

K&L GATES

**Constitution of the Moelis Australia
Hotel Trust II**

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CONSTITUTION

By

Moelis Australia Asset Management Ltd ACN 142 008 535 of Level 27, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000 (**Responsible Entity**).

Terms

1. Interpretation

1.1 Definitions

Office of State Revenue (NSW)	
Client No: 139687878	4838
Duty: \$10	Trans No: 9096571-001
Asst details: <u>DUPLICATE - Fixed</u>	
<u>Trust deed</u>	

The following words have the following meanings in this Constitution, unless the context requires otherwise.

Accounting Standards means:

- (a) all accounting standards and principles required by Law to be complied with in respect of the Trust; and
- (b) except to the extent that it is inconsistent with paragraph (a) above, generally accepted accounting principles applying in Australia, subject to any variation approved by the Auditor;

AML Requirements means the applicable provisions of:

- (a) the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, including any regulation made under it and subject to any rules issued by the Australian Transaction Reports and Analysis Centre;
- (b) the Financial Transactions Reports Act 1988 (Cth);
- (c) other relevant legislation including any regulations made under it and common law,

to which the Responsible Entity is subject.

Applicant means an applicant for a Unit or an Option;

Application means an application to subscribe for a Unit or an Option made pursuant to an application in a form determined by the Responsible Entity from time to time (which may include by electronic means) and includes the exercise of an Option under 6.3(b);

Application Account means an account in which money is held for Applicants in accordance with section 1017E of the Corporations Act;

Application Money means any form of valuable consideration, including Cash or other Property, received by the Responsible Entity for Units or Options and other money paid upon Application for any Units or Options;

Application Price means the application price for a Unit determined in accordance with clause 8;

Application Price Allocation has the meaning given in clause 8.13;

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions;

ASIC Relief means:

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

whether in the form of a class order or a specific instrument and whether modifying the Corporations Act, exempting the Responsible Entity from provisions of the Corporations Act or otherwise, and includes without limitation Class Orders 13/655, 13/656 and 13/657;

Assets means, from time to time (as applicable), either:

- (a) if the Trust has only one class of Units in issue, all the Property of the Trust; or
- (b) if the Trust has more than one class of Units in issue, in respect of a class of Units, all the Property of the Trust properly attributable to that class of Units,

including subscriptions paid in respect of each Unit issued or issued in that class of Units (as applicable) but, for the avoidance of doubt, excluding any amount held in the Application Account or any other subscription amount paid in connection with an Application for a Unit which has not been issued;

Associate has the same meaning given to "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act);

ASX means the ASX Limited 008 624 691 or the financial market operated by that company (whichever the context requires);

ASX Settlement means ASX Settlement Pty Limited ACN 008 504 532;

ASX Settlement Operating Rules means the operating rules of ASX Settlement from time to time;

ASX Trading Day means those Business Days on which buying and selling occurs through the ASX;

ATO means the Australian Taxation Office;

Attached Security means a security of any Stapled Entity which is from time to time Stapled or to be Stapled to a Unit;

Auditor means the auditor for the Trust, from time to time;

Bid Consideration has the meaning given in clause 8.7;

Business Day means a day other than a Saturday, Sunday or public holiday on which banks are open for general banking business in New South Wales or if the administrator for the Trust primarily performs its administration functions in respect of the Trust in a city

other than Sydney and if determined by the Responsible Entity, means Sydney and the city in which the administrator performs such functions;

Calculation Date in relation to a Security or an Option (as applicable) means:

- (a) where the Security or Option (as applicable) is offered by way of a Disclosure Document, the date specified in that document;
- (b) where the Security is offered as Bid Consideration, or as part of the Bid Consideration, the day the offer is announced; or
- (c) in any other case, the date of issue of the Security or Option (as applicable);

Capital Reallocation Issue means an issue of Units in the circumstances contemplated by clause 7.12;

Capital Reallocation Units has the meaning set out in clause 7.12(a);

Cash includes a cheque, bank cheque, payment order or electronic transfer of funds (but not currency unless the Responsible Entity otherwise determines);

CHESS has the meaning given to that term in the ASX Settlement Operating Rules;

Class Rights means the rights, liabilities, obligations and restrictions attaching to a class of Units as determined by the Responsible Entity which must be set out in this Constitution (which may include a schedule) while the Trust is a registered scheme;

Compliance Committee Member means a member of the compliance committee, if any, established by the Responsible Entity in connection with the Trust;

Constitution means this deed, as amended from time to time;

Consultant means any adviser including any counsel, lawyer, accountant, auditor, valuer, banker, broker, underwriter, contractor and other professional adviser;

Corporations Act means the *Corporations Act 2001 (Cth)* as modified by any applicable ASIC Relief;

Costs includes all direct and indirect costs, charges, disbursements, expenses, outgoings, fees (including all legal, professional, accounting, expert, investment manager (including project manager and asset manager and the Manager), Custodian, Consultant fees, valuation fees and registration fees), commissions, brokerage, Taxes and all financing costs (including bank charges and fees, interest charges, discount fees and guarantee fees);

CS Facility has the meaning given to the term "prescribed CS facility" in section 761A of the Act;

Custodian means a custodian, if any, appointed by the Responsible Entity to hold Assets;

Cut-off Time means a day and time, from time to time, prescribed by the Responsible Entity by which an Application must be received in order to be accepted by the Responsible Entity as at that day or any other day prescribed by the Responsible Entity;

Disclosure Document means a product disclosure statement, information memorandum, or any other form of disclosure document used to offer Units or Options or Stapled Securities for subscription or invite subscriptions for Units or Stapled Securities or Options;

Disposal Notice means a written notice given to the holder of a Small Holding under clause 10.2(a);

Eligible Investor means an investor who meets the requirements for acquisition (whether by issue, transfer or otherwise) of a Unit or class of Units (as applicable), Options or Stapled Securities as determined by the Responsible Entity and specified in any Disclosure Document or otherwise;

Entitled Member has the meaning given in clause 6.1(b);

Exchange Offer has the meaning given in clause 9.16;

Exercise Price has the meaning given in clause 6.1(a)(i);

FATCA means sections 1471 to 1474 of the US Internal Revenue Code of 1986 (commonly known as the Foreign Account Tax Compliance Act provisions) as of the date of this Constitution, any current or future regulations or official interpretations thereof, Division 396 of Schedule 1 of the *Taxation Administration Act* 1953, the Agreement entered into between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA on 28 April 2014, and the Competent Authority Arrangement signed on 16 September 2015 between Competent Authorities of Australia and the United States of America;

Financial Year means, unless the Responsible Entity determines otherwise, a financial year in respect of the Trust being:

- (a) for the first financial year, the period commencing on the date on which the Trust commences to the next 30 June;
- (b) for the last financial year, the period commencing on the 1 July immediately before the date the Trust terminates to the date the Trust terminates; and
- (c) for all other periods, the 12 month period ending 30 June in each year;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Gross Asset Value means the total value of the Assets determined in accordance with the Accounting Standards and this Constitution;

GST means any goods and services tax including the tax imposed under the GST Law;

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and *A New Tax System (Goods and Services Tax) Regulations 1999 (Cth)*;

in issue means in respect of a Unit, that the Unit has been issued and not withdrawn;

Incoming Responsible Entity means a person appointed as a new Responsible Entity of the Trust in accordance with this Constitution and the Corporations Act;

Initial Public Offer means:

- (a) an initial public offer of Units (whether or not part of Stapled Securities) for the purpose of raising capital;
- (b) a sell down of a substantial portion of the Units by the Members; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking admission of the Trust to the Official List and Official Quotation of the Units (including where Units are to form part of a Stapled Security);

Input Tax Credit has the same meaning as in the GST Law;

Investment Vehicle means a company, trust, joint venture (incorporated or unincorporated) or partnership in which the Responsible Entity (in its capacity as trustee or responsible entity of the Trust) has a direct or indirect interest (through any number of interposed companies, trusts, joint ventures (incorporated or unincorporated) and partnerships);

IRS means the Internal Revenue Service of the United States of America;

Issuer Sponsored Holding has the meaning given in the ASX Settlement Operating Rules;

Law means

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency, including the Corporations Act and the Listing Rules (where applicable); and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

Liabilities means from time to time (as applicable), either:

- (a) if the Trust has only one class of Units in issue, all liabilities of the Trust; or
- (b) if the Trust has more than one class of Units in issue, in respect of a class of Units, all the liabilities of the Trust properly attributable to that class of Units,

and includes in respect of the Trust or class of Units (as applicable) all liabilities accrued but not yet paid, borrowings, Costs, contingent liabilities, unpaid amounts due to a Member including Withdrawal Amounts and distributions to which a former Member has become entitled to be paid, unpaid remuneration due to the Responsible Entity or the Manager and any provision which the Responsible Entity determines should be taken into account in determining the liabilities of the Trust or class of Units (as applicable), but excluding Member Liabilities, determined in accordance with the Accounting Standards;

Liquid has the meaning given in section 601KA(4) of the Corporations Act;

Listed means admitted to the Official List;

Listing Rules means the listing rules of the ASX and any other rules and procedures that apply to the Trust while it is Listed or to the Units while they are Officially Quoted (and includes for the avoidance of doubt the ASX Settlement Operating Rules and the ASX Operating Rules), each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX;

Loss includes, in each case whether of a direct, indirect or consequential nature:

- (a) any liability, damage, Cost (including reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, any thing; and
- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss under, or in relation to, any other contract;

Management Agreement means an Investment Management Agreement (or similar) between the Responsible Entity and the Manager pursuant to which the Manager is appointed to provide certain services to the Trust;

Manager means an investment manager or managers appointed by the Responsible Entity from time to time to manage the Trust and its Assets, Subsidiaries and/or Investment Vehicles and any other investments of the Trust;

Market Price of a Security on a particular day means:

- (a) subject to paragraph (b), the VWAP less (if the Security will be issued ex distribution and the VWAP is cum distribution) the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the VWAP were of Securities cum distribution); or
- (b) to the extent permitted by ASIC Relief, if the Responsible Entity considers that it will produce a more appropriate market price of Securities the Responsible Entity may do any of the following:
 - (i) apply a different trading period (so long as it is reasonably current);
 - (ii) include any special crossings undertaken in the trading period;
 - (iii) apply a different formula than the VWAP (so long as it is a formula generally used for calculating a price for market-traded securities); or
 - (iv) apply a price determined by an adviser who:
 - (A) is independent of the Responsible Entity; and
 - (B) is qualified to determine and has relevant market experience in determining the issue price of Securities in circumstances similar to those in which the determination of the Security issue price is being made; and
 - (C) certifies the amount in writing to the Responsible Entity and confirms that in determining the amount the expert has had regard to the matters set out in subparagraphs (1) to (3) below:

- (1) the nature and size of the proposed offer of Securities for which purpose the issue price of a Security is being calculated;
 - (2) the circumstances in which the proposed offer of Securities will be made; and
 - (3) the interests of holders of Securities generally including the balancing of the dilutionary effect of any such issue against the desirability of a successful capital raising; and
- (D) concludes that a price determined in accordance with paragraph (iv)(C) is a more appropriate measure of the market price of Securities than the price determined under paragraph (a), and the valuation methods and policies applied by the adviser must be capable of resulting in a calculation of the market price that is independently verifiable.

If Securities have not been traded in the 20 ASX Trading Days ending on the relevant day, paragraph (b) applies.

Marketable Parcel has the meaning given in the Listing Rules;

Member means a person whose initial Application has been accepted by the Responsible Entity and whose name for the time being is entered in the Register as the holder of a Unit in accordance with clause 7.6 and which Units have not been withdrawn in accordance with clause 11.9;

Member Liabilities means the amount representing Members' capital undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not the Units may be withdrawn and regardless of whether characterised as equity or debt in the accounts of the Trust (but excluding Withdrawal Amounts and any distributions to which a Member has become entitled to be paid);

Members Offered has the meaning given in clause 9.16;

Minimum Application Amount means the number of Units or Options (or Cash value equivalent) prescribed by the Responsible Entity from time to time as being the minimum Application amount;

Minimum Holding means the number of Units or Units in a class of Units or Options (or Cash value equivalent) prescribed by the Responsible Entity from time to time as being the minimum holding of Units or Units in that class of Units or Options (as applicable);

Minimum Withdrawal Amount means the number of Units or Units in a class (or Cash value equivalent) prescribed by the Responsible Entity from time to time as being the minimum amount that may be withdrawn by a Member;

Net Asset Value means the Gross Asset Value less the total value of the Liabilities;

Official List has the same meaning given in the Listing Rules;

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

Option means an option to be issued a Unit;

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

Outgoing Responsible Entity means a Responsible Entity of the Trust, who is removed or retires in accordance with this Constitution and the Corporations Act;

Pay includes apply, transfer, assign, convey or credit a monetary amount;

Property means property, assets and rights of any kind including real, personal, moveable and immoveable property of any nature, wherever situated, including income, financial products, insurance policies, currency, Cash, bank accounts and choses in action;

Real Property means real property (including any one or more pieces of real property and any buildings or improvements on that real property) acquired, and held, as an Asset or by a Subsidiary or an Investment Vehicle;

Redcape Group means, collectively, the Trust, the Stapled Entity and each of their respective Subsidiaries and Investment Vehicles;

Reduced Input Tax Credit has the same meaning as in the GST Law;

Register means the register of Members and the register of Option Holders maintained by, or on behalf of, the Responsible Entity (and includes the Stapled Security Register while Stapling applies);

Regulatory Requirement has the meaning in clause 27.2;

Regulatory Requirement Amendment has the meaning in clause 27.2;

Reinvestment Arrangement has the meaning given in clauses 15.1(k)(i) and 15.2(k)(i) (as applicable) but subject to clauses 8.6 and 15.4;

Representative has the meaning given in clause 9.12(a);

Required Part has the meaning given in clause 27.2;

Responsible Entity means, from time to time:

- (a) if the Trust is registered, the responsible entity of the Trust; or
- (b) otherwise the trustee of the Trust who is called the "Responsible Entity" in this Constitution;

Restricted Security has the same meaning given to it in the Listing Rules;

Rights Member has the meaning given in clause 8.4;

Security means:

- (a) where Units are Stapled, a Stapled Security; and
- (b) where Units are not Stapled, a Unit;

Small Holding means a parcel of Units that is less than a Marketable Parcel;

Special Resolution means:

- (a) while the Trust is a registered scheme, the meaning given in the Corporations Act; and
- (b) while the Trust is not a registered scheme, a resolution passed at a meeting of Members:
 - (i) on a show of hands, by greater than 75% of Members present in person or by proxy and entitled to vote on the resolution; or
 - (ii) on a poll, by persons who together hold greater than 75% of the number of Units held by Members present in person or by proxy and entitled to vote on the resolution,

including any such resolution passed in accordance with clause 25.14.

Stapled Constitution means the Constitution for a Stapled Entity (as amended from time to time);

Stapled Entity means any trust, corporation, managed investment scheme or other entity the securities in which are Stapled to Units and, where the context requires, includes the trustee or responsible entity of the relevant trust or managed investment scheme;

Stapled Security means a Unit and each Attached Security which are Stapled together;

Stapled Security Holder means a person entered in the Stapled Security Register as the holder of a Stapled Security (including any persons jointly registered);

Stapled Security Register means the register of Stapled Securities to be established and maintained in accordance with clause 36.5;

Stapling means the linking together of the rights and obligations which attach to a Stapled Security so that the Unit and the Attached Security or Attached Securities may only be dealt with together and **Stapled** has a corresponding meaning;

Stapling Date means the date determined by the Responsible Entity to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities;

Stapling Deed means the deed of that name between a Stapled Entity and the Responsible Entity in relation to the Stapling (as amended from time to time);

Stapling Provision means a provision of this Constitution relating or referring to or connected with Stapling;

Subsidiary has the meaning given in the Corporations Act, but so that:

- (a) an entity will also be considered to be a Subsidiary of a trustee, responsible entity or other entity if it is controlled by that trustee, responsible entity or other entity (expressions used in this paragraph have the meanings given for the purposes of Division 6 of Part 1.2 of the Corporations Act);

- (b) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation;

Tax or Taxes means every kind of tax, duty, rate, levy, withholding, deduction and charge imposed at any time by any fiscal, national, state or local authority or entity, together with interest and penalties including, for the avoidance of doubt, any GST;

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

Termination means the date the Trust terminates in accordance with clause 30.1;

Terms of Issue means in relation to an Option the terms and conditions on which that Option is issued;

Transaction Costs means the transaction costs determined by the Responsible Entity to be associated with the acquisition or disposal of Assets, being:

- (a) when calculating the Application Price of a Unit, the Responsible Entity's estimate of the total costs of acquiring the Assets or the Assets properly attributable to a class of Units, as applicable (which may include costs associated with the valuation, transfer or assignment of Property transferred in satisfaction of the Application Price); and
- (b) when calculating the Withdrawal Price of a Unit, the Responsible Entity's estimate of the total costs of selling the Assets or the Assets properly attributable to a class of Units, as applicable,

necessary to avoid an adverse impact on other Members because of an issue or a withdrawal of Units, provided that, subject to the Corporations Act, the Responsible Entity may in its absolute discretion deem the Transaction Costs to be a lesser sum or zero;

Trust means the trust constituted under this Constitution;

Trust Fund means, at any time, all of the Assets but subject to the Liabilities at that time;

Unit means an undivided beneficial interest in the Trust Fund subject to the rights, obligations and restrictions attaching to that Unit as set out in this Constitution;

Unstapled or Unstapling in relation to a Unit in the Trust means not being Stapled to an Attached Security;

Unstapling Date has the meaning set out in clause 36.12;

Unstapling Event has the meaning set out in clause 36.12;

Valuation Time means a time as at which the Responsible Entity calculates any of the value of Assets, Liabilities, the Gross Asset Value, the Gross Asset Value of a class of Units, the Net Asset Value or the Net Asset Value of a class of Units for the purposes of determining any amount or item in accordance with this Constitution;

VWAP of a Security on a particular day means the volume weighted average traded price per Security of all Securities traded on ASX (excluding any special crossings) and on any other securities exchange for the period of 20 ASX Trading Days ending on the relevant day (whether or not a sale was recorded on any particular day);

Wholesale Client has the meaning set out in section 761G of the Corporations Act;

Withdrawal Amount means, in respect of a withdrawal of Units of a Member which has been accepted by the Responsible Entity under clause 11.1 or pursuant to a withdrawal offer made under clause 11.4, the total Withdrawal Price of all Units the subject of the withdrawal;

Withdrawal Date has the meaning given in clause 11.1(c)(i);

Withdrawal Price means the withdrawal price of a Unit to be calculated as follows:

- (a) if the Trust has only one class of Units in issue, a price per Unit calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{Number of Units in issue}}$$

using the value of each of the variables determined by the Responsible Entity as at the Withdrawal Date, except while the Trust is a registered scheme but is not Liquid, in which case it will be as at the time the relevant withdrawal offer closes; or

- (b) if the Trust has more than one class of Units in issue, a price per Unit for a Unit in a particular class of Units equal to:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{Number of Units in issue in that class of Units}}$$

where:

Net Asset Value = the Net Asset Value of that class of Units, being the Gross Asset Value of the Assets properly attributed by the Responsible Entity to that class of Units less any Liabilities properly attributed to that class of Units by the Responsible Entity; and

Transaction Costs = the proportion of Transaction Costs of selling the Assets properly attributed to that class of Units by the Responsible Entity,

using the value of each of the variables determined by the Responsible Entity as at the Withdrawal Date, except while the Trust is a registered scheme but is not Liquid, in which case it will be as at the time the relevant withdrawal offer closes; and

Withdrawal Request means a request by, or on behalf of, a Member to withdraw wholly or partly from the Trust, in writing (which may include by electronic means).

