amount calculated as follows:

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

where:

- A is the Income Entitlement;
- B is the number of Units held by the Member at the end of the Distribution Period;
- C is the number of Units held by all Members at the end of the Distribution Period;
- D is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of the amounts calculated for the purposes of variable D in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year.

11.6 Indefeasibility

Notwithstanding any other provision of this Constitution, a person cannot be defeated of any share of the Distribution Income to which the person is entitled under clause 11.3.

11.7 Satisfaction of present entitlement to Income

The present entitlement of a Member to Distributable Income of the Fund for the Financial Year is satisfied by the distribution to the Member of the Income Entitlement of the Member in respect of the Financial Year.

11.8 Allocation of Income Entitlement

The Entity must satisfy the Income Entitlements of a Member for a Distribution Period by a distribution in cash to the Member of the Member's Income Entitlement for the Distribution Period within 60 days after the end of the period to which it relates, or if the audit (if any) for that period has not been completed, as soon as possible after its completion.

11.9 Specification of types of income and capital

The Entity may keep separate accounts of different categories or sources of income, capital, deductions or credits for tax purposes. The Entity may specify for a distribution the extent to which, allowing for reasonable approximation, the Income Entitlement of a Member participating

in the distribution consists of or is taken to consist of various types of income or capital comprised in it.

11.10 Classification as income or capital

The Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

11.11 Other distributions

The Entity may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Entity. The distribution may be in cash or by way of additional Units.

11.12 Minimum distribution

The Entity may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the Entity as trustee of the Fund becoming liable to pay tax under the Tax Act.

11.13 Reinvestment

The Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

11.14 Procedure for reinvestment

If the Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

11.15 Time of receipt

- (a) While the Units are not Officially Quoted, unless otherwise determined by the Entity, if the reinvestment applies in respect of a Member's Income Entitlement for a Distribution Period, the Entity is taken to have received and accepted an application for the relevant Units accompanied by application money equal to the amount to be reinvested immediately before the Prescribed Time on the first Business Day after the end of the Distribution Period to which the distribution relates. The Application Price payable for each additional Unit upon reinvestment is the Application Price on the first Business Day after the end of the Distribution Period to which the distribution relates, less any such discount, if any, not exceeding 10% as the Entity may determine.
- (b) While Units are Officially Quoted, the application price payable for each additional Unit on reinvestment of distributions (if any) is the average VWAP for a Unit over the first 10 Business Days following the Business Day after the Distribution Calculation Date for the distribution for the relevant Distribution Period (unless the Entity believes that this calculation does not provide a fair reflection of the Market Price during this period in which event the Market Price used in the calculation of the Application Period of each additional Unit will be as determined by the Entity) less such discount, if any, not exceeding 10% as the Entity may determine.

11.16 Position on transfer of Units

Income to which a Member is presently entitled but which has not yet been paid when a transfer or transmission of Units is Registered remains credited to the transferor.

12 Administration and reporting

12.1 Register

The Entity must establish a Register of Members and keep it up to date. The Register of Members is conclusive evidence of the matters recorded in it and may be relied upon as such by the Entity. The Entity is not required to register more than 3 persons as joint Members.

12.2 Joint tenancy

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

12.3 Member is absolute owner

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

12.4 Inspection of Register

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

12.5 Notify changes of name or address of Member

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

12.6 Certificates

No certificates will be issued for Units.

12.7 Transfers

- (a) Subject to clause 12.7(b), Members may transfer Units. Transfers must be in a form approved by the Entity and be presented for registration duly stamped. A transfer is not effective until registered.
- (b) If compliance with a transfer would result in the Member holding fewer Units than the then current minimum application amount, the Entity may refuse in its absolute discretion to transfer the relevant Units.

12.8 Refusal to register transfer

The Entity may refuse to Register any transfer in its absolute discretion.

12.9 Death, legal disability

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or legal personal representative (in any other case) will be recognised as having any claim to Units registered in the Member's name.

12.10 Discharge to Entity

A person who becomes entitled to a Unit or Units because of the death, bankruptcy, insanity or other disability of a Member is entitled to receive and may give a discharge for all money payable

in respect of the Units but is not entitled to receive notices of or to attend or vote at any meetings of Members until that person is registered as a Member.

12.11 Payments

Money payable by the Entity to a Member may be:

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

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

12.12 Deductions

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

12.13 Reports

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

12.14 Notices to Members

A notice or other communication required under this Constitution to be given to a Member must be given in writing (which includes a fax or an electronic communication). A notice, or other communication sent by post is taken to be received on the day after it is posted; a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission; and ~~an~~ electronic communication is taken to be received 1 hour after sending and proof of actual receipt is not required.

12.15 Notices to Joint Members

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

12.16 Notices to Entity

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

13 Meetings of Members

13.1 Corporations Act to apply

Except as provided for in clauses 13.2 to 13.11 inclusive, the provisions of Part 2G.4 of the Corporations Act apply to meetings of Members.

13.2 Date, time and place

Subject to this clause 13 and the Corporations Act, the Entity may determine the date, time and place at which each meeting of Members is to be convened and the manner in which it will be conducted.

13.3 Quorum

The quorum for a meeting is 2 Members present in person or by proxy provided that if the Fund has only one Member, that Member is a quorum.

13.4 No Quorum

If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members, dissolved; or
- (b) otherwise - adjourned to such place and time as the Entity determines,

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

13.5 Adjournment

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

13.6 Proxies¹⁰

The provisions of the Corporations Act governing proxies and voting for meetings of Members of registered managed investment schemes apply to the Fund.

13.7 Other attendees

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

13.8 Chair

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

13.9 Resolutions binding

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

¹⁰ Clause 13.6 was amended by supplemental deed dated 4 November 2021 (Document 10).

- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

13.10 Failure to receive notice of meeting

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

13.11 Minutes

The minutes of a meeting of Members signed by the chair are conclusive evidence of the matters stated in them unless the contrary is provided.

14 Rights and liabilities of Entity

14.1 Holding Units

The Entity and its associates may hold and deal with Units in any capacity.

14.2 Other capacities

- (a) Subject to the Corporations Act, the Entity may:
- (i) deal with itself, with a related body corporate, with an associate of a related body corporate of the Entity or with a Member, including:
 - (A) buying assets; and
 - (B) selling property into the Fund,in any capacity, including in its own right or as Entity or responsible entity of another Fund or scheme, such as a Stapled Entity;
 - (ii) be interested in any contract or transaction with itself, with a related body corporate, with an associate of itself or of a related body corporate, or with a Member (all in any capacity), including a contract or transaction for provision of services paid for from the Assets; and
 - (iii) act in the same or a similar capacity in relation to another trust or management investment scheme, such as a Stapled Entity,
- subject to the Entity acting at all times with good faith toward Members.
- (b) The Entity and its related bodies corporate and its or their associates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in this clause.

14.3 Entity and Associates not liable to account

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

14.4 No liability for Entity

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

- (a) the Entity obtaining or relying on (in accordance with clause 14.10) any of the opinions, advice, statements, documents or information referred to in clause 14.10;
- (b) the Entity performing or not performing its duties or exercising or not exercising any of its powers;
- (c) the Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Entity;
- (d) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Entity). This includes fraudulent or unauthorised acts or omissions;
- (e) the Entity making any payment to any fiscal authority on any basis even if the payment need not have been made; or
- (f) the Entity doing or omitting to do any act which by reason of:
 - (i) any present or future law; or
 - (ii) any decree, order or judgment of any Court,
 the Entity is hindered, prevented or forbidden from doing or required to do.

14.5 Fraud, gross negligence or wilful default of the Entity

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

14.6 Liability limited to third parties

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

14.7 Entity action

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

14.8 Entity as a Member

Subject to the Corporations Act, when the Entity is a Member, the Entity is entitled to all of the benefits and rights of any other Member under this Constitution and the law.

14.9 No limitation on other statutory protection for the Entity

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

14.10 Entity may rely on advice

The Entity may take and act upon:

- (a) the opinion or advice of counsel or solicitors whether or not instructed by the Entity in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally as to the administration of the Fund or any other matter in connection with the Fund;

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

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

14.11 Entity may rely upon signatures and documents

The Entity may rely upon:

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

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

14.12 Liability for cheques etc

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

14.13 Taxation Liability

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

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

15 Liability of Members

15.1 Liability limited

Subject to clauses 14.12, 14.13 and 16.6 and any separate agreement or acknowledgment by a Member, the liability of a Member is limited to the Application Price paid or agreed to be paid for a Unit and a Member need not indemnify the Entity if there is a deficiency in the Net Assets of the Fund or meet the claim of any creditor of the Entity in respect of the Fund.

15.2 Recourse

Subject to clauses 14.12, 14.13 and 16.6, the recourse of the Entity and any creditor is limited to the Assets.

15.3 Agency relationship

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

16 Remuneration and Expenses

16.1 Fees payable to Entity¹¹

The Entity is to be paid in relation to the proper performance of its duties in respect of the Fund:

- (a) a Base Fee;
- (b) a Performance Fee;
- (c) a Contribution Fee;
- (d) an Acquisition Fee; and
- (e) a Retirement Fee.

16.2 Base Fee

This clause is subject to clause 16.5. The Entity is entitled to a fee for the proper performance of its duties as Entity and responsible entity of a maximum of 1% per annum of the Gross Asset Value calculated on each day but if the Gross Asset Value is not determined on a day then on the Gross Asset Value last determined. The fee accrues on a daily basis and is payable within 30 days of the end of each month, first out of income of the Fund and then out of capital of the Fund.

16.3 Performance Fee

~~(a)~~ The Performance Fee is an amount calculated in accordance with:

~~(i)~~ up to but not including the Restructure Issue Date, Part 1 of Schedule 3; and

~~(ii)(a)~~ on and after the Restructure Date, Part 1A of Schedule 3.¹²

- (b) The Entity may choose to receive payment of some or all of the Performance Fee by the issue to the Entity or a person nominated by it of Units at the Application Price.
- (c) If the Entity elects to receive payment of the Performance Fee in Units, the Application Price is to be the Application Price at the end of the relevant Fee Period instead of the Application Price at the day of issue.

16.4 Contribution Fee

- (a) A Contribution Fee of 4% of the Application Price is payable to the Entity by the applicant for Units from the Assets upon acceptance of an application for Units pursuant to the Product Disclosure Statement dated on or around 18 July 2006, or upon acceptance after 18 July 2006 of any other application for Units. No Contribution Fee is payable upon reinvestment of a distribution to acquire Units.
- (b) The Entity may choose to receive payment of some or all of the Contribution Fee payable out of the Assets, by the issue to the Entity or a person nominated by it of Units at the

¹¹ Clauses 16.1(d) and 16.1(e) were inserted by supplemental deed dated 23 October 2019 (Document 9).

¹² Clause 16.3(a) was amended by supplemental deed dated 23 October 2019 (Document 9) to remove the words "Schedule 3 and is payable from the Assets within 15 days of the end of the Fee Period" and to insert 16.3(a)(i) and 16.3(a)(ii).

Application Price as at the day the Contribution Fee is payable, having a total value equal to the Contribution Fee payable out of the Assets.

16.5 Entity receiving Fees

- (a) The Entity may from time to time if permitted by law determine to receive fees under clause 16.6 instead of under clauses 16.2, 16.3 and 16.4, and may revoke any such determination from time to time. Where such a determination is current, the Entity may only receive fees under clause 16.6 and not under clauses 16.2, 16.3 and 16.4.
- (b) The Entity must give notice of any such determination or revocation (including as to the date from which the determination or revocation is to apply) to the Members before the determination or revocation becomes effective.

16.6 Entity's fee a debt owed by Member

This clause is subject to clause 16.5. As and when an amount is calculated and accrues under this clause 16.6:

- (a) first, out of amounts which have become:
 - (i) distributable to the Member under clause 11.4; or
 - (ii) payable to the Member under clause 7 following the making of a Withdrawal Offer by the Entity; and
- (b) second, by direct action against the Member.

Each Member directs the Entity to deduct and retain for itself the amount due and payable by the Member to the Entity in respect of the fees referred to in this clause 16 out of the amounts referred to in (a) and (b) before paying or distributing those amounts to the Member.

