

FARMCAP PRIVATE CREDIT AGRICULTURAL MORTGAGE FUND  
(DIVERSIFIED)  
CONSTITUTION

BRINDABELLA INVESTMENT GROUP PTY LTD  
(ACN 626 692 984)  
("Trustee")

# BRINDABELLA

## INVESTMENT GROUP

BRINDABELLA INVESTMENT GROUP PTY LTD  
PO BOX Q131 QUEEN VICTORIA BUILDING SYDNEY NSW 1230  
02 9799 8557 | BRINDABELLASECURITIES.COM.AU  
ABN 37 626 692 984 | AFSL 510735  
DATE UPDATED 1 JUNE 2024

TABLE OF CONTENTS

1. MEANINGS ..... 2

2. ESTABLISHMENT AND PURPOSE OF THE TRUST ..... 9

3. PERIOD OF THE TRUST .....10

4. CONSTITUTION OF THE TRUST .....10

5. OVERRIDING PROVISIONS .....11

6. UNITS .....12

7. APPLICATION FOR UNITS.....14

8. ISSUING OF UNITS .....15

9. WITHDRAWAL PROCEDURES.....18

10. WITHDRAWAL PRICE FOR UNITS .....22

11. REGISTER OF UNITHOLDERS.....23

12. INTERESTS OF UNITHOLDERS .....24

13. INVESTMENTS AND VALUATION OF ASSETS.....25

14. TRUSTEE'S POWERS AND DUTIES .....26

15. LENDING OF TRUST ASSETS .....29

16. FINANCIAL REPORTS, AUDITORS AND TAX RETURNS .....30

17. FEES AND EXPENSES .....31

18. FEES AND EXPENSES TO BE PAID BY BORROWERS .....36

19. INCOME OF THE TRUST .....37

20. DISTRIBUTION REINVESTMENT .....40

21. DEDUCTIONS FROM WITHDRAWALS AND DISTRIBUTIONS.....40

22. MONEY OWING BY UNITHOLDERS .....41

23. INFORMATION FROM UNITHOLDERS .....42

24. TRANSFER AND TRANSMISSION OF UNITS .....43

25. WINDING UP OF THE TRUST.....44



26. INDEMNITY AND LIABILITY.....45

27. COMPLIANCE COMMITTEE.....48

28. MEETINGS OF UNITHOLDERS.....49

29. CONDUCT OF MEETINGS .....49

30. RESOLUTIONS .....50

31. CHANGE OF TRUSTEE.....51

32. COMPLAINTS HANDLING.....52

33. NOTICES .....54

34. MISCELLANEOUS PROVISIONS.....55



# Farmcap Private Credit Agricultural Mortgage Fund (Diversified)

## CONSTITUTION

THIS DEED POLL dated 6<sup>th</sup> December 2024.

BY: **BRINDABELLA INVESTMENT GROUP PTY LTD** (ACN 678 494 865) of Level 10,  
131 York Street, Sydney NSW 2000 ("Trustee").

### RECITALS:

- A. The Trustee wishes to constitute a unit trust to be called the Farmcap Private Credit Agricultural Mortgage Fund (Diversified) for the benefit of the Unitholders under the trust established by this Constitution.
- B. The Trustee has agreed to act as first trustee of the Trust.

### OPERATIVE PROVISIONS:

#### 1. MEANINGS

##### 1.1 Definitions

Unless a contrary intention appears:

"**Accounting Standards**" has the meaning given to that term in Section 9 of the Corporations Act.

"**Administrator**" means any person appointed by the Trustee to provide administrative services in respect of the Trust.

"**AMIT**" has the meaning given to that term in Section 995-1 of the Tax (1997) Act.

"**AMIT Election**" means a choice made by the Trustee in accordance with the requirements of the AMIT Rules for the Trust to be an AMIT.

"**AMIT Rules**" means Divisions 275 and 276 of the Tax (1997) Act.

"**Applicant**" means a person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.



**"Application Money"** means any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Applicant directs the Trustee to pay to a third person on account of service fees or other fees associated with the acquisition of Units.

**"ASIC"** means the Australian Securities and Investments Commission.

**"Associate"** means an associate as defined in Division 2 of Part 1.2 of the Corporations Act.

**"Attribution Income Tax Liability"** of a person in relation to the Trust means an income tax liability of the person under the Tax (1997) Act or the TAA that results from the Trust being operated as an AMIT, Managed Investment Trust or Withholding MIT.

**"Borrower"** means any person who applies to the Trustee to borrow Trust Assets and is approved by the Trustee.

**"Business Day"** means a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne.

**"Commencement Date"** means the day on which the first Trust Asset vests in the Trustee.

**"Complaint"** means an expression of dissatisfaction made to the Trustee by a Unitholder in relation to the Trust, or the Trust's complaint handling process itself, where a response or resolution is explicitly or explicitly expected.

**"Complainant"** means a Unitholder who has complained to the Trustee pursuant to clause 32.

**"Compliance Committee"** means, where the Trust is a Registered Scheme, the compliance committee, if any, for the Trust appointed by the Trustee for the purposes of the Corporations Act.

**"Compliance Plan"** means, where the Trust is a Registered Scheme, the compliance plan for the Trust for the purposes of the Corporations Act.

**"Constitution"** means this document as it may from time to time be amended and in force.

**"Corporations Act"** means the *Corporations Act 2001 Cth* for the time being in force, together with the regulations.

**"Credit Facility"** means the provision of credit to a Borrower.



"**Custodian**" means any person appointed as custodian of the Trust as provided for in clause 14.2(h).

"**Defaulting Credit Facility**" means a Credit Facility under which the Borrower is in default for more than 1 day.

"**Disclosure Document**" means a document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in respect of the disclosure document.

"**Distributable Amount**" means the amount determined by the Trustee from time to time under clause 19.4.

"**Distribution Calculation Date**" means the last day of each Financial Year and such other days as designated by the Trustee.

"**Distribution Period**" means:

- (a) For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date.
- (b) For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust.
- (c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

"**Financial Year**" means the period of twelve months ending on 30 June in each year during the continuance of the Trust or such other period the Trustee determines and the Corporations Act allows. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.

"**Fund Manager**" means any person appointed by the Trustee to manage or advise in respect of the Trust's investments or any part of the Trust's investments.

"**GST**" means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.



"**GST Act**" means the A New Tax System (Goods & Services Tax) Act 1999.

"**Income**" means the Net Income unless otherwise determined by the Trustee.

"**Initial Holding Period**" means, in relation to a Unit;

- (a) the period ending 24 months after the date on which the Unit is issued in accordance with clause 8.2; or
- (b) such longer or shorter period as the Trustee may determine prior to the time that the Unit is issued.

"**Issue Price**" means, in relation to a Unit, the price determined in accordance with clause 8.

"**Loan Amount**" means the sum of money to be advanced to a Borrower under a Credit Facility.

"**Loan Application**" means the application by a potential Borrower to the Trustee to borrow Trust Assets.

"**Lock Up Period**" means, in respect of a Unit, a period of 12 months (or as otherwise specified in the Disclosure Document) commencing from the date the Unit is issued during which the Unitholder is not permitted to submit a redemption request. The Lock Up Period may be waived at the discretion of the Trustee.

"**Liquid**" has the same meaning as in section 601KA of the Corporations Act.

"**Managed Investment Trust**" has the meaning given to that term in Section 995-1 of the Tax (1997) Act.

"**Net Application Money**" means in relation to an application for Units, the Application Moneys less any entry fee charged under clause 17.3.

"**Net Asset Value**" means the total value of the Trust Assets less the Trust Liabilities, each as calculated in accordance with clause 13.