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (a) a gender includes the other genders;
- (b) the headings are used for convenience only and do not affect the interpretation of this Constitution;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to this Constitution, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Constitution, their substitutes and assigns;
- (h) the word "month" means calendar month;
- (i) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a reference to all or any part of a statute, rule, regulation, ordinance or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (m) wherever "include", "for example", "such as" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (n) money amounts are stated in Australian currency unless otherwise specified;
- (o) a reference to time is to the time a thing is to be done, unless specified otherwise;
- (p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body; and

- (q) words defined in the Corporations Act or the Listing Rules not otherwise defined in this Constitution, have the same meaning in this Constitution, including where the Trust is not a registered scheme, as if the Trust were a registered scheme.

1.3 Schedules

Any schedule attached to this Constitution forms part of it. If there is any inconsistency between any clause of this Constitution and any provision in any schedule, the clause of the schedule will prevail.

1.4 Registered scheme

- (a) If the Trust is a registered scheme, a provision in this Constitution which is inconsistent with a provision of the Corporations Act, does not operate to the extent of the inconsistency.
- (b) A clause in this Constitution which is stated to be subject to the Corporations Act or to apply except as the Corporations Act provides otherwise, is only subject to, or its application restricted by, the Corporations Act at any time whilst the Trust is registered.
- (c) The Responsible Entity declares that this Constitution is the constitution of the Trust for the purposes of the Corporations Act at any time that the Trust is a registered scheme.

1.5 More than one class of Units

Where there is more than one class of Units in issue, each clause and calculation in this Constitution in connection with a Unit must be read as referable to and applied in respect of, the class to which the Unit belongs, unless the context requires otherwise.

1.6 Listing Rules and ASX Settlement Operating Rules only apply if Trust is Listed

In this Constitution, a reference to the Listing Rules or ASX Settlement Operating Rules:

- (a) only has effect if at the relevant time the Trust is Listed and Units are Officially Quoted and is otherwise to be disregarded; and
- (b) is to be read taking into account any ASX waivers or exemptions applicable to the Trust.

2. Establishment of the Trust

2.1 Name of the Trust

- (a) The Trust formed under this Constitution is called the Moelis Australia Hotel Trust II or any other name the Responsible Entity determines.
- (b) If a Responsible Entity retires or is removed, the Incoming Responsible Entity must, unless otherwise approved by the Outgoing Responsible Entity, within 20 Business Days (or a longer period determined by the Outgoing Responsible Entity) after the Outgoing Responsible Entity retires or is removed, do everything reasonably necessary to change the name of the Trust to a name that does not imply an association with the Outgoing Responsible Entity or its business.

2.2 Declaration of trust

The Responsible Entity declares that it will hold the Trust Fund on trust for the Members on, and subject to, the terms and conditions of this Constitution.

2.3 Commencement of the Trust

The Trust commences on the date that a person (other than the Responsible Entity) Pays to the Responsible Entity or Custodian \$10 to establish the Trust Fund and the Responsible Entity issues Units to that person in return for that payment. On the payment of that amount, the person's name will be entered on the Register and 10 Units will be issued to that person.

3. Assets held on trust

3.1 Assets not available to another trust

- (a) The Assets are not available to meet any liabilities of any trust other than the Trust.
- (b) The Assets of a class of Units are not available to meet any liabilities of any other class of Units.
- (c) The Responsible Entity must, if required by the Corporations Act, ensure that the Assets are clearly identified as Assets and held separately from the Property of the Responsible Entity and the Property of any other trust.
- (d) If not required by clause 3.1(c) to hold Assets separately, the Responsible Entity may hold the Assets of the Trust together with other Property provided that the Responsible Entity:
 - (i) performs regular reconciliation procedures appropriate to the nature of the Assets of the Trust; and
 - (ii) reasonably considers that holding the Assets of the Trust separately from other Property would not be in the best interest of Members.

3.2 Vesting of Assets

The Assets vest in the Responsible Entity to be held by the Responsible Entity or a Custodian appointed by the Responsible Entity, on trust for the Members throughout the continuance of the Trust.

4. Members and Responsible Entity bound by Constitution

4.1 Constitution enforceable

This Constitution is executed for the benefit of the Members and is legally enforceable as between the Members and the Responsible Entity.

4.2 Constitution binding

This Constitution (including as amended in accordance with clause 27) binds the Responsible Entity, each present and future Member, any other person with an interest

in the Trust and any person claiming through any of them in accordance with its terms as if they were a party to this Constitution.

5. Units

5.1 Beneficial interest divided into Units

The beneficial interest in the Trust Fund is divided into Units.

5.2 Interest conferred by Units

- (a) Subject to any Class Rights, each Unit confers an equal undivided interest in the Trust Fund as a whole.
- (b) Where there is more than one class of Units in issue, each Unit in a class confers an equal undivided interest in the Assets properly attributable to that class of Units as a whole.
- (c) A Unit does not confer any interest in any particular part of the Trust Fund or in any Asset.
- (d) The right of each Member is limited to the right to require the due administration of the Trust in accordance with this Constitution.
- (e) If the Responsible Entity breaches or threatens to breach any duties or obligations to a Member, the Member's recourse against the Responsible Entity is limited to a right to recover damages or compensation from the Responsible Entity, and the Members acknowledge that damages or compensation from the Responsible Entity is an adequate remedy for such breach or threatened breach.

5.3 Member rights

- (a) A Member holds a Unit subject to the rights, obligations and restrictions attaching to that Unit.
- (b) Where there is more than one class of Units in issue, a Member holds a Unit subject to any Class Rights applicable to that Unit.

5.4 No interference by Members

- (a) Subject to the Corporations Act or as expressly provided in this Constitution, no Member is entitled to:
 - (i) interfere with any discretions, rights or powers of the Responsible Entity, the Custodian or their dealings with the Trust Fund, the Assets or any part of them;
 - (ii) exercise, or purport to exercise, any rights, powers or privileges in respect of any Asset;
 - (iii) interfere in any way with the Trust, the Assets or the Trust Fund;
 - (iv) require that any Asset be transferred to any Member; or
 - (v) lodge a caveat in respect of any Asset.

- (b) A Member may not give any direction to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which:
- (i) may result in the Responsible Entity acting contrary to Law;
 - (ii) may result in the Trust ceasing to comply with the Listing Rules; or
 - (iii) would otherwise be within the scope of any discretion or power expressly conferred on the Responsible Entity by this Constitution.

5.5 Classes of Units

- (a) The Responsible Entity may issue Units of a single class or may, in accordance with the Corporations Act and provided that such action does not have a material adverse effect on the rights or obligations of any existing Members:
- (i) issue Units of different classes with different Class Rights; and
 - (ii) alter the class of a Unit by converting the entire class of Units into another class or by re-classifying or re-allocating particular Units to another class.
- (b) The Responsible Entity may in accordance with the Corporations Act:
- (i) determine that an Asset (or a proportion of an Asset) is properly attributable to a class of Units;
 - (ii) determine that a class specific Liability is properly attributable to that class of Units (including any accrued fees and costs properly attributable to that class of Units);
 - (iii) subject to the Corporations Act and any determination made in accordance with clause 5.5(b)(ii), attribute all other Liabilities of the Trust among the classes of Units in issue in the following proportions:
- $$\frac{\text{Class A}}{\text{Total A}}$$
- where:
- Class A = the value of the Assets properly attributable to a class of Units
- Total A = the total value of the Assets of the Trust
- (iv) if clause 15.1 applies, determine that a Distributable Amount is properly attributable to a class of Units.
 - (v) if clause 15.2 applies, determine that income of the Trust is properly attributable to a class of Units.
- (c) The Responsible Entity must determine the proportion of net proceeds of realisation under clause 31.3 that is properly attributable to each class of Units and each proportion attributable to each class of Units must be distributed pro rata to Members holding Units in that class according to the number of Units in that class they hold.

- (d) At any time, all the Units in a class rank equally and are of equal value regardless of when the Units were issued.
- (e) If no separate classes of Units have been issued all Units will be deemed to be of the same class.

5.6 Issue and reconstruction of Units

The Responsible Entity may at any time issue further Units to any person (including an Associate or a related body corporate of the Responsible Entity), cancel, consolidate or divide Units or grant Options to subscribe for Units provided that such action does not have an adverse effect on the rights or obligations of any existing Members.

5.7 Confirmations

The Responsible Entity may promptly issue written confirmations to Members in respect of Units that are issued.

5.8 Certificates

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity is not required to issue certificates for Units or Options (unless their Terms of Issue require).
- (b) If the Responsible Entity is required by the Corporations Act or the Listing Rules to issue certificates for Units, Options or other securities of the Trust, the Responsible Entity must issue the certificates.

5.9 Rounding

- (a) Notwithstanding any other clause of this Constitution, subject to the Listing Rules the Responsible Entity may round (either up or down in its discretion) a Unit fraction (including as a result of the issue or withdrawal of a Unit), the Application Price, Withdrawal Price, distributions to be made or any other amounts to be calculated or paid under this Constitution to such number of decimal places, to a whole cent or to a whole Unit as prescribed by the Responsible Entity.
- (b) Where the Responsible Entity needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units or Options to be issued to an Applicant, the Responsible Entity will disclose the method of calculating the conversion to the Applicant.

6. Options and Financial Instruments

6.1 Issue of Options

- (a) The Responsible Entity may issue Options to any person (including an Associate or a related body corporate of the Responsible Entity):
 - (i) on the basis that the Application Price for a Unit to be issued on exercise of the Option (the **Exercise Price**):

- (A) while the Units in the Trust are Officially Quoted, is a price determined by the Responsible Entity in accordance with clause 8.2 or
 - (B) while the Units in the Trust are not Officially Quoted, is a price determined by the Responsible Entity in accordance with clause 8.1(c) calculated as at the last Valuation Time before the Calculation Date; or
 - (C) is a price determined by the Responsible Entity in accordance with clauses 8.3 or 8.4; or
 - (D) subject to clause 6.1(b), is a price determined by the Responsible Entity other than in accordance with clauses 6.1(a)(i)(A) to 6.1(a)(i)(C);
- (ii) for consideration of \$1 or, subject to clause 6.1(b), for other consideration determined by the Responsible Entity (including no consideration); and
 - (iii) on such other terms as the Responsible Entity determines,

subject to the Corporations Act, any ASIC Relief and any requirements of the Listing Rules.

- (b) The Responsible Entity may issue an Option on the basis that the Exercise Price is a price determined by the Responsible Entity other than in accordance with clauses 6.1(a)(i)(A) to 6.1(a)(i)(C) or consideration other than \$1 (including for no consideration) when the Responsible Entity offers the Option to persons who are Members on a date determined by the Responsible Entity (**Entitled Members**), in proportion to the value of each Entitled Member's Units in the Trust on that date, subject to the exclusion of any Member from the offer where it is not a contravention of section 601FC(1)(d) of the Corporations Act (including where the Responsible Entity is not required to comply with section 601FC(1)(d) under ASIC Relief).

6.2 Reorganisation of Options

Subject to the Listing Rules, the Responsible Entity may at any time reorganise Options in accordance with their Terms of Issue.

6.3 Option exercise

- (a) Options may only be exercised in accordance with their terms and subject to clause 6.5.
- (b) The Responsible Entity must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an Application for Units but the Responsible Entity must not refuse to issue any Units except if the Terms of Issue and, if applicable, the Listing Rules permit (or if any Law requires) such refusal.

6.4 Rights attaching to Options

- (a) An Option will not confer any interest in, or any rights to participate in the income or capital of, the Trust Fund.

- (b) No Option Holder is entitled to:
 - (i) interfere with any discretions, rights or powers of the Responsible Entity, the Custodian or their dealings with the Trust Fund, the Assets or any part of them;
 - (ii) exercise, or purport to exercise, any rights, powers or privileges in respect of any Asset;
 - (iii) interfere in any way with the Trust, the Assets or the Trust Fund;
 - (iv) require that any Asset be transferred to any Option Holder; or
 - (v) lodge a caveat in respect of any Asset.
- (c) Subject to the Terms of Issue of the Option and the Corporations Act, an Option Holder who is not a Member is not entitled to any other rights of a Member.
- (d) If an Option constitutes an interest in the Trust for the purposes of the Corporations Act, the Terms of Issue must be set out in this Constitution (which may include in a schedule).

6.5 Lapse of Options

An Option lapses on the earliest of:

- (a) the date stipulated in the Terms of Issue;
- (b) the Termination of the Trust; or
- (c) the winding up of the Trust,

and the liability of the Trustee and the Trust ceases in respect of the Option.

6.6 Exercise of Options while Stapling applies

While Stapling applies, an Option to acquire those Units may only be exercised if, at the same time the Units are acquired pursuant to the Option, the same person acquires the same number of Attached Securities.

7. Applications for Units or Options

7.1 Applying for Units or Options

- (a) An Applicant who wishes to subscribe for a Unit (other than the initial Units issued pursuant to clause 2.3) or an Option must:
 - (i) complete an Application;
 - (ii) lodge or make the Application in a manner determined by the Responsible Entity (which may include by electronic means); and
 - (iii) Pay the Application Money in the form and manner specified by the Responsible Entity.

- (b) While Stapling applies, an Applicant for Units (including an Application reliant on the exercise of an Option) must, at the same time, apply for an identical number of Attached Securities.

7.2 Application Money

- (a) Any Application Money received from an Applicant will be held in an Application Account until a Unit is issued.
- (b) An Applicant who is dissatisfied with the processing of their Application is entitled to make a complaint to the Responsible Entity in accordance with the complaints handling process maintained by the Responsible Entity pursuant to clause 29.

7.3 Transfer of Property

- (a) The Responsible Entity may, subject to clauses 7.3(b) and 18.2(b), in its absolute discretion, accept a transfer of Property to the Trust (rather than Cash) as payment of part or all of the Application Price for Units for which a person is subscribing.
- (b) If clause 7.3(a) applies, the number of Units to be issued is to be calculated as follows:

$$\frac{A - B - C}{D}$$

where:

- A = the value of the Property determined by the Responsible Entity in accordance with clause 18.2 or determined by a valuation acceptable to the Responsible Entity.
- B = the transaction costs of transferring the Property.
- C = the Establishment Fee determined in accordance with Schedule 1 (if any).
- D = the Application Price of the relevant class of Units calculated as at that time, in accordance with clauses 8.5 and 8.12.

7.4 Responsible Entity may determine a Cut-off Time

The Responsible Entity may from time to time, determine that Applications will only be accepted if received by a Cut-off Time.

7.5 Responsible Entity may reject Applications

- (a) The Responsible Entity may in its absolute discretion, reject an Application, in whole or in part, without reason and irrespective of whether the Application has been received by the Cut-off Time that applies to that Application. The Responsible Entity must make that decision as soon as practicable after receiving the Application. Subject to the Listing Rules, the Responsible Entity is not required to provide any reason or ground for such rejection but must give written notice to the Applicant of the decision to reject the Application within a reasonable time and return the Application Money.

- (b) While Stapling applies, the Responsible Entity must reject an application for Units (including an application reliant on the exercise of an Option) if the Applicant does not also apply for an identical number of Attached Securities and if an identical number of Attached Securities will not be issued to the Applicant at the same time as the Units.

7.6 Issue of Units, Options and Stapled Securities

- (a) Subject to clause 7.6(c), a Unit is issued to a person when:
 - (i) the Application is accepted by the Responsible Entity; and
 - (ii) subject to clause 36.5, the person's name is recorded on the Register as the holder of the Units.
- (b) An Option is issued to a person when:
 - (i) the Application is accepted by the Responsible Entity; and
 - (ii) the person's name is recorded on the Register as the holder of the Option.
- (c) While Stapling applies, a Stapled Security is issued to a person when:
 - (i) the Application for the Stapled Security is accepted by the Responsible Entity; and
 - (ii) the person's name is recorded on the Stapled Security Register as the holder of the Stapled Securities.

7.7 Number of Units created

Subject to clauses 7.3, 7.12(c) and 8.3 and the Terms of Issue of any Option, the number of additional Units which will be created in respect of an Application for Units accepted by the Responsible Entity is the number calculated by the Responsible Entity dividing the Application Money (less any Establishment Fee payable to the Responsible Entity in accordance with Schedule 1) by the Application Price for the relevant class of Units.

7.8 Cancellation of Applications and Units and Options

- (a) Notwithstanding any other act of the Responsible Entity or any of its agents, the Responsible Entity may cancel Units or Options, elect to treat an Application as not having been made or accepted, make appropriate entries in the records of the Trust and, if applicable, return the subscription amount to the Applicant if:
 - (i) a subscription amount for Units or Options is tendered by way of uncleared funds or cheque and the funds are not cleared or the cheque is dishonoured;
 - (ii) the Application was incorrectly executed or executed without power or authority;
 - (iii) the applicant is not eligible to hold Units or Options; or
 - (iv) the Application was accepted in error.

- (b) If Units are cancelled under clause 7.8(a), the Responsible Entity is not required to adjust any Application Price or Withdrawal Price determined before the cancellation of the Units.
- (c) Where Stapling applies, the Responsible Entity may take any action contemplated by clause 7.8(a) where the Application is for Stapled Securities.
- (d) While Stapling applies but there are Applications for each part of the Stapled Security, if the Stapled Entity determines in relation to an Attached Security that the application for the Attached Security is defective, the Responsible Entity must treat the application for Units as defective for the purposes of clause 7.8(a).

7.9 Fractional Units

- (a) The Responsible Entity may issue and allow to remain in issue fractional Units unless Stapling applies or while the Trust is Listed in which case clause 7.9(d) applies.
- (b) If fractional Units are issued, then the provisions of this Constitution relating to Units and Members apply to fractional Units and holders of fractional Units in the proportion which the value of the relevant fractional Unit bears to the value of a Unit in the applicable class of Units (calculated to such number of decimal places as the Responsible Entity determines).
- (c) The Responsible Entity may add any fractional Unit held by a Member in a class of Units to, and consolidate it with, any other fractional Units of the same class held by that Member.
- (d) While Stapling applies or if Trust is Listed, the Responsible Entity may not issue fractional Units or allow them to exist.
- (e) If any fractions of Units are on issue at a time when the Trust is to be Listed the Responsible Entity may cancel the fractions with effect from the date the Trust is Listed.

7.10 Restriction on new Units

Notwithstanding any other clause in this Constitution, the Responsible Entity must not issue any Units:

- (a) on or after the 80th anniversary of the date the Trust commenced if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity; or
- (b) if the Trust has terminated in accordance with clause 30.1.

7.11 Minimum Application Amount and Minimum Holding

- (a) Subject to the Corporations Act and clause 7.11(b), the Responsible Entity may set a Minimum Application Amount and a Minimum Holding for the Trust or a class of Units or Options and alter or waive those amounts from time to time.
- (b) The Responsible Entity's right to establish a Minimum Holding under clause 7.11(a) is suspended while the Trust is Listed.

7.12 Capital Reallocation Issue

- (a) The Responsible Entity may at any time issue Units (**Capital Reallocation Units**) in either of the following circumstances:
- (i) a Stapled Entity applies for Capital Reallocation Units as agent for all the holders of Stapled Securities and applies a distribution of capital paid out of the Stapled Entity towards the Application Moneys for those Capital Reallocation Units; or
 - (ii) a Stapled Entity applies for Capital Reallocation Units out of a distribution of capital paid out of the Stapled Entity and the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities.
- (b) The Responsible Entity must immediately consolidate the Capital Reallocation Units issued under this clause 7.12 with all other Units then in issue in the Trust so that the total number of Units in issue after the consolidation is equal to the total number of Units in issue before the issue of the Capital Reallocation Units taking place.
- (c) Capital Reallocation Units issued under this clause 7.12 will be issued at an Application Price equal to the amount calculated by dividing the total amount received in relation to the Application made under clause 7.12(a) by the number of Units in issue as at the date of issue of the Capital Reallocation Units.