16.7 Waiver of fees

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

16.8 Expenses

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

- (a) this Constitution, any supplemental deed and the formation of the Fund;
- (b) preparation, review, distribution and promotion of any disclosure document in respect of Units;
- (c) the sale, purchase, insurance, custody and any other dealing with Assets (or any proposal to do any of those things);
- (d) any proposed investment;
- (e) the administration, management or promotion of the Fund or its Assets and Liabilities including without limitation complying with any law and any of the requirements of ASIC;

- (f) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (g) Tax (other than Tax on income received beneficially by the Entity as against the Fund) and bank fees;
- (h) the engagement (whether in the Entity's personal capacity as Entity and/or responsible entity) of delegates, agents, valuers, advisers, investment managers, brokers, solicitors, barristers, underwriters and contractors (including legal costs on a full indemnity basis);
- (i) preparation and audit of the taxation returns and accounts of the Fund;
- (j) termination of the Fund and/or the retirement or removal of the Entity and the appointment of a new trustee or responsible entity;
- (k) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Entity (except to the extent that the person incurring the expenses is found by a court to be in breach of trust, in default or to have been negligent in which case any expenses reimbursed under this clause 16.8(k) must be repaid);
- (l) fees paid to any ratings organisation;
- (m) establishing and maintaining a Register of Members and/or Mortgagees;
- (n) the preparation, printing and postage of distribution statements;
- (o) Liabilities, including interest, discount and acceptance fees and all other borrowing costs and like amounts;
- (p) swaps, forward rate agreements, currency exchange agreements, securities lending agreements or any derivative transactions entered into by or on behalf of the Entity as trustee;
- (q) the operation and development of computer facilities (both software and hardware) and the use of computerised or electronic communication or information networks (including, without limitation, the Internet) in relation to the Fund or its administration or management;
- (r) complying with the requirements of any law in relation to the Fund or its administration or management;
- (s) communications (printed, electronic or otherwise) with Members;
- (t) the fees of the Auditor and of the Compliance Plan Auditor;
- (u) the establishment and operation of the Compliance Committee (including the selection and appointment of CC Members). Without limitation this includes the fees paid to and any costs and expenses (including insurance premiums) of any member of a Compliance Committee;
- (v) the cost of any legal, accounting or other professional advice commissioned by the Compliance Committee;
- (w) the establishment and administration of the complaints handling procedures referred to in clause 20; and
- (x) the listing of the Fund on any stock exchange.

For the avoidance of doubt, nothing in clause 16.8 limits the generality of anything else in clause 16.8.

Clause 16.8 applies to costs, fees, expenses and other amounts whether or not they are payable to the Entity (acting in another capacity) or an associate of the Entity.

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

16.9 Deferral

The Entity may defer reimbursement of any or all expenses under clause 16.8 for any period.

16.10 Acquisition Fee¹³

The Entity is entitled to an Acquisition Fee of a maximum of 1% of the purchase price of new Assets, payable from the Assets following the acquisition.

16.11 Removal Fee¹⁴

- (a) The Entity is entitled to a Removal Fee of a maximum of 1% of Gross Asset Value for the proper performance of its duties as Entity and responsible entity if the Entity is removed or retires, unless the replacement responsible entity is a Related Body Corporate of the Entity.
- (b) The Removal Fee is payable from the Assets as soon as possible following the removal of the Entity.

17 Termination

17.1 Procedure

- (a) On termination of the Fund, the Entity must realise the Assets as soon as practicable. The Entity is entitled to postpone the realisation of any of the Assets for any time it thinks is desirable having regard to the interests of the Members.
- (b) The Entity will not be responsible for any loss or damage attributable to that postponement except if and to the extent expressly provided for in clause 14.5.

17.2 Final distribution

Subject to clause 17.5, the net proceeds of realisation of the Assets, after discharging or providing for all Liabilities of the Fund (including fees payable to the Entity) and meeting the expenses (including anticipated expenses) of termination, must be distributed pro rata to Members according to the number of Units they hold, but the Entity may make provision for contingent liabilities as it considers fit.

17.3 Post termination

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

17.4 Audit of Final Accounts

The accounts of the Fund on termination must be audited by an independent registered company auditor.

¹³ Clause 16.10 was inserted by supplemental deed dated 23 October 2019 (Document 9).

¹⁴ Clause 16.11 was inserted by supplemental deed dated 23 October 2019 (Document 9).

17.5 Asset distribution

The Entity may transfer Assets to a Member rather than pay cash or part of the cash otherwise payable as a termination entitlement under clause 17.2. These Assets and any cash payment must be of equal value to the termination entitlement (or relevant portion) due to the Member. The value of the Assets must be based on a valuation as at the date of termination of the Fund. The cost of transfer of the Asset may be deducted from the value of the Assets transferred. A Member has no right to require the transfer of Assets under this clause 17.5.

18 Amendments to Constitution

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

19 Securities and other interests in Units

19.1 Entry of Mortgagee on Register

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

19.2 Acknowledgements and agreements

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

19.3 Removal of Mortgagee from Register

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

19.4 Mortgagee of Units being transferred

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

19.5 Rights attaching to Mortgaged Units

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

- (a) to receive any or all distributions, whether on winding up or otherwise and whether of capital or of income (including in each case without limitation by the issue of Units), which would, in the absence of such entry, have been made or paid to the relevant Member;

- (b) to make any request or application in relation to the relevant Units and to receive any notice, or other document or correspondence which would ordinarily be made or received by such Member; and
- (c) to receive notice of any meeting of Members convened by the Entity and to attend and vote at any such meeting in place of the relevant Member.

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

19.6 Priority for Entity

Any interest in, rights against or security granted over:

- (a) the Units of a Member; or
- (b) any distribution or any proceeds of redemption in connection with those Units, held by the Member or a third party is subject to and ranks in priority after any right of the Entity to be paid amounts due to the Entity out of distributions or redemption proceeds payable to the Member.

20 Complaints

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

- (a) The Entity must seek to resolve each Complaint promptly and in a fair and equitable manner. In resolving each Complaint, the Entity must follow the procedure set out in this clause and must do so without charge to the Member who made the Complaint.
- (b) The Entity must record each Complaint in the register to be kept by the Entity for that purpose. Each Complaint made orally must be summarised by the person, being a representative or employee of the Entity, who receives the Complaint and that summary must be kept in the records of the Fund for 7 years. Each Complaint made in writing must be kept in the records of the Fund for 7 years.
- (c) The Entity must promptly acknowledge, orally or in writing, receipt of each Complaint (**Acknowledgment**) unless the Entity has made its First Response (defined in sub-clause (e)) to the Complaint within 48 hours from receipt of the Complaint.
- (d) The Entity must consider each Complaint and, if necessary to resolve the Complaint, investigate the events or circumstances which led to the Complaint.
- (e) The Entity must respond, orally or in writing, to each Complaint, with a view to resolving the Complaint (**First Response**), within 45 days from receipt by it of the Complaint. The First Response must include the Entity's reasons for its response. If the Entity has not completed its consideration of and/or investigation into a Complaint within the time necessary to enable it to comply with this sub-clause:
 - (i) the Entity must within 45 days from receipt by it of the Complaint so inform the Member who made the Complaint (**Interim Response**), advise the Member of the reasons for the delay, undertake to complete its consideration of and/or investigation into the Complaint within a further 45 days and to then respond, in writing, to the Complaint; and
 - (ii) the Entity must respond to the Complaint, with a view to resolving the Complaint, within the period referred to in sub-clause (i) (**Final Response**). The Final Response must include the Entity's reasons for its response.

- (f) In its First Response, or if sub-clauses (e)(i) or (e)(ii) apply in its Interim Response and in its Final Response, the Entity must inform the Member who made the Complaint of the availability of external complaints handling mechanisms (if any).
- (g) Every decision of the Entity on Complaints and every Acknowledgment, First Response, Interim Response and Final Response must be recorded, in writing, in the records of the Fund and must be kept there for seven years.
- (h) All written communications by the Entity relating to a Complaint must be addressed to the Member who made the Complaint at the address given by such Member or, if no address is so given, at the address of the Member recorded In the Register of Members.

21 Compliance Committee Members

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

22 Severability

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

23 If Fund ceases to be registered

23.1 De-registration

- (a) if the Fund is a Stapled Entity and ~~the Master Scheme~~ is a registered scheme, the Entity may apply to ASIC to deregister the Fund under Chapter 5C of the Corporations Act.
- (b) If the Fund has ceased to be a registered scheme, the Entity may apply to ASIC for the Fund to be registered as a managed investment scheme under Chapter 5C of the Corporations Act.

23.2 Meetings if Fund not registered

If the Fund is not a registered scheme, the provisions of this Constitution and of the Corporations Act to do with meetings of Members of a registered scheme apply to meetings of Members as if the Fund was a registered scheme, varied as provided by clauses 13.2 to 13.11.

24 Proposals for Stapling, Listing or Restructure

~~24.1 Issuer Fee~~

~~24.2 Upon implementation of the Scheme Proposal by Stapling, and when the Stapling is complete, the Entity is entitled to receive an issuer fee equal to 0.25% of the Gross Asset Value as at 30 June 2006.~~

~~24.3~~ 24.1 Stapling mechanics and implementation

The following provisions apply for implementing a Proposal ~~(including the Scheme Proposal)~~:

- (a) The Entity may do everything it reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit of a particular Class or Classes or other security or un-Staple a Unit or other security.
- (b) The Entity (in any capacity, including as responsible entity of the Fund, or a Stapled Entity or another scheme or trust):
 - (i) is appointed irrevocably as agent and attorney of each Member to sign any document or do anything the Entity reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit of a particular Class or Classes or other security or un-Staple a Unit or other security; and
 - (ii) may (as agent or attorney of the Member) on behalf of the Member:
 - (A) receive and apply returned capital or redemption proceeds from the Fund, or from a Stapled Entity of another scheme, trust or entity (including to repay borrowings of the Member or to apply for a unit or other security);
 - (B) apply for a unit, share or interest in a Stapled Entity or proposed Stapled Entity, or in another scheme, trust, company or entity, including copying or deriving an application form from a PDS or prospectus given to the Member, using personal information such as name, address, date of birth and tax file number of the Member to complete the application on behalf of the Member, giving a consent under any legislation about privacy or email communication and consenting to be bound by the constitution of a Stapled Entity or proposed Stapled Entity, or of another scheme, fund, company or entity (which may include provisions like this clause 24 for such matters as implementing further Proposals); [and](#)

- (C) receive an offer of an opportunity to withdraw from the Fund or from a Stapled Entity, or from another scheme, and accept such a withdrawal offer ~~and~~

~~(D) consent to be bound by the Constitution of the Master Scheme (and that Constitution may include provisions like this clause 24 for such matters as implementing further Proposals).~~

- (c) The Entity may enter into a deed or agreement (including with the responsible entity of another scheme or with a company or other entity) for implementing a Proposal for or for the conduct of Stapled Entities.

24.424.2 Listing

The Entity may apply to admit the Fund or any of the Stapled Entities to the official list of any stock exchange, or to remove them from such a list.

24.524.3 Limitation of liability of and indemnity for Entity

Subject to the Corporations Act, clauses 14.4, 14.4 and 14.6 and each other provision of this Constitution limiting the liability of the Entity, and clauses 9.4, 14.12 and 14.13 and each other provision of this Constitution indemnifying the Entity, apply in connection with:

- (a) a Proposal ~~(including the Scheme Proposal)~~ and giving effect to it;
- (b) a Stapling, the relationship created by a Stapling, or the cessation of a Stapling; and
- (c) an application for listing, or a listing, or a removal from listing.

24.6 Entity may indemnify Members of the Stapled Entities

~~24.7 The Entity may by payment from the Assets and on such terms as the Entity thinks fit indemnify any person who pursuant to the Scheme Proposal, or on application made pursuant to the initial product disclosure statement dated 28 October 2003 of the Fund concerned, becomes a holder of units in the Stapled Entities, from liability to pay duty in connection with:~~

~~24.8~~

~~24.9 any issue or transfer to that person of units in any trust in giving effect to the Scheme Proposal;~~

~~24.10 any issue to that person of units in any trust pursuant to the initial PDS of that trust; or~~

~~24.11 any acquisition of an interest in a trust by that person taken to have occurred upon redemption or cancellation of any unit in a Fund in giving effect to the Scheme Proposal, including a unit to which any of them is Stapled.~~

24.1224.4 Expenses of Proposal

The indemnity for expenses in clause 16.8 includes all expenses in connection with a Proposal ~~(including the Scheme Proposal)~~ or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling, and in connection with an application for listing, or a listing, or a removal from listing, such as due diligence, retaining experts or advisers and preparing information for a stock exchange or for Members.

24.1324.5 Paramount effect

Subject to clause 2.3, this clause 24 has effect despite any other provision of this Constitution and a provision of this Constitution that is inconsistent with this clause 24 does not have effect to the extent of the inconsistency.