"**Net Income**" means the total assessable income of the Trust less all deductions of the Trust determined in accordance with the Tax Act, which may be reduced or increased by the amount of any reserves, provisions or amounts that, in the determination of the Trustee, need to be made. If the total amount is less than zero, then the total amount is taken to be zero.

"**Perpetuity Period**" means the period commencing on the date of



commencement of the Trust and expiring on the Vesting Date.

**"Pricing Time"** means the time or times the Trustee determines that applications or redemption requests for Unitholders or any group or class of Unitholders must be received to obtain a Unit price calculated at a particular time.

**"Register"** means the register of Unitholders required to be kept according to clause 11.

**"Registered Scheme"** has the meaning given to that term in Section 9 of the Corporations Act.

**"Regulator"** means ASIC and such other governmental agency with authority to regulate the operation of the Trust.

**"Relevant Law"** means any requirement of the Corporations Act, the *Australian Securities and Investments Commission Act 2001*) and any other present or future law of the Commonwealth of Australia or any State or Territory with which the Trustee must satisfy in order for the Trustee or Fund Manager to avoid a relevant penalty, detriment or disadvantage.

**"Segregated Assets"** means the Trust Assets referable to a class of Units. Where a Trust Asset is referable to more than one class of Units, then for the purposes of this definition of Segregated Assets, such amount of the Trust Asset will be included as the Trustee determines is properly referable to the class of Units.

**"Segregated Liabilities"** means the Trust Liabilities referable to the class of Units. Where Trust Liabilities are referable to more than one class of Units, then for the purposes of this definition of Segregated Liabilities, such amount of the Trust Liabilities will be included as the Trustee determines is properly referable to the class of Units.

**"TAA"** means the *Taxation Administration Act 1953*, including the accompanying schedules.

**"Tax"** includes, but is not limited to:

- (a) stamp duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Trust Assets or the Trust itself;
- (b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution;
- (c) taxes imposed or assessed upon:





- (i) any Application Money or property;
- (ii) the Trust Assets, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Trust Assets or the Trust itself; or
- (iii) the Trustee in respect of its capacity as trustee of the Trust;
- (d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust; and
- (e) every kind of tax, duty, rate, levy, deduction and charge including any GST.

"**Tax Act**" means the Tax (1936) Act, Tax (1997) Act, or both as appropriate.

"**Tax (1936) Act**" means the Income Tax Assessment Act 1936.

"**Tax (1997) Act**" means the Income Tax Assessment Act 1997.

"**Transaction Cost Percentage**" means when calculating:

- (a) the Issue Price of a Unit, an amount (expressed as a percentage of the Net Asset Value) equal to the Trustee's estimate of expenses which would have been incurred if all the Trust Assets had been purchased or acquired; or
- (b) the Withdrawal Price of a Unit, an amount (expressed as a percentage of the Net Asset Value) equal to the Trustee's estimate of expenses which would have been incurred if all the Trust Assets had been sold or disposed of.

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

"**Trust Assets**" includes all property, rights and income of the Trust, but excludes:

- (a) Application Money or property paid in respect of which Units have not been issued;
- (b) proceeds from withdrawal which have not yet been paid; and
- (c) Distributable Amount awaiting payment to Unitholders.

"**Trust Liabilities**" means all liabilities of the Trust, including any provisions the Trustee considers should be taken into account in determining liabilities. To the



extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for this Trust, Unitholders' funds are not to be treated as a liability.

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

"**Unit**" means an undivided share in the beneficial interest in the Trust Assets as provided in this Constitution.

"**Unitholder**" means a person for the time being registered under the provisions of this Constitution as a holder of Units and who holds a beneficial interest in the Trust Assets.

"**Units in Issue**" means the number of Units that have been issued less the number that have been redeemed.

"**Valuation Date**" means the time at which the Trustee calculates the Net Asset Value.

"**Vesting Day**" means the day which is the later of:

- (a) the day immediately prior to the 80th anniversary of the date of commencement of the Trust; or
- (b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.

"**Withdrawal Price**" means, in relation to a Unit, the price at which a Unit is redeemed and calculated in accordance with clause 10.1.

"**Withholding MIT**" has the meaning given to that term in Section 995-1 of the Tax (1997) Act.

## 1.2 Interpretation

Unless a contrary intention appears:

- (a) words and phrases used in this Constitution have the same meanings as in the Corporations Act;
- (b) words denoting any gender include all genders;
- (c) the singular number includes the plural and vice versa;



- (d) references to any legislation includes any legislation which amends or replaces that legislation;
- (e) a person includes their executors, administrators, successors, substitutes and assigns;
- (f) a person includes companies and corporations and vice versa;
- (g) headings do not affect the interpretation of this Constitution;
- (h) amounts of money are expressed in Australian dollars unless otherwise expressly stated;
- (i) a reference to a document includes any variation or replacement of it; and
- (j) a reference to a thing includes the whole or each part of it.

### **1.3 Rounding of Unit prices**

The Issue Price or Withdrawal Price of a Unit may be rounded as the Trustee determines. The amount of rounding must not be more than one percent of the Issue Price or Withdrawal Price.

## **2. ESTABLISHMENT AND PURPOSE OF THE TRUST**

### **2.1 Appointment of trustee**

The Trustee declares that it is and has agreed to on and from the Commencement Date:

- (a) act as trustee of the Trust; and
  - (b) hold the Trust Assets on trust for the Unitholders,
- on the terms contained in this Constitution.

### **2.2 Holding of Trust Assets**

The Trustee must clearly identify the Trust Assets as property of the Trust and must hold the Trust Assets separate from the assets of the Trustee and the assets of any other trust fund of which it is trustee. All Trust Assets must be held:

- (a) by the Trustee; or
- (b) if required by the Corporations Act or the Trustee thinks it necessary or



appropriate, by a Custodian.

## 2.3 Purpose of the Trust

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

## 2.4 Name of the Trust

The Trust will be known initially as the **Farmcap Private Credit Agricultural Mortgage Fund (Diversified)**. However, the Trustee may designate another name at any time.

# 3. PERIOD OF THE TRUST

## 3.1 Term of the Trust

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

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or the Corporations Act or in accordance with the law.

## 3.2 Perpetuity Period

Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, unless that issue or redemption would not cause any contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a Perpetuity Period in this clause 3.2 does not require that the Trust terminate on expiration of that period.

## 3.3 Unvested Interests

To the extent that any interest or interests in any or all of the Trust Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.

# 4. CONSTITUTION OF THE TRUST



#### 4.1 Constitution binding on the parties

This Constitution operates as a deed and is binding on:

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

#### 4.2 Benefits and obligations

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

#### 4.3 Power to amend

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) with such approvals of the Unitholders as the Corporations Act requires;  
or
- (b) subject to paragraph (a), as the Trustee determines.

#### 4.4 Lodgment of amendment

If the Trust is a Registered Scheme then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

### 5. OVERRIDING PROVISIONS

#### 5.1 Statutory requirements of the Corporations Act

While the Trust is a Registered Scheme, if the Corporations Act or any modification to the provisions of the Corporations Act granted by ASIC requires that this Constitution contain certain provisions then, subject to clause 4.3(a), those provisions are deemed to be incorporated into this Constitution.

#### 5.2 Operation as an AMIT

Following the making of an AMIT Election the following provisions of the Corporations Act will apply to the Trust regardless of whether the Trust is a Registered Scheme at that time:



- (a) section 601GC(1);
- (b) section 601FC(1)(c); and
- (c) section 601FC(1)(d),

subject to any exceptions to these requirements that apply under the Corporations Act or any modification to the provisions of the Corporations Act granted by ASIC or, if the Trust is not a Registered Scheme, would apply if the Trust was a Registered Scheme.