8. Application Price

8.1 Application Price while Units in the Trust are not Officially Quoted

- (a) The Application Price for Units issued to commence the Trust pursuant to clause 2.3 is \$1.00 per Unit.
- (b) Provided the Trust is not a registered scheme, the Application Price for Units issued pursuant to an Application made under the first Disclosure Document will be equal to \$1.00 less the application price for any other security also issued pursuant to that first Disclosure Document as determined by the Responsible Entity.
- (c) Subject to clauses 6.1(a)(i)(B), 7.12, 8.1(b) and 8.2 to 8.11 (inclusive) and to any applicable ASIC Relief, while Units in the Trust are not Officially Quoted, the Responsible Entity may offer Units for subscription to any person after Units issued in accordance with clauses 8.1(a) and 8.1(b) for an Application Price per Unit which is not less than 90% of the price calculated on the basis of the following formula :
- (i) if the Trust has only one class of Units in issue, a price per Unit equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Number of Units in issue}}$$

using the value of each of the variables determined by the Responsible Entity as at the next Valuation Time after the Responsible Entity accepts the Application for issue of the Unit; or

- (ii) if the Trust has more than one class of Units in issue in respect of a Unit to be issued in a particular class of Units, a price per Unit equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Number of Units in issue in that class of Units}}$$

where:

Net Asset Value = the Net Asset Value of that class of Units, being the Gross Asset Value of the Assets properly attributed by the Responsible Entity to that class of Units less any Liabilities properly attributed to that class of Units by the Responsible Entity; and

Transaction Costs = the proportion of Transaction Costs of buying the Assets properly attributed to that class of Units by the Responsible Entity,

using the value of each of the variables determined by the Responsible Entity as at the next Valuation Time after the Responsible Entity accepts the Application for issue of the Unit.

- (d) Subject to clauses 8.3 to 8.11 (inclusive), any applicable ASIC Relief and the Listing Rules, the Responsible Entity may offer Units for subscription to any person pursuant to an Initial Public Offer for an Application Price per Unit which is not less than 90% of the price calculated on the basis of the following formula:

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

where:

the Net Asset Value is determined on a day which is not more than 5 Business Days prior to the date on which a Disclosure Document pursuant to which the Initial Public Offer is made is lodged with ASIC; and

IPO Transaction Costs means an amount determined by the Responsible Entity as appropriate to factor into the calculation of the Application Price under this clause 8.1(d) to account for transaction expenses or other amounts incurred or to be incurred in connection with, or which may arise as a consequence of, the Initial Public Offer. This amount may include, but is not limited to:

- (A) costs associated with refinancing (including any fees, amounts, costs, expenses (including expenses incurred or required to be accelerated in accordance with the applicable Accounting Standards) or other charges which may become payable or expensed in connection with the application, establishment, recapitalisation or termination, of any existing or anticipated financing arrangements); and
- (B) any fees, amounts, costs or other charges (whether direct or indirect) incurred or to be incurred in connection with, or as a consequence of, the admission of the Trust to the Official List, the Official Quotation of Units or the issue of Units as part of the Initial Public Offer, including any fee, amount, cost or other charge (whether direct or indirect) which is incurred or to be incurred as a

result of a payment to a third party, or required to be expensed in accordance with the applicable Accounting Standards.

Unless the Responsible Entity otherwise determines, the IPO Transaction Costs is the Responsible Entity's estimate of the total transaction costs incurred in connection with the Initial Public Offer.

8.2 Application Price while Units in the Trust or Stapled Securities are Officially Quoted

- (a) Subject to clauses 8.2(b) and 8.3 to 8.11 (inclusive) and to clause 7.12, while Units in the Trust are Officially Quoted:
 - (i) where the Unit will not form part of a Stapled Security, the Application Price for any Unit will be the Market Price of a Unit on the Calculation Date; or
 - (ii) where the Unit will form part of a Stapled Security, the Application Price for the Unit will be the price determined by the Responsible Entity in accordance with clauses 8.2(b) and 8.13.
- (b) Subject to clauses 8.3 to 8.11 (inclusive), if Stapling applies, while Units in the Trust are Officially Quoted, the application price for a Stapled Security will be the Market Price of a Stapled Security on the Calculation Date.

8.3 General

Despite any other provision in this clause 8, the Responsible Entity may issue Units or Stapled Securities at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clauses 8.1 and 8.2 (as applicable), to the extent the Responsible Entity is permitted to do so under the Corporations Act, any applicable ASIC Relief and the Listing Rules. This includes specifying an Application Price by amending this Constitution or, to the extent permitted by the Corporations Act and any applicable ASIC Relief, determining the Application Price by reference to specified criteria or a formula.

8.4 Rights issues

Without limiting clause 8.3, the Responsible Entity may issue Units (or Units in a class) at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clauses 8.1 and 8.2, by way of rights issue or similar offering when the Responsible Entity offers the Units to persons who are Members (or Members of a particular class of Units) on a date determined by the Responsible Entity (**Rights Members**), in proportion to the value of each Rights Member's Units (or to the value of each Right's Member's Units in the relevant class) on that date, subject to the exclusion of any Member from the offer where it is not a contravention of section 601FC(1)(d) of the Corporations Act (including where the Responsible Entity is not required to comply with section 601FC(1)(d) under ASIC Relief).

8.5 Issue of Units to acquire an Asset

- (a) While Units in the Trust are not Officially Quoted, the Application Price for those Units that are consideration (in whole or in part) for the acquisition of Property must be calculated in accordance with clause 8.1(c) (but subject to clause 8.12)

calculated on the date of the agreement under which there will be an issue of the Units.

- (b) Subject to clause 8.7, while Units in the Trust are Officially Quoted:
- (i) but do not form part of a Stapled Security, the Application Price for Units that are consideration (in whole or in part) for the acquisition of Property must be the Market Price calculated on the day which is five Business Days before the day on which the Responsible Entity publicly announces the transaction (or proposed transaction) under which there will be an issue of the Units (or if there is no such announcement, five Business Days before the date of the agreement under which there will be an issue of the Units); or
 - (ii) as part of a Stapled Security, the Application Price for Units that are consideration (in whole or in part) for the acquisition of Property will be the price determined by the Responsible Entity in accordance with clause 8.13 calculated on the day which is five Business Days before the day on which the Responsible Entity publicly announces the transaction (or proposed transaction) under which there will be an issue of the Stapled Securities (or if there is no such announcement, five Business Days before the date of the agreement under which there will be an issue of the Stapled Securities).

8.6 Reinvestment or placements

Subject to the Listing Rules, the Responsible Entity may issue Units at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clauses 8.1 and 8.2, under a Reinvestment Arrangement or a placement to the extent permitted under ASIC Relief.

8.7 Issue of Units as Bid Consideration

Without limiting clause 8.3, if the Responsible Entity considers that it would be in the best interests of Members to issue Units as consideration, or part of the consideration, to acquire financial products of a target entity (**Bid Consideration**), the Responsible Entity may offer the Bid Consideration under a takeover bid made in accordance with Chapter 6 of the Corporations Act, or other offer to acquire financial products of a target entity, for an Application Price per Unit determined in accordance with this clause 8.

8.8 Unit purchase plan

Subject to the Listing Rules, the Responsible Entity may issue Units at an Application Price determined by the Responsible Entity being a price other than the Application Price calculated in accordance with clauses 8.1 and 8.2 (as applicable) under a Unit purchase plan undertaken in accordance with ASIC Relief.

8.9 Foreign Members

To the extent permitted by the Listing Rules, the Corporations Act and any ASIC Relief, the Responsible Entity is not required to offer Options or offer Units under clauses 6.1(b), 8.4, 8.6 and 8.8 to Members whose address on the Register is outside Australia or where in the Responsible Entity's opinion the transfer may contravene any Law in respect of ownership of assets by persons not being Australian persons.

8.10 Underwriting of rights issues and placements by Associates of the Responsible Entity

Subject to the terms of any relevant ASIC Relief and to the Corporations Act and the Listing Rules, the Responsible Entity may issue Units or Options to an Associate as an underwriter or sub-underwriter.

8.11 Issues to Associates of the Responsible Entity

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may issue Units or Options to an Associate that holds interests in the Trust.

8.12 Satisfaction of Application Price

The Application Price may be satisfied by payment of Cash or by transfer to the Responsible Entity of Property acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts Property it may, subject to the Corporations Act and any applicable ASIC Relief, determine that some or all of the costs associated with the valuation, transfer or assignment of the Property are payable or reimbursable out of the Assets or by the Applicant (or both, in agreed proportions).

8.13 Apportionment of Application Price while Stapling applies

- (a) If a Unit is to be issued as part of a Stapled Security the Responsible Entity must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this Constitution (the **Application Price Allocation**) in accordance with this clause 8.13.
- (b) Subject to clauses 8.3 to 8.11 (inclusive) and to clause 7.12, while Units in the Trust are not Officially Quoted and form part of a Stapled Security, the Application Price for any Unit will be the price determined by the Responsible Entity in accordance with clause 8.1(c) and the application price of the Stapled Security is the sum of that amount and the application price of the other Attached Security or Attached Securities.
- (c) Subject to clauses 8.3 to 8.11 (inclusive) and to clause 7.12, while Units in the Trust are Officially Quoted and form part of a Stapled Security, unless otherwise agreed between the Responsible Entity and the other Stapled Entity, the Application Price Allocation is to be in the ratio that the amount of the Net Asset Value of the Trust bears to the amount of the aggregate Net Asset Value of the Trust and the net asset value of the other Stapled Entity. However, subject to clauses 8.3 to 8.11 (inclusive) and clause 7.12, the aggregate of the Application Price of that Unit and the application price of the Attached Security or Attached Securities to which that Unit will be Stapled must equal the Market Price of a Stapled Security on the Calculation Date.
- (d) For the purposes of clause 8.13(c), unless the Responsible Entity and the other Stapled Entity agree otherwise, the net assets of each Stapled Entity and the Trust will be determined by reference to its most recent financial statements, adjusted to take into account any subsequent valuations undertaken in relation to an asset.
- (e) The application price for a Stapled Security under this clause 8.13 must be consistent for each Stapled Security issued to a Stapled Security Holder at the same time.

9. Transfer and transmission of Units and Options

9.1 Units and Options transfers

Units and Options may be transferred subject to their terms and this Constitution.

9.2 Transfer if not Officially Quoted

While Units or Options are not Officially Quoted, the form of transfer for a Unit or an Option must comply with clause 9.4.

9.3 Transfer if Officially Quoted

- (a) Subject to this Constitution and the Listing Rules, if a Unit or an Option is Officially Quoted, it is transferable:
 - (i) in any manner permitted by the Listing Rules (or any other operating rules of a CS Facility applicable to the Units); or
 - (ii) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.
- (b) The Responsible Entity may require before registration of any transfer under 9.3(a) that there be provided to the Responsible Entity any documents which the Listing Rules or which the Corporations Act, ASX or ASIC require or permit the Responsible Entity to require be provided to it to authorise registration.
- (c) If a duly completed instrument of transfer which complies with clause 9.4 is:
 - (i) used to transfer a Unit or an Option in accordance with 9.3(a)(ii); and
 - (ii) left for registration with the Responsible Entity or the body responsible for keeping the Register and accompanied by any information that the Responsible Entity properly requires to show the right of the transferor to make the transfer,

the Responsible Entity must, subject to this Constitution, register the transferee as the holder of the Unit or Option (as applicable).
- (d) Subject to the Corporations Act, while Units are Officially Quoted, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.
- (e) While Units or Options are Officially Quoted, no fee may be charged by the Responsible Entity on the transfer of those Units or Options, except to the extent that the fee is permitted by the Listing Rules.

9.4 Form of written transfer

- (a) All written transfers of Units or Options must be in a form determined by the Responsible Entity from time to time (which may include by electronic means).
- (b) Unless otherwise determined by the Responsible Entity, all transfers of Units or Options other than in accordance with the Listing Rules must be:

- (i) executed by both the transferor and the transferee;
- (ii) duly stamped (if required); and
- (iii) accompanied by such evidence (if any) as the Responsible Entity requires to prove the transferor's title or right to transfer the Units or Options and that the transferee is an Eligible Investor.

9.5 Responsible Entity may refuse transfer

- (a) Subject to the Corporations Act and any applicable ASIC Relief, if Units or Options are not Officially Quoted, the Responsible Entity may refuse to record any transfer in the Register without giving any reason for the refusal including if the transfer results in the Member holding less than the Minimum Holding or if the transferee is not an Eligible Investor.
- (b) Subject to the Corporations Act, any applicable ASIC Relief and to the extent permitted under the Listing Rules, if Units or Options are Officially Quoted the Responsible Entity may:
 - (i) ask ASX Settlement or the body responsible for keeping the Register to apply a holding lock to prevent a transfer of the Units or Options (as applicable and which must also apply to any Attached Securities when Stapling applies); or
 - (ii) refuse to register a transfer of the Units or the Options to which 9.5(b)(i) does not apply.
- (c) To the extent permitted by the Listing Rules, the Corporations Act and any ASIC Relief, the Responsible Entity may decline to register any instrument of transfer where in the Responsible Entity's opinion the transfer may contravene any Law in respect of ownership of assets by persons not being Australian persons.

9.6 Notice of non-registration

If the Responsible Entity determines to decline to register any transfer of Units or Options, the Responsible Entity must, within five Business Days after making that determination give to the person who made the transfer written notice of the decision to decline registration and the reason for it. A failure to give notice does not, however, invalidate the decision of the Responsible Entity.

9.7 Suspension of transfers

Subject to the Listing Rules (while the Units or Options are Officially Quoted), the Responsible Entity may suspend registration of transfers of Units or Options at any times and for any periods as it decides from time to time.

9.8 Recognition of title

Except as provided by the Listing Rules (while the Units or Options are Officially Quoted):

- (a) the transferor of a Unit remains the Member until the Register is updated to record the name of the transferee as the new Member in respect of the Unit; and

- (b) the transferor of an Option remains the Option Holder until the Register is updated to record the name of the transferee as the new holder of the Option.

9.9 Restricted Securities

- (a) Any Restricted Securities in issue cannot be disposed of during the escrow period except as permitted by the Listing Rules or by the ASX.
- (b) The Responsible Entity will refuse to acknowledge a disposal of Restricted Securities (including registering a transfer of any Restricted Securities) during the escrow period relating to the Restricted Securities except as permitted by the Listing Rules or by the ASX.
- (c) For the duration of a breach of the Listing Rules relating to Restricted Securities or a breach of a restriction agreement relating to Restricted Securities, the Responsible Entity must not:
 - (i) pay any distribution to; or
 - (ii) permit the exercise any voting rights (subject to the Corporations Act) by, the holder of the Restricted Securities.

9.10 Transfer of Stapled Securities

- (a) While Stapling applies, a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if the transfer relates to or is accompanied by a transfer of the same number of each Attached Security from the same transferor in favour of the same transferee at the same time.
- (b) While Stapling applies, a transfer of a Unit which does not relate to or is not accompanied by a transfer of the same number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the same number of each Attached Security from the same transferor to the same transferee.
- (c) While Stapling applies, a transfer of any Attached Security to which a Unit is Stapled which does not relate to or is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.

9.11 Death or legal disability of Member

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity:

- (a) the survivor (where the deceased was a joint holder);
- (b) the executors or administrators of the deceased (where the Member was a sole holder or held Units as tenants in common); or
- (c) a Member's legal personal representative (in any other case),

are the only persons entitled to be recognised by the Responsible Entity as having any claim to the Units registered in the Member's name or any claim to the Options registered in the Option Holder's name (as the case may be).

9.12 Registration of new holder in certain circumstances

- (a) Any person becoming entitled to any Units or Options in consequence of the death, bankruptcy or other disability of a Member (**Representative**) may upon such evidence being produced as is required by the Responsible Entity, elect either to be registered as the holder of the Units or Options or to have some other nominated person registered as the holder of the Units or Options (as the case may be).
- (b) A Representative who wishes to make an election pursuant to clause 9.12(a) must deliver or send to the Responsible Entity an election notice in writing in a form determined by the Responsible Entity and signed by the Representative.
- (c) If the Representative elects to have the Representative's nominee registered, the election notice must also be signed by the Representative's nominee.
- (d) All the provisions of this Constitution relating to the registration of transfers of Units or Options apply to an election notice or transfer under this clause so far as they can with such changes as are necessary as if the death, bankruptcy, or disability of the Member had not occurred and the election notice was a transfer executed by the Member.

9.13 Representative's rights

- (a) A Representative is entitled to receive, and may give a discharge for, all money payable in respect of the Units of the Member or the Options of the Option Holder represented.
- (b) A Representative is not entitled to receive notices of, or to attend or vote at, any meetings of Members until the Representative's name is entered in the Register as the Member in respect of the relevant Units.

9.14 Assistance with sales

The Responsible Entity is not responsible for selling any Unit or Option or the enforcement of any terms of sale of any Unit or Option.

9.15 Stapling

Notwithstanding any other provision of this Constitution, while Stapling applies no person under this clause 9 may become a registered holder of Units unless that person is also entitled to become the registered holder of the same number of Attached Securities.

9.16 Exchange Offer and acceptance

- (a) Subject to the Corporations Act and the Listing Rules, if, with the approval of the Responsible Entity, a written offer is made to one or more Members (**Members Offered**) to transfer or withdraw some or all of their Units (an **Exchange Offer**) in consideration of any or all of:

- (i) the issue or transfer of another financial product (including units in another trust, or interests of whatever nature in or in relation to another entity);
- (ii) a Cash payment; and
- (iii) a transfer of Property,

and at least 20 Business Days' notice is given to the Members Offered to accept the Exchange Offer, then on expiry of the period of notice, any Member Offered who has not made an election in respect of the Exchange Offer will be taken to have accepted the Exchange Offer in accordance with clause 9.16(b).

- (b) Where an Exchange Offer is made up of:
 - (i) Cash and one or more other alternatives, the Member Offered is taken to have elected to accept the Cash alternative; and
 - (ii) one or more non Cash alternatives, the Member Offered is taken to have elected to accept the alternative determined by the Responsible Entity.
- (c) The Responsible Entity is irrevocably authorised to complete any Application for Units, forms of transfer or other documents reasonably required for the purposes of an Exchange Offer, in each case, on behalf of and in the name of the relevant Member Offered, as agent or attorney.
- (d) Payments made to or an issue or transfer affected in favour of a Member pursuant to an Exchange Offer is in full discharge of the Member's rights in respect of the Units to which the Exchange Offer relates.
- (e) The Responsible Entity will not give its approval to any Exchange Offer if, having regard to any reasonably foreseeable material benefits and detriments to Members, the Responsible Entity believes that to approve the Exchange Offer is not in the best interests of Members as a whole, or is materially adverse to the Members Offered and to the Members as a whole.

10. Sale of Small Holdings of Units

10.1 Small holdings

Subject to the provisions of this clause 10 and any necessary ASIC Relief and while the Units are Officially Quoted, the Responsible Entity may in its discretion from time to time sell or withdraw any Units held by a Member (together with any Attached Securities) which comprise a Small Holding from time to time without request by the Member.

10.2 Disposal Notice

- (a) If the Responsible Entity determines that a Member's holding of Units is a Small Holding, the Responsible Entity may send a notice in writing (**Disposal Notice**) to that Member stating that the Responsible Entity intends to sell or withdraw the relevant Units, unless within 6 weeks from the date the Disposal Notice is sent:
 - (i) the Member's holding of Units increases to at least a Marketable Parcel;
 - (ii) the Member no longer holds the Units; or

- (iii) the Member gives written notice to the Responsible Entity stating that it wishes to retain its holding.
- (b) If at 5:00 pm Sydney time on the last day of the 6 week period referred to in clause 10.2(a) the Member still holds the Units the subject of the Disposal Notice and:
 - (i) the Member's holding of Units has not increased to at least a Marketable Parcel; and
 - (ii) the Member has not given a written notice to the Responsible Entity under clause 10.2(a)(iii),

the Member is deemed to have irrevocably appointed the Responsible Entity as its agent to withdraw Units or to sell the Units as contemplated by clause 10.4 (in its discretion) and to deal with the proceeds of sale or withdrawal in accordance with clause 10.5.

10.3 Limits on Responsible Entity's power to sell or withdraw

- (a) The Responsible Entity may only exercise its powers under this clause 10 once in any 12 month period.
- (b) The Responsible Entity's power to sell or withdraw Units under this clause 10 lapses following the announcement of a takeover of the Trust. The procedure may be started again after the close of the offers made under the takeover.