25 Stapling

25.1 When Stapling applies

- (a) The Entity may by written notice declare that some or all Units of a particular Class or Classes or other securities in the Fund are Stapled to units or to other equivalent securities in one or more other managed investment schemes, trusts, companies or entities. Stapling pursuant to this clause 25 applies from the date of that declaration (or from a date specified by that declaration) despite any other provision of this Constitution. The date specified by the Entity may be earlier than the date of that declaration and if so:
 - (i) all units or other securities covered by that declaration are to be treated as if Stapling had occurred on the specified date: and
 - (ii) the Entity may determine that all units of the same Class or other securities of the same Class covered by that declaration are to rank equally in all respects from the specified date (even if the specified date precedes their date of issue).
- (b) The provisions of this clause 25 apply to securities other than units to the extent applicable if necessary changes are made.

25.2 Stapling continues despite changes in Stapled Entities

Stapling pursuant to this clause 25 continues to apply while any Unit remains Stapled to a unit in at least one other Stapled Entity, even if:

- (a) Units have ceased to be Stapled to units in one or more other Stapled Entities; or
- (b) Units have begun to be Stapled to units in a further Stapled Entity.

25.3 Units and units of each other Stapled Fund are Stapled

While Stapling pursuant to this clause 25 applies:

- (a) **(Units Stapled)** each Unit of the relevant Class or Classes is Stapled to a unit in each other Stapled Entity;
- (b) **(Unit dealings)** there must be no dealing or disposition of any kind in relation to the relevant Class of Unit unless there is also an identical dealing or disposition by the same parties with each unit of the same class in a Stapled Entity to which that Unit is Stapled;
- (c) **(offers of Units or securities)** the Entity must not offer that Class of Units or other securities for subscription or sale unless:
 - (i) it also offers, at the same time and to the same person, the same number of units of the same class or of equivalent other securities in each other Stapled Entity for subscription or sale; and
 - (ii) the offer is on condition that the offeree may not accept the offer unless the offeree also accepts the offer for units or for equivalent other securities in each other Stapled Entity;
- (d) **(Unit issues, sales)** the Entity must not issue or sell any Units of that Class to a person unless it at the same time issues or sells to that person the same number of units of the same class in each other Stapled Entity;
- (e) **(reorganisations)** the Entity must not consolidate, subdivide, cancel or reorganise Units of that Class unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the units of the same class in each other Stapled Entity;

- (f) **(Unit transfers)** a Member must not transfer a Unit of that Class to a person (and the Entity must not refer a transfer) unless at the same time the Member transfers to that person the same number of units of the same class in each other Stapled Entity;
- (g) **(Unit redemption)** the Entity must not redeem or buy back Units of that Class of a Member unless at the same time the same number of units of the same class of the Member in each other Stapled Entity are redeemed or bought back;
- (h) **(Unit transmission)** Units of that Class or other securities registered in the name of a Member are not capable of being transmitted to any person unless at the same time the same number of units of the same class or of equivalent other securities registered in the name of the Member in each other Stapled Entity are transmitted to that person;
- (i) **(price for issue or redemption of a Stapled Security)** a Stapled Security may be issued or redeemed for a price calculated by aggregating the price for the issue or redemption of a Unit of that Class in the particular circumstances fixed by this Constitution with the price for issue or redemption of a unit of the same class in each other Stapled Entity in those circumstances fixed by their [cConstitutions](#);
- (j) **(allocation of money received or paid for Stapled Securities among Stapled Entities)** the Entity may apply money received for the issue of Stapled Securities to the Stapled Entities or pay money for the redemption of Stapled Securities from the Stapled Entities in proportion to the Net Asset Value of the Fund and the net asset values of the other Stapled Entities worked out under their [cConstitutions](#), or may apportion the receipts or payments between the Stapled Entities as the Entity thinks fit;
- (k) **(apportionment of Application Price of Stapled Securities)** the Entity may apportion the Application Price of a Stapled Security between a Unit of the relevant Class and a unit in each other Stapled Fund as the Entity sees fit, but if the Entity makes no apportionment or is not permitted by law to make an apportionment in its discretion, the Application Price of a Stapled Security must be apportioned between the Unit and the units of the same class in each other Stapled Entity comprising the Stapled Security in the same proportions as the Net Asset Value of the Fund bears to the net asset values of the other Stapled Entities worked out under their [cConstitutions](#);
- (l) **(alternative calculation of prices)** subject to the Corporations Act, the Entity may keep valuation records and financial records for the Stapled Entities as an economic entity and may use the net scheme value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of aggregating the unit values of the units comprising a Stapled Security;
- (m) **(regard to interests of holders in Stapled Entities)** in exercising its powers or discretions or performing its functions under this document or in relation to the Fund, the Entity may as it sees fit:
 - (i) take into account the interests of holders of units in Stapled Entities other than the Fund; and
 - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Members;
- (n) **(discretion may be fettered)** the Entity may in connection with the Stapling fetter its discretions under this document or in relation to the Fund, as it thinks fit, including by agreeing to consult with, or obtain the consent of, a person administering another Stapled Entity;
- (o) **(compromises)** the Entity may with the responsible entity of any other Stapled Entity compromise:

- (i) any allocation of assets property, liabilities, expenses or remuneration between the Fund and any Stapled Entity;
 - (ii) any allocation of application money for Units of the relevant Class and units of the same class in any other Stapled Entity; or
 - (iii) any other matter between the Fund and a Stapled Entity that the Entity considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling.
- (p) **(guarantees)** the Entity may in connection with the Stapling or the relationship created by the Stapling given any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including the responsible entity of any other Stapled Entity;
 - (q) **(security for guarantees)** the Entity may if it thinks fit give security for any such guarantee or indemnity or other liability over all or any part of the Assets;
 - (r) **(consideration)** the Entity may if it thinks fit in connection with the Stapling or the relationship created by the Stapling exercise all or any of its powers whether or not there is consideration or benefit for the Fund and either alone or jointly with any person including the responsible entity of any other Stapled Entity or as responsible entity of any other Stapled Entity, and may assume joint and several or several liability in respect of any joint exercise of these powers;
 - (s) **(cooperative operation)** the Entity may cooperate with the responsible entity of any other Stapled Entity to facilitate the operation of the Stapled Entities as an economic entity for the benefit of Members and of Members in each Stapled Entity;
 - (t) **(Register of Members)** a Member must provide to the Entity the same personal information for the Register of Members and for the register of members of each other Stapled Entity and the Entity may conduct the Register of Members and issue holding statements jointly with the responsible entity of each other Stapled Entity;
 - (u) **(proxy forms)** a Member must, if the Entity so determines, use a form of proxy to appoint the same proxy to vote on their behalf in respect of both a Unit of the relevant Class and a unit of the same class in each other Stapled Entity;
 - (v) **(resolutions at meetings)** the Entity may arrange for meetings of Members and meetings of Members of each other Stapled Entity to be held concurrently and may determine that a vote cast on a resolution by or on behalf of a Member is to be treated also as a vote cast for an equivalent number of that Member's units of the same class in each other Stapled Entity; and
 - (w) **(amendment)** an amendment of this Constitution that directly affects the terms on which a Unit of the relevant Class is held is of no effect unless the units of the same class of each other Stapled Entity are affected in the same way.

25.4 Conduct of Stapled Entities

To the extent permitted by law, the Entity must cooperate with the responsible entity of each other Stapled Entity in everything relating to the Stapled Entities and the Fund. Without limitation, the Entity must do everything needed on its part to ensure that the Fund and the other Stapled Entities:

- (a) **(accounting policies)** adopt consistent accounting policies;
- (b) **(valuation policies)** adopt consistent valuation policies;
- (c) **(proposed investments)** take a consistent approach on proposed investments;

- (d) **(meetings)** hold Members' meetings concurrently or, where necessary, consecutively;
- (e) **(new issues, redemptions)** agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs;
- (f) **(value)** consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (g) **(distribution)** co-ordinate the announcement and payment of distributions;
- (h) **(reinvestments)** co-ordinate any distribution re-investment plan; and
- (i) **(reports)** report to Members consistently and at the same times.

25.5 Unstapling

The following provisions apply for cessation of Stapling:

- (a) The Entity may by written notice declare that Stapling ceases to apply to some or all Units or other securities in the Fund immediately, or upon a stated day.
- (b) Stapling will automatically cease to apply to all Units in the Fund if:
 - (i) the Fund terminates in accordance with clause 4.2;
 - (ii) the units in any Stapled Entity to which the Units are Stapled cease for any reason to be transferable only with Units; or
 - (iii) the law prohibits the Stapling.
- (c) The Members may, by special resolution, determine that Stapling will cease to apply to some or all Units in the Fund.
- (d) If Stapling ceases to apply to a Unit, the preceding provisions of this clause 25 then cease to apply to that Unit.
- (e) If Stapling ceases to apply to all Units in the Fund, the Entity must do everything reasonably necessary to give effect to the cessation of Stapling, including:
 - (i) amending any records of the Fund;
 - (ii) transferring any property or paying any Tax; and
 - (iii) giving directions or consents to any Stapled Entity to which Stapling will cease to apply, or to the custodian or responsible entity that holds the assets or property of such a Stapled Entity.

25.6 Paramount effect

Subject to clause 2.3, this clause 25 has effect despite any other provision of this Constitution and a provision of this Constitution that is inconsistent with this clause 25 does not have effect to the extent of the inconsistency.

26 — Master Scheme

26.1 — Master Scheme

~~While Stapling applies, the Entity may do all that is needed on its part to obtain or maintain registration of all Stapled Entities as one managed investment scheme under Part 5C of the Corporations Act, including:~~

~~(b) — (modifying Master Scheme Constitution) modifying the Constitution of the Master Scheme as the Entity sees fit to implement the Scheme Proposal; or~~

~~(c) — (commitment to Master Scheme Constitution) committing Members to be bound by the Constitution of the Master Scheme.~~

26.2 — Conduct of Master Scheme

~~To the extent permitted by law, while the Master Scheme is registered under Part 5C of the Corporations Act, the Entity must cooperate with the responsible entity of the Master Scheme and the responsible entities of each other Stapled Entity in everything relating to the Stapled Securities and the Master Scheme. Without limitation, the Entity must do everything needed on its part to ensure that the Fund, the other Stapled Entities and the Master Scheme:~~

~~(a) — (accounting policies) adopt consistent accounting policies;~~

~~(b) — (valuation policies) adopt consistent valuation policies;~~

~~(c) — (proposed investments) take a consistent approach on proposed investments;~~

~~(d) — (meetings) hold Members' meetings concurrently or, where necessary, consecutively;~~

~~(e) — (new issues, redemptions) agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy backs;~~

~~(f) — (value) consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;~~

~~(g) — (distribution) co-ordinate the announcement and payment of distributions;~~

~~(h) — (reinvestments) co-ordinate any distribution re-investment plan; and~~

~~(i) — (reports) report to Members consistently and at the same times.~~

26.3 — Indemnity in respect of Master Scheme

~~The Entity must to the extent permitted by law indemnify the responsible entity of the Master Scheme out of the property of the Fund on a full indemnity basis for all expenses and liabilities which the responsible entity of the Master Scheme may incur in connection with the Master Scheme or in performing its obligations or exercising its powers under the Constitution of the Master Scheme, including:~~

~~(a) — for liability to provide an indemnity for any agent, delegate or compliance committee Member in relation to the Master Scheme; and~~

~~(b) — reimbursement or indemnity in connection with all matters of the kind listed in clause 16 as if they referred to the Master Scheme rather than to the Fund.~~

26.4 — Constitution of Master Scheme paramount

~~Subject to clause 2.3, while the Master Scheme is a registered managed investment scheme under Part 5C of the Corporations Act, a provision of this Constitution is of no force or effect to the extent that it contradicts or is inconsistent with a provision of the Constitution of the Master Scheme.~~

27.26 Provisions in schedule apply for listing

27.126.1 While the Fund is listed

- (a) While the Fund is admitted to the official list of a stock exchange, the provisions set out in Schedule 2 to this Constitution apply and prevail over the other provisions of this Constitution to the extent of any inconsistency.
- (b) If that stock exchange is not ASX (as defined in Schedule 2), references in Schedule 2 to ASX are to be read as references to that stock exchange and Schedule 2 applies with any wording changes that need to be made to apply Schedule 2 to that stock exchange instead of to ASX.