### **5.3 Inconsistency with statutory requirements**

While the Trust:

- (a) is a Registered Scheme, to the extent there is any inconsistency between the Corporations Act and a provision of this Constitution then that provision will be of no effect; and
- (b) has made an AMIT Election, to the extent there is any inconsistency between clause 5.2 and a provision of this Constitution other than clause 5.3(a) then that other provision will be of no effect.

## **6. UNITS**

### **6.1 Division of beneficial interest**

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

### **6.2 Further issues of Units**

Subject to the Corporations Act, the Trustee may determine to create and issue further Units of the same class or of a different class to those already on issue.

### **6.3 Classes of Units**

The Trustee may make the issue of further Units in different classes subject to such rights, obligations and restrictions the Trustee determines including differing rights, obligations and restrictions relating to:

- (a) applications for Units;
- (b) the determination of the Issue Price and the Withdrawal Price;



- (c) transfers and switching;
- (d) distributions to Unitholders;
- (e) valuations; and
- (f) withdrawals.

The rights of Unitholders are subject to the rights, obligations and restrictions attaching to a Unit of a class which they hold. A Unitholder may switch from one class of Units to another class on terms which the Trustee determines.

#### **6.4 Segregation between classes of Units**

Notwithstanding the generality of clause 6.3, the Trustee may issue a class of Units on the following terms:

- (a) the Segregated Assets for each class of Units comprise a particular Asset or Assets and all proceeds and income received by the Trustee in respect of, or relating to, that particular Asset or Assets;
- (b) the Segregated Liabilities are attributed to a class of Units such that they can only be met from Segregated Assets;
- (c) Segregated Assets for a class of Units are not encumbered in relation to Segregated Liabilities of another class of Units;
- (d) the Trustee is not entitled to be indemnified out of the Segregated Assets of a class of Units in relation to Segregated Liabilities of another class of Units; and
- (e) each class of Units that is constituted by a particular Asset or Assets will commence on the date determined by the Trustee and will expire on the maturity for the particular Asset or Assets or as otherwise determined by the Trustee.

#### **6.5 Classes under the AMIT Rules**

Following the making of the AMIT Election the Trustee may, in its discretion, make a choice to treat a particular class of Units as a separate AMIT.

#### **6.6 Fractions of Units**

Fractions of a Unit may be issued by the Trustee. If fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders



apply in the proportion which the fraction bears to the Unit. The Trustee may consolidate or divide Units or fractions of Units on terms it determines.

## **6.7 Rounding of fractions of Units**

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

## **7. APPLICATION FOR UNITS**

### **7.1 Form of application**

An application for Units must be in any form the Trustee may for the time being require or approve. By applying to become a Unitholder, the Applicant acknowledges that they have read, understood and agree to any terms of issue (for example, in any Disclosure Document).

### **7.2 Minimum application**

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

### **7.3 Application payment**

Each Applicant must, at the time of lodging an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Application Money. However:

- (a) if the application for Units arises as part of a reinvestment under clause 8.6 then the Application Money is paid at the time the reinvestment is made; and
- (b) at the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

### **7.4 Satisfaction of Application Money**

The payment of Application Money for Units may be satisfied in such a manner as the Trustee determines, including:





- (a) by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods (and subject to the Corporations Act the Trustee may determine that some or all of the costs of transferring investments is to be paid by the relevant Unitholder); or
- (b) in the case of an application for Units by the Trustee, by reinvestment of any fee due to the Trustee.

#### **7.5 Holding Application Money**

Application Money must be dealt with as the Corporations Act requires. The terms of the trust on which Application Monies are held for the Applicant include that an Applicant may not withdraw an application unless the Trustee agrees.

#### **7.6 Investment of the Application Money**

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

#### **7.7 Interest on Application Money**

Subject to the Corporations Act, interest earned on Application Money will form part of the Trust Assets.

#### **7.8 Trustee may refuse application form**

The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal. If an application is refused, then the Trustee must refund any money paid by that Applicant to the Applicant within ten Business Days after the refusal.

#### **7.9 Cooling off**

Applicants who are retail clients have such cooling off rights as the Corporations Act requires.

### **8. ISSUING OF UNITS**

#### **8.1 Restriction on issue**

The Trustee will not issue a Unit except at a price calculated in accordance with the provisions of this Constitution.



## 8.2 Date Units issued

Units are issued as soon as is practicable after the later of:

- (a) the day on which the Trustee accepts the application for Units; and
- (b) the day on which the Trustee receives the Application Money in clear funds, or the property against which Units are to be issued is vested in the Trustee (or its agents).

However, if the Units are issued following a reinvestment pursuant to clause 8.6, then the Units are issued on the day after the end of the Distribution Period in which an application in respect of those Units is deemed to have been received.

## 8.3 Cleared Funds

A Unit issue is void if the relevant Application Money is not received or transfer fails or is flawed.

## 8.4 Number of Units issued

The number of Units issued to an Applicant is calculated as follows:

$$\frac{\text{Net Application Money which forms part of the Trust Assets}}{\text{Issue Price of a Unit}}$$

## 8.5 Issue Price of a Unit

The Issue Price of a single Unit is the Issue Price calculated as follows:

- (a) For the first issue of Units the Issue Price of a single Unit is \$1.00.
- (b) At all other times the Issue Price will be calculated as follows:

$$\frac{\text{Net Asset Value} * (100\% + \text{Transaction Cost Percentage})}{\text{Units In Issue}}$$

subject to the Trustee determining another price for a Unit in accordance with clause 8.6, clause 8.7 or as otherwise permitted under the Corporations Act.

## 8.6 Issue of Units on reinvestment of distribution

Subject to the Corporations Act and any conditions imposed by the Corporations Act, the Trustee may set the Issue Price for Units at a price other than a price determined under clause 8.5 where all of the following apply:



- (a) The whole or part of any money payable to a Unitholder under this Constitution by way of a distribution of capital or Income is applied in payment for the issue of Units.
- (b) Each Unitholder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distributions which are, or should otherwise be, payable to that Unitholder.
- (c) All the Units issued under the arrangement are of the same class.
- (d) The price of each Unit issued pursuant to that arrangement in relation to any particular distribution is the same.
- (e) All Units issued under the arrangement in relation to any particular distribution are issued at substantially the same time.
- (f) The amount by which the price is less than the amount that would otherwise apply pursuant to clause 8.5 does not exceed 10 percent.

#### **8.7 Issue of Units at an individually negotiated price**

Subject to the Corporations Act and any conditions imposed by the Corporations Act, the Trustee may set the Issue Price for Units at a price other than a price determined under clause 8.5 where all of the following apply:

- (a) The Trustee and a person who is a wholesale client within the meaning of the Corporations Act agree on an Issue Price that is equal to a price at which Units would be issued under this Constitution, in the absence of this clause 8.7, less a reduction (a fee reduction) in the fees that are payable to the Trustee for the issue of Units.
- (b) The Trustee has given all Unitholders a statement that fees may be individually negotiated with wholesale clients on or before the first date when the Trustee sends communication to all Unitholders after a fee reduction is first offered.
- (c) The Trustee ensures that if fees may be individually negotiated with wholesale clients, then a statement of that fact is disclosed in any Disclosure Document used for an offer of Units.
- (d) The fee reduction does not adversely affect the fees that are paid or to be paid by any other Unitholder who does not have the benefit of the fee reduction.



## 8.8 Time to calculate Issue Price

Subject to this Constitution the Trustee must determine the Issue Price at least as frequently as the next Valuation Date after the later of:

- (a) the day on which the Trustee receives a valid application for Units;
- (b) the day on which the Trustee receives the Application Money or property against which Units are to be issued; and
- (c) the Pricing Time.