10.4 Sale or withdrawal of Units

- (a) The Responsible Entity may sell the Units which make up less than a Marketable Parcel as soon as practicable at a price per Unit indicated in the Disposal Notice.
- (b) For the purposes of effecting a sale, the Responsible Entity may, in accordance with the ASX Settlement Operating Rules, move the Units from a CHES holding to an Issuer Sponsored Holding or into certificated or other registered form.
- (c) Each Unit withdrawn under this clause 10 must be withdrawn at the Withdrawal Price using the value of the variables in the calculation of the Withdrawal Price determined by the Responsible Entity as at the next Valuation Time after 5:00pm Sydney time on the last day of the 6 week period referred to in clause 10.2(a).

10.5 Proceeds of sale or withdrawal

- (a) Subject to clause 10.5(b), for a sale or withdrawal arising from clause 10.2(b), the proceeds of sale (less the costs of the sale) or withdrawal must be sent to the Member after the sale or withdrawal (as applicable).
- (b) The proceeds of sale will not be sent to the Member until the Responsible Entity has received any certificate relating to the Units (or Stapled Securities if applicable) or is otherwise satisfied that such certificate has been lost or destroyed.
- (c) All money payable to a former Member under this clause 10 which is unclaimed for 1 year after payment may be invested or otherwise made use of by the Responsible Entity for the benefit of the Trust until claimed or otherwise disposed

of according to Law. No money payable under this clause 10.5 to a former Member bears interest as against the Responsible Entity or the Trust.

10.6 Effect of sale or withdrawal

The exercise by the Responsible Entity of its powers under this clause 10 extinguishes all interests in the Units of the former Member, and all claims against the Responsible Entity in respect of those Units by that Member including all distributions (whether final or interim) determined to be paid in respect of those Units and not actually paid or accrued.

10.7 Costs of sale

For a sale arising from clause 10.2(b), the purchaser bears the costs of sale of the Units (but is not liable for tax on income or capital gains of the former Member).

10.8 Where Units of two or more Members sold

If the Units of two or more Members to whom this clause applies are sold to one purchaser, the transfer may be effected by one transfer.

10.9 Rights of purchaser

- (a) A certificate signed by the Responsible Entity stating that Units sold under this clause have been properly sold discharges the purchaser of those Units from all liability in respect of the purchase of those Units.
- (b) When a purchaser of Units is recorded on the Register as the holder of the Units, the purchaser:
 - (i) is not bound to see to the regularity of the actions and proceedings of the Responsible Entity under this clause or to the application of the proceeds of sale; and
 - (ii) has title to the Units which is not affected by any irregularity or invalidity in the actions and proceedings of the Responsible Entity.

10.10 Limit on Member's remedies

Any remedy of any Member to whom this clause applies in respect of the sale of the Member's Units is limited to a right of action in damages against the Responsible Entity to the exclusion of any other right, remedy or relief against any other person.

10.11 Stapling

Where a Unit forms part of a Stapled Security, the Responsible Entity may only withdraw Units under this clause 10 if there is a corresponding withdrawal or buy back of an identical number of Attached Securities at the same time and may only sell Units under this clause 10 if the Attached Securities to which the Units are Stapled are sold at the same time to the same person.

11. Withdrawal of Units

11.1 Withdrawal procedure while the Trust is Liquid or not a registered scheme

- (a) Subject to clauses 11.10, 12 and 13, a Member may request that some or all of their Units be withdrawn while the Trust is Liquid or not a registered scheme by completion and lodgement of a Withdrawal Request with the Responsible Entity in accordance with clauses 11.1, 11.2 and 11.3.
- (b) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to accept or reject a Withdrawal Request from a Member to withdraw some or all of their Units (which any such acceptance or rejection may be made by the Responsible Entity in its absolute discretion without the need to provide any reasons for such acceptance or rejection).
- (c) If the Responsible Entity accepts a Withdrawal Request made in accordance with clause 11.1(a), subject to clause 12, the Responsible Entity must:
 - (i) withdraw the Units the subject of the accepted Withdrawal Request with effect as at the next Valuation Time after the Responsible Entity accepts that Withdrawal Request (**Withdrawal Date**);
 - (ii) cancel the Units by making appropriate changes to the Register with effect as at the Withdrawal Date; and
 - (iii) Pay the relevant Withdrawal Amount from the Assets within 21 days of the Withdrawal Date (or while the Trust is not a registered scheme such longer period determined by the Responsible Entity).
- (d) Subject to clause 11.1(e), the Responsible Entity must notify the Member of its decision to accept or reject a Withdrawal Request within 20 Business Days after the date of receipt of the Withdrawal Request or such longer period as allowed by clause 12.
- (e) If the Responsible Entity does not notify the Member of its decision to accept or reject a Withdrawal Request by the day which is 20 Business Days after the date of receipt of the Withdrawal Request or such longer period as allowed by clause 12, on that day the Responsible Entity is taken to have decided not to accept the Withdrawal Request, the Withdrawal Request lapses and the Responsible Entity must notify the Member of its decision as soon as possible and in any event within a further 10 Business Days following the deemed decision.
- (f) The Responsible Entity will determine whether or not the Trust is Liquid for the purposes of this clause 11. Such a determination is binding on Members and no Member may challenge it.

11.2 No revocation

- (a) A Member may not revoke a Withdrawal Request unless the Responsible Entity agrees.
- (b) On making a Withdrawal Request a Member will have no right to deal with the Units unless and until the Withdrawal Request is denied by the Responsible Entity.

11.3 Minimum withdrawal

- (a) The Responsible Entity may determine that Withdrawal Requests will only be accepted if the requests relate to a Minimum Withdrawal Amount.
- (b) Notwithstanding any other clause of this Constitution, the Responsible Entity may refuse a Withdrawal Request if the number of Units (or Cash value equivalent) the subject of the request is less than the Minimum Withdrawal Amount.
- (c) While the Units are not Officially Quoted, the Responsible Entity may treat a Withdrawal Request as a request to withdraw all the Member's Units if the Responsible Entity determines that, after withdrawal, the Member will hold less than the Minimum Holding.

11.4 Withdrawal procedure while the Trust is not Liquid

- (a) While the Trust is a registered scheme but is not Liquid, subject to the Listing Rules and the Corporations Act:
 - (i) a Member may only withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act and this Constitution;
 - (ii) a Member has no right to withdraw from the Trust if there is no withdrawal offer currently open for acceptance by Members;
 - (iii) the Responsible Entity is not at any time obliged to make a withdrawal offer; and
 - (iv) the Responsible Entity may determine the manner which notice of any withdrawal offer is to be given to Members.
- (b) A withdrawal offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The withdrawal offer must be sent to all Members in any manner permitted under clause 26 (which for the avoidance of doubt is to include by electronic means).
- (c) Subject to this clause 11, the Corporations Act and the Listing Rules, the Responsible Entity may determine the terms of a withdrawal offer.
- (d) The Responsible Entity may cancel a withdrawal offer in accordance with the Corporations Act.
- (e) Subject to the Corporations Act, the amount payable to a Member on acceptance of a Withdrawal Request made in response to a withdrawal offer will be the Withdrawal Amount applicable to the Units referred to in the Withdrawal Request which must be paid to the Member or former Member within 21 days of the date on which the withdrawal offer closes.

11.5 Withdrawal Price

- (a) Subject to clause 11.4, a Unit must only be withdrawn at the Withdrawal Price applicable to that Unit.

- (b) The Responsible Entity may determine that the Withdrawal Price includes an amount which represents a distribution of the income of the Trust and the Responsible Entity must notify the person withdrawing Units of such an amount after the end of the Financial Year in which the withdrawal occurs.

11.6 Amounts owed to the Responsible Entity

The Responsible Entity may deduct from the Withdrawal Amount, any amount due to the Responsible Entity (in its capacity as Responsible Entity) by the Member to whom the Withdrawal Amount is owed and any amount required to indemnify the Responsible Entity for any Tax payable in connection with the Member and the Member's Units in the Trust or by operation of clause 17.

11.7 Purchasing Units

- (a) The Responsible Entity may, in its absolute discretion, decide whether to purchase some or all, of the Units the subject of any Withdrawal Request out of its own funds.
- (b) The Responsible Entity is not at any time obliged to purchase Units under clause 11.7(a) either in whole or in part, out of its own funds.

11.8 Compulsory withdrawal

- (a) While the Units are not Officially Quoted, the Responsible Entity may in its discretion withdraw some or all of a Member's Units without receiving a Withdrawal Request (whether or not the Trust is Liquid) if:
 - (i) the Member does not hold, or ceases to hold, the applicable Minimum Holding;
 - (ii) holding the Units contravenes any Law;
 - (iii) the Member is not or has ceased to be an Eligible Investor;
 - (iv) the Member does not provide information as and when requested by the Responsible Entity;
 - (v) the Responsible Entity considers in its absolute discretion that the nature of the Member may prejudice the Trust or the way in which the Trust is administered or taxed;
 - (vi) any payment or reimbursement required to be made by the Member is not made as and when required;
 - (vii) such a withdrawal is in connection with any obligation, contractual or otherwise, the Responsible Entity has with any Government Agency or regulatory authority including to the ATO or IRS in relation to FATCA or any other Governmental Agency in respect of similar legislation;
 - (viii) the Responsible Entity considers that such compulsory withdrawal is in the best interests of Members as a whole;
 - (ix) the Trust has terminated in accordance with clause 30.1; or

- (x) as otherwise provided in this Constitution.
- (b) While the Units are Officially Quoted, the Responsible Entity may, subject to and in accordance with the Listing Rules and the Corporations Act, withdraw Units in accordance with clause 11.8(a) (other than under 11.8(i) which does not apply while the Trust is Listed).

11.9 Cessation of rights

Units which are withdrawn will cease to carry any rights (except for the obligation of the Responsible Entity to Pay the Withdrawal Amount in respect of the Units that are to be withdrawn) on and from:

- (a) (if the Trust is Liquid or not a registered scheme) the Withdrawal Date; or
- (b) (if the Trust is a registered scheme but not Liquid) the time the relevant withdrawal offer closes,

and from that time until payment of the Withdrawal Amount, the former holder of the withdrawn Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the relevant Withdrawal Amount. The Responsible Entity must as soon as possible after this time arrange for the withdrawal of Units to be recorded in the Register.

11.10 Suspension of withdrawal request right

- (a) Unless the Responsible Entity determines otherwise, the right to make a Withdrawal Request is suspended while the Trust is Listed.
- (b) Subject to the Listing Rules, the Responsible Entity may make a withdrawal offer under clause 11.4 while the Trust is Listed.

11.11 On market buy back of Units

- (a) Subject to the Listing Rules, the Corporations Act and any applicable ASIC Relief, the Responsible Entity may effect a buy back of Units (including where Units are part of a Stapled Security) by purchasing the Units (or the Stapled Security, as the case may be) on market as if the Trust was a company, with any adaptations that the ASX or ASIC may consider appropriate and cause the Units to be cancelled. No further Withdrawal Price is payable on cancellation of the Units.
- (b) Where Stapling applies, the Responsible Entity may buy back and cancel the Units if the Attached Securities to which the Units are Stapled are also bought back and cancelled.
- (c) The price of each Unit and Stapled Security purchased under this clause 11.11 will be such allocation of the purchase price of the Stapled Security as agreed between the Responsible Entity and the Stapled Entity.

11.12 Stapling

While Stapling applies the Responsible Entity must not withdraw a Unit unless each Attached Security to which the Unit is Stapled is also withdrawn, bought back or otherwise cancelled.

12. Suspensions

12.1 Ability to suspend

The Responsible Entity may at any time suspend the consideration of Withdrawal Requests, the withdrawal of Units and/or the payment of Withdrawal Amounts if the Responsible Entity believes that it is in the best interest of the Members as a whole, including if:

- (a) it is desirable for the protection of the Trust;
- (b) if it suspects or is advised that the payment of the Withdrawal Amount may result in a contravention of AML Requirements;
- (c) any relevant financial, stock, bond, note, derivative or foreign exchange market (including the ASX) is closed or trading on any such market is restricted in any way; or
- (d) an emergency (including an emergency caused by a mechanical or electronic malfunction) or such other circumstances exist and as a result:
 - (i) it is not reasonably practicable for the Responsible Entity to acquire or dispose of Assets or determine the Withdrawal Price fairly;
 - (ii) the Responsible Entity's ability to acquire or dispose of Assets or determine the Withdrawal Price fairly is, or may be, significantly adversely affected; or
 - (iii) sufficient Assets of the Trust cannot be realised at an appropriate price, in a timely manner or on adequate terms or otherwise.

12.2 Withdrawal and payment following suspension

- (a) A Withdrawal Request lodged during the period of suspension is deemed received immediately after the end of the period of suspension.
- (b) Following any period of suspension under this clause 12, the period allowed under clause 11.1 for consideration of the Withdrawal Request or payment of the Withdrawal Amount may be extended by the number of days during which such circumstances for the suspension apply.

13. Cooling-off

- (a) Notwithstanding clause 11, a Member must not request a withdrawal of a Unit and the Responsible Entity must not withdraw a Unit, during the period the Member has a right to return the Unit in accordance with the cooling off rights set out in the Corporations Act.
- (b) Nothing in clause 11 prevents the Responsible Entity complying with its obligations under the Corporations Act in respect of the cooling off rights of a Member.

14. Powers of the Responsible Entity

14.1 Investment policy for the Trust

The Responsible Entity must determine, and may vary from time to time, the investment policy of the Trust.

14.2 Responsible Entity's general powers

The Responsible Entity has all the powers in respect of, and in connection with, the Trust, the Trust Fund, the Assets and the Liabilities that it is legally possible for a natural person, trustee or corporation to have including all and any powers:

- (a) which it could exercise if it were the absolute and beneficial owner of the Assets, the Liabilities and the Trust Fund;
- (b) to acquire, encumber, develop, maintain or invest in and to sell any Asset (including Real Property and financial products);
- (c) to enter into a Management Agreement with a Manager on terms agreed between the Responsible Entity and the Manager;
- (d) to direct any amount arising from the sale of an Asset to a Member in connection with the withdrawal of the Member's Units;
- (e) to offer Units and to invite offers to subscribe for Units;
- (f) to carry on any business in connection with the Trust's investments and investment policy;
- (g) to incur liabilities and obligations of any kind (including to enter into joint venture arrangements, grant indemnities and guarantees, make representations, give warranties and undertakings);
- (h) to enter into, offer or issue any sort of financial product or futures, derivative, swap, foreign exchange, option contract or arrangement or instrument (or combination of any of these) and including of a speculative nature;
- (i) to borrow, procure financial accommodation and raise money for the purposes of the Trust or any member of the Redcape Group and to grant security over, or security interests in, the Assets;
- (j) to make loans to a Stapled Entity, any member of the Redcape Group, an Associate of the Responsible Entity or any other trust of which the Responsible Entity is trustee or responsible entity, provided any such loan is on terms that:
 - (i) would be reasonable in the circumstances if the Responsible Entity and the other party were dealing at arm's length; or
 - (ii) are less favourable to the other party.
- (k) to enter into a Stapling Deed on behalf of the Trust and to perform its obligations under the Stapling Deed;

- (l) to enter into any other agreement, arrangement or undertaking with any Member, the Stapled Entity or any member of the Redcape Group;
- (m) to participate in litigation in connection with the Assets, the Liabilities and the Trust Fund;
- (n) to grant indemnities to directors and officers of the Responsible Entity, to delegates of the Responsible Entity and to Compliance Committee Members, to the extent legally permissible;
- (o) to establish and to acquire interests in Investment Vehicles that directly or indirectly (through any number of interposed Investment Vehicles) invest in Assets (including Real Property) and to promote or undertake, or cause the Investment Vehicle to promote or undertake, the investment or development of any Asset (including Real Property);
- (p) to, subject to the Corporations Act and the Listing Rules, buy back Units;
- (q) to apply for listing of the Trust on any securities exchange (including on the Official List) and for the Units or Options (or any other financial product) to be quoted, either individually or as part of a Stapled Security, on any securities exchange (including but not limited to the ASX) and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Member as the Member's agent or attorney to do all things necessary to effect a listing or quotation;
- (r) to enter into any arrangement or agreement with underwriters (including an Associate of the Responsible Entity) in relation to the Trust, Units or Options;
- (s) to exercise all voting rights conferred by the Assets as it thinks fit;
- (t) to give guarantees and/or indemnities to any person, and
- (u) to fetter future discretions.

14.3 Responsible Entity's AMIT powers

- (a) The terms "AMMA Statements", "AMIT", "Determined Trust Component", "Over", "Trust Component" and "Under" have the meanings given in clause 15.2(a).
- (b) The Responsible Entity may, in its discretion, take any steps necessary to:
 - (i) enable the Trust to qualify as, and continue to qualify from time to time as, an AMIT; and
 - (ii) if there is more than one class of Units in the Trust, to enable each class of Units in the Trust to qualify as, and continue to qualify from time to time as, a separate AMIT in accordance with section 276-20 of the Tax Act.
- (c) The Responsible Entity may make a choice for the purposes of the Tax Act:
 - (i) for the Trust to be an AMIT; and
 - (ii) if there is more than one class of Units in the Trust, for each class of Units in the Trust to be a separate AMIT.

- (d) The Responsible Entity may, subject to its duties, determine to exercise or not to exercise any rights or powers granted to it under Divisions 275 and 276 of the Tax Act, in its absolute discretion as it sees fit.
- (e) Subject to the Tax Act, if while the Trust is an AMIT the Responsible Entity becomes aware of an Under or Over for a Trust Component in respect of a Financial Year calculated in accordance with clause 15.2(d), the Responsible Entity may reconcile the Under or Over by either, in its absolute discretion:
 - (i) attributing the Under or Over (as applicable) to Members in a later Financial Year by adjusting the Determined Trust Component for that later Financial Year;
 - (ii) revise the Determined Trust Component for the relevant Financial Year to which the Under or Over (as applicable) relates and reissue AMMA Statements for that Financial Year; or
 - (iii) otherwise deal with any such Under or Over in a manner that is fair and reasonable to Members,

and in accordance with any written policy of the Responsible Entity.

14.4 Real Property

Without limiting the powers of the Responsible Entity or any other provision of this Constitution, the Responsible Entity has all powers in connection with the Assets and the Real Property to:

- (a) manage, improve, develop and enhance the value of the Real Property;
- (b) collect and receive all income and capital receipts arising from the Real Property;
- (c) repair and maintain the Real Property;
- (d) attend to cleaning and waste disposal;
- (e) organise fire services and security;
- (f) negotiate and enter into contracts of maintenance, development, repair or construction, whether alterations, additions, new building works or otherwise;
- (g) attend to tenant communications;
- (h) Pay any rates and Taxes;
- (i) Pay any other Costs relating to the Real Property whether of a capital or revenue nature;
- (j) negotiate and enter into contracts of insurance for the Real Property;
- (k) negotiate leases, renewals, new leases, options, surrenders or rights of any kind relating to the Real Property;
- (l) conduct rent reviews;
- (m) acquire or dispose of any fixtures, fittings or chattels;

- (n) negotiate and enter into deeds and agreements including any options, loans or any other form of financial accommodation, indemnities, guarantees, mortgages for the financing of the acquisition, development, maintenance and re-development of Real Property and any other real estate in connection with the ownership, management, development, maintenance and re-development of Real Property;
- (o) negotiate and enter into deeds and agreements relating to the purchase, sale or management of any part or all of the Real Property (including the appointment of a managing agent);
- (p) invest any surplus funds including as may be required under any financing arrangement;
- (q) take or defend any court or arbitration action; and
- (r) strata or apply for changes to be made to the title or classification of any Real Property, apply for different zoning or development approvals or undertake any development, redevelopment or refurbishment initiatives in connection with the Real Property.

14.5 Custodian

If the Responsible Entity has appointed a Custodian, the Responsible Entity alone has power to direct the Custodian to perform or refrain from any act or exercise any power or right.

14.6 Absolute discretion

The Responsible Entity has an absolute discretion as to the manner, mode and time of exercise of the powers, authorities, discretions, rights and duties conferred on it under this Constitution or the Corporations Act.