28.27 The Fund as an Attribution Managed Investment Trust¹⁵

28.127.1 Application of this clause 28.1

- (a) The provisions of this clause 27.128.1 apply at all times during the life of the Fund and prevail over any other provisions of this constitution to the extent of any inconsistency.
- (b) In this Constitution:

AMIT means, in respect of a Financial Year, an attribution managed investment trust as defined in the 1997 Act;

AMIT Election means a choice/election made by the Entity under the 1997 Act for the AMIT Regime to apply to the Fund or to a class of Units of the Fund (if any); and

AMIT Regime means the regime for the taxation of AMITs as set out in the Tax Act.
- (c) The Entity may, in its absolute discretion, make an AMIT Election for the Fund with effect from the commencement of any Financial Year of the Fund. Nothing in this clause 27.1(c)28.1(e) requires the Entity to make an AMIT Election or to otherwise cause the Fund to enter into the AMIT Regime.
- (d) Clauses 27.228.2 to 27.528.5 (both inclusive) shall apply in relation to each Financial Year for which the Fund is an AMIT but not otherwise. Whilst such provisions apply, they will prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (e) The Entity shall have the power to take any action which it reasonably believes is necessary or desirable to:
 - (i) enable the Fund to qualify as an AMIT (subject always to the Corporations Act);
 - (ii) allow it to make an AMIT Election in respect of the Fund; and
 - (iii) administer the Fund in a Financial Year for which it intends to make an AMIT Election on the basis that clauses 27.228.2 to 27.528.5 (both inclusive) apply even if an AMIT Election has not yet been made in respect of that Financial Year.
- (f) In addition to, and without limiting clause 14, to the maximum extent permitted under the Corporations Act, the Entity is not obliged to account to anyone (including any Member) nor is it liable for any loss or damage as a result of any matter, act or thing done or omitted to be done by a Member in relation to the way in which the Entity attributes the taxable income of the Fund under the AMIT Regime.

¹⁵ Clause 28 was inserted by supplemental deed poll dated 13 June 2017 (Document 8).

- (g) Subject always to the Corporations Act, if a Member takes a position in its tax return that is inconsistent with the way that the Entity attributes or purports to attribute the taxable income of the Fund under the AMIT Regime, that Member shall, if required by the Entity, indemnify the Entity against all costs, expenses and liabilities that the Entity incurs in resolving the inconsistency including the payment of any Taxes that the Entity determines (acting reasonably) relate to that Member or to an amount that the Entity attributes or purports to attribute to that Member.
- (h) The indemnity contained in this clause ~~27.1(f)~~~~28.1(g)~~ applies without limiting any other right of indemnity contained in this Constitution (and they are in addition to, and not in substitution for, those other indemnities).
- (i) Subject always to the Corporations Act (including section 601GA(2)(b)), the Entity is indemnified and entitled to be reimbursed out of or paid from the Assets for any costs, expenses or liabilities relating to the application or purported application of the AMIT Regime to the Fund including any Tax that become payable by the Entity under the AMIT Regime or as a result of the AMIT Regime not applying to the Fund and including the cost of resolving any disputes with Members or former Members in relation to the way that the AMIT Regime applies to the Fund.

The indemnities contained in this clause ~~27.1(g)~~~~28.1(h)~~ apply without limiting any other right of indemnity contained in this Constitution (and they are in addition to, and not in substitution for, those other indemnities). For the avoidance of doubt, the Entity is entitled to be fully indemnified under this clause ~~27.1(g)~~~~28.1(h)~~ without calling on the indemnity in clause ~~27.1(f)~~~~28.1(g)~~.

~~28.2~~27.2 **AMIT Regime definitions**

In this Constitution:

Attribution Amount in respect of a Financial Year, means any amount calculated by the Entity to be fair and reasonable and attributed to a Member for the purposes of Division 276 of the 1997 Act, and may include or be adjusted by:

- (a) components of income character;
- (b) components of tax offset character;
- (c) any amount the Entity determines; and
- (d) Unders or Overs.

Determined Trust Component means a determined trust component as defined in the 1997 Act.

Over has the meaning given to that word in the 1997 Act.

Under has the meaning given to that word in the 1997 Act.

~~28.3~~27.3 **AMIT powers**

Subject always to the Corporations Act, in addition to its other rights and powers included in this Constitution, the Entity has all of the powers and rights which are necessary or desirable to:

- (a) enable the Entity to comply with the AMIT Regime and to do all such things which it is empowered or required to do under the AMIT Regime;
- (b) enable the Entity to operate and administer the Fund under the AMIT Regime; and
- (c) ensure that there is an appropriate and equitable application of the powers and rights of the Entity and Members that arise under the AMIT Regime.

28.4~~28.4~~27.4 Attribution

- (a) Where the Entity has made a choice in accordance with the 1997 Act to treat a Class of Units as a separate AMIT, this clause ~~27.4~~28.4 applies to each Class of Unit of the Fund that is a separate AMIT.
- (b) The Entity must, following the end of a Financial Year, attribute each Determined Trust Component of a particular character for the Financial Year to Members in a way that is fair and reasonable having regard to the amount and character of Distributable Income that has been distributed to those Members in respect of the Financial Year including any Distributable Income that the Entity determines forms part of the amount distributed to a Member upon withdrawal or redemption of some or all of their Units.
- (c) The Entity may determine that some or all of the proceeds of a withdrawal or redemption of Units includes an amount of Distributable Income in a way that is fair and reasonable having regard inter alia to any income or gains (including unrealised gains) that have accrued to the Fund at the time of withdrawal or redemption but have not yet been distributed.
- (d) Where a Determined Trust Component of a particular character for a Financial Year is increased as a result of an Under or decreased as a result of an Over, that increase or decrease shall be attributed to Members in proportion to their share of Distributable Income for the Financial Year.
- (e) In the event that there is no Distributable Income for a Financial Year, each Determined Trust Component for the Financial Year shall be attributed to persons who are Members at the end of the Financial Year in proportion to their Units.

28.5~~28.5~~27.5 Consequential amendments to other provisions of Constitution

- (a) The definition of 'Tax Act' in clause ~~04~~04 of Schedule 1 is deleted and replaced with: '**Tax Act** means the Income Tax Assessment Act 1936 (Cth) (**1936 Act**), the Income Tax Assessment Act 1997 (Cth) (**1997 Act**) and the Taxation Administration Act 1953 (Cth) (**1953 Act**), as appropriate, and any subordinate legislation in relation to those pieces of legislation.'
- (b) The definition of 'Distributable Income' in clause ~~04~~04 of Schedule 1 is amended by deleting 'and 11.2'.
- (c) Delete clause 11.2.
- (d) In clause 11.3, replace the reference to 'clauses 11.1 or 11.2' with 'clause 11.1'.
- (e) In clause 11.4, insert after the words 'for a Financial Year' the following: '(reduced by any Distributable Income that forms part of amounts distributed to Members upon withdrawal or redemption of some or all of their Units during the Financial Year)'.
- (f) In clauses 11.5(a) and (b), replace the reference to 'Distribution Income' with 'Distributable Income' in the definitions of D.
- (g) In clause 11.5(b), add the following at the end of the definition of D: 'and any Distributable Income that forms part of amounts distributed to Members upon withdrawal or redemption of some or all of their Units during the Financial Year'.
- (h) Delete clause 11.12.

~~RPF/DPF Restructure Proposal¹⁶~~

~~Defined terms~~

~~In this clause 29, these words and phrase have the following meaning unless the contrary intention appears:~~

~~AUFML means Australian Unity Funds Management Limited~~

~~Explanatory Memorandum means the explanatory memorandum enclosed with the notice of meeting dated 23 September 2019 issued by the Entity to the members in relation to the Restructure.~~

~~Implementation Deed means the Implementation Deed dated on or about 21 October 2019 between the Entity and AUFML in its capacity as responsible entity for each of the RPF Schemes.~~

~~Restructure means the proposal to transfer all of the units in the RPF Schemes to the Entity, in exchange for which the members of the RPF Schemes will be issued the Restructure Units, as set out in the Explanatory Memorandum and the Implementation Deed.~~

~~Restructure Fee Period means the period commencing from the end of the previous Fee Period prior to the Restructure and ending the day prior to the Restructure Issue Date.~~

~~Restructure Issue Date means the date of the issue of the Restructure Units as part of the Restructure.~~

~~Restructure Units means the Units to be issued to members of the RPF Schemes as detailed in the Explanatory Memorandum.~~

~~RPF Schemes means:~~

~~Australian Unity Retail Property Fund ARSN 133 632 765;~~

~~Australian Unity Retail Property Trust ARSN 086 218 199;~~

~~Australian Unity Property Syndicate — East West Retail ARSN 091 941 061; and~~

~~Australian Unity Gillies Street Trust ARSN 103 267 447~~

~~Power to implement the Restructure~~

~~Subject to section 601FC of the Corporations Act, the Entity is empowered to do all things which it considers necessary, desirable or reasonably incidental for the purpose of implementing or effecting the Restructure, including;~~

¹⁶ Clause 29 inserted by supplemental deed dated 23 October 2019 (Document 9)

~~determining the form of and accepting applications for Restructure Units made by AUFML as the responsible entity of the RPF Schemes on behalf of the members of the RPF Schemes;~~

~~issuing the Restructure Units; and~~

~~registering the holders of the Restructure Units,~~

~~and these powers apply notwithstanding and are not limited by any other provision of this Constitution.~~

Entity's limitation of liability

~~In addition to all other rights of the Entity under this Constitution and at law, the Entity will be indemnified out of the Fund from and against any claim, demand, cost, expense, damage, loss and liability that may be suffered or incurred by them in relation to or arising out of the Restructure.~~

Entity not liable

~~Notwithstanding any other provision of this Constitution, the Entity will not be liable to any Member in any way, arising directly or indirectly as a result of the Entity doing or refraining from doing any act (including the execution of documents) pursuant to or in connection with the Restructure or its implementation.~~

Invalidity, Ineffectiveness or unenforceability

~~Clauses 29.3 and 29.4 extend to all liabilities, claims, demands, costs, expenses, damages and losses arising in connection with any Invalidity, Ineffectiveness or unenforceability of any aspect of the Restructure or its implementation except to the extent that such loss is attributable to the Entity's own negligence.~~

Performance fee

~~Immediately prior to the Issue of the Restructure Units, the Entity shall be entitled to a Performance Fee.~~

~~For the purposes of the Performance Fee in clause 29.6(a), the Fee Period will be the Restructure Fee Period.~~

~~The Performance Fee in clause 29.6(a) will be paid from the Assets in the manner end at the time as the Entity may choose.~~

Paramountcy

~~This clause 29 has effect irrespective of any other provision of this deed and any provision of this deed which is inconsistent with this clause 29 does not operate to the extent of the inconsistency.~~

Amendments to this Constitution

~~The amendments to this Constitution to give effect to the Restructure are binding on all Members, including those Members who:~~

~~did not attend the meeting of the Members to consider the Restructure;~~

~~attended the meeting the Members, or whose proxy attended the meeting of Members of the Fund, to consider the Restructure but did not vote on the Restructure;~~

~~attended the meeting of Members, or whose proxy attended the meeting of Members of the Fund, to consider the Restructure but voted against the Restructure; and~~

~~were not Members at the time of the meeting.~~

Schedule 1 Dictionary

1 Dictionary

Acquisition Fee means the fee described in clause 16.10.¹⁷

Application Amount means in respect of an application for Units, an amount equal to the cash payment accompanying that application or (as the case may be) the market value of the Property as determined by the Entity.

Application Price has the meaning given to it in clause 8.1, clause ~~26~~²⁷ and clause 5.5 of Schedule 2 where appropriate.

ASIC means the Australian Securities and Investments Commission and includes any body which replaces the Australian Securities and Investments Commission.

ASIC Instrument means each of the following:

- (a) an exemption or declaration under the Corporations Act Part 5C.11; or
- (b) an instrument issued by ASIC under a power of ASIC that applies or relates to the Entity.

Assets means all the property, rights and income of the Fund, but not:

- (a) application money or property in respect of which Units have not yet been issued;
- (b) proceeds of redemption which have not yet been paid;
- (c) distributions which have not yet been paid; or
- (d) any amount to which a Member is presently entitled.

ASX means ASX Limited (ACN 008 624 691) or the securities exchange which it operates, as the context requires.

Auditor means the auditor for the time being of the Fund.

~~**AUDPF** means Australian Unity Diversified Property Fund.⁴⁸~~

Base Fee means the Fee described in clause 16.2.