## 8.9 When Trust not Registered

Despite any other provision in this clause 8 but subject to clause 5.2, whilst the Trust is not a Registered Scheme, the Trustee may issue Units in any manner it determines appropriate including under a:

- (a) rights issue;
- (b) placement;
- (c) reinvestment offer;
- (d) fee rebate arrangement; or
- (e) Unit purchase plan.

## 9. WITHDRAWAL PROCEDURES

### 9.1 Lock Up Period

- (a) Units may not be redeemed, and redemption requests may not be made, during the Lock Up Period for the relevant Units, unless otherwise approved by the Trustee in its absolute discretion.
- (b) The remainder of this clause 9 is subject to clause 9.1(a).

### 9.2 Ordinary requests for withdrawal

A Unitholder may make a request for the withdrawal of some or all of their Units of a particular class if the Trust is:

- (a) not a Registered Scheme; or



- (b) a Registered Scheme that is Liquid,

as permitted by the rights, obligations and restrictions applicable to that class of Units and in a manner approved by the Trustee. The Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 9.

### **9.3 Requests for withdrawal when Trust is not Liquid**

If the Trust is a Registered Scheme that is not Liquid, a Unitholder may make a request for the withdrawal of some or all of their Units of a particular class in response to a withdrawal offer made by the Trustee in accordance with the Corporations Act.

### **9.4 Compulsory withdrawal**

The Trustee may redeem the Units of any Unitholder without the need for a withdrawal request in any of the following circumstances:

- (a) The Trust is not a Registered Scheme.
- (b) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Trustee or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time to time by the Trustee.
- (c) The redemption is required by operation of:
  - (i) legislation where the mechanism for redemption is contained in that legislation;
  - (ii) a provision in this Constitution which has been included in mandatory compliance with Australian legislation;
  - (iii) the order of a court of competent jurisdiction;
  - (iv) a lien, the exercise of which results in a redemption; or
  - (v) the terms of issue of the Units allow or the Unitholder breaches this Constitution.

### **9.5 Money owed**

If a Unitholder owes any money to the Trustee (including any exit fee charged under clause 17.4) or to someone else in respect of the Units, then the Trustee



may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.

#### **9.6 Transfer of Trust Assets to satisfy withdrawal or distribution**

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

#### **9.7 Transfer of proceeds from the sale of Trust Assets to satisfy withdrawal or distribution**

The Trustee may, in its absolute discretion, direct an amount arising from the sale of a Trust Asset to a particular Unitholder, if:

- (a) the Unitholder makes a withdrawal; and
- (b) the direction of the amount is made to fund the withdrawal.

#### **9.8 Suspension of withdrawals**

Except to the extent that cooling off rights might prohibit this, the Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time where:

- (a) any minimum holding period agreed between the Unitholder and the Trustee at the time of the Unitholder's investment in the Trust has not expired;
- (b) it has determined to honour withdrawal requests in relation to a particular time the Trust is valued and the total redemption monies which would be payable at this time represent more than 5% of the value of the net assets of the Trust, and in this case the Trustee can redeem the Units at such future time, or at times over such period, as it determines. Payments to each Unitholder must be in the proportion that their redemption monies bear to all other withdrawal requests which were payable at that time;
- (c) the withdrawal request is received between the date the Trust is



terminated and the date the Trust is wound up;

- (d) it is not in the best interests of Unitholders for a withdrawal to be made;
- (e) due to circumstances beyond the Trustee's reasonable control, it cannot calculate or pay the Withdrawal Price; or
- (f) without limiting paragraph (d), it is not able to realise Trust Assets on terms it considers reasonable which are needed to satisfy a withdrawal request within the time required.

This period of time may be extended by the Trustee for so long as the circumstances which caused the suspension continue to apply. The Unit price is the next calculated after the suspension ceases.

## 9.9 Provisions which apply when the Trust is Liquid

If the Trust is:

- (a) not a Registered Scheme; or
- (b) a Registered Scheme that is Liquid:

then the following provisions apply to withdrawal from the Trust:

- (c) If the Trustee gives effect to a withdrawal request, then the withdrawal request must be satisfied in respect of a Unit by payment from, or transfer of, the Trust Assets. The payment must be made within 60 days of receipt of the request.
- (d) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding in the Trust.
- (e) The Trustee need not give effect to withdrawal requests in respect of a Unit during the Initial Holding Period for that Unit.
- (f) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (g) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat



the withdrawal request as relating to the remaining balance of the Unitholder's holding in the Trust.

- (h) If the Trustee is not obliged to give effect to a withdrawal request, then it may redeem some or all of the Units which are the subject of the request.

#### **9.10 Provisions which apply when the Trust is not Liquid**

If the Trust is a Registered Scheme that is not Liquid then the following provisions apply to withdrawal from the Trust:

- (a) The Trustee may (subject to the Corporations Act) at any time offer Unitholders the opportunity to withdraw from the Trust, wholly or partly, as Part 5C.6 of the Corporations Act contemplates.
- (b) Subject to the Corporations Act, a withdrawal offer may be made using any procedures the Trustee determines (for example, by such procedures as are disclosed in any Disclosure Document, by making the offer on a web site, by mail, e-mail or advertisement, or any combination).
- (c) A withdrawal offer must specify at least the things which Part 5C.6 of the Corporations Act requires.
- (d) Withdrawal offers accepted by Unitholders must be dealt with as Part 5C.6 of the Corporations Act requires.
- (e) If a redemption request is received whilst a withdrawal offer is current, but not in response to that withdrawal offer the Trustee may treat it as being in response to such offer.
- (f) The Withdrawal Price for a particular withdrawal offer is the next Unit price calculated after the offer closes.
- (g) Withdrawal offers may be cancelled by the Trustee in such circumstances as the Corporations Act contemplates.
- (h) Subject to the Corporations Act, a withdrawal offer may be cancelled using any procedures the Trustee determines (for example, by such procedures as are disclosed in any Disclosure Document, by disclosing the cancellation of the offer on a web site, by mail, e-mail or advertisement, or any combination).

### **10. WITHDRAWAL PRICE FOR UNITS**

#### **10.1 Withdrawal price**





Subject to the Corporations Act, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$$\frac{\text{Net Asset Value} * (100\% - \text{Transaction Cost Percentage})}{\text{Units In Issue}}$$

## 10.2 Time to calculate Withdrawal Price

For clause 10.1, the Withdrawal Price must be calculated:

- (a) if the Trust is:
  - (i) not a Registered Scheme; or
  - (ii) a Registered Scheme, while the Trust is Liquid,
 at the Valuation Date which relates to the relevant Pricing Time; or
- (b) if the Trust is a Registered Scheme, while the Trust is not Liquid, as at the time the withdrawal offer closes.

## 11. REGISTER OF UNITHOLDERS

### 11.1 Trustee must maintain the Register

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

### 11.2 Recording of security interests on Register

On a Unitholder's written request, the Trustee may record a mortgagee of Units of that Unitholder in the Register and on the mortgagee's written request may delete that record.

### 11.3 Removing information from the Register

Subject to the Corporations Act, information relating to a Unitholder (or any part of it) may be removed from the Register at any time after the first day of the



Financial Year occurring seven years after the Financial Year in which the Unitholder ceased to be the holder of Units.

#### **11.4 Register is evidence of who are Unitholders**

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

#### **11.5 Change of details**

A Unitholder must notify the Trustee of any change of personal details as soon as reasonably possible after the change occurs. The Trustee must update its records accordingly.