14.7 Agents

- (a) The Responsible Entity, by power of attorney or otherwise, may authorise any person (whether or not being an Associate of the Responsible Entity) to do, or delegate to any person, anything that the Responsible Entity may do, including to hold any Asset and to execute documents on its behalf.
- (b) If the Responsible Entity appoints a Custodian to hold Assets, the Custodian acts as the agent of the Responsible Entity and references in this Constitution to the Responsible Entity being paid Cash or receiving or holding Property includes a reference to the Custodian being paid Cash or receiving or holding Property.

14.8 Appointment of advisers

- (a) The Responsible Entity may engage a Consultant to advise, provide services to or assist, the Responsible Entity in discharging its duties, exercising its powers, managing the Trust or dealing with the Trust Fund, any Asset or any Liability or in connection with any Investment Vehicle.
- (b) A Consultant appointed by the Responsible Entity is not an agent of the Responsible Entity and to the extent permitted by Law, the liability of the

Responsible Entity is limited to exercising reasonable care in the selection of, and in monitoring the activities of, the Consultant.

- (c) If the Responsible Entity delegates any of its responsibilities under this Constitution to a third party, including management or administration of the Trust or any of its Subsidiaries or Investment Vehicles to the Manager, the Responsible Entity may pay to the person to whom it has delegated that role all or part of the fees that the Responsible Entity would otherwise have been entitled to receive under this Constitution for undertaking that role.

15. Income of the Trust and Distributions

15.1 While the Trust is not an AMIT

This clause 15.1 applies in respect of any Financial Year in which the Trust is not an AMIT (as that term is defined in clause 15.2).

(a) Definitions

The following words have the following meanings in this clause 15.1:

Distributable Amount means either:

- (i) such amount as the Responsible Entity determines before the end of a Financial Year; or
- (ii) otherwise, the Net Taxable Income of the Trust for the Financial Year,

properly attributable to each class of Units. If the Distributable Amount is to be calculated under this clause 15.1 for a Period that is part of a Financial Year, it must be calculated as if the Period was a Financial Year;

Financial Year End Distribution means, in respect of a Period which ends on the last day of a Financial Year, an amount calculated by the Responsible Entity as the positive amount, if any, by subtracting from the Distributable Amount for the Financial Year, the sum of the Interim Distributions paid in respect of previous Periods forming part of the same Financial Year (if any);

Interim Distribution means, in respect of a Period ending on a day other than the last day of a Financial Year, an amount determined by the Responsible Entity equal to what would have been the Distributable Amount for the Period if the Period were a Financial Year;

Net Taxable Income means, for a Financial Year, the net income of the Trust for the Financial Year as determined under Division 6 of Part III of the Tax Act ('**Tax Net Income**'), reduced to the extent of Non-Cash Income, and increased to the extent of any Non-Taxed Income;

Non-Cash Income means any amount that is included in the Tax Net Income of the Trust that will not be received by the Responsible Entity including franking credits;

Non-Taxed Income means any amount that is received by the Trust as income or capital gain that is not included in the Tax Net Income of the Trust, including the discount on capital gains; and

Period means any period prescribed by the Responsible Entity so long as the period is all or a part of one Financial Year and commences and ends during, or at the same time as the Financial Year.

(b) **Distributions**

- (i) The Responsible Entity:
 - (A) may make an Interim Distribution to Members in respect of a Period which ends on a date other than the last day of the Financial Year;
 - (B) must make a Financial Year End Distribution to Members in respect of a Period which ends on the last day of a Financial Year; and
 - (C) may make a distribution of any other amount, whether of income or capital, or otherwise according to such terms, as are prescribed by the Responsible Entity.
- (ii) The Responsible Entity must distribute the Distributable Amount to Members in accordance with this clause 15.1.
- (iii) The Responsible Entity must calculate the income of the Trust for each Period and may decide:
 - (A) the classification of any item including as being on income or capital account; and
 - (B) the extent to which reserves or provisions need to or should be made.
- (iv) The Responsible Entity may determine standing principles for calculating the income of the Trust for any Period and may change the principles from time to time. However, the Responsible Entity may not determine standing principles, and may not change any existing standing principles, in such a way as to defease any Member of a vested entitlement to income or capital of the Trust.
- (v) A Member cannot be defeased of any share of Distributable Amount to which the Member is entitled under clause 15.1(e).
- (vi) The Responsible Entity may maintain separate accounts in relation to different categories and sources of income, or deductions or credits for tax purposes.

(c) **Interim Distributions**

Any Interim Distribution must be distributed to persons who were Members on the Register immediately before midnight on the last day of the relevant Period in accordance with the formula set out in clause 15.1(e)(i).

(d) **Financial Year End Distributions**

Any Financial Year End Distribution must be distributed to persons who were Members on the Register immediately before midnight on the last day of the relevant Financial Year in accordance with the formula set out in clause 15.1(e)(i).

(e) Present entitlement to Distributable Amount

- (i) As at the end of each Period, the Members are presently and absolutely entitled to all of the Distributable Amount for the relevant Period. Subject to any preferred, deferred or other special rights, obligations or restrictions with respect to distributions of any class of Unit issued from time to time, each Member is entitled to a share of the Distributable Amount in respect of each class of Units held by that Member calculated as follows:

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

where:

- A = the Distributable Amount properly attributable to a class of Units for the Period less amounts of income paid as part of the Withdrawal Price of Units for that class withdrawn during the Period as determined pursuant to clause 11.5(b) and less any income paid pursuant to clause 15.1(h) during that Period;
- B = the total number of Units held by the Member in that class of Units immediately before midnight on the last day of the Period; and
- C = the total number of Units held by all Members in that class of Units immediately before midnight on the last day of the Period.
- (ii) At the end of each Financial Year, the Responsible Entity must inform each Member of its share of the Net Taxable Income or other kinds of income or capital, and all other details, including deductions, credits, rebates or other benefits attaching to the payment of the Distributable Amount necessary to determine the tax position of the Member in relation to its share of the Distributable Amount.
- (iii) The Responsible Entity may deduct or Pay an amount in respect of Tax under clause 17.1 in respect of a Member from that Member's payment of the share of the Distributable Amount.

(f) Manner in which a distribution is effected

Subject to any contrary determination made by the Responsible Entity, the Distributable Amount must be distributed to the Members in accordance with this Constitution.

(g) Participation in Distributable Amount

Subject to clause 15.1(e)(i) and any preferred, deferred or other special rights, obligations or restrictions with respect to distributions of any class of Unit issued from time to time:

- (i) where there is only one class of Units in issue, each Unit ranks equally for distribution of the Distributable Amount from the day it was created;
- (ii) where there is more than one class of Units in issue, each Unit of a class ranks equally for distribution of the Distributable Amount properly attributable to that class from the day it was created.

(h) Return of capital or income

Without limiting any other clause, the Responsible Entity may at any time distribute, or may direct the Custodian to distribute:

- (i) where there is only one class of Units in issue, any amount of capital or income of the Trust to the Members as at a date specified by the Responsible Entity, in proportion to the number of Units held by them immediately before midnight on that date compared to all Units then in issue, by the payment of Cash or the issue of Units; and
- (ii) where there is more than one class of Units in issue, in respect of a class of Units, any amount of capital or income properly attributable to that class of Units to the Members holding Units in that class of Units as at a date specified by the Responsible Entity, in proportion to the number of Units held by them in that class of Units immediately before midnight on that date compared to all Units then in issue in that class of Units, by the payment of Cash or the issue of Units.

(i) Payment of distributions

Subject to clause 15.1(k), the Responsible Entity must Pay:

- (i) an Interim Distribution or a Financial Year End Distribution as soon as practicable after the end of the relevant Period;
- (ii) an income distribution made under clause 15.1(h), within two months of the relevant date for determining entitlements to the distribution; and
- (iii) a capital distribution made under clause 15.1(h), within two months of the relevant date for determining entitlements to the distribution.

(j) Records

The Responsible Entity must keep separate accounts of different categories or sources of income or capital or deductions or credits for tax purposes.

(k) Reinvestment

- (i) Subject to the Listing Rules, the Corporations Act, any applicable ASIC Relief and clauses 8.6 and 15.4, the Responsible Entity may offer Members the right to reinvest some or all of any distribution by acquiring Units of the same class of Units to which the distribution relates in the Trust (**Reinvestment Arrangement**).
- (ii) Subject to clauses 8.6 and 15.4, if a Reinvestment Arrangement is offered and a Member elects to participate (including by not electing out of a Reinvestment Arrangement), the Responsible Entity is deemed to have received and accepted an Application from the Member for the amount to be reinvested on the day the Member becomes entitled to the distribution for Units in the same class of Units to which the distribution relates.
- (iii) The procedure for reinvestment of distributions is to be prescribed by the Responsible Entity and notified to Members from time to time.

15.2 While the Trust is an AMIT

This clause 15.2 applies in respect of any Financial Year in which the Trust is an AMIT.

(a) Definitions

The following words have the following meanings in this clause 15.2:

AMMA Statement has the meaning set out in section 276-460 of the Tax Act;

AMIT means attribution managed investment trust as defined in section 276-10 of the Tax Act;

Determined Member Component has the meaning set out in section 276-205 of the Tax Act;

Determined Trust Component has the meaning set out in section 276-255 of the Tax Act;

Member Component has the meaning set out in section 276-210 of the Tax Act;

Over has the meaning set out in section 276-345 of the Tax Act;

Period means any period prescribed by the Responsible Entity;

Trust Component has the meaning set out in section 276-260 of the Tax Act; and

Under has the meaning set out in section 276-345 of the Tax Act.

(b) Distributions

(i) The Responsible Entity may make a distribution of any amount, whether of income or capital, or otherwise according to such terms, as are prescribed by the Responsible Entity and must make distributions as disclosed in any current Disclosure Document and otherwise in accordance with this clause 15.2.

(ii) The Responsible Entity must calculate the income of the Trust and may decide:

(A) the classification of any item including as being on income or capital account; and

(B) the extent to which reserves or provisions need to or should be made.

(iii) The Responsible Entity may determine standing principles for calculating the income of the Trust for any Period and may change the principles from time to time. However, the Responsible Entity may not determine standing principles, and may not change any existing standing principles, in such a way that is not fair and reasonable to existing Members.

(c) Entitlement to distributions

- (i) Subject to clause 15.2(c)(ii), any distribution must be distributed to persons who were Members (or where applicable, Members of a particular class) on the Register immediately before midnight on the last day of the relevant Period.
- (ii) Each Member is entitled to a share of a distribution in respect of each class of Units held by that Member calculated as follows:

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

where:

- A = the total distribution for a class of Units for the Period less amounts of income paid as part of the Withdrawal Price of Units for that class withdrawn during the Period as determined pursuant to clause 11.5(b) and less any income paid pursuant to clause 15.2(h) during that Period;
- B = the total Units held by the Member in that class of Units immediately before midnight on the last day of the Period; and
- C = the total Units held by all Members in that class of Units immediately before midnight on the last day of the Period.

(d) Trust Components

Each Financial Year the Trust is an AMIT, the Responsible Entity must:

- (i) calculate each Trust Component of a particular character in accordance with the Tax Act in respect of:
 - (A) the Trust; and
 - (B) if there is more than one class of Units in the Trust, each class of Units that is a separate AMIT; and
- (ii) document (including by electronic means) each Determined Trust Component of a particular character in accordance with the Tax Act in respect of:
 - (A) the Trust; and
 - (B) if there is more than one class of Units in the Trust, each class of Units that is a separate AMIT.

(e) Member Components

- (i) Subject to clauses 14.3(e) and 15.2(d), each Financial Year the Trust is an AMIT, the Responsible Entity must in accordance with the Tax Act:
 - (A) calculate each Member Component of a particular character on a fair and reasonable basis in respect of each Member;

(B) issue an AMMA Statement to each Member that reflects each of the Member's Determined Member Components of a particular character.

(ii) The Members agree to accept the Responsible Entity's calculation of Trust Components under clause 15.2(d) and the Responsible Entity's calculation and attribution of Member Components under clause 15.2(e)(i), provided the Responsible Entity has properly performed its duties in determining those calculations and determining that attribution (as applicable).

(f) **Manner in which a distribution is effected**

Subject to any contrary determination made by the Responsible Entity, a distribution must be distributed to the Members in accordance with this Constitution.

(g) **Participation in distributions**

Subject to clauses 15.2(b) and 15.2(c), and subject to any preferred, deferred or other special rights, obligations or restrictions with respect to distributions of any class of Unit issued from time to time:

(i) where there is only one class of Units in issue, each Unit ranks equally for distributions from the day it was created;

(ii) where there is more than one class of Units in issue, each Unit of that class ranks equally for distributions for that class from the day it was created.

(h) **Return of capital or income**

Without limiting any other clause, the Responsible Entity may at any time distribute, or may direct the Custodian of the Trust (from time to time) to distribute:

(i) where there is only one class of Units in issue, any amount of capital or income of the Trust to the Members as at a date specified by the Responsible Entity, in proportion to the number of Units held by them immediately before midnight on that date compared to all Units then in issue, by the payment of Cash or the issue of Units; and

(ii) where there is more than one class of Units in issue in respect of a class of Units, any amount of capital or income properly attributable to that class of Units to the Members holding Units in that class of Units as at a date specified by the Responsible Entity, in proportion to the number of Units held by them in that class of Units immediately before midnight on that date compared to all Units then in issue in that class of Units, by the payment of Cash or the issue of Units.

(i) **Payment of distributions**

Subject to clause 15.2(k), the Responsible Entity must Pay:

(i) a distribution as soon as practicable after the end of the relevant Period;

- (ii) an income distribution made under clause 15.2(h), within two months of the relevant date for determining entitlements to the distribution; and
- (iii) a capital distribution made under clause 15.2(h), within two months of the relevant date for determining entitlements to the distribution.

(j) **Records**

The Responsible Entity must keep separate accounts of different categories or sources of income or capital or deductions or credits for tax purposes.

(k) **Reinvestment**

- (i) Subject to the Listing Rules, the Corporations Act, any applicable ASIC Relief and clauses 8.6 and 15.4, the Responsible Entity may offer Members the right to reinvest some or all of any distribution by acquiring Units in the Trust (**Reinvestment Arrangement**).
- (ii) Subject to clauses 8.6 and 15.4, if a Reinvestment Arrangement is offered and a Member elects to participate (including by not electing out of a Reinvestment Arrangement), the Responsible Entity is deemed to have received and accepted an Application from the Member for the amount to be reinvested on the day the Member becomes entitled to the distribution for Units in the same class of Units to which the distribution relates.
- (iii) The procedure for reinvestment of distributions is to be prescribed by the Responsible Entity and notified to Members from time to time.

15.3 Trust taxed as a company

Notwithstanding the other provisions of clause 15, the Responsible Entity has complete and absolute discretion as to how much of a distribution will be distributed to Members in respect of any Financial Years in which the income of the Trust is subject to tax under the Tax Act as if the Trust were a company, including under the provisions of Division 6C of Part III of the Tax Act.

15.4 Reinvestment while Stapling applies

While Stapling applies:

- (a) no reinvestment may occur unless, contemporaneously with the reinvestment in additional Units, the Member subscribes for or purchases an additional number of Attached Securities which, when issued or acquired, are Stapled to the additional Units;
- (b) the Responsible Entity may pay the subscription and purchase price for those Attached Securities out of a distribution referable to Units available for reinvestment. Part of the Application Price of the Units may come from distributions or dividends paid on the Attached Securities;
- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction may be paid to the Member or held for future reinvestment in the Trust and the Stapled Entity in such proportions as the Responsible Entity and the Stapled Entity may determine; and

- (d) whenever under this Constitution or by Law money is held on behalf of a Member for future reinvestment, the money so held may be aggregated and, on each occasion on which the aggregated amount equals the Application Price of a Unit, the amount will be applied to purchase a new Unit for issue to the Member (as part of a Stapled Security only).

16. Payments to Members

16.1 Money payable

Money payable by the Responsible Entity to a Member may be paid in any manner the Responsible Entity determines including in the case of a payment under a Reinvestment Arrangement, subject to clause 15.4 reinvesting the money payable to a Member in additional Units.

16.2 Cancellation of cheques

- (a) Cheques drawn by the Responsible Entity that are not presented within 6 months may be cancelled.
- (b) Subject to the Corporations Act, when a cheque has been drawn in favour of a Member or where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds and the transfer is unsuccessful, the money may be:
- (i) subject to clauses 15.4(a) and 15.4(c) (as applicable), reinvested in Units at the Application Price prevailing at the next Valuation Time after the day the cheque is cancelled or the Responsible Entity determines that an electronic funds transfer has not been successful (or as otherwise determined by the Responsible Entity in accordance with clause 8);
 - (ii) held by the Responsible Entity for the benefit of the Member;
 - (iii) paid by the Responsible Entity in accordance with applicable unclaimed money legislation; or
 - (iv) in the case of an unsuccessful electronic transfer of funds, used to draw a cheque in favour of the Member.

16.3 Joint holders

A payment to any one of joint Members will discharge the Responsible Entity for the payment.

16.4 Transfer of Assets

The Responsible Entity may transfer specified Assets to a Member rather than pay Cash in satisfaction of all or part of a Withdrawal Amount, pursuant to a withdrawal offer, in payment of a Distributable Amount or a distribution of any amount of capital or income of the Trust or on the winding up of the Trust. The aggregate value of the specified Assets and any Cash paid must equal the amount due to the Member, as the case may be, based on a reasonably current valuation undertaken before the date of the proposed transfer which is consistent with the range of ordinary commercial practice for valuing assets of that type. The Responsible Entity may deduct the Cost of transferring the Assets and the Cost of any valuation from the amount due to the Member.

17. Deduction of Tax

17.1 Payments

Subject to the Listing Rules, the Responsible Entity may make a payment in respect of any amount of Tax that the Responsible Entity believes is payable or anticipated to become payable by the Responsible Entity being Tax which is referable to a distribution otherwise payable to a Member or for which a Member may be liable.

17.2 Deductions

Subject to the Listing Rules, the Responsible Entity may deduct from any amount payable or distributable to a Member, or received from a Member, any amount of Tax (or an estimate or instalment of it) which, in the Responsible Entity's opinion, it is required or authorised to deduct in respect of that payment or receipt by Law or by this Constitution. For example, this includes any amount of Tax which may be payable by the Responsible Entity or the Custodian on, or in respect of, the issue of Units to, the withdrawal, repurchase, forfeiture or cancellation of Units of, or distributions to, a Member.

17.3 Notification

The Responsible Entity must advise the Member or cause the Member to be advised, of any payment or deduction made under this clause 17 within a reasonable time after the payment or deduction is made.

17.4 Application of deductions

The Responsible Entity may apply a deduction made under this clause towards:

- (a) reimbursement of the Trust for an amount paid or reimbursed out of the Trust;
- (b) reimbursement of the Responsible Entity for an amount paid by the Responsible Entity; or
- (c) the payment of the Tax to the person or authority entitled to it.

17.5 Indemnity for Taxes paid

- (a) The Responsible Entity is entitled to be indemnified out of the Assets in relation to any amount of Tax referred to in clause 17.1 or 17.2 or otherwise in connection with the Trust, the Assets, the income of the Trust and distributions from the Trust paid (whether or not the amount was due or payable) or payable by it and which amount has been paid or is payable in exercising any of its powers, rights or obligations in properly performing its duties in relation to the Trust.
- (b) The Responsible Entity is also entitled to be indemnified by a Member or a former Member to the extent that it incurs any liability for Tax as a result of the Member's or former Member's action or inaction or as a result of an act or omission requested by the Member or former Member (including in relation to the sale or transfer of a Unit or a Stapled Entity).
- (c) In relation to any sale or transfer of a Unit or a Stapled Security, if there is a Tax liability to which clause 17.5(b) relates, the Responsible Entity is not obliged to process that sale or transfer until such time as it has received full payment of the amount of the Tax liability.

- (d) Joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clauses 17.5(b) and 17.5(c) apply.