Business Day means a day on which the Entity is open for business in ~~Sydney~~^{Melbourne}.

Calculation Date means the last day of each Financial Year and any other day the Entity determines.

CC Member means a member of the Compliance Committee.

Class means a class of Units. Until the Entity determines to create a class, all Units will be taken to be of the same class.

¹⁷ This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).

~~⁴⁸ This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).~~

Complaint means an expression of dissatisfaction, whether oral or written, by a Member in relation to the Fund, communicated to the Entity.

Compliance Committee means the committee (if any) established by the Entity pursuant to section 601JA(1) of the Corporations Act.

Constitution means the provisions of this Deed Poll as amended from time to time.

Contribution Fee means the fee described in clause 16.4.

Corporations Act means the *Corporations Act 2001* (Cth).

Distributable Income means the amount determined under clauses 11.1 and 11.2.

Distribution Period means:

- (a) for the first Distribution Period, the period from the commencement of the Fund to any date determined by the Entity;
- (b) for the last Distribution Period, the period beginning the day after the preceding Calculation Date to the date of termination of the Fund; and
- (c) in all other circumstances, the period beginning on the day after the preceding Calculation Date to the next occurring Calculation Date.

Entity means:

~~(a) — Australian Unity Property Limited;~~

~~(b) (where Australian Unity Property Limited is not the Entity)~~ any person appointed in accordance with the Corporations Act as responsible entity or temporary responsible entity for the Fund.

Expert Determination means a statement of the appropriate methodologies, policies or principles to be applied in determining the ~~a~~ market value of an Asset or the amount of a Liability provided by a qualified accountant or another person reasonably believed by the Entity to be expert in relation to the subject matter of the statement.

Expenses includes expenses, costs, charges, fees, commissions, taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

Fee Period means (unless the Entity determines another period):

- (a) the period from 21 August 2006 to 30 June 2007; and
- (b) the period commencing from the end of the last Fee Period and ending on the day prior to the Restructure Issue Date; and otherwise
- ~~(e) — each successive period of 12 months ending on 30 June.¹⁹~~
- (c) **Financial Year** has the meaning given in the Corporations Act.

¹⁹ The definition of Fee Period was amended by supplemental deed dated 23 October 2019 (Document 9) to remove the words “then each successive period of 12 months ending on 30 June” and insert (b) and (c).

Fund means the trust constituted in this Constitution.

Gross Asset Value means the aggregate gross value of the Assets including assets of the Fund's Controlled Entities.

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

Income Entitlement means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 11.5.

Issuer Fee means the fee described in clause 24.1.

Liabilities means all present liabilities of the Fund, including any provision taken into account in accordance with the methodologies, policies or principles outlined in the most recent Expert Determination obtained by the Entity (if any), but not liabilities:

- (a) attached to application money or Property in respect of which Units have not been issued; or
- (b) to Members, arising by virtue of any right conferred on Members under this Constitution to request redemption of their units or to participate in the distributions of the Assets on winding up of the Fund,

but redemption proceeds payable in respect of Units that have been redeemed are Liabilities.

Liquid has the same meaning as in the Corporations Act.

Listing Rules means the listing rules of ASX, and any other rules of ASX that apply while the Fund is admitted to the Official List, except to the extent of any express waiver by ASX.

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

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Entity believes that the calculation in paragraph (a) does not provide a fair reflection of the Market Price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Entity does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the Market Price of a Unit on that Business Day, the price determined by an expert whose identity and instructions are to be determined by the Entity.

Market Value of an Asset means the value determined by reference to the methodologies, policies or principles outlined in the most recent Expert Determination obtained by the Fund (if any).

~~**Master Scheme** means Westpac Diversified Property Fund ARSN 119 620 674.~~

Member of the Fund means the person for the time being Registered under this Constitution as the holder of any Units in the Fund and includes persons jointly so registered who will be deemed to hold their Units as joint tenants.

Mortgagee means a mortgagee or chargee of Units entered in the Register of Members pursuant to clause 19 and any employee, officer or agent of the Mortgagee appointed by the Mortgagee.

Net Assets means the Assets less the Liabilities calculated in accordance with clause 8.

Net Asset Value means the value of the Net Assets.

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

Officially Quoted means quoted on the Official List, including the situation where any such quotation is suspended for continuous period not exceeding 60 days.

Performance Fee means the fee described in clause 16.3.

Prescribed Time means 4:00pm EST on a Business Day or such other time on a Business Day as the Entity determines.

Property means any legal or equitable estate or interest in real or personal property other than cheques or cash equivalents acceptable to the Entity.

Proposal means a proposal for Stapling, ~~including the Scheme Proposal~~, or a proposal for cessation of Stapling, or a proposal for listing the Fund or the Stapled Entities on a stock exchange.

~~**Public Offer** means the offer to investors of the shortfall not take up by Members under a rights issue offer to occur from November 2010 to December 2010.²⁰~~

Qualified Investor means a person whose holding of Units, in isolation or in combination with the holding of Units by one or more other persons, would not in the opinions of the Entity result in the Fund being adversely affected for stamp duty purposes. For this purpose, the Fund being "adversely affected for stamp duty purposes" means that, for the purposes of the stamp duties legislation applicable from time to time in any Australian state or territory, the Fund becomes, or ceases to be, characterised or classified in a particular way such that, in either case, the issue, transfer, or redemption of Units attracts a liability for stamp duty which would not otherwise have applied.

Redemption Price has the meaning given to it in clause 8.9.

Redemption Request means a request by a Member to the Entity to redeem Units.²¹

Registered means recorded in the Register of Members.

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

Related Body Corporate has the meaning given in the Corporations Act.²²

Relevant Person means a person who at any time is, was or becomes a Member and that person's executors, administrators and successors.

Removal Fee has the meaning given to it in clause 16.11.²³

Required Majority except where this Constitution or any applicable law provides otherwise, means a simple majority and where this Constitution, [Listing Rule](#) or any applicable law provides otherwise means that majority specified in this Constitution, [Listing Rule](#) or applicable law.

²⁰ ~~This definition was inserted by supplemental deed dated 25 October 2010 (Document 4).~~

²¹ This definition was inserted by supplemental deed dated 2 September 2015 (Document 7)

²² This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).

²³ This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).

Resolution means:

- (a) a resolution passed at a meeting of Members:
 - (i) if a poll is required by the Corporations Act or is duly demanded, by the Required Majority of the number of Units held by Members present and voting on the poll, in person or by proxy; or
 - (ii) on a show of hands, by the Required Majority of Members present in person or by proxy; or
- (b) where the Corporations Act allows, a resolution or counterpart resolutions in writing signed by Members holding the Required Majority of the Units.

~~**Restructure** has the meaning given to it in clause 29.1.²⁴~~

~~**Restructure issue Date** has the meaning given to it in clause 29.1.²⁵~~

~~**Scheme Proposal** means the proposal detailed in a notice of meeting for a meeting of Members and accompanying information approved by the Entity on or about 18 July 2006, for certain trusts to be Stapled as Stapled Entities and for Members to become members of the Master Scheme.~~

Staple means:

- (a) for Stapled Entities, to link together each Stapled Entity;
- (b) for Units, to link together the rights and obligations which attach to one Unit with the rights and obligations which attach to one unit in each other Stapled Entity; and
- (c) for other securities, to link together the rights and obligations which attach to one other security of the Fund with the rights and obligations which attach to one equivalent other security in each other Stapled Entity.

Stapled Entity means the Fund and each other trust, company or entity to whose units, shares or other securities any units or other securities in the Fund are from time to time Stapled.

Stapled Security means a security formed by Stapling together one unit of the relevant Class and a unit of the same class in each other Stapled Entity.

Tax means the actual or anticipated taxes, duties, deductions and charges imposed by a government, together with interest and penalties.

Tax Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* where appropriate.

Taxation Amount in relation to a Relevant Person means:

- (a) an amount of Tax, bank fees or charges referable to the Relevant Person; and
- (b) an amount of Tax which the Relevant Person is or is expected to be primarily liable to pay.

Trading Day has the same meaning as in the Listing Rules.

²⁴ This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).

²⁵ This definition was inserted by supplemental deed dated 23 October 2019 (Document 9).

Transaction Costs Allowance means:

- (a) when calculating the Application Price of a Unit, an allowance towards the Entity's estimate of the cost per Unit of acquiring and selling Assets and issuing Units; and
- (b) when calculating the Redemption Price of a Unit, an allowance towards the Entity's estimate of the cost per Unit which would be incurred in selling Assets to make the redemption and redeeming Units,

provided that, subject to the law, the Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum, an estimated average percentage or zero.

Unit means an undivided share in the beneficial interest in the Fund as provided in this Constitution.

Valuation Time means a time at which the Entity calculates Net Asset Value.

Valuer means an independent qualified valuer appointed by the Entity.

VWAP means in respect of a Unit for a Trading Day, the value weighted average of the Unit prices for that ~~Business~~-Trading Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units, any overnight crossings and any other sales which the Entity reasonably considers may not be fairly reflective of natural supply and demand.

Withdrawal Offer means a withdrawal offer in accordance with sections 601KB-601KE of the Corporations Act.

2 Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words 'including' and 'for example' when introducing a list of items does not exclude a reference to other terms, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) headings and marginal notes are for convenience only and do not affect interpretation of this Constitution; and
- (h) a reference to "Stapling" a Unit or other security in the Fund to a unit or equivalent other security in another Stapled Entity Includes Stapling one Unit or other security to a fixed number of units (or other securities) in another Stapled Entity.

Schedule 2 ASX provisions

1 Schedule

1.1 Purpose of this schedule

This schedule contains provisions of the Constitution which apply if the Fund becomes listed on a stock exchange.

1.2 Paramount effect

When the provisions of this schedule apply, they prevail over the other provisions of this Constitution to the extent of any inconsistency.

1.3 Stock exchange

If the stock exchange in whose official list the Fund is included or on which securities of the Fund are officially quoted is not ASX, references to ASX are to be read as references to that stock exchange and this schedule applies with any wording changes that need to be made to apply this schedule to that stock exchange instead of to ASX.

1.4 When this schedule applies

This schedule begins to apply at the start of the day on which any Unit becomes Officially Quoted and ceases to apply at the end of the day on which Units cease to be Officially Quoted so that no Unit is Officially Quoted.

2 Listing Rules

2.1 Compliance with the Listing Rules

So long as the Fund [or the Stapled Entity](#) is admitted to the Official List, the following apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing 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 taken to contain that provision; if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision;
- (e) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

2.2 Official Quotation

While any Units are Officially Quoted, the Entity and each Member must comply with the provisions of the Listing Rules relevant to them.

3 Additional provisions for Units

3.1 Consolidation, division and reclassification of Units

The Entity may consolidate, divide or reclassify Units, as it thinks fit.

3.2 Classes of Units

- (a) Subject to paragraph (b), the Entity may divide issued Units into different Classes. The Entity must determine the terms and conditions applying to a Class of Units when it divides issued Units into different Classes, and such terms and conditions will prevail over the provisions of this Constitution to the extent of any inconsistency.
- (b) The Entity may not divide issued Units into different Classes if to do so would affect existing Members vested and indefeasible entitlement to the Assets.

3.3 Minimum holding

The Entity may determinate a minimum holding for Units, expressed in either or both dollar terms or number of Units.

4 Additional provisions for Stapling

4.1 Notices about Stapling

A notice of the Entity under clause 25 of the Constitution declaring that securities are Stapled or that Stapling ceases to apply may be in a document given to ASX.

4.2 Holding locks

While Stapling pursuant to clause 25 of the Constitution applies, the Entity must not apply a holding lock or ask ASTC to apply a holding lock to prevent transfer of a Unit of a Member unless it also applies or asks for a holding lock to apply to an equivalent number of units of that Member in each other Stapled Entity.

4.3 Market Price of a Unit in a Stapled Security

The allocation of the Market Price of a Stapled Security between the Unit and the unit in each other Stapled Entity must be determined as follows:

- (a) the Entity and the responsible entity of each other Stapled Entity may determine what part of the Market Price of the Stapled Security is to be allocated to the Unit and to the unit in each other Stapled Entity; and
- (b) unless otherwise determined by the Entity and the responsible entity of each of the Stapled Entities, the Market Price must be allocated in proportion to the Net Asset Value of the Fund and the net asset value of each other Stapled Entity under its Constitution at the relevant date.

4.4 Further provisions about Unstapling

- (a) If any Stapled Security is Officially Quoted, the Entity may only give a notice declaring that Stapling ceases to apply with the approval of Members by ordinary resolution.
- (b) The Members may, by special resolution, determine that Stapling ceases to apply to some or all Units in the Fund.