#### **11.6 Limit to number of registered holders**

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

#### **11.7 Closure or suspension of the Register**

Subject to the Corporations Act, the Trustee may close the Register at times and for the duration the Trustee determines in its discretion.

#### **11.8 Payments to mortgagee**

The proceeds of the redemption of Units of a Unitholder, capital distributions (not representing part of Distributable Amount) and distributions upon termination of the Trust must be paid to the recorded mortgagee unless the mortgagee informs the Trustee otherwise in writing.

#### **11.9 Transfer of secured interests**

Any transfer of Units subject to a mortgagee record are not able to be transferred by the Unitholder without the written consent of the mortgagee.

#### **11.10 No recourse against Trustee**

The Trustee will not be taken to have notice of the terms of any mortgage or charge and has no liability to any mortgagee.

### **12. INTERESTS OF UNITHOLDERS**

#### **12.1 Joint holders**



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

## **12.2 Conditions relating to joint holdings**

Unless the Trustee determines otherwise,

- (a) the Trustee shall not be bound to register more than 3 persons as joint Unitholders of a Unit;
- (b) the joint Unitholders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of a Unit; and
- (c) any one of the joint Unitholders may give an effective receipt that discharges the Trustee in respect of any payment or distribution.

## **12.3 Restrictions on Unitholders**

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

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

# **13. INVESTMENTS AND VALUATION OF ASSETS**

## **13.1 Investment policy**

The Trustee must:

- (a) determine, and may from time to time vary, the Trust's investment policy; and



- (b) describe the current investment policy for the Trust in each Disclosure Document.

### **13.2 Net Asset Value**

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

### **13.3 Periodic valuations**

The Trustee may cause a Trust Asset or Trust Liability to be valued at any time. However, the Trustee must do so as and when required by the Corporations Act.

### **13.4 Valuation methodology**

The Trustee may determine valuation methods and policies for each category of Trust Asset and Trust Liability and change them from time to time. The value of a Trust Asset or Trust Liability for the purpose of calculating Net Asset Value will be its market value unless the Trustee determines:

- (a) there is no market in respect of the Trust Asset or Trust Liability; or
- (b) the market value does not represent the fair value of the Trust Asset or Trust Liability.

If the Trustee values a Trust Asset or Trust Liability at other than its market value, then the valuation methods and policies applied by the Trustee must be capable of resulting in a calculation of the Issue Price or Withdrawal Price that is independently verifiable.

### **13.5 Role of Trustee**

In determining whether a valuation accurately reflects the current value of a Trust Asset or Trust Liability, the Trustee is not deemed to have the knowledge of a valuer or any other expertise in respect of the valuation of Trust Assets and Trust Liabilities.

## **14. TRUSTEE'S POWERS AND DUTIES**

### **14.1 General powers**

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



## 14.2 Specific powers

Without limiting clause 14.1, the Trustee's powers include the power to do the following:

- (a) Acquire and invest in any property (whether real or personal) or assets.
- (b) Lend Trust Assets to a Borrower under a Credit Facility in accordance with clauses 15 and 18.
- (c) Dispose of or otherwise deal with the Trust Assets.
- (d) Mingle Trust Assets with the property of other persons, including an Associate of the Trustee.
- (e) Manage and administer the Trust Assets.
- (f) Negotiate and agree settlement terms with any Borrower in respect of a Credit Facility.
- (g) Borrow or raise money, grant security, enter into ISDA master agreements and derivative transactions (including but not limited to foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to:
  - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust); and
  - (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Trust Assets.
- (h) Appoint a company or firm to:
  - (i) carry out the duties of the custodian of the Trust Assets;
  - (ii) carry out the duties of Fund Manager;
  - (iii) carry out the duties of Administrator; or
  - (iv) provide credit reports in relation to potential Borrowers; or



- (v) act as its agent or delegate to perform any other act or exercise any other discretion within the Trustee's power,  
and including the power to appoint in turn its own agent or delegate.
- (i) If the Trustee does appoint a company or firm under clause 14.2(h), then:
  - (i) it may do so on terms and conditions the Trustee thinks fit; and
  - (ii) the company or firm may be an Associate of the Trustee.
- (j) Act as underwriter for the offer of any securities or interests in managed investment schemes.
- (k) Perform any act which is necessary or expedient to enable the Fund to comply with and effectively operate as an AMIT for the purposes of the AMIT Rules.
- (l) Make any election or choice that is open to the Trustee to make under the Corporations Act, the Tax Act or any other legislation.

#### **14.3 Interested dealings by Trustee**

Subject to the Corporations Act, the Trustee (and any officer, employee, shareholder or Associate of the Trustee) may:

- (a) be interested in any contract or transaction with itself (as Trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust;
- (b) act in the same or similar capacity in relation to any other managed investment scheme;
- (c) hold Units in the Trust in any capacity;
- (d) hold or deal in or have any other interest in an Asset; or
- (e) act in any capacity as a representative, delegate or agent of a Unitholder.

#### **14.4 Retention of benefits**

Where the Trustee acts in accordance with clause 14.3:

- (a) it may retain and need not account for any benefit derived by it; and



- (b) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.

#### **14.5 Retirement benefit**

The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders, and nominating to the Unitholders the incoming trustee as its replacement; or
- (b) its retirement as Trustee.

The Trustee is not required to account to Unitholders for such remuneration or benefit.

#### **14.6 Exercise of discretion**

Subject to this Constitution, the Trustee may, in its absolute discretion, decide how and when to exercise its powers.

#### **14.7 Compliance Plan and Committee**

Where the Trust is a Registered Scheme the Trustee must ensure that:

- (a) The Trust has a Compliance Plan which meets the requirements of the Corporations Act; and
- (b) If required by the Corporations Act, there is a Compliance Committee in respect of the Compliance Plan.

### **15. LENDING OF TRUST ASSETS**

#### **15.1 Assessment of Borrowers**

The Trustee must only invest Trust Assets in a Credit Facility if:

- (a) the Borrower has provided to the Trustee a completed Loan Application containing, but not limited to, the following information:
  - (i) the Borrower's assets and liabilities;
  - (ii) a statement of the Borrower's income; and



- (iii) the proposed Loan Amount;
- (b) the Trustee has conducted adequate credit checks on the Borrower; and
- (c) the Trustee has assessed the merits of the Loan Application and, in its opinion, is satisfied on the basis of this information that the Borrower will be able to make interest payments and repay the Loan Amount.

#### **15.2 Trustee to manage Credit Facilities**

The Trustee will manage all Credit Facilities and will collect all amounts payable on all Credit Facilities in the Trust over the term of the relevant Credit Facility.

#### **15.3 Defaulting Credit Facilities**

The Trustee shall exercise all due diligence and vigilance in protecting the interests of the Unitholders on the occurrence of a Defaulting Credit Facility.

#### **15.4 Assignment of Credit Facility by Trustee**

The Trustee may transfer, charge or assign any Credit Facility or any entitlement to interest and penalty interest due under a Credit Facility to another person (including an Associate of the Trustee) on such terms as the Trustee considers appropriate.

### **16. FINANCIAL REPORTS, AUDITORS AND TAX RETURNS**

#### **16.1 Accounts, audit and other reports**

The Trustee must comply with the financial reports and audit requirements of the Corporations Act to the extent applicable to the Trust.

#### **16.2 Appointment of auditor**

The Trustee will, if required, appoint an auditor for the Trust and an auditor of the Compliance Plan. An appointee:

- (a) must be a registered company auditor according to the provisions of the Corporations Act; and
- (b) may be the auditor of the Trustee unless otherwise restricted by the Corporations Act.