18. Accounts and valuations

18.1 Preparation of accounts

The Responsible Entity must keep proper accounts in respect of the Trust or cause them to be kept in accordance with any applicable Accounting Standards and the Corporations Act and the Tax Act or otherwise as determined by the Responsible Entity.

18.2 Valuations

The Responsible Entity:

- (a) may cause any Asset or Liability to be valued at any time;
- (b) must cause any Property to be acquired by the Trust in accordance with clause 7.3 to be valued prior to the acquisition;
- (c) must value an Asset, Property or a Liability at regular intervals appropriate to the nature of the Asset, Property or Liability and in accordance with any applicable Accounting Standards and the requirements of the Corporations Act and applicable ASIC policy (if any);
- (d) may determine valuation methods and policies for categories of Assets, Property and Liabilities (which methods must be consistent with ordinary commercial practice for valuing that type of Asset, Property or Liability and produce a value that is reasonably current at the time of valuation) and may change them periodically; and
- (e) is not to be regarded as or be taken as holding out that it has expertise as regards the valuation of the Assets, Property or the Liabilities.

18.3 Calculations

Any amount or item required to be calculated or determined for the purpose of this Constitution is to be calculated or determined by, or on behalf of, the Responsible Entity, unless the Constitution otherwise provides as at a time prescribed by the Responsible Entity and in accordance with any applicable Accounting Standards.

18.4 Amortisation

The Responsible Entity may capitalise or amortise Costs in accordance with any applicable Accounting Standards over such periods as it thinks fit.

19. Rights of Responsible Entity

19.1 May act in relation to other trusts

Nothing in this Constitution or the fact of the Responsible Entity acting as responsible entity or trustee of the Trust prevents the Responsible Entity from establishing or acting as responsible entity, manager or trustee for any other trusts or managed investment schemes whether of a similar nature to or different from the Trust or to conduct any other business unrelated to the Trust.

19.2 Dealings with Associates

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity and its Associates may, without any liability to account to any Member or the Trust:
- (i) deal with the Responsible Entity (as trustee or responsible entity of the Trust or in another capacity including in its personal capacity), the Trust or any Member;
 - (ii) act as trustee or responsible entity in relation to any other trust or managed investment scheme, including a Stapled Entity;
 - (iii) hold Units or Options and hold any units, options or other securities in a Stapled Entity;
 - (iv) be interested in any contract, transaction or matter with the Responsible Entity, the Trust, any Member or with any Stapled Entity;
 - (v) invest any Assets in any company, managed investment scheme or trust owned, controlled, managed (or any of its assets managed by such a company or trust) or advised by, the Responsible Entity or any of its Associates;
 - (vi) sell Property to, or acquire Property from, the Trust for Cash or Units or any combination of them; and
 - (vii) sell Real Property to, or acquire Real Property from, the Trust or any of its Subsidiaries or Investment Vehicles for Cash or Units or any combination of them.
- (b) A contract, arrangement or transaction referred to in clause 19.2(a) is not void, voidable or unenforceable, and no person is required to account to the Trust for any profit realised or benefit gained through it, by reason only of the interest of the Responsible Entity or any of its Associates in that contract, arrangement or transaction.

20. The Responsible Entity's liability

20.1 Limitation on Responsible Entity's liability

Subject to compliance with Law, the Responsible Entity and each director and officer of the Responsible Entity is not liable to one or more or all of the Members, the Option Holders, the Trust, any creditors of the Trust or any other person for any amount (including in respect of any contracts entered into as a trustee or responsible entity of the Trust or in relation to any Assets or Liabilities or in relation to the Stapling of any Attached Securities and any action taken by the Responsible Entity under clause 36.1), beyond the amount which the Responsible Entity is entitled to recover and is actually indemnified for out of the Trust Fund, through its right of indemnity in respect of the Trust.

20.2 Reliance

The Responsible Entity is not liable beyond the amount referred to in clause 20.1, for any Loss or damage to one or more or all of the Members, the Option Holders, the Trust, any creditors of the Trust or any other person in acting or omitting to act where:

- (a) it has complied with its duties under this Constitution and as trustee of the Trust and while, the Trust is a registered scheme, in accordance with its duties as set out in section 601FC of the Corporations Act;
- (b) it exercised, or did not exercise, or proposed to exercise, any trust, right or power under the Constitution;
- (c) it relied upon information or the authenticity of any document, signature or marking, provided that it believed that the information was correct or the document, signature or marking was authentic;
- (d) it relied upon or acted or did not act, or purported to act on the advice, services, information or opinion of any person or Consultant whether or not instructed or engaged by the Responsible Entity, provided that the Responsible Entity believed the person to have relevant expertise;
- (e) it acted or omitted to act in accordance with a resolution or direction of the Members;
- (f) in relation to a specific Member, it acted with the agreement of, or on the specific direction of, that Member;
- (g) it paid or retained money to meet a liability or to pay an amount to a fiscal authority which the Responsible Entity believed in good faith was due or payable to the fiscal authority;
- (h) it acted under the compulsion of any Law of the Commonwealth, a State or a Territory or in accordance with the terms of an order or judgement of any competent court;
- (i) it relied on any document upon which it was reasonable for it to rely;
- (j) it paid or retained money in good faith; or
- (k) a person (other than a company under its control) failed to carry out or was negligent in the carrying out of any agreement with it or any of its agents in connection with the Trust.

20.3 Contractual limitation of liability

The Responsible Entity is not required to do anything or refrain from doing anything which involves or could involve the Responsible Entity incurring a Liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its liability is satisfactorily limited.

20.4 Other obligations excluded

All obligations or liabilities of the Responsible Entity which might otherwise be implied or imposed by Law are expressly excluded to the extent permitted by Law, including any obligation of the Responsible Entity in its capacity as trustee or Responsible Entity of the Trust arising under any statute.

20.5 Separate limitations

- (a) Each clause of this Constitution that provides, or relates to, a right of the Responsible Entity to Pay or be reimbursed out of the Assets or indemnified or a limitation of the Responsible Entity's liability:
 - (i) is separate and independent of any other right, indemnity or limitation of liability;
 - (ii) does not limit any other provision of this Constitution; and
 - (iii) applies to the maximum extent permitted by Law.
- (b) The Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

20.6 Directors and officers

Except as the Corporations Act expressly provides otherwise, no director or officer of the Responsible Entity is personally liable to a Member or any other person in connection with acting as a director or officer of the Responsible Entity.

21. Indemnities

21.1 Responsible Entity's indemnity

- (a) The Responsible Entity is indemnified and is to be kept indemnified on a full indemnity basis and is entitled to Pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, all Taxes, Costs and Losses (which are to be calculated on a GST inclusive basis, net of any Input Tax Credit or Reduced Input Tax Credit to which the Responsible Entity is entitled) which it may Pay or incur in exercising any of its powers, rights or obligations in properly performing its duties in connection with the Trust.
- (b) Without limiting clause 21.1(a), the Responsible Entity is indemnified and is to be kept indemnified on a full indemnity basis and is entitled to Pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, any Tax or other liability, Costs and Losses which it may Pay or incur pursuant to Divisions 275 or 276-G of the Tax Act in exercising any of its powers, rights or obligations in properly performing its duties in connection with the Trust or the Members or as a consequence of any act or omission of any Member.

21.2 Responsible Entity additional and continuing indemnity

- (a) Any indemnity or right of reimbursement to which the Responsible Entity is entitled under this Constitution (including in respect of any Tax liability):
 - (i) applies in addition to any indemnity or right of reimbursement available or provided by Law; and
 - (ii) is a continuing indemnity and, subject to Law, applies to the Responsible Entity after it retires or is removed as trustee or responsible entity of the Trust and after the Trust is terminated.

- (b) Each indemnity or right of reimbursement available or provided by Law is deemed to be included in this Constitution.

21.3 Agents

To the extent not prohibited by Law, the right or entitlement of the Responsible Entity to be reimbursed or indemnified or paid a fee and any limitation of liability in favour of the Responsible Entity applies regardless of whether the Responsible Entity itself or any delegate or agent on its behalf has incurred the relevant Cost, Loss or obligation, acted or omitted to act or perform the relevant function.

21.4 Compliance Committee

- (a) Subject to, and so far as permitted by the Corporations Act, if a Compliance Committee Member incurs a liability:
 - (i) in that capacity in good faith and in the Compliance Committee Member's proper performance of his or her duties; or
 - (ii) for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of the Compliance Committee Member or in which the Compliance Committee Member is acquitted, or in connection with an application in relation to those proceedings in which a court grants relief to the Compliance Committee Member under the Corporations Act,

the Responsible Entity may indemnify that person out of the Assets in respect of that liability.

- (b) The indemnity in clause 21.4(a) is a continuing indemnity and is enforceable even when a person has ceased to be a Compliance Committee Member.

21.5 Investment Vehicle directors and officers

To the extent permitted by Law, the Responsible Entity may indemnify out of the Assets of the Trust directors and officers of Subsidiaries or Investment Vehicles.

22. Retirement of the Responsible Entity

22.1 Voluntary retirement

- (a) Subject to the Corporations Act, while the Trust is a registered scheme the Responsible Entity may retire as the Responsible Entity at any time.
- (b) While the Trust is not a registered scheme, the Responsible Entity may at any time retire as the Responsible Entity and on retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

22.2 Compulsory retirement

- (a) While the Trust is a registered scheme the Responsible Entity must retire as the Responsible Entity when required to do so by Law.
- (b) While the Trust is not a registered scheme, the Responsible Entity must retire within 20 Business Days if Members who together hold greater than 90% of the

votes attaching to all Units pass a resolution to remove the Responsible Entity and choose a company to be the new trustee of the Trust that has consented in writing to act as trustee of the Trust.

22.3 Release

When it retires or is removed, subject to the Corporations Act, the Outgoing Responsible Entity is released from all obligations and Liabilities in relation to, or in connection with, the Trust arising after the time it retires or is removed.

22.4 Retirement payment

- (a) To the maximum extent permitted by Law, the Outgoing Responsible Entity is entitled to agree with the Incoming Responsible Entity or any person to be remunerated by, or to receive a benefit from, the Incoming Responsible Entity and is not required to account to the Members or the Trust for such remuneration or benefit. The Members consent to the Responsible Entity receiving any such payment or benefit.
- (b) The Outgoing Responsible Entity is also entitled to sell part or all of its business relating to managing the Trust to the Incoming Responsible Entity (or an Associate of the Incoming Responsible Entity) for any consideration the Outgoing Responsible Entity and the Incoming Responsible Entity may agree and the Outgoing Responsible Entity is not required to account to the Members or the Trust for any such consideration.

22.5 New Responsible Entity

- (a) Any Incoming Responsible Entity must execute a deed in which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) If the Responsible Entity is removed or retires, it must:
 - (i) as soon as practicable give the Incoming Responsible Entity any books or records which the Outgoing Responsible Entity was obliged to keep and maintain in relation to the Trust; and
 - (ii) give other reasonable assistance to the Incoming Responsible Entity to facilitate the change of trustee.

23. Remuneration and expenses of the Responsible Entity

23.1 Responsible Entity's fees

Subject to clause 23.8, the Responsible Entity is entitled to, and is to, be paid the fees set out in Schedule 1.

23.2 Expenses

- (a) Subject to clauses 21.2(b), 23.2(b) and 23.8, the Responsible Entity is indemnified and is to be kept indemnified on a full indemnity basis and is entitled to Pay or to be paid or reimbursed, out of the Assets (or the assets of a Subsidiary or an Investment Vehicle) in respect of, or in connection with, all Costs and Losses (which are to be calculated on a GST inclusive basis, net of any Input Tax Credit or Reduced Input Tax Credit to which the Responsible Entity is

entitled) incurred in the course of its office or in relation to the administration or management of the Trust, (or while Stapling applies, in connection with a Stapled Entity or jointly with the Stapled Entity) including the following expenses:

- (i) fees and expenses of the Responsible Entity including in connection with:
 - (A) setting up the Trust and preparing this Constitution and any amendments to it (for example, drafting and stamping such documents as well as lodging the documents with any Government Agency);
 - (B) making offers or invitations in respect of Units or Stapled Securities (including for issue, withdrawal or cancellation of Units) or Options, including preparation, review, lodgement, registration and distribution of any Disclosure Document;
 - (C) marketing and promoting the Trust (including any third party capital raising fees) or its Assets or the Redcape Group or the Real Property;
 - (D) the administration, management or restructuring of the Trust, its accounts or its Assets and Liabilities or the Redcape Group;
 - (E) costs of preparing, printing and posting and despatching of all statements, cheques, accounts, notices, reports, distribution statements and other documents sent to Members (whether or not expressly required to be sent by Law or this Constitution) or Option Holders;
 - (F) any agreement or proposed agreement relating to the Trust;
 - (G) the administration of the Trust and the administration and management of Property of the Trust (including legal, accounting and valuation fees, expenses and overheads, financial institution fees and expenses and fees and overheads associated with the use of computers for infrastructure for the Trust);
 - (H) calling and holding meetings of Members, communicating with Members and implementing any resolution passed by Members;
 - (I) appointing or engaging any person, agent, delegate, or Consultant in relation to the Trust and including any delegation by the Responsible Entity of any functions of the Responsible Entity (including the appointment of, or delegation to, an Associate of the Responsible Entity and including legal expenses on a full indemnity basis);
 - (J) any services provided by a Manager to the Trust, including fees and properly incurred expenses payable by the Responsible Entity to the Manager under a Management Agreement;
 - (K) appointing or engaging any asset managers, property managers, fund administrators, licensing and compliance support personnel, development managers, project managers, leasing agents, sale agents, valuers, collection agents, contractors and advisers

- (including legal, financial and accounting advisers) in respect of the Real Property or the Redcape Group whether or not the person is employed by the Responsible Entity or an Associate of the Responsible Entity;
- (L) Tax and preparing and auditing Tax returns and accounts of the Trust;
 - (M) the appointment, retirement or removal of the Responsible Entity, Trust auditor or compliance plan auditor or any audit committee for the Trust appointed in accordance with ASX corporate governance guidelines or otherwise;
 - (N) any initiation, conduct and settlement of any court proceedings (including negotiations, conferences and demands), arbitration or other dispute to enforce any provision of this Constitution, in respect of the Trust or any part of it or otherwise to protect the interest of Members, and concerning the Assets, Liabilities or the Trust (including proceedings against the Responsible Entity, but to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, the Responsible Entity must repay any expenses paid or reimbursed to it under this paragraph 23.2(a)(i)(N));
 - (O) the establishment and operation of any compliance committee (including any fees and other amounts paid to, and insurance premiums in respect of, the Compliance Committee Members) and all amounts payable under clause 21.4;
 - (P) for any time when there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity or others carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (Q) issuing, withdrawing, cancelling and transferring Units (or Stapled Securities) or Options;
 - (R) the Stapling of Units to the Attached Securities;
 - (S) having the Trust rated by a ratings agency;
 - (T) underwriting arrangements in respect of the Trust or any offer or invitation in relation to Units or Options;
 - (U) any actual or proposed purchase, sale or other dealing with any Property of the Trust or Liability (including investigating and making enquiries into Property proposed to be acquired, or Liabilities proposed to be incurred, by the Responsible Entity);
 - (V) the insurance, custody, valuation, maintenance and improvement of Property of the Trust (including Real Property);

- (W) preparing, implementing, amending and auditing of the compliance plan for the Trust;
 - (X) the cost of handling complaints from an Applicant or Members and resolving disputes with them, including the cost of membership or an external dispute resolution scheme;
 - (Y) the forming of Investment Vehicles;
 - (Z) re-arrangement of the capital structure of the Trust or the Redcape Group;
 - (AA) expenditure made on the Assets for the purpose of maintaining or enhancing their value;
 - (BB) registration of the Trust as a registered managed investment scheme;
 - (CC) regulatory and legislative compliance in respect of the Trust (including under the Corporations Act or the Listing Rules and complying with any request or requirement of ASIC or the ASX);
 - (DD) fees payable to ASIC, the ASX and any other regulatory body in relation to the Trust, Units, Stapled Securities or Options; and
 - (EE) terminating and winding up the Trust;
- (ii) fees and expenses of admission of the Trust to the Official List or any other securities exchange, its continuing compliance with the rules (including the Listing Rules) of any such exchange, or in relation to any removal of the Trust from the Official List or any other exchange;
 - (iii) fees and expenses of the quotation of or suspension from trading of any Units, Stapled Securities or Options on the ASX or any other securities exchange;
 - (iv) Taxes imposed on the Trust or the Responsible Entity in relation to the Trust (but not Taxes on the Responsible Entity's own income); and
 - (v) any Trust Liability and any liability arising in respect of the Property of the Trust (for example, calls on shares) or the Real Property.
- (b) The Responsible Entity is not entitled to be paid or reimbursed out of the Assets (or the assets of a Subsidiary or an Investment Vehicle) for costs relating to the overhead expenses and in-house administrative costs of the Responsible Entity including rent, office maintenance, salaries and personal income tax of the Responsible Entity.
 - (c) The Trustee is entitled to indemnify the Manager and Pay or reimburse the Manager, out of the Assets (or the assets of a Subsidiary or an Investment Vehicle) in respect of, or in connection with, all Costs and Losses (which are to be calculated on a GST inclusive basis, net of any Input Tax Credit or Reduced Input Tax Credit to which the Manager is entitled) incurred by the Manager in the course of performing its obligations in accordance with a Management Agreement including (but not limited to) those expenses identified in clause 23.2(a) (to the

extent those expenses are incurred by the Manager). The Manager is not entitled to be paid or reimbursed out of the Assets for costs relating to the overhead expenses and in-house administrative costs of the Manager including rent, office maintenance, salaries and personal income tax of the Manager.

- (d) Where Stapling applies, the Responsible Entity may pay expenses or fees out of the Assets that are incurred by or in connection with the Stapled Entity or are incurred by the Responsible Entity jointly with a Stapled Entity or in its capacity as trustee or responsible entity of a Stapled Entity.

23.3 GST

- (a) If in the Responsible Entity's opinion, the Responsible Entity or the Manager becomes liable to pay GST in respect of any supply made by it in connection with the Trust, the fees and expenses referred to in this clause 23 will be automatically adjusted to ensure that the Responsible Entity's fees or the Manager's fees (as applicable) net of the impact of the GST (such impact to be reduced by any Input Tax Credit or Reduced Input Tax Credit to which the Responsible Entity is entitled) are the same as set out in clause 23.1.
- (b) For the avoidance of doubt, the Responsible Entity or the Manager (as applicable) will be entitled to be paid out of the Assets, any fee increased in accordance with this clause 23.3.
- (c) Nothing in this clause 23.3 empowers the Responsible Entity to do any act prohibited by the *Competition and Consumer Act 2010 (Cth)* or any other law.

23.4 Payments to related entities

Payments made under this Constitution may be made to an Associate or related entity of the Responsible Entity.

23.5 Differential fee arrangement

Subject to Law and the conditions of any applicable ASIC Relief being satisfied, the Responsible Entity may agree with any Member fee arrangements in respect of the Member which are different to those provided for under this Constitution.

23.6 Units as payment for fees

Subject to Law, the Responsible Entity may elect that it (or its nominated Associate) is to be issued Units or Stapled Securities instead of Cash in payment of the Responsible Entities' fees or reimbursement of its Costs under this Constitution, and if elected by the Manager, may pay the fees of the Manager or reimbursement of its Costs by the issue of Units or Stapled Securities to the Manager (or its nominated Associate) instead of Cash.

23.7 Deferral and waiver

The Responsible Entity may accept lower fees than it is entitled to receive under this Constitution, waive, defer, assign or rebate any fees or the reimbursement of any or all expenses to which it is entitled to be paid or reimbursed under this Constitution. Where payment of any fee which the Responsible Entity is entitled to receive under this Constitution is deferred, the fee still accrues daily.

23.8 Proper performance

The rights of the Responsible Entity to be paid fees or reimbursed or to be indemnified out of the Assets in relation to the performance of its duties are available only in relation to the proper performance of those duties.

24. The Register

24.1 Responsible Entity must maintain registers

Subject to clause 36.5, the Responsible Entity must maintain and keep, or cause to be maintained and kept, a separate register of Members and, where applicable, register of Option Holders. The register of Members and the register of Option Holders are to be kept by the Responsible Entity in such jurisdiction as the Responsible Entity determines from time to time.