5 Issuing Units and Application Prices

5.1 Entity may issue Units

Subject to schedule clause 5.2, the Entity may issue a Unit. The issue may be on application or under an arrangement made by the Entity, for example, to reinvest distributions.

5.2 Issues to comply with Corporations Act and Listing Rules

The Entity must ensure that every issue of Units is subject to and in accordance with the Corporations Act, the Listing Rules and this Constitution.

5.3 Powers to issue Units are cumulative

A number of provisions of this Constitution give the Entity power to issue Units. Each of those provisions is to be given full effect, and none of those provisions limits any other such provision.

5.4 Underwriting of issue

- (a) The Entity may arrange for an offer for sale, subscription or issue of Units, or a distribution reinvestment plan or other arrangement ~~any of the following~~ to be underwritten by an underwriter.
- (b) The Entity may decide the terms of the underwriting.
- (c) The Entity or a related body corporate of the Entity or any of its or their associates may be the underwriter or a sub-underwriter.
- (d) The underwriter may take up, or cause any other person to take up, any Unit not subscribed for.
- (e) The Application Price for an issue to or at the direction of an underwriter must be the same as for other issues under the underwritten offer, issue or arrangement.

5.5 Application price

Without limiting ~~schedule~~ clause 5.6 [of this schedule](#) and subject to the Constitution, a Unit, including a Stapled Security, may be issued at the relevant Application Price, which is:

- (a) if the Unit or Stapled Security is to be Officially Quoted:
 - (i) where Stapling applies — an Application Price for a Stapled Security which is, or an Application Price for a Unit which is when aggregated with the application price of a unit in each other Stapled Fund, the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated (and where there is more than one class of Stapled Security Officially Quoted, the Market Price of the relevant class or, if no relevant class, of ordinary Stapled Securities); or
 - (ii) where Stapling does not apply — an Application Price which is the weighted average Market Price of Units during the 10 Business Days immediately prior to

the date on which or as at which the Application Price is to be calculated (and where there is more than one class of Unit Officially Quoted, the Market Price of the relevant class or, if no relevant class, of ordinary Units);

5.6 Application price set by Entity

The Entity may, to the fullest extent permitted by law (including in any of the circumstances set out in or permitted by ASIC), issue a Unit or a Stapled Security:

- (a) if the Unit or Stapled Security is of the same Class as, or is to form part of a Stapled Security that is of the same Class as a Class of Units or of Stapled Securities that are Officially Quoted — for an issue which does not contravene the Listing Rules, subject to paragraph (c), at an Application Price set by the Entity; or
- (b) in any other case — subject to paragraph (c), at an Application Price set by the Entity; but
- (c) for a rights issue, or reinvestment of a distribution, made in reliance on an ASIC, Instrument, the Application Price set by the Entity must not be less than the amount specified under clause 8.5 and 11.15 of this Constitution.

5.7 Minimum number of Units to be issued

If the Entity has determined a Minimum Holding, it must not issue Units unless the Member concerned will have, after the issue, at least the Minimum Holding.

6 Certificates of Title

6.1 Uncertificated securities

The Entity:

- (a) must not issue a certificate for a Unit; and
- (b) may cancel a certificate for any Unit without issuing another certificate,

unless the Listing Rules and the ASTC Settlement Rules allow the Entity to issue a certificate for the Unit.

6.2 Issue and deliver of certificate

If the Entity issues a certificate of title to Units in accordance with schedule clause 6.1, it must deliver the certificate to the Member in accordance with the Corporations Act and the Listing Rules.

6.3 Multiple certificates and joint holders

If there is a current certificate for particular Units and the Member asks the Entity to issue several certificates, each for a part of the Units Registered in the Member's name, the Entity must do so. For this purpose, joint holders of Units are a single Member. The Entity may issue only one certificate that relates to each Unit Registered in the names of two or more joint holders and may deliver the certificate to any of those joint holders.

6.4 Lost and worn out certificates

- (a) If a current certificate for particular Units is lost or destroyed and the Member applies in accordance with the Corporations Act and the Listing Rules, the Entity must issue a new certificate in its place.

- (b) If a current certificate for particular Units is produced to the Entity defaced or worn out, the Entity may issue a new certificate in its place.

7 Unmarketable Parcels

7.1 Entity's power of sale

The Entity may sell a Unit that is part of an Unmarketable Parcel if it does so in accordance with this schedule clause 7. The Entity's power to sell lapses if a takeover (as defined in the Listing Rules) is announced after the Entity gives a notice under schedule clause 7 and before the Entity enters into an agreement to sell the Unit.

7.2 Notice of proposed sale

- (a) The Entity may give written notice to a Member who holds an Unmarketable Parcel:
 - (i) stating that it intends to sell the Unmarketable Parcel; and
 - (ii) specifying a date at least 6 weeks (or a lesser period permitted under the Corporations Act or the Listing Rules) after the notice is given as the date by which the Member may give the Entity written notice that the Member wishes to retain the holding.
- (b) The Entity may not give such notice more than once every ~~12~~6 months unless otherwise permitted by the Listing Rules.
- (c) If the Entity's power to sell lapses, a notice given by the Entity under schedule clause 7.2(a) is taken never to have been given and the Entity may give a new notice after the close of the offers made under the takeover.

7.3 No sale where Member gives notice

The Entity must not sell an Unmarketable Parcel if, by the date specified in a notice given by the Entity under schedule clause 7.2(a), the Entity receives written notice that the Member wishes to retain the holding.

7.4 Terms of sale

A sale of Units under this schedule clause 7 includes all distributions payable on those Units and other rights attaching to them. The Entity must pay the costs of the sale and is entitled to be reimbursed for those costs out of the Assets. Otherwise, the Entity may decide the manner, time and terms of sale.

7.5 Unit transfers

For the purpose of giving effect to this clause, the Entity has power to:

- (a) effect a Market Transfer; or
- (b) execute a Unit transfer under schedule clause 12.1,

as agent for a Member who holds an Unmarketable Parcel.

7.6 Application of proceeds

The Entity must:

- (a) hold the balance and any distributions, whether income or capital, accruing in respect of the Units in Fund for the previous holder of the Units (**Divested Member**);
- (b) as soon as practicable give written notice to the Divested Member stating:
 - (i) what the balance is; and
 - (ii) that it is holding the balance for the Divested Member while awaiting the Divested Member's instructions and return of the certificate (if any) for the Units sold or evidence of its loss or destruction;
- (c) if the Units sold were certificated, not pay the proceeds of sale out of the Fund account until it has received the certificate for them or evidence of its loss or destruction; and
- (d) subject to schedule clause 7.6(c), deal with the amount in the account as the Divested Member instructs.

7.7 Protections for transferee

The title of the new holder of a Unit sold under this schedule clause 8 is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the Unit is damages, which may be recovered only from the Entity.

7.8 Application of schedule clause 7

This schedule clause 7 applies only to Units in a new holding created by the transfer of an Unmarketable Parcel at the time the Market Transfer was initiated or lodged, as the case may be.

8 Members meetings

8.1 Determining voting entitlements

Subject to the Corporations Act, the Listing Rules and the ASTC Settlement Rules, to decide, for the purposes of a particular meeting of Members, who is a Member and the percentage of votes a Member has, the Entity must refer only to the Register of Members as it stood 48 hours before the Meeting or a later time required or permitted by the Corporations Act, [the Listing Rules](#) and the ASTC Settlement Rules.

8.2 Voting restrictions

If the Corporations Act, the Listing Rules or this Constitution require that some Members are not to vote on a resolution or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect, those Members have no right to vote on that resolution and the Entity must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravene the Corporations Act, the Listing Rules or this Constitution:

- (a) on a show of hands — the vote is invalid and the Entity must not count it; and
- (b) on a poll:
 - (i) if the Corporations Act, the Listing Rules or this Constitution require the vote to be cast in a given way — the vote must be treated as cast in that way; or
 - (ii) otherwise — the vote is invalid and the Entity must not count it.

9 Register

9.1 Non-beneficial holders of Units

Subject to this Constitution and unless otherwise ordered by a court of competent jurisdiction or required by law, the Entity:

- (a) may treat the person named in the Register of Members as the holder of a Unit as the absolute owner of it; and
- (b) need not recognise any equitable or other claim or interest in a Unit by any person except the Registered holder.

10 Entity's fees and expenses

10.1 No Contribution Fee

No Contribution Fee is payable while this schedule applies.

10.2 Variation of Performance Fee

While this schedule applies, the changes set out in this schedule clause 10 apply to the Performance Fee.

10.3 Benchmark Index

The Benchmark Index is the S&P ASX 300 Property Accumulation Index, applied as follows:

- (a) if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Commercial — the weighted average gross return for that Fee Period of all those funds included in calculating the S&P ASX 300 Property Accumulation Index with underlying direct property assets at least 70% of which are Commercial;
- (b) if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Retail — the weighted average gross return for that Fee Period of all those funds included in calculating the S&P ASX 300 Property Accumulation Index with underlying direct property assets at least 70% of which are Retail;
- (c) if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Industrial — the weighted average gross return for that Fee Period of all those funds included in calculating the S&P ASX 300 Property Accumulation Index with underlying direct property assets at least 70% of which are Industrial; and
- (d) in any other case - the total return of the S&P ASX 300 Property Accumulation Index for that Fee Period.

10.4 Industry Sectors

The sectors "Commercial", "Retail" and "Industrial" are as used in the sub-sector index based on the S&P ASX 300 Property Accumulation Index and published by UBS Securities Australia Limited, or in any equivalent or replacement publication or index, to be arranged if necessary by the Entity in consultation with the Auditor.

10.5 WDPF Return

The WDPF Return is the percentage increase from the last day of the preceding Fee Period to the last day of the Fee Period in a Trust index.

10.6 Trust index

The Entity must arrange for a trust index consistent with the S&P ASX 300 Property Accumulation Index to be compiled as an accumulation index for the Stapled Entities by Standard & Poor's or by some other person determined by the Entity. The trust index is to use closing market price series data except that the closing price at the end of the Fee Period is to be replaced by the 10 day VWAP for a valuation period described in the next clause. This index is to commence at 1.00 p.m. on the day this schedule begins to apply using the number of Stapled Securities then on issue and the Redemption Price for a Stapled Security on the previous day worked out under the constitutions of the Stapled Entities.

10.7 Valuation Period

The valuation period at the end of a Fee Period is:

- (a) the first 10 Business Days for which the Stapled Securities (or Units) are quoted on an "ex" basis for the distribution with a record date under the Listing Rules which is on, or falls closest to (whether before or after), the last day of the Fee Period, provided that;
- (b) if the record date for that distribution is after the end of the Fee Period the Entity may elect that the valuation period is to be the last 10 Business Days in the Fee Period.

10.8 Trigger Event

~~Instead of the definition in Schedule 3, any~~Any of the following is a Trigger Event:

- (a) a resolution is passed at a meeting of Members removing or replacing the Entity;
- (b) the Fund terminates;
- (c) the occurrence of the first of the following to occur:
 - (i) the date the Stapled Entities (or the Fund) are removed from the Official List; or
 - (ii) the day after the end of a continuous period of suspension of Official Quotation of Stapled Securities (or Units) of 60 days;
- (d) the Stapled Securities (or Units) are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act; and
- (e) the Members approve a scheme of arrangement for the Stapled Entities (or the Fund) to merge with any other managed investment scheme or entity pursuant to which there is a material change in the ownership or control of the Stapled Entities (or the Fund).

10.9 Occurrence of a Trigger Event

If a Trigger Event occurs, the closing price at the end of the Fee Period for the ~~Fund~~Trust index is:

- (a) for a takeover bid, the price per Stapled Security (or per Unit) which would be payable for compulsory acquisition which for non-cash consideration is its Market Price on the date of the Trigger Event;

- (b) for a scheme of arrangement, the mid-point of the value range for the Stapled Securities (or Units) in the independent expert's report prepared for the Members, or if there is no independent expert's report, the fair value of the consideration per Stapled Security (or per Unit) as determined by an independent accountant appointed by the Entity;
- (c) on a delisting, the VWAP of a Stapled Security (or Unit) for the last 10 Business Days before removal from the Official List for the last 10 Business Days before commencement of the suspension of Official Quotation; or
- (d) on termination of the Fund, the amount per Stapled Security (or per Unit) to be received by the Members after accruing the amount payable to the Fund for Performance Fees.