#### **16.3 Removal or retirement of auditor**





The Trustee may remove an auditor for the Trust or the Compliance Plan at any time. An auditor may retire after giving notice to the Trustee. An auditor must give at least one month's notice unless otherwise agreed with the Trustee.

## **17. FEES AND EXPENSES**

### **17.1 Management expense fee**

The Trustee is entitled to be paid an ongoing management fee of up to 3% per annum of the value of the Trust Assets as set out from time to time in the Disclosure Document.

### **17.2 Performance fee**

The Trustee is entitled to be paid a performance fee calculated at the end of each month or quarter as an amount of up to 40% of the amount by which the Net Asset Value of the Trust (adjusted for applications and withdrawals and before the payment of any distributions) on the last Business Day of that month or quarter exceeds the Net Asset Value of the Trust on the last Business Day of the previous month or quarter subject to a performance hurdle as set out from time to time in the Disclosure Document.

### **17.3 Entry fee**

The Trustee is entitled to be paid an entry fee of up to 5% of the Application Money received from an Applicant in relation to an application for Units.

### **17.4 Exit fee**

The Trustee is entitled to be paid an exit fee of up to 5% of the proceeds payable to a Unitholder in relation to a withdrawal request.

### **17.5 Switching fee**

The Trustee is entitled to be paid a switching fee of up to \$250 upon a Unitholder switching in situations described in the Disclosure Document.

### **17.6 Expense reimbursement**

In addition to the remuneration payable to it under clauses 17.1, 17.2, 17.3, 17.4 and 17.5, the Trustee will be entitled to be reimbursed and indemnified in respect of the recoverable expenses referred to in clause 17.11.

### **17.7 Payment of fees**



The fees referred to in:

- (a) clauses 17.1, 17.2, 17.3 and 17.4, accrue daily and are payable monthly in arrears from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this Constitution; and
- (b) clause 17.5 are payable upon the relevant switching of Units.

#### **17.8 Recovery of fees**

Except to the extent that those fees or expenses have been paid to the Trustee by another person, Trustee may recover fees referred to in clauses 17.1, 17.2, 17.3, 17.4 and 17.5 and recoverable expenses referred to in clause 17.6:

- (a) out of the Trust Assets; or
  - (b) directly from the Unitholders,
- or in any combination of these methods.

#### **17.9 Fees may be taken as Units**

The Trustee at any time may elect that as at the last day of any calendar month, or at such other times as the Trustee in its discretion may determine, in lieu of all or part of any amount to which it would otherwise be entitled as Fees (plus any applicable GST), it will be issued with that number of Units which equals the amount divided by the Withdrawal Price as at the close of business on that day.

#### **17.10 Waiver of fees and expenses**

Notwithstanding any other provision of this clause 17, the Trustee:

- (a) must only charge the fees and expenses:
  - (i) that have been agreed between the Fund Manager and the Trustee; and
  - (ii) which it is otherwise entitled to receive under this Constitution at the level which has been disclosed from time to time in the Disclosure Document;
- (b) may accept lower fees and expenses than it is entitled to receive under this Constitution; and



- (c) may defer payment of those fees and expenses for any time. If payment is deferred, then the fee accrues daily until paid.

#### 17.11 Recoverable expenses

Recoverable expenses means all costs, expenses and liabilities which the Trustee may incur in connection with the Trust or in performing its obligations or exercising its powers under this Constitution, including in connection with the following matters:

- (a) bank fees, cheques, certificates, investment advices, accounts, statements and other communications specific to the Trust;
- (b) borrowing arrangements on behalf of the Trustee or guarantees in connection with the Trust, including all costs in connection with any hedging arrangements;
- (c) Unitholder registers, accounting and other records;
- (d) Unitholder meetings;
- (e) any transaction or proposed transaction in relation to the Trust, including the acquisition, disposition, development and management of assets of the Trust;
- (f) management of the Trust Assets, including asset valuation;
- (g) Taxes collectable from, or incurred or payable by, the Trustee in connection with the Trust, or the management or administration of the Trust (not including taxes payable by the Trustee in respect of its fees and reimbursable expenses), and the preparation of taxation returns for the Trust;
- (h) regulatory and compliance matters as they relate to the Trust, including complying with any Relevant Law, and any request or requirement of any Regulator;
- (i) the preparation, implementation, amendment and audit of the Compliance Plan (if any);
- (j) custody of the Trust Assets (including fees of the Custodian, if any);
- (k) satisfactory insurance premiums payable specific to the Fund Manager in carrying out its obligations under this Agreement, and where relevant its personnel in carrying out the Fund Manager's obligations under this



Agreement;

- (l) the engagement of agents, valuers, contractors and advisers (including fees of the Fund Manager, if any) whether or not the agents, valuers, contractors or advisers are associates of the Trustee or the Fund Manager;
- (m) the third party charges in relation to the administration or management of the Trust or the Trust Assets and Trust Liabilities;
- (n) preparation approval, execution, interpretation and enforcement of this Constitution, the formation of the Trust and any supplemental deed or proposed supplemental deed to amend this Constitution, including advisers' fees;
- (o) the preparation, review, approval, distribution and promotion of the Disclosure Document or any other disclosure document or marketing material;
- (p) promotion of the Trust to, or communicating with, Unitholders, potential Unitholders and their advisers;
- (q) preparation of Trust accounts;
- (r) audit fees (including Compliance Plan audit fees, if any) relating to the Trust, but not the audit of the Trustee;
- (s) resolution of Unitholder complaints as they relate to the Trust;
- (t) any court proceedings, arbitration or dispute concerning the Trust, including proceedings against the Fund Manager and or the Trustee in connection with the Trust;
- (u) retirement or removal of the Trustee from the Trust and the appointment of a replacement trustee; and
- (v) termination and winding-up of the Trust.

#### **17.12 Payments to Associates**

No person will be ineligible or disqualified for payment under this clause 17 because they are related to, or are Associates of, the directors of the Trustee.

#### **17.13 Apportionment of expenses**



BRINDABELLA INVESTMENT GROUP PTY LTD  
ABN 37 626 692 984 | AFSL 510735

If the Trustee:

- (a) determines that any expenses of the Trust are attributable to more than one Distribution Period, then the Trustee may apportion the expenses between the Distribution Periods as the Trustee considers appropriate; and
- (b) acts for other trusts, and incurs expenses (whether recoverable expenses or fees included in the expense recovery fee) that are applicable to a number of those trusts, including the Trust, then the Trustee can attribute a reasonable portion of these expenses with this Trust along with the other trusts.

#### **17.14 Priority of payments**

The Trustee may pay its reimbursement out of the Trust Assets in priority to any claim by Unitholders.

#### **17.15 Performance of duties**

Despite anything else in this Constitution, the Trustee is not entitled to any fees, recovery of costs or indemnity from the Trust Assets in circumstances where the Trustee has not properly performed its role under the Constitution or the Corporations Act. The lack of entitlement to these payments pursuant to this clause 17.15 is only in respect of that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 17.15 means the Trustee is not entitled to be paid fees and costs for work performed properly.

#### **17.16 Goods and Services Tax**

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

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made:



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

## **18. FEES AND EXPENSES TO BE PAID BY BORROWERS**

### **18.1 Fees**

The fees which the Trustee is entitled to charge the Borrower under each Credit Facility include, but are not limited to:

- (a) a loan application fee – to process the Loan Application;
- (b) an establishment fee – for establishing the Credit Facility;
- (c) a rollover fee – to rollover or extend the term of the Credit Facility;
- (d) a modification fee – to cover agreed variations to the Credit Facility;
- (e) an insurance administration fee – for obtaining and ensuring adequate insurance under the terms of the Credit Facility;
- (f) a handling fee – for Borrowers who make payments by cheque or cash;
- (g) an administration fee – for work conducted at the request of the Borrower;
- (h) a discharge fee – to prepare a discharge of the Credit Facility; and
- (i) a default administration fee – to administer any payments not received from a Borrower in accordance with the terms of the Credit Facility.