24.2 No notice of trusts

The Responsible Entity will not be deemed to be on notice of the existence of any trust and is not required to enter notice of any trust or the interest of any person other than the Member or Option Holders in the Registers. The person from time to time entered in the Register as the holder of Units or Options or their Representative will be the only person recognised by the Responsible Entity as entitled to the Units or Options registered in that name or to exercise the rights and privileges attaching to those Units or Options pursuant to this Constitution.

24.3 Joint Members and Option Holders

The Responsible Entity is not required to register more than three persons as joint Members or joint Option Holders.

24.4 Joint tenancy

Persons registered jointly as the holder of a Unit or Option hold the Unit or Option as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

24.5 Change in information

A Member or Option Holder must advise the Responsible Entity of any change to the information noted in the Register in respect of that Member or Option Holder. Upon receipt of such advice the Responsible Entity must promptly update the information contained in the Register.

24.6 Conclusiveness of Registers

The Registers are conclusive evidence of title to Units or Options.

24.7 Appointment of third party to maintain Register

The Responsible Entity may cause the Register to be maintained by a third party on its behalf and require that person to discharge the Responsible Entity's obligations in relation to the Register. The Responsible Entity is not liable for any act or omission of such person provided the Responsible Entity has taken reasonable steps to select a person to perform this function.

25. Meetings of Members

25.1 Application of Part 2G.4 of the Corporations Act

Subject to clauses 25.2 to 25.13 (inclusive), meetings of Members will be called and held in accordance with Part 2G.4 of the Corporations Act regardless of whether the Trust is a registered scheme.

25.2 Responsible Entity's powers

- (a) Subject to the Corporations Act and this Constitution, meetings of Members may be convened and conducted in such manner as the Responsible Entity determines, including the requirements in relation to the period of notice and proxies and their use.
- (b) The Responsible Entity must convene a meeting of Members if required by the Corporations Act.

25.3 Notice

- (a) A meeting of Members must be convened by notice in writing sent to every Member entitled to attend and vote. The notice of meeting need not set out the terms of any resolution unless required by Law.
- (b) If a Member does not receive a notice in respect of a meeting (including if the notice was accidentally omitted to be given to them) the meeting is not invalidated.
- (c) While the Trust is not a registered scheme the Responsible Entity may call a meeting on shorter notice than is required by section 252F with the unanimous consent of Unitholders.

25.4 Quorum

- (a) Subject to clause 25.4(b), the quorum for a meeting of Members is at least two Members present in person or by proxy holding at least 10% or more of the Units in issue and the quorum must be present at all times during the meeting.
- (b) If at any time there is only 1 Member, the quorum for a meeting is 1.
- (c) If an individual is attending a meeting both as a Member and as a proxy or body corporate representative, the Responsible Entity may in determining whether a quorum is present, count the individual in respect of each such capacity.

25.5 No quorum

- (a) If a quorum is not present within 15 minutes after the scheduled time for the commencement of the meeting, the meeting is:
 - (i) if convened on the requisition of Members, dissolved; or
 - (ii) otherwise, adjourned to such place and time as the Responsible Entity decides.

- (b) At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

25.6 Chair

- (a) Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Members.
- (b) The decision of the chair on any matter relating to the conduct of the meeting (including any objection to a vote cast at a meeting) is final.

25.7 Adjournment

- (a) The chair of the meeting has power to adjourn a meeting for any reason and to such place and time as the chair thinks fit.
- (b) Subject to the Corporations Act, adjournment of a meeting need not be notified to Members.

25.8 Postponement or cancellation

- (a) Other than a meeting convened on the requisition of Members, the Responsible Entity may postpone any meeting of the Members for any reason to a place and a time as the Responsible Entity thinks fit or cancel the meeting.
- (b) The Responsible Entity must as soon as possible after determining that a meeting of Members is to be postponed or cancelled, notify the Members of the postponement or cancellation (as the case may be).

25.9 Demand for a poll

A poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting.

25.10 Proxy

- (a) Subject to clause 25.10(b) and 25.10(c), the provisions of Division 5 of Part 2G.4 of the Corporations Act govern proxies for meetings of Members.
- (b) The Responsible Entity may, in its absolute discretion, decide to accept an appointment of a proxy as valid even if it does not comply with all of the requirements of section 252Y(1) of the Corporations Act.
- (c) A proxy form must, in respect of each resolution at a meeting of Members provide for the Member to direct the proxy:
 - (i) to vote on the resolution;
 - (ii) to vote against the resolution; or
 - (iii) to abstain from voting on the resolution.

25.11 Voting

- (a) The provisions of Division 6 of Part 2G.4 of the Corporations Act (other than section 253E which does not apply while the Trust is not a registered scheme) govern voting at meetings of Members.
- (b) Subject to this Constitution and the Corporations Act, all questions will be decided by a majority vote.

25.12 Resolutions

- (a) A resolution passed by Members at a meeting convened in accordance with this Constitution binds all Members, regardless of:
 - (i) in the case of a resolution passed at a meeting, whether:
 - (A) the Member was present at the meeting;
 - (B) the giving of notice of the meeting to that Member was omitted; and
 - (C) the Member voted in favour of or against the resolution, or
 - (ii) whether or not they signed the resolution in the case of a resolution in writing.
- (b) No objection may be made to any vote cast for a meeting unless the objection is made at the meeting.

25.13 Minutes

The minutes of a meeting of Members signed by the chairperson of the meeting or the meeting at which the minutes were accepted as a true and correct record are conclusive evidence of the matters stated in them unless the contrary is proved.

25.14 Written resolutions

Unless the Corporations Act requires otherwise, if a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed, is assented to in writing signed by:

- (a) Members holding the required majority of the Units in the Trust; and
- (b) if the Trust has only one Member, that Member,

that act, matter or thing or resolution is to be taken as having been done at or passed by a meeting of the Members of the Trust and the document is to be taken as a minute of the passing of that resolution. The resolution may consist of several documents in the same form, each signed by one or more Members. A document produced by mechanical or electronic means under the name of the Member with the Member's authority is considered to be a document in writing signed by the Member.

25.15 Option Holders

Subject to the Corporations Act, this clause 25 applies to meetings of Option Holders with any necessary modifications.

25.16 Class meetings

Subject to the Corporations Act, this clause 25 applies so far as it is capable of application to a meeting of a class of Members.

25.17 Meetings while Stapling applies

While Stapling applies:

- (a) representatives of the Stapled Entity may attend and speak at any meeting of Members and may invite any other person to attend and speak; and
- (b) meetings of Members may be held in conjunction with meetings of the holders of the Attached Securities and subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of those meetings as the Responsible Entity determines.

26. Notices

26.1 Form of notice to Members and Option Holders

- (a) Subject to the Corporations Act, a notice or other communication required to be given to a Member or an Option Holder in connection with the Trust must be given in writing (including by email or other electronic means) and may be given in any manner as prescribed by the Responsible Entity (including any electronic means of communication).
- (b) Any notices to Members or Option Holders must be delivered or sent to their physical address or electronic address last advised to the Responsible Entity for delivery of notices.

26.2 Joint Members

Service of any notice or document on any one of several joint Members or joint Option Holders will be deemed effective service on the other joint Member or joint Members or other joint Option Holder or joint Option Holders.

26.3 When notice sent to Member or Option Holder is received

Subject to the Corporations Act, a notice or other communication sent to a Member or Option Holder:

- (a) by post is taken to be received on the Business Day after it is posted; or
- (b) by email or other electronic means is taken to be received an hour after it is sent if the sender has not received a notice of non-delivery.

26.4 Notices to Responsible Entity

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing including by email or other electronic means provided it is given in such manner as the Responsible Entity determines and notifies to Members or Option Holders.

- (b) A notice to the Responsible Entity is effective only at the time of receipt in legible form.
- (c) The notice must bear the actual or electronic signature of the Member or Option Holder or their duly authorised officer or representative unless the Responsible Entity dispenses with this requirement.

27. Amendment

27.1 Power to amend

- (a) While the Trust is a registered scheme, subject to the Corporations Act, this Constitution may be amended, deleted, added to or repealed and replaced with a new Constitution, by a supplemental deed executed by the Responsible Entity if:
 - (i) the amendments, deletions or additions to the Constitution as set out in the supplemental deed have been approved by a Special Resolution of the Members;
 - (ii) the Responsible Entity reasonably considers that the provisions of the supplemental deed will not adversely affect Members' rights; or
 - (iii) clauses 27.2 or 27.3 apply.
- (b) While the Trust is not a registered scheme, this Constitution may be amended, deleted, added to or repealed and replaced with a new Constitution, by a supplemental deed executed by the Responsible Entity if:
 - (i) the amendment is made before the issue of any Units in addition to the original Units issued pursuant to clause 2.3;
 - (ii) Members have resolved to amend the Constitution by Special Resolution (other than any change to clauses 22.2, 23.1, 23.2, Schedule 1 and this clause 27 which resolution must be passed by Members who together hold greater than 90% of the votes attaching to all Units);
 - (iii) the Responsible Entity reasonably considers the change is not materially adverse to Members;
 - (iv) the Responsible Entity has given Members at least 28 days' prior notice of the proposed amendments and less than 25% of those Members have within that period requested a meeting be called to consider and to approve those amendments;
 - (v) the amendment is required:
 - (A) under the Corporations Act, ASIC Relief or by ASIC in order for the Trust to be registered as a registered managed investment scheme; or
 - (B) under the Listing Rules or by ASX for the Trust to become Listed; or
 - (vi) clauses 27.2 or 27.3 apply.

27.2 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act, the Listing Rules, ASIC Relief, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Members:

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

27.3 Statutory requirements

- (a) Subject to clause 27.3(b), if the Corporations Act or any applicable ASIC Relief requires that this Constitution contain certain provisions or may only be relied on if this Constitution contains certain provisions, then those provisions are taken to be incorporated into this Constitution at all times at which, and to the extent to which, they are required to be included in order to comply with the Corporations Act or for the ASIC Relief to apply. Any such provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) If the ASIC Relief is granted by class order or legislative instrument (rather than specifically in relation to the Trust or the Responsible Entity) then the provisions required for the class order to apply will only be taken to be incorporated if they automatically apply to the Trust or the Responsible Entity otherwise resolves that the ASIC Relief is to apply.
- (c) The Members authorise the Responsible Entity to make any amendments:
 - (i) referred to in clauses 27.3(a) or 27.3(b); or
 - (ii) required by ASIC in order for the Trust to be registered as a registered managed investment scheme or by ASX for the Trust to be Listed,

in a deed made for that purpose and if required lodge that deed with ASIC and ASX and acknowledge that those changes will not adversely affect their rights.

28. Limitation of liability of Members

- (a) The liability of each Member is limited to the amounts subscribed and agreed to be subscribed by the Member for Units. A Member need not indemnify the Responsible Entity, the Custodian or any other person if there is a deficiency in the Assets as compared to Liabilities or to meet the claim of the Responsible Entity or any creditor of the Responsible Entity in respect of, or in connection with the Trust, the Assets or Liabilities.
- (b) Subject to clause 28(a) recourse of the Responsible Entity and any creditors of the Trust is limited to the Assets.

29. Complaints handling

- (a) Subject to clause 29(b), if the Trust is:
- (i) a registered scheme; or
 - (ii) not a registered scheme but is offered to retail clients in accordance with any applicable exemption from registration under the Corporations Act or ASIC Relief,

the Responsible Entity must, as an Australian financial services licensee, comply with the dispute resolution requirements in section 912A(2) of the Corporations Act in dealing with any complaint made by a Member or made pursuant to clause 7.2(b).

- (b) The Responsible Entity must apply the following procedure in relation to a complaint of a Member that is a Wholesale Client:
- (i) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
 - (ii) the Responsible Entity will ensure that a complaint is acknowledged in writing within a reasonable period and the Member making the complaint is treated courteously;
 - (iii) the Responsible Entity will ensure that a final written response will be provided to the Member within 45 days of receipt of the complaint and in a manner that is fair to the Member and Responsible Entity or its officers or employees against whom it is made.
- (c) While Stapling applies the Responsible Entity may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 29 to ensure an efficient and equitable resolution of the complaint.

30. Termination

30.1 Term

The Trust terminates on the earlier of:

- (a) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members;
- (b) the date determined by the Members by extraordinary resolution;
- (c) the date Members pass, in accordance with section 601FM of the Corporations Act while the Trust is a registered scheme, an extraordinary resolution to remove the Responsible Entity but do not, at the same meeting, pass an extraordinary resolution choosing a company to be the new responsible entity that consents to becoming the Trust's responsible entity; and
- (d) the date on which the Trust terminates in accordance with an order of a court, any other provision of this Constitution or by Law.

30.2 No further dealings in Units

No Units may be issued or withdrawn following Termination of the Trust, except a withdrawal of Units pursuant to clause 11.8(viii) to facilitate an orderly wind-up of the Trust.

31. Procedure on Winding up

31.1 Notice of Termination

- (a) Within a reasonable time before, or as soon as practicable after Termination, the Responsible Entity must give to each Member notice of the Termination and of its intention to wind up the Trust Fund.
- (b) Where Stapling applies, the Responsible Entity must notify each Stapled Entity of Termination at the same time as Members are notified. If a Stapled Entity is wound up under its constitution or by Law, then the provisions of this Constitution relating to Stapling will cease to apply to that Stapled Entity so far as they relate to the Attached Securities of that Stapled Entity (and the relevant Units).

31.2 Realisation

Following Termination of the Trust, the Responsible Entity must:

- (a) realise the Assets, except to the extent that the Responsible Entity may agree with a Member that the Member's entitlement in whole or in part on winding up be satisfied by transferring specified Assets to that Member in accordance with clause 16.4; and
- (b) satisfy the Liabilities.

31.3 Final distribution

- (a) Subject to clauses 5.5(b)(iv) or 5.5(b)(v) (as applicable) and any agreement made between the Responsible Entity and a Member in accordance with clause 31.2(a), the net proceeds of realisation, after discharging all Liabilities and meeting the Costs (including anticipated expenses and fees of the Responsible Entity) of Termination of the Trust, must be distributed to the Members by the Responsible Entity as at the date of distribution subject to any rights, obligations or restrictions that apply to any class of Units, and in proportion to the number of Units held by them in the relevant class of Units.
- (a) Proceeds of realisation may be distributed in instalments.

31.4 Indemnity

The Responsible Entity is entitled to be indemnified out of the Assets in respect of all Costs incurred in connection with termination and wind-up of the Trust.

31.5 Postponement of realisation

- (a) Subject to the duties of the Responsible Entity under the Corporations Act, the Responsible Entity may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Members.

- (b) The Responsible Entity will not be responsible for any Loss attributable to the postponement.

31.6 Retention

- (a) Subject to this clause and the Corporations Act, the Responsible Entity may retain (either directly or under its control) any Assets, which in its opinion, may be required to meet any Liabilities.
- (b) Any Assets retained under this clause that are ultimately found not to be required will remain subject to the Trust for conversion and distribution in accordance with this Constitution.

31.7 Powers and rights continue

The powers, rights and discretions of the Responsible Entity under this Constitution (including the rights to fees, indemnities and right to reimbursement) continue in full effect until there has been a final distribution to Members and all Liabilities have been paid.

31.8 Cancellation of Units

All Units will be cancelled and taken to be withdrawn from the date the final distribution of the net proceeds from realisation is made to Members.

31.9 Independent audit

If the Trust was a registered scheme immediately before Termination, the Responsible Entity must arrange for an independent audit of the final accounts of the Trust by a registered company auditor or audit firm after the Trust is wound up.

31.10 Duration of the Trust

Subject to the Corporations Act, the provisions of this Constitution including the powers, rights and discretions of the Responsible Entity (including the rights to fees, any indemnities in favour of the Responsible Entity and right of reimbursement) continue to apply after the Termination of the Trust until there has been a final distribution to Members and all Liabilities have been paid, but during that period the Responsible Entity must not accept any Applications or Withdrawal Requests.

32. Merger

32.1 Application for interests in another trust

The Members may, by Special Resolution, resolve that each Member is obliged to apply for units or interests in another trust in return for the transfer of the Members' Units to that other trust or cancellation of the Members' Units in connection with a transfer of Assets and any such resolution binds every Member (whether or not the Member voted in favour of the resolution) and each Member appoints the Responsible Entity as its attorney to sign any documents (including Unit transfers and application forms) required to implement the resolution.

32.2 Power of Responsible Entity

The Responsible Entity will have power to do all things it considers necessary, desirable or reasonably incidental to give effect to a resolution referred to in clause 32.1.

33. No agency

Except as provided for in clause 32, nothing in this Constitution makes the Responsible Entity the agent of any Member nor creates any relationship other than that of beneficiary and trustee.

34. Severability

If any provision of this Constitution is illegal, invalid or unenforceable because it offends any Law (including the Corporations Act) then:

- (a) where the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed in which event the remaining provisions of this Constitution will operate as if the severed provision had not been included.

35. Listing Rules

35.1 Authority to List

Without limiting clause 14, the Responsible Entity has the power to do all things necessary and is authorised to seek listing of the Trust on the Official List or any other securities exchange and for Units (and where Stapling applies, Stapled Securities) or any Options to be Officially Quoted on the ASX or any other securities exchange and to take all steps required to achieve such listing and quotation of the Units (and where Stapling applies, Stapled Securities) or any Options.

35.2 Listing Rules

Notwithstanding any other provision of this Constitution including, without limitation, any change to this Constitution effected under clause 27, if and for so long as the Trust is Listed the following applies:

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

- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision;
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency; and
- (g) if the Listing Rules give the Responsible Entity a power, right or obligation subject to that power, right or obligation being contained in this Constitution then such a power, right or obligation is taken to be included in this Constitution.

36. Stapling

36.1 Power to Staple

- (a) In addition to any power the Responsible Entity has under clause 14, the Responsible Entity may, subject to this clause 36, the Corporations Act and the Listing Rules, cause the Stapling of any security to any Unit and may cause the Stapling of further securities to Units whether or not those are a different class of securities of the Stapled Entity from those Stapled at the time or are securities of any other trust or entity not Stapled at the time.
- (b) Stapling takes effect from the Stapling Date. The Stapling Provisions take effect on and from the Stapling Date and (subject to this clause 36) cease to apply on and from the Unstapling Date.
- (c) Without limiting clause 14, the Responsible Entity has power and is authorised to execute all documents and do all things that it considers to be necessary, desirable or reasonably incidental to give effect to the Stapling of any other security or securities to the Units, including consolidating or dividing the Units, without needing further authority or approval of Members.
- (d) The Responsible Entity is irrevocably appointed as the agent and attorney of each Member to execute all documents or do all things which it reasonably considers are necessary or desirable to be done on behalf of Members to give effect to the Stapling, including:
 - (i) making distributions to or on behalf of a Member;
 - (ii) applying for or purchasing Attached Securities on behalf of a Member;
 - (iii) agreeing to become a member of the company, managed investment scheme or other entity issuing the Attached Securities and consenting to the entry of the name of the Member in the register of members of the entity issuing Attached Securities; and
 - (iv) so far as permitted by Law, supplying any such entity (or their advisers or service providers) with information, notices and elections relating to that Member.
- (e) Subject to their Terms of Issue, the Responsible Entity is authorised to change the terms of any Option to facilitate and take account of Stapling.

36.2 Application of Stapling Provisions

- (a) If there is an inconsistency between any Stapling Provision and any other provision of this Constitution (other than to the extent such provision is required under the Corporations Act (including under clauses 27.2 and 27.3) or the Listing Rules (including under clause 35.2)), then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of any Law.
- (b) The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.
- (c) The provisions of this Constitution must be read and interpreted subject to the Stapling Provisions.

36.3 Responsible Entity's duties

- (a) The Responsible Entity is entitled to have regard to the fact that the Trust is operating with a Stapled Entity as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entity are aligned.
- (b) To the extent permitted by Law, while Stapling applies, in exercising any power or discretion, the Responsible Entity may have regard to the interests of Stapled Security Holders as a whole and must act in the best interests of the Stapled Security Holders rather than only in the interests of the Members as a whole.