10.10 Additional provisions about Manager's expenses

The expenses recoverable under clause 16 of the Constitution include expenses connected with any of the following:

- (a) causing the Fund to be admitted to the Official List, causing Units to be Officially Quoted and causing any Units to be Stapled Securities;
- (b) marketing and promoting the Fund;
- (c) underwriting arrangements in respect of the Fund;
- (d) insurance policies for the benefit of, fees payable to and all other expenses and costs in relation to, the board of directors or governing body of any entity in which the Fund invests (directly or through any other entity);
- (e) investing in, holding and dealing with Assets (such as travel and marketing expenses);
- (f) appointing or engaging any agent, delegate, custodian, nominee, manager, adviser or other person in relation to the Fund (including legal and asset management fees and expenses on a full indemnity basis);
- (g) investment, audit and compliance committees;
- (h) fees, insurance premiums and expenses paid by the Fund to, or for the benefit of, any director of the Fund to the extent that those fees are for attendances or work of the director in connection with the administration or management of the Fund or any Assets; and
- (i) liabilities arising in respect of the Fund or any Assets.

11 Redemption of Units

11.1 Redemption rights

- (a) Subject to the rights attaching to any particular Class of Units and to the terms of issue of any Unit, a Member has rights of redemption as follows:
 - (i) for Units that are Officially Quoted, or are Stapled to form a Stapled Security that is Officially Quoted:
 - (A) a Member does not have a right to redemption of Units from the Fund; and
 - (B) the Entity may but does not have to redeem Units from the Fund;

- (ii) for Units that are neither Officially Quoted nor Stapled to form a Stapled Security that is Officially Quoted:
 - (A) if the Fund is liquid — a Member does not have a right to redemption of Units from the Fund, but the Entity may, but does not have to, redeem Units from the Fund; and
 - (B) if the Fund is not liquid and the Fund is a registered scheme — redemptions may only be effected in accordance with the Corporations Act.
- (a) If a Member ceases to hold the minimum holding, the Entity may, but does not have to, redeem all of a Member's relevant Units.
- (b) Without limiting this schedule clause 11.1, the Entity may decline to redeem Units from the Fund if, in the Entity's opinion, it would not be adequately indemnified in respect of the redemption.

11.2 Buy back

For Units that are Officially Quoted, or are Stapled to form a Stapled Security that is Officially Quoted, the Entity may offer to acquire, and may use Assets to acquire, Units or Stapled Securities, and may cancel the Units so acquired.

11.3 Buy back price

While Units are Officially Quoted, or are Stapled to form a Stapled Security that is Officially Quoted, a Unit may only be bought back for its buy back price (and despite any other provision of this document, may be redeemed by the Entity for the same price), which is:

- (a) if Stapling applies, a buy back price which when aggregated with the buy back price of a unit in each other Stapled Entity equals at least 90% of the Market Price of a Stapled Security, and which bears the same proportion to the buy back price of a unit in each other Stapled Entity as the Net Asset Value of the Fund bears to the net asset values of the other Stapled Entities worked out under their Constitutions; and
- (b) if Stapling does not apply, at least 90% of the Market Price of a Unit.

12 Transferring Units

12.1 Form of transfer

- (a) Subject to this Constitution, a Member may transfer a Unit by a Market Transfer, or by a written document that:
 - (i) relates only to Units of one class;
 - (ii) is a proper instrument of transfer of securities under the Corporations Act or in any other form approved by the Entity or ASX;
 - (iii) is delivered to the registered office of the Entity or the address of the Register last notified to Members by the Entity;
 - (iv) is accompanied by the certificate (if any) for the Units to be transferred or evidence satisfactory to the Entity of the loss or destruction; and
 - (v) is marked with payment of any stamp duty payable.

- (b) Property in and title to a transfer document that is delivered to the Entity (but not the Units to which it relates) passes to the Entity on delivery.
- (c) The Entity must not Register a transfer that does not comply with this schedule clause 12.

12.2 Market obligations

The Entity:

- (a) may do anything permitted by the Corporations Act, the Listing Rules and the ASTC Settlement Rules that the Entity thinks necessary or desirable in connection with the Fund taking part in a computerised or electronic system established or recognised by the Corporations Act, the Listing Rules or the ASTC Settlement Rules for dealings in interests in managed investment schemes; and
- (b) must comply with obligations imposed on it by the Corporations Act, Listing Rules or the ASTC Settlement Rules in relation to transfers of interests in managed investment schemes.

12.3 Restricted securities

If Units are classified as restricted securities under the Listing Rules:

- (a) during the escrow period set by the restriction agreement required by ASX in relation to the Units, except as permitted by the Listing Rules or ASX:
 - (i) the Member may not dispose of them (as defined in the Listing Rules); and
 - (ii) the Entity must not Register a transfer of the Units or otherwise acknowledge a disposal of them; and
- (b) if there is a breach of the Listing Rules or of the restriction agreement in relation to the Units, then, while the breach continues, the holding of the Units does not entitle the Member to be present, speak or vote at, or be counted in the quorum for, a meeting of Members or to receive a distribution.

12.4 Refusal to Register transfer

The Entity:

- (a) may refuse to Register a transfer of Units, and may do so without given any reason, but may do so only if that refusal would not contravene the Corporations Act, the Listing Rules or the ASTC Settlement Rules; and
- (b) must not Register a transfer if the Corporations Act, the Listing Rules or the ASTC Settlement Rules forbid registration.

12.5 Where transfer refused

If, in accordance with the Corporations Act and the Listing Rules, the Entity applies or asks ASTC to apply a holding lock to prevent a transfer, or refuses to Register a transfer, the Entity must give the transferee written notice of the refusal and the reason for the refusal within 5 Business Days after the date on which it applied or asked for the holding lock or the transfer was lodged.

12.6 Transferor remains holder until transfer Registered

The Transferor of a Unit remains the holder of it until:

- (d) if the transfer is a Market Transfer — the time the ASTC Settlement Rules provide that the transfer takes effect; and
- (e) otherwise — the transfer is Registered and the transferee's name is entered in the Register as the holder of the Unit.

12.7 Powers of attorney

The Entity may assume, as against a Member, that a power of attorney granted by the Member that is lodged with or produced or exhibited to the Entity remains in force, and may so rely on it until the Entity receives express notice in writing at its registered office of the revocation of the power of attorney or the death, dissolution or insolvency of the Member.

13 Interpretation

13.1 Definitions

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

Aggregate Gross Asset Value: where Stapling applies, the aggregate of the Gross Asset Value and the gross asset value of each other Stapled Entity (calculated under their constitutions), and where Stapling does not apply, the Gross Asset Value.

ASTC: ASX Settlement ~~and Transfer Corporation~~ Pty Ltd (~~ABN 49~~ACN 008 504 532).

ASTC Settlement Rules: the operating rules of ASTC and, to the extent that they are applicable, the operating rules of ~~each of ASX and Australian Clearing House Pty Limited~~ASX Clear Pty Limited (~~ACN BN 48~~ 001 314 503).

Benchmark Index: for any Fee Period:

- (a) if on the last day of the immediately precedent Fee Period at least 30% of Aggregate Gross Asset Value is securities in listed property trusts — the Composite Index; and
- (b) in any other case — the Property Index.

Commercial: the sector "Commercial" as defined for MUPFI.

Industrial: the sector "Industrial" as defined for MUPFI.

~~**ASX:** Australian Stock Exchange Limited or (as appropriate) the stock market it operates.~~

~~**Interest Rate:** in a provision of this Constitution, means:~~

- ~~(a) — the rate for the time being prescribed by the Entity for that provision; or~~
- ~~(b) — if no rate is so prescribed — 10% a year.~~

Market Transfer: a transfer (or change of ownership) that:

- (a) according to the ASTC Settlement Rules, is a proper transfer; or

- (b) is a valid transfer under a computerised or electronic system established or recognised by the Corporations Act, the Listing Rules or the ASTC Settlement Rules for dealings in interests in managed investment schemes.

Market Price: of:

- (a) Stapled Securities in respect of any Business Day while the Stapled Securities are Officially Quoted means:
- (i) the last sale price per Stapled Security recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
 - (ii) if the Entity believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Stapled Security on that Business Day, the mid-point of the bid and after prices per Stapled Security recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
 - (iii) if the Entity does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a unit on that Business Day, the price determined by an expert whose identity and instructions are to be determined by the entity.
- (b) for Units that are Officially Quoted — Market Price determined under paragraph (a) as if references to "Stapled Securities" were references to "Units" and with other necessary changes;
- (c) for Units that form part of Stapled Securities that are Officially Quoted — as set out in schedule clause 4.3; and
- (d) for other property or assets (Units or Stapled Securities) — the market price determined by a Valuer appointed by the Entity to value the assets or property, or determined in such other manner as the Entity determines in consultation with the Auditor.

MUPFI: Mercer Unlisted Property Fund Index prepared by Mercer Investment Consulting of 33 Exhibition Street, Melbourne, 3000.

NAV per Unit: the Net Asset Value divided by the number of Units on issue.

Property Index: for any Fee Period:

- (a) if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Commercial — the weighted average gross return for that Fee Period of all those funds included in calculating MUPFI with underlying direct property assets at least 70% of which are Commercial;
- (b) if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Retail — the weighted average gross return for that Fee Period of all those funds included to calculating MUPFI with underlying direct property assets at least 70% of which are Retail;
- (c) if on the last day of the Fee Period Immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Industrial — the weighted average gross return for that Fee Period of all those funds included to calculating MUPFI with underlying direct property assets at least 70% of which are Industrial; and
- (d) in any other case — the gross median return of MUPFI for that Fee Period.

Retail: the sector "Retail" as defined for MUPFI.

Unmarketable Parcel: a parcel of Units of a single class, ~~Registered~~ in the same name or the same joint names, that is:

- (a) less than the number that constitutes a marketable parcel of Units of that class under the Listing Rules; or
- (b) subject to the Corporations Act and the Listing Rules — some other number determined by the Entity.

VWAP means in respect of a Stapled Security for a Trading Day, the value weighted average of the Stapled Security prices for that ~~Trading~~~~Business~~ Day for all sales of Stapled Securities recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Stapled Securities, any overnight crossings and any other sales which the Entity reasonably considers may not be fairly reflective of natural supply and demand.

WDPF Return for any Fee Period means:

- (a) where Stapling applies, the total return of the Stapled Entities calculated by dividing the aggregate of the adjusted NAV per Unit and the Adjusted net asset value per unit of each other Stapled Entity (worked out under their constitution) on the last day of the Fee Period by the aggregate of the NAV per Unit and of the net asset value per unit of each other Stapled Entity (worked out under their constitutions) on the first day of the Fee Period;
- (b) where Stapling does not apply, the total return of the Fund calculated by dividing the adjusted NAV per Unit on the last day of the Fee Period by the NAV per Unit on the first day of the Fee Period; and
- (c) whether or not Stapling applies, the adjusted Net Asset Value per Unit means adjusted by adding the amount per Unit of any Income Distribution or capital distribution made during that Fee Period.

13.2 Rules for interpreting this Constitution

The following rules also apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to legislation (including subordinate legislation), the Listing Rules or the ASTC Settlement Rules is to that legislation or those rules as amended, modified or waived in relation to the Fund, and as re-enacted, amended or replaced, and includes subordinate legislation or rules issued under that legislation or those rules.
- (b) A reference to a section or other provision of a statute is a reference to the provisions of the Corporations Act.