## **18.2 Waiver of fees and expenses**

The Trustee may in its absolute discretion, reduce, waive or vary its entitlement to any of the fees and expenses which may be charged to a Borrower under this Constitution.

## **18.3 Redirection of fees and expenses**

The Trustee may in its absolute discretion, redirect its entitlement to any of the fees and expenses which may be charged to a Borrower under this Constitution to a company or firm appointed under clause 14.2(h).

# **19. INCOME OF THE TRUST**

## **19.1 Trustee will collect in all money**

The Trustee must:

- (a) collect or cause to be collected all amounts generated from the Trust Assets and all other money, rights and property which are paid, due or receivable in respect of the Trust; and
- (b) pay these amounts into an account in the name of the Trustee (or if a Custodian is appointed into an account in the name of the Custodian) on behalf of the Trust.

## **19.2 Role of Custodian**

If a Custodian has been appointed, then the Custodian will attend to those payments relating to the Trust as are authorised by the Trustee from the Trust Assets and will provide regular reconciliation and account to the Trustee for those payments in accordance with the custodian agreement.

## **19.3 Distributions of capital**

The Trustee may distribute the capital of the Trust to the Unit Holders either in addition to, or as part of, a distribution made under clause 19.4. Subject to the rights, obligations and restrictions attaching to any particular Unit or class of Units, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Trustee divided by the number of Units on issue on that date.

## **19.4 Calculation of Distributable Amount**

The Distributable Amount of the Trust for a Distribution Period will be equal to



the sum of:

- (a) the Income of the Trust; and
- (b) any amount of capital of the Trust, determined by the Trustee from time to time to be distributed to Unitholders.

If at the end of a Financial Year, the sum of the amounts distributed as Income for all Distribution Periods under this clause 19.4 exceeds the Income of the Trust for the Financial Year, the excess will be taken to be a distribution of capital.

#### **19.5 Persons who will receive Distributable Amount**

The Trustee must determine the amount of Distributable Amount of the Trust for a Distribution Period and, after payment of all Tax, pay that amount to Unitholders who are Unitholders on the last day of that Distribution Period in accordance with the following formula:

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

Where:

- A is the number of Units held by the Unitholder at the close of business on the last day of the Distribution Period;
- B is the Distributable Amount for the Distribution Period; and
- C is the number of Units held by all Unitholders on the close of business of the last day of the Distribution Period.

#### **19.6 Time for payment of Distributable Amount**

The Distributable Amount for a Distribution Period must be paid by the Trustee to those entitled to receive it within 3 calendar months after the Distribution Calculation Date.

#### **19.7 Unitholders presently entitled to Distributable Amount**

At the end of each Distribution Period the persons who are Unitholders on that day will be presently entitled (within the meaning of the Tax Act) to and have a vested and indefeasible interest in all Distributable Amount derived during the relevant Distribution Period.

#### **19.8 Nature of distribution to Unitholders**





The Trustee can determine or classify an item of income, receipt, gain, expense, deduction, loss or any such like amounts as being either Income or capital of the Trust. If any question arises as to whether distributions to those entitled to receive them are of a capital or income nature or whether a particular expense is chargeable against capital or Income, then the question will be resolved by the Trustee.

#### **19.9 Other distributions**

The Trustee may at any time determine that capital or Income be distributed to:

- (a) the Unitholders generally; or
- (b) a particular Unitholder prior to the withdrawal of some or all of their Units.

#### **19.10 Form of payment**

A payment under clause 19.3, 19.6 or clause 19.9 may be made by way of:

- (a) cash payment;
- (b) the issue of additional Units pursuant to clause 8.6; or
- (c) the transfer of Trust Assets pursuant to clause 9.5.

#### **19.11 Separate accounts**

The Trustee may:

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

#### **19.12 Allocations to separate accounts**

The Trustee may allocate costs, expenses or other like amounts ("**Expenses**") to categories of income or capital under clause 19.11 in the following manner:

- (a) Directly attributable Expenses (or parts of an Expense) against the specific classes of income or capital to which they relate (as determined by the Trustee on a reasonable basis).



- (b) Other Expenses (or parts of an Expense) on a fair and reasonable basis (as determined by the Trustee).
- (c) To the extent that a class of income or capital is less than nil after applying Expenses, the excess amount may be re-allocated by the Trustee to other classes using the principles outlined above (as determined by the Trustee).

### **19.13 Treatment of errors - AMIT**

If, following the making of an AMIT Election, the Trustee determines that an error has been made in the determination of the Net Income in respect of a prior Financial Year, the Trustee may in its absolute discretion, either:

- (a) amend the Income in respect of a prior Financial Year if the Trustee is required to amend its tax return (or related tax information) in respect of a prior Financial Year for an amount of the error;
- (b) include the amount of the error in the determination of the Net Income of a Financial Year in which the amount of the error is dealt with in accordance with the Tax Act; or
- (c) take no action.

## **DISTRIBUTION REINVESTMENT**

### **19.14 Reinvestment**

The Trustee may permit Unitholders to reinvest some or all of their distributions by acquiring Units.

### **19.15 Notice to Unitholders**

If the Trustee permits reinvestment, then it must notify all Unitholders of that fact, together with the terms on which the reinvestment may be made. The Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion.

## **20. DEDUCTIONS FROM WITHDRAWALS AND DISTRIBUTIONS**

### **20.1 Deduction of Taxes**

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



## **20.2 Recovery of Taxes**

The Trustee may recover from a Unitholder as a debt an amount that the Trustee has paid as Tax (including a withholding tax) on behalf of, attributable to or in respect of a Unitholder (including in respect of a distribution or an amount attributed to a Unitholder).

## **20.3 Set off**

The Trustee may set off all amounts that the Trustee may recover from a Unitholder under clause 21.2 against any debts due by the Trustee to that Unitholder including any amounts owing to the Unitholder with respect to a withdrawal or distribution.

## **20.4 Closely held**

If a Unitholder who holds Units as the trustee of another trust does not provide the information required by the Trustee to enable it to comply with relevant tax rules, the Trustee is entitled to recover any tax levied by the Australian Taxation Office out of the Trust Assets or from the Unitholder directly.

# **21. MONEY OWING BY UNITHOLDERS**

## **21.1 Interest payable**

The Trustee may charge interest on any amount of money owed to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the rate charged by the National Australia Bank on overdrafts in excess of \$100,000. The Trustee may waive payment of that interest in whole or in part.

## **21.2 Interest to be an Asset**

Any interest received forms part of the Trust Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

## **21.3 Non-payment of money**

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of



the Trust Assets and may redeem the Unitholder's Units to pay amounts owing. In addition, the Trustee may either:

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

#### **21.4 Realisation of Unitholder's Units**

For notices sent under clause 22.3(b), if the money is not paid within the specified time, then the Trustee may either:

- (a) sell the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale; or
- (b) redeem the Unitholder's Units.

The proceeds of the sale or redemption of the Units will be applied first on account of the amounts in respect of which the notice was sent under clause 22.3(b) and secondly in payment of the balance, (if any) remaining to the relevant Unitholder.

## **22. INFORMATION FROM UNITHOLDERS**

### **22.1 Unitholder to supply information**

Any Unitholder who is asked by the Trustee to supply information in respect of monies used, themselves and their investment must do so within 14 days of service of a notice from the Trustee.

### **22.2 Unitholder's duty to correct**



If any particular information given to the Trustee under clause 23.1 ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact in a timely way that such particular information is no longer correct and to give the updated and corrected information.