36.4 Stapling

- (a) From the Stapling Date each Unit will be Stapled to an Attached Security or Attached Securities to form a Stapled Security.
- (b) From the Stapling Date and before the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the same number of each Attached Security to form a Stapled Security or that those Units will be issued as part of a Capital Reallocation Issue.
- (c) From the Stapling Date and before the Unstapling Date, the Responsible Entity and the Members must not do anything nor refrain from doing anything if to do so or refrain from doing so would result in any Unit no longer being a component of a Stapled Security (or have the same practical effect). In particular:
 - (i) the Responsible Entity must not offer a Unit for subscription or sale (including by way of offering Options or other convertible securities) unless an offer is made at the same time and to the same person for the same number of each Attached Security for issue or sale;
 - (ii) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the same number of each Attached Security;
 - (iii) the Responsible Entity must not accept an Application for a Unit if the Applicant does not at the same time apply for the same number of each Attached Security;

- (iv) a Member must not sell a Unit to any person unless the same number of each Attached Security is also sold to the same person at the same time;
- (v) the Responsible Entity must not issue or sell a Unit to any person unless the same number of each Attached Security is also issued or sold to the same person at the same time;
- (vi) the Responsible Entity must not reorganise, buy back, withdraw or cancel any Units unless at the same time there is a corresponding reorganisation, buy back, withdrawal, redemption or cancellation of all Attached Securities so that the person holding Units holds the same number of each Attached Security;
- (vii) the Responsible Entity must not cancel a Member's Unit unless the same number of each Attached Security is also cancelled or forfeited;
- (viii) the Responsible Entity must not issue any rights or Options to acquire a Unit unless corresponding rights or Options to acquire each Attached Security are issued to the same person at the same time;
- (ix) the Responsible Entity must not permit an Option Holder to exercise any rights or Options to acquire a Unit unless the Option Holder exercises the corresponding rights or Options to acquire, or otherwise acquires, each Attached Security at the same time;
- (x) until Units and Attached Securities are Unstapled in accordance with this Constitution, the Responsible Entity must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security; and
- (xi) the Responsible Entity must not register the transmission or transfer of Units unless the same number of each Attached Security is also transmitted or transferred (as the case may be) to the same person at the same time,

but nothing in this clause 36.4 prevents the Responsible Entity from issuing Units as part of a Capital Reallocation Issue.

36.5 Stapled Security Register

- (a) The Stapled Securities must be registered in the Stapled Security Register and the Responsible Entity may at its discretion (but subject to Law is not required to) issue a certificate, or a holding statement in respect of the Stapled Securities, identifying the Stapled Securities to which the certificate or holding statement relates.
- (b) The Responsible Entity must maintain or cause to be maintained the Stapled Security Register which records the names and addresses of the Members holding Units, the number of Units held, the number of Attached Securities held (which must be in the proportions determined by the Responsible Entity and the Stapled Entity) by the Members and any additional information required by the Responsible Entity from time to time.
- (c) The Stapled Security Register will, for so long as Stapling applies, be deemed to constitute part of the Register.

36.6 Consistency with Stapled Constitution

- (a) The Responsible Entity must use reasonable endeavours to procure that Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions of the Stapled Constitution. Notwithstanding any other provision, the Stapled Entity and the Trust will remain as separate entities.
- (b) The rights and obligations attaching to Attached Securities are set out in the Stapled Constitution. The Responsible Entity must use reasonable endeavours to procure that each Attached Security is dealt with in a manner consistent with the provisions relating to the Stapled Constitution.
- (c) The Responsible Entity and the Stapled Entity may agree any allocation of assets, property, liability, expenses or remuneration between the Stapled Entity and the Trust (including in relation to the allocation of the payment of fees to the Manager appointed by the Responsible Entity and the Stapled Entity) and any other matter between the Stapled Entity and the Trust that the Stapled Entity and the Responsible Entity consider to be necessary or appropriate in connection with the Stapling.

36.7 Financial assistance/Intra-Group loans

- (a) Subject to clause 36.7(b), the Responsible Entity must, while Units are Stapled, and to the maximum extent permitted by Law, if called upon by the Stapled Entity, enter into or procure that a Subsidiary enter into any agreement, document or arrangement, or do any other act, matter or thing at the request of a Stapled Entity, in respect of any of the following:
 - (i) lending money or providing financial accommodation to the Stapled Entity (or any of its Subsidiaries or Investment Vehicles);
 - (ii) guaranteeing any loan or other financing facility or financial accommodation of the Stapled Entity (or any of its Subsidiaries or Investment Vehicles), including providing any security or indemnity to any person providing the loan facility or financial accommodation;
 - (iii) entering into any covenant, undertaking, restraint, or pledge at the request of the Stapled Entity including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or security in connection with any financial accommodation;
 - (iv) paying any Costs, expenses or fees payable or incurred by the Stapled Entity (or any of its Subsidiaries or Investment Vehicles);
 - (v) entering into any joint borrowing or joint financial accommodation with the Stapled Entity (or any of its Subsidiaries or Investment Vehicles), and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
 - (vi) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of the Stapled Entity (or any of its Subsidiaries or Investment Vehicles) or any other person.

- (b) The Responsible Entity will not be obliged to enter into or procure that any Subsidiary or Investment Vehicle enter into any document or perform any act, matter or thing pursuant to this clause 36.7 if entering into of the document or the performance of the act, matter or thing would cause it to breach any contractual obligation to a third party or breach any Law.

36.8 Disclosure of information

- (a) The Responsible Entity must provide to the Stapled Entity on request all information in its possession relating to the Stapled Securities or the affairs of any member of the Redcape Group.
- (b) The Responsible Entity must prepare group accounts with the Stapled Entity, being consolidated financial statements of the Redcape Group.
- (c) The Responsible Entity must provide all assistance to the Stapled Entity to enable the provision of all other reports or other information required to be provided or disclosed by Law or the Listing Rules or which it is reasonably desirable to provide to the Stapled Security Holders.

36.9 Co-operation

To the extent permitted by Law, the Responsible Entity must cooperate with the Stapled Entity in respect of all matters relating to the Stapled Securities, including to facilitate that the Stapled Entity and the Responsible Entity:

- (a) comply with their obligations under the Listing Rules;
- (b) co-ordinate the disclosure of information and reports to ASX, ASIC and Stapled Security Holders;
- (c) adopt consistent accounting, valuation and investment policies;
- (d) hold meetings of holders of Units and holders of Attached Securities concurrently or, where necessary, consecutively;
- (e) agree on the terms and timing of all new issues of securities including bonus and rights issues and placements and redemptions and options;
- (f) consult before taking any action (or omitting any action) which may materially affect the value of the Stapled Securities;
- (g) co-ordinate the announcement and payment of dividends and distributions;
- (h) co-ordinate any dividend or distribution re-investment plan;
- (i) co-ordinate all actions connected with partly paid Stapled Securities; and
- (j) maintain the same auditor from time to time and agree on any change of auditor so that any change of auditor is implemented for the Trust and the Stapled Entity.

36.10 Loans or debt finance

The Responsible Entity may enter into loan or debt finance arrangements on arm's length commercial terms with the Stapled Entity for the purpose of allocating capital raised under issues of Stapled Securities.

36.11 Temporary Suspension of Stapling

- (a) The Responsible Entity may determine that Stapling is to be temporarily suspended. When doing so, the Responsible Entity must also determine the period of the suspension. The Responsible Entity must procure that the Units and Attached Securities are treated as Unstapled during the suspension. However, clauses 36.12(c) and 36.12(d) will not apply during the suspension.
- (b) The Responsible Entity must as soon as possible notify Stapled Security Holders of the suspension, including how long it will last.

36.12 Unstapling

- (a) Subject to clause 36.12(b), once the Units are Stapled to the Attached Securities, Stapling will continue for so long as the Units and the Attached Securities are on issue, unless:
 - (i) Stapled Security Holders pass a Special Resolution (as that term is defined in clause 1.1 but with all references to "Members" being replaced with "Stapled Security Holders") providing that the Stapling Provisions will cease to apply or be suspended;
 - (ii) Stapling becomes unlawful;
 - (iii) the Stapled Entity becomes insolvent or commences winding up or terminates and the Responsible Entity determines that Stapling should cease; or
 - (iv) the Responsible Entity and the Stapled Entity determine that Stapling is materially adverse to the interests of Stapled Security Holders,
 (each an **Unstapling Event**).
- (b) While Units are Officially Quoted, Units and the Attached Securities may only be Unstapled if the ASX has indicated in writing that it will grant permission for the Unstapling to occur.
- (c) From the date of an Unstapling Event, the Responsible Entity must do all things reasonably necessary to procure that the Attached Securities and the Units are Unstapled.
- (d) As soon as possible after the date of the Unstapling Event, the Responsible Entity must determine a date from which the Stapling Provisions in this Constitution will no longer apply (the **Unstapling Date**).
- (e) Nothing in this clause 36.12 prevents the Responsible Entity from subsequently determining that the Stapling Provisions should again apply.

- (f) Prior to the Unstapling Date, the consent of a Stapled Entity must be obtained to effect any amendment to this Constitution which:
 - (i) directly affects the terms on which Units are Stapled; or
 - (ii) removes any restriction on the transfer of a Unit that is Stapled unless the restriction also exists for all Attached Securities and is simultaneously removed for all Attached Securities.

37. Governing law

- (a) This Constitution and its formation are governed by the laws in force in New South Wales.
- (b) The Responsible Entity and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Schedule 1

1. Fees

1.1 Establishment Fee

The Responsible Entity is entitled to, and is to be paid out of Application Money (which fees may be paid to the Manager in accordance with the Management Agreement), an Establishment Fee equal to 1.0% of the total Application Money received under a capital raising undertaken for the Trust at any time (including but not limited to an Initial Public Offer).

The Establishment Fee is payable within 10 Business Days following the closing of the relevant capital raising undertaken for the Trust.

1.2 Management Fee

The Responsible Entity is entitled to, and is to be paid out of the Assets (which fees may be paid to the Manager in accordance with the Management Agreement), a Management Fee calculated as follows (less any amounts of that fee paid to the Responsible Entity in respect of a Stapled Entity):

Management Fee = 0.005 x Gross Hotel Portfolio Value

Where:

Gross Hotel Portfolio Value means the aggregate value of all Real Property held as an asset by the Redcape Group based on the most current independent valuation or valuation by the Responsible Entity of each Real Property asset (which valuation methods in either case must be consistent with ordinary commercial practice for valuing that type of Real Property asset and produce a value that is reasonably current at the time of valuation).

The Management Fee accrues daily and is to be paid monthly in arrears within 10 days of the end of each month.

1.3 Performance fee

PART A - While the Trust is not Listed

While the Trust is not Listed the Responsible Entity must be paid, and is entitled to be paid out of the Assets (which fees may be paid to the Manager in accordance with the Management Agreement) a Performance Fee on completion of a Realisation Event calculated as follows (less any amounts of that fee paid to the Responsible Entity in respect of a Stapled Entity):

Performance Fee = 20% x Outperformance

Where:

- **Outperformance** means the Realisation Sale Proceeds less the Return Hurdle.
- **Realisation Sale Proceeds** means where the Realisation Event is an Initial Public Offer, the Management NA, or where the Realisation Event is not an Initial Public Offer, the total cash distribution to be paid to Members calculated on a pre Performance Fee basis resulting from completion of the Realisation Event.

- **Management NA** means the net assets of the Redcape Group as disclosed in the pro forma consolidated balance sheet of the Redcape Group prepared as part of the Initial Public Offer:
 - (i) excluding any adjustments made to the pro forma consolidated balance sheet to reflect the Initial Public Offer; and
 - (ii) excluding assets or liabilities of the Redcape Group relating to straight-line leasing, over-market leases and other such non-cash items; and
 - (iii) excluding the total of plant, property and equipment, investment properties and goodwill relating to Real Property assets held by the Redcape Group; and
 - (iv) adding back the sum of the most recent independent valuations of each of the Real Property assets held by the Redcape Group (which valuation methods must be consistent with ordinary commercial practice for valuing the type of asset and produce a value that is reasonably current at the time of valuation) plus any capital invested into the Real Property assets by the Redcape Group since the most recent independent property valuation was obtained.
- **Return Hurdle** means the theoretical distribution amount required to be returned to Members on completion of a Realisation Event that would deliver the Members an IRR of 10% per annum excluding any deduction for payment of the Performance Fee but including deductions for all other fees and including all distributions previously paid to Members.
- **Realisation Event** means an event that provides a cash return to Members resulting from a trade sale of assets of the Redcape Group, an Initial Public Offer of the Trust or any other similar transaction.
- **IRR** means the interest rate, expressed as an annual effective rate, at which the net present value of all cash received by the Trust from Members (including Application Money for Units) and all cash paid by the Trust to Members for the period from the establishment of the Trust to completion of the Realisation Event equals zero. The IRR is to be calculated by using the XIRR Function provided in Microsoft Excel.

PART B - While the Trust is Listed

- (a) While the Trust is Listed the Responsible Entity is entitled to, and is to be paid out of the Assets (which fees may be paid to the Manager in accordance with the Management Agreement), a Performance Fee calculated and accrued as set out in this Part B of Schedule 1 (less any amounts of that fee paid to the Responsible Entity in respect of a Stapled Entity).
- (b) For the purposes of this Part B of Schedule 1, **Performance Fee Period** means each six month period ending on 30 June and 31 December each year.
- (c) For each Performance Fee Period, the Performance Fee is the positive amount (if any) that is calculated as follows:

$$P = 20\% \times [(Outperformance/SNA) - Hurdle Return] \times ENA$$

where:

P is the Performance Fee for the Performance Fee Period

Outperformance is calculated as:

- [ENA – SNA] plus any distributions made to Members during the Performance Fee Period
- Hurdle Return** is 10% per annum (adjusted pro rata where the Performance Fee Period is less than 12 months)
- SNA** is the Management NA on the first day of the Performance Fee Period
- ENA** is the Management NA on the last day of the Performance Fee Period
- Management NA** means the net assets of the Redcape Group as reported in the latest audited consolidated balance sheet of the Redcape Group:
- (i) excluding assets or liabilities of the Redcape Group relating to straight-line leasing, over-market leases and other such non-cash items; and
 - (ii) excluding the total of plant, property and equipment, investment properties and goodwill relating to Real Property assets held by the Redcape Group; and
 - (iii) adding back the sum of the most recent independent valuations of each of the Real Property assets held by the Redcape Group (which valuation methods must be consistent with ordinary commercial practice for valuing the type of asset and produce a value that is reasonably current at the time of valuation) plus any capital invested into the Real Property assets by the Redcape Group since the most recent independent property valuation obtained.
- (d) The following provisions apply to the calculation, accrual and payment of the Performance Fee:
- (i) If the Performance Fee for a Performance Fee Period is a negative amount, no Performance Fee for that Performance Fee Period is payable to the Responsible Entity. Subject to paragraph (d)(iii) below, the Performance Fee for a Performance Fee Period is the Performance Fee calculated using the above formula plus any negative Performance Fee calculated for the previous Performance Fee Period. Subject to paragraph (d)(iii) below, a negative Performance Fee amount for the previous Performance Fee Period is to be added to a negative Performance Fee amount for the current Performance Fee Period in determining the Performance Fee for that period.
 - (ii) If the Performance Fee for a Performance Fee Period is a positive amount, and remains a positive amount after deducting any negative amount under paragraph (d)(i) above a Performance Fee equal to the positive amount is payable to the Responsible Entity. The Performance Fee is to be paid within 10 Business Days after the end of the relevant Performance Fee Period.
 - (iii) Where the Performance Fee for six consecutive Performance Fee Periods has been a negative amount, the Performance Fee for the previous Performance Fee Period is reset to zero for the purposes of calculating the Performance Fee for the next Performance Fee Period.

- (e) The Responsible Entity may, in respect of any Performance Fee Period, elect to receive the Performance Fee in cash or Securities.

1.4 Debt Arranging Fee

The Responsible Entity is entitled to, and is to be paid out of the Assets (which fees may be paid to the Manager in accordance with the Management Agreement), a Debt Arranging Fee equal to 50 basis points of the total amount of any third party debt finance or refinancing obtained for the Redcape Group (less any amounts of that fee paid to the Responsible Entity in respect of a Stapled Entity).

A Debt Arranging Fee is payable on the date binding commitment documentation is entered into by the relevant Redcape Group member and the third party financier.

1.5 Acquisition Fee and Disposal Fee

The Responsible Entity is entitled to, and is to be paid out of the Assets (which fees may be paid to the Manager in accordance with the Management Agreement), the following Acquisition Fees and Disposal Fees (less any amounts of that fee paid to the Responsible Entity in respect of a Stapled Entity):

- (a) an Acquisition Fee of 1% of the total purchase price of any Real Property acquired by the Redcape Group; and
- (b) a Disposal Fee of 1% of the total sale price of any Real Property disposed of by the Redcape Group.

The Acquisition Fee and Disposal Fee is payable on financial completion of the acquisition or disposal of any Asset.

EXECUTION

Executed as a deed poll this


13

June 2017

Executed by **Moelis Australia Asset Management Ltd** ACN 142 008 535 in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:


.....
Signature of director

Hugh Thomson
.....
Name (please print)


.....
Signature of ~~director~~ or company secretary*
*delete whichever does not apply

Peter Dixon
.....
Name (please print)

Compliance Checklist for Constitution

(When the Trust is a registered scheme)

Corporations Act	Clause
<p>Section 601GA(1) The Constitution of a registered scheme must make adequate provision for:</p>	
<p>(a) the consideration that is to be paid to acquire an interest in the scheme; and</p>	7.1, 7.3, 7.12, 8 and definition of Application Price in clause 1.1
<p>(b) the powers of the responsible entity in relation to making investments of, or otherwise dealing with, scheme property; and</p>	14.1, 14.2, 14.4 and 36.7
<p>(c) the method by which complaints made by members in relation to the scheme are to be dealt with; and</p>	7.2(b) and 29
<p>(d) winding up the scheme.</p>	31
<p>Section 601GA(2) If the responsible entity is to have any rights to be paid fees out of scheme property, or to be indemnified out of scheme property for liabilities or expenses incurred in relation to the performance of its duties, those rights:</p>	
<p>(a) must be specified in the scheme's Constitution; and</p>	17, 20.1, 21.1, 23, and Schedule 1
<p>(b) must be available only in relation to the proper performance of those duties.</p>	17.5(a) and 21.1, 23.8
<p>Section 601GA(3) If the responsible entity is to have any powers to borrow or raise money for the purposes of the scheme those powers must be specified in the scheme's Constitution.</p>	14.2(g), 14.2(i) and 36.7(vi)
<p>Section 601GA(4) If members are to have a right to withdraw from the scheme, the scheme's Constitution must:</p>	
<p>(a) specify the right; and</p>	10, 11, 12 and 13

Corporations Act	Clause
(b) if the right to withdraw may be exercised while the scheme is liquid (as defined in section 601KA) - set out adequate procedures for making and dealing with withdrawal requests; and	11.1,11.2, 11.3, 11.5, 11.9 and 11.12
(c) if the right may be exercised while the scheme is not liquid (as defined in section 601KA) - provide for the right to be exercised in accordance with Part 5C.6 and set out any other adequate procedures (consistent with that Part) that are to apply to a making and dealing with withdrawal requests. The right to withdraw, and any provisions in the Constitution setting out procedures for making and dealing with withdrawal requests, must be fair to all members.	11.4
Section 601GB The Constitution of a registered scheme must be contained in a document that is legally enforceable as between the members and the responsible entity.	4.1
Section 601GC(1) The Constitution of a registered scheme may be modified, or repealed and replaced with a new Constitution: (a) by special resolution of the members of the scheme; or (b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.	27.1
Section 601FC(1)(i) The responsible entity must ensure that scheme property is:	
(i) clearly identified as scheme property; and	3.1
(ii) held separately from property of the responsible entity and property of any other scheme.	3.1