Schedule 3 Performance Fee (clause 16.3)

~~Part 1 – AUDPF Fee prior to and Including the day of Implementation of the Restructure²⁶~~

~~1 Subject to this Schedule, the Entity is entitled to a Performance Fee at the end of each Fee Period.~~

~~2 Subject to this Schedule, in particular clauses 3, 4, 5 and 6 below, the amount of the Performance Fee for any Fee Period is calculated as follows:~~

$$\text{PF} = (20\% \times (\text{WDPF Return} - \text{Benchmark Return}) \times \text{Gross Asset Value}) + \text{GST}$$

~~where:~~

~~PF is the Performance Fee.~~

~~WDPF Return is the WDPF Return expressed as a percentage.~~

~~Benchmark Return is the Benchmark Return expressed as a percentage.~~

~~Gross Asset Value is the Gross Asset Value as at the last day of the Fee Period.~~

~~3 If for any Fee Period WDPF Return less the Benchmark Return is less than zero, no Performance Fee is payable, and the Benchmark Return for the next Fee Period must be worked out using the opening Benchmark Index for the preceding Fee Period, so that underperformance is recovered before any Performance Fee is earned. If the Benchmark Index for one of the Fee Periods until underperformance is recovered is the Property Index and for another it is the Composite Index, the calculation must be adjusted appropriately by the Manager in consultation with the Auditor.~~

~~4 If for any Fee Period the WDPF Return is less than zero, no Performance Fee for that Fee Period is payable even if the WDPF Return exceeded the Benchmark Return.~~

~~5 If for any Financial Year the Fee Cap would be exceeded, the payment of that part of the Performance Fee for the Fee Periods in the Financial Year which would exceed the Fee Cap is to be deferred until payment is permitted by this schedule.~~

~~6 If the Entity has been paid an amount in excess of the Fee Cap for a Financial Year, the Entity must repay the excess within 15 Business Days of the end of the Financial Year.~~

~~7 The Entity may receive any deferred Performance Fee to the extent that there is Fee Cap Capacity for a Financial Year.~~

~~8 On the date a Trigger Event occurs the Entity becomes entitled to immediate payment of all deferred Performance Fees.~~

~~9 If a Trigger Event occurs, the Entity is entitled for the current Fee Period to payment of a Performance Fee as follows:~~

²⁶ The words “AUDPF Fee prior to and Including the day of Implementation of the Restructure” were inserted by supplemental deed dated 23 October 2019 (Document 9).

- ~~(a) The fee is payable on the day of the Trigger Event or as soon as it can be calculated;~~
- ~~(b) In applying the formula above the date of the Trigger Event is used for the last day of the Fee Period.~~

~~10 If the MUPFI is no longer published:~~

- ~~(a) the Entity must either:~~
 - ~~(i) arrange for the continued compilation of an index on the same principles to serve the purpose for this schedule; or~~
 - ~~(ii) select an appropriate replacement index (and make any changes to the formula in this schedule that are in the reasonable opinion of the Entity needed for that replacement) in consultation with and with the approval of the Auditor; and~~
- ~~(b) references in this schedule to the MUPFI are then to be read as references to the index so compiled or so selected;~~

~~11 If the S&P ASX 300 Property Accumulation Index is no longer published:~~

- ~~(a) the Entity must either:~~
 - ~~(i) arrange for the continued compilation of an index on the same principles to serve the purpose for this schedule; or~~
 - ~~(ii) select an appropriate replacement index (and make any changes to the formula in this schedule that are in the reasonable opinion of the Entity needed for that replacement) in consultation with and with the approval of the Auditor; and~~
- ~~(b) references in this schedule to the S&P ASX 300 Property Accumulation Index are then to be read as references to the index so compiled or so selected;~~

~~12 If there is any matter in connection with replacement of an index upon which the Entity and the Auditor are unable to agree, either the Entity or the Auditor may require the matter to be determined by an independent person with appropriate expertise acting as an expert and not as an arbitrator whose fees may be paid as an expense of the Fund.~~

Part 1A – Fee following the implementation of the Restructure²⁷

~~21~~ Subject to this Schedule, the Entity is entitled to a Performance Fee at the end of each Performance Fee Period.

~~32~~ Subject to this Schedule, the amount of the Performance Fee for any Performance Fee Period is calculated as follows:

$$PF = (0.2 \times D) + GST$$

where:

- (a) PF is the Performance Fee; and

²⁷ Part 1A was inserted by supplemental deed dated 23 October 2019 (Document 9).

(b) D is the greater of:

(i) zero; and

(ii) Performance Fee NAV minus Performance Fee Benchmark NAV.

(b) If the Performance Fee NAV minus Performance Fee Benchmark NAV is less than zero for any Performance Fee Period, then the Performance Fee is not payable, ~~and the Performance Fee Benchmark NAV for the next Performance Fee Period must be determined using the opening Performance Fee Benchmark NAV for the preceding Performance Fee Period, so that any underperformance is recovered before any Performance Fee is accrued, in respect of that Performance Fee Period only.~~

(c) If during all or any part of a Performance Fee Period the Gross Asset Value exceeds \$1,000,000,000, the Performance Fee payable to the Entity in respect of that Performance Fee Period will be subject to a 5% reduction to the amount that would otherwise be payable as a result of the Fund's performance for the whole Performance Fee Period.

~~(a)~~ —

~~(b)~~(d) **Performance Fee NAV** means:

(i) Gross Asset Value plus or minus any other adjustments made by the Entity in order to ensure equity between existing and incoming Members;

less the following:

(ii) all amounts required to meet all costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments (including the amount of any provisions the Responsible Entity determines, and the Auditor agrees, should be made but excluding liabilities (if any) to Members in respect of Units, other than the liability to pay Members the withdrawal price of Units in respect of which a Withdrawal Request has been made by a Member and accepted by the Responsible Entity) and excluding any performance fee provision; and

(iii) the amount of any distribution payable but not paid to Members at the time the Performance Fee NAV is determined.

~~(c)~~(e) **Performance Fee Benchmark NAV** means the notional Performance Fee NAV on the Performance Fee Date which is required to make the internal Rate of Return of the Scheme for the Performance Fee Period equal to 10% assuming:

(i) the issue price on the issue date of each Unit on issue on the beginning of the first day of the Performance Fee Period was subscribed for at an issue price equal to the Performance Fee Current Unit Value on the first day of the Performance Fee Period and all Units issued during the Performance Fee Period were issued at the price and on the date at which those Units were issued;

(ii) distributions were received by Members on the date they were paid;

(iii) distributions referable to the Performance Fee Period which are not paid in such Performance Fee Period are paid on the last day of the Performance Fee Period;

(iv) Withdrawal Requests were received on the date that they were paid;

- (v) Withdrawal Requests referable to the Performance Fee Period which are not paid in such Performance Fee Period are paid on the last day of the Performance Fee Period; and
- (vi) Performance Fee Benchmark NAV on the last day of such Performance Fee Period was paid to Members on that day.

~~(d)~~(f) **Performance Fee Current Unit Value** means at any time the Performance Fee NAV divided by the number of Units on Issue.

~~(e)~~(g) **Performance Fee Date** means the last day of the Performance Fee Period.

~~(f)~~(h) **Performance Fee Period** means:

- (i) the period from ~~the Restructure Issue Date until 30 June 2019;~~ 1 January 2026 to 31 December 2030 (First Performance Fee Period); then
- (ii) ~~then~~ each successive period of five years12 months commencing on 1 January of a calendar year and ending on 30-31 December June of that calendar year (Successive Period); or-
- (iii) on the occurrence of a Trigger Event:
 - (A) during the First Performance Fee Period, the period from the commencement of the First Performance Fee Period to the date of the Trigger Event; and
 - ~~(i)~~ during any Successive Period, the period from the day after the preceding Performance Fee Date to the date of the Trigger Event.
 - (B)

(i) **Internal Rate of Return** means the rate of return per annum (expressed as a percentage) which when applied as an inflation rate to the ~~t~~Total ~~e~~Cash ~~f~~Flows to and from Members for the Performance Fee Period results in an amount equal to the Performance Fee ~~e~~ae Benchmark NAV.

~~(g)~~(i) **Total Cash Flow** means the total cash flow to and from Members, adjusted to include the value of any Property or other consideration provided to and from Members other than as cash, as determined by the Entity in its direction, with the Entity determining the value of such Property or other consideration in accordance with the Market Value of that consideration or Property.

Part 2 - Definitions

In this Schedule:

~~**Aggregate Gross Asset Value:** where Stapling applies, the aggregate of the Gross Asset Value and the gross asset value of each other Stapled Entity (calculated under their constitutions), and where Stapling does not apply, the Gross Asset Value.~~

~~**Benchmark Index:** for any Fee Period:~~

- ~~(a) if on the last day of the immediately precedent Fee Period at least 30% of Aggregate Gross Asset Value is securities in listed property trusts — the Composite Index; and~~

~~(b) — in any other case — the Property Index.~~

Benchmark Return: for any Fee Period:

~~(a) — if the Benchmark Index is the Property Index, the Property Index; and~~

~~(b) — if the Benchmark Index is the Composition Index, the Composite Return.~~

Commercial: the sector "Commercial" as defined for MUPFI.

Composite Benchmark Increment: for a Fee Period, the aggregate of:

~~(a) — that part of Aggregate Gross Asset Value on the last day of the immediately preceding Fee Period which did not comprise securities in listed property trusts, multiplied by the Property Index; and~~

~~(b) — that part of Aggregate Gross Asset Value on the last day of the immediately preceding Fee Period which comprised securities in listed property trusts, multiplied by the percentage increase in the S&P ASX 300 Property Accumulation Index from the last day of the immediately preceding Fee Period until the last day of the Fee Period.~~

Composite Index: for any Fee Period:

~~(a) — for that proportion of Aggregate Gross Asset Value on the last day of the immediately preceding Fee Period that comprises securities in listed property trusts — the S&P ASX 300 Property Accumulation Index; and~~

~~(b) — for the remainder of the Aggregate Gross Asset Value on the last day of the immediately preceding Fee Period — the Property Index.~~

Composite Return: for any Fee Period, the Composite Benchmark Increment divided by Aggregate Gross Asset Value on the last day of the immediately precedent Fee Period, expressed as a percentage.

Fee Cap: for a Financial Year, one percent of Aggregated Gross Asset Value as at the last day of the Financial Year, which is exceeded if the aggregate of the Performance Fees (and where Stapling applies, the performance fees for each other Stapled Entity) for the Fee Periods comprising a Financial Year is greater than the Fee Cap.

Fee Cap Capacity: for a Financial Year, the amount by which the aggregate of the Performance Fees (and where Stapling applies, the performance fees for each other Stapled Entity) for the Fee Periods comprising that Financial Year is less than the Fee Cap for that Financial Year.

Industrial: the sector "Industrial" as defined for MUPFI.

MUPFI: Mercer Unlisted Property Fund Index prepared by Mercer Investment Consulting of 33 Exhibition Street, Melbourne, 3000.

NAV per Unit: the Net Asset Value divided by the number of Units on issue.

Property Index: for any Fee Period:

~~(a) — if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Commercial — the weighted average gross return for that Fee Period of all those funds included in calculating MUPFI with underlying direct property assets at least 70% of which are Commercial;~~

- ~~(b) — if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Retail — the weighted average gross return for that Fee Period of all those funds included to calculating MUPFI with underlying direct property assets at least 70% of which are Retail;~~
- ~~(c) — if on the last day of the Fee Period immediately before the Fee Period concerned at least 70% of the underlying direct property assets of the Stapled Entities are Industrial — the weighted average gross return for that Fee Period of all those funds included to calculating MUPFI with underlying direct property assets at least 70% of which are Industrial; and~~
- ~~(d) — in any other case — the gross median return of MUPFI for that Fee Period.~~

~~**Retail:** the sector “Retail” as defined for MUPFI.~~ **Trigger Event:** any of the following:

- (a) a resolution is passed at a meeting of Members removing or replacing the Entity;
- (b) the Fund terminates;
- (c) a Proposal is implemented;
- (d) upon completion of any transaction or proposal pursuant to which the Responsible Entity has provided Unitholders with the opportunity to realise (through redemption, transfer, a recapitalisation or other transaction structure) all of their investment in the Fund;
- (e) the Stapled Securities (or Units) are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (f) the Members approve a scheme of arrangement for the Stapled Entities (or the Fund) to merge with any other managed investment scheme or entity pursuant to which there is a material change in the ownership or control of the Stapled Entities (or the Fund).

~~**Trigger Event:** any of the following:~~

- ~~(a) — a resolution is passed at a meeting of Members removing or replacing the Entity;~~
- ~~(b) — the Fund terminates; or~~
- ~~(c) — the Fund or the Stapled Entities are listed on a stock exchange.~~

~~**WDPF Return:** for any Fee Period:~~

- ~~(a) — where Stapling applies, the total return of the Stapled Entities calculated by dividing the aggregate of the adjusted NAV per Unit and the Adjusted net asset value per unit of each other Stapled Entity (worked out under their constitution) on the last day of the Fee Period by the aggregate of the NAV per Unit and of the net asset value per unit of each other Stapled Entity (worked out under their constitutions) on the first day of the Fee Period;~~
- ~~(b) — where Stapling does not apply, the total return of the Fund calculated by dividing the adjusted NAV per Unit on the last day of the Fee Period by the NAV per Unit on the first day of the Fee Period; and~~
- ~~(c) whether or not Stapling applies, the adjusted Net Asset Value per Unit means adjusted by adding the amount per Unit of any Income Distribution or capital distribution made during that Fee Period.~~