### **22.3 Lack of information**

If any Unitholder fails to provide information required by clauses 23.1 or 23.2, then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.

### **22.4 Unitholder's indemnity**

Any Unitholder who supplies incorrect information under clauses 23.1 or 23.2 indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

## **23. TRANSFER AND TRANSMISSION OF UNITS**

### **23.1 Right to transfer Units**

A Unitholder may transfer its Units in the Trust in accordance with this clause 24.

### **23.2 Form of transfer**

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

### **23.3 Trustee's discretion to enter transfer**

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

### **23.4 Transfer effective when registered**

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

### **23.5 Suspension prior to end of year**



The Trustee may decline to register any transfer of a Unitholder's Units during the 30 days immediately preceding 1 July in any Financial Year.

### **23.6 Listing on a secondary market or exchange**

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

### **23.7 Transmission of Units**

Upon the death, bankruptcy, mental incapacity or other legal disability of:

- (a) a sole Unitholder, the legal personal representative need be the only person recognised by the Trustee as having any title to or interest in the deceased Unitholder's Units; or
- (b) any one of joint holders of a Unit, the survivor or survivors need be the only persons recognised by the Trustee as having any title to or interest in the deceased Unitholder's Units,

subject to the production of any supporting evidence that the Trustee requires.

## **24. WINDING UP OF THE TRUST**

### **24.1 Events which cause a winding up**

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

- (a) The Trustee terminates the Trust.
- (b) The Trust comes to the end of its term as set out in this Constitution.
- (c) If the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in Section 601NC.
- (d) A court orders the Trust be wound up pursuant to Section 601ND.
- (e) Any of the circumstances set out in Section 601NE apply such that the Trustee is required to wind up the Trust.

### **24.2 Process of winding up**

Unless otherwise required by the Corporations Act, the Trustee is responsible for



the winding up of the Trust in accordance with the following provisions of this clause 25. The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.

#### **24.3 Liquidation of Trust Assets**

Subject to clause 25.4, the Trustee must convert the Trust Assets to money, deduct all proper costs and then divide the balance amongst the Unitholders according to the beneficial interest of each Unitholder in the Trust. The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit.

#### **24.4 Distributions in specie**

Despite clause 25.3, the Trustee may, at its discretion instead of or in addition to converting Trust Assets to money, distribute Trust Assets in specie in satisfaction of a whole or part of the beneficial interest of any Unitholder in the Trust.

#### **24.5 Trustee may withhold proceeds of realisation**

The Trustee may retain money from the proceeds of realisation of the Trust Assets:

- (a) to meet future payment obligations which the Trustee reasonably believes may fall due after a distribution is made to Unitholders pursuant to this Constitution; and
- (b) fees and expenses.

#### **24.6 Auditor's certificate**

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

### **25. INDEMNITY AND LIABILITY**

#### **25.1 Liability of the Trustee**

Subject and to the extent the Corporations Act imposes liability:

- (a) the Trustee is not liable for any loss suffered by Unitholders in respect of



the Trust, whether in contract, tort or otherwise;

- (b) the liability of the Trustee to any person other than a Unitholder in respect of the Trust is limited to the Trustee's actual indemnification from the Trust Assets for that liability; and
- (c) all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law.

## 25.2 Indemnity from the Trust

The Trustee has a right of indemnity out of the Trust Assets in respect of:

- (a) any liability incurred by the Trustee in the performance of its duties in respect of the Trust;
- (b) all fees payable to and costs recoverable by the Trustee under this Constitution; and
- (c) any liability incurred by the Trustee that is one or more of the following:
  - (i) Tax paid on behalf of any Unitholders;
  - (ii) an Attribution Income Tax Liability of the Trustee; or
  - (iii) results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under the AMIT Rules to the interests held by the Unitholder or former Unitholder.

However, this indemnity does not apply to the extent that the liability is incurred because of the improper performance of duties by the Trustee.

## 25.3 Continuation of Trustee's indemnity

The right of indemnity of the Trustee under clause 26.2:

- (a) in respect of a particular indemnified matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular indemnified matter) in breach of trust or in breach of this Constitution; and
- (b) will continue in favour of the Trustee after it has ceased to be the Trustee





and will apply even if at any time the value of the Trust Liabilities exceed the Trust Assets.

For the avoidance of doubt, the Trustee may be entitled to an indemnity under clause 26.2 in respect of any act or omission of a delegate or agent appointed by the Trustee for which the delegate or agent is not obliged to fully indemnify the Trust.

#### **25.4 Payment of taxes**

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

#### **25.5 Reliance on others**

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

- (a) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust.
- (b) Advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee who are in each case not doubted by the Trustee in good faith to be expert in relation to the matters upon which they are consulted.
- (c) The document which the Trustee does not doubt in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust.
- (d) Any document provided to the Trustee in connection with Trust upon which the Trustee believes is reasonable for the Trustee to rely.

#### **25.6 Trustee not liable for good faith error**

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



## **25.7 Limitation of liability of Unitholders**

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

## **26. COMPLIANCE COMMITTEE**

### **26.1 Indemnity for Compliance Committee members**

Subject to the Corporations Act, the Trustee (in its capacity as trustee of the Trust) must, to the extent the person is not otherwise indemnified, indemnify every member of the Compliance Committee against a liability:

- (a) incurred as a Compliance Committee member to a person (other than the Trustee or a related body corporate), unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred by the Compliance Committee member in defending civil or criminal proceedings in which judgment is given in favour of the member or in which the member is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to the member under the Corporations Act.

### **26.2 Insurance for Compliance Committee members**

Subject to the Corporations Act, the Trustee may enter into, and pay premiums on, a contract of insurance for a person who is or has been a member of the Compliance Committee.

### **26.3 Compliance Committee members' indemnity is a continuing one**

The indemnity in favour of Compliance Committee members under clause 27.1 is a continuing indemnity. It applies for all acts of a person while a member of the Compliance Committee even though the person is not a member at the time the claim is made.

### **26.4 Trustee may enter into agreement**

Subject to the Corporations Act and without limiting a person's rights under this clause 27, the Trustee may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the



person under this clause 27 on any terms that the Trustee thinks fit.

## **27. MEETINGS OF UNITHOLDERS**

### **27.1 Meetings**

The Trustee may at any time convene a meeting of Unitholders or Unitholders of a class to consider any matter, including resolutions. It must convene a meeting if requisitioned or otherwise required to do so as the Corporations Act contemplates.

### **27.2 Notice of meeting**

A meeting of Unitholders or a class must be convened by notice sent to every Unitholder entitled to attend and vote at the meeting as well as to other persons the Corporations Act requires. Notices must be resent for adjourned meetings if the Corporations Act requires.

### **27.3 Form of notice**

Subject to the Corporations Act the form of the notice, the time and place of the meeting and the manner in which the meeting will be conducted (for example, the order of business and proxy mechanics) is determined by the Trustee.

### **27.4 Period of notice**

For meetings, the Trustee must give at least the notice period which the Corporations Act requires for the business at that meeting.

### **27.5 Procedural irregularities**

A meeting of Unitholders or class of Unitholders, any notice of meeting or any proceeding at a meeting is not invalidated because of the accidental omission to give notice of the meeting or the non-receipt of the notice or because of any procedural irregularity (including as defined by section 1322 of the Corporations Act).

## **28. CONDUCT OF MEETINGS**

### **28.1 Non-physical meetings**

Subject to the Corporations Act, the Trustee may hold meetings any way it determines (for example, phone hook-up, video conference, electronic voting, circular resolution or the necessary Unitholders agreeing in writing (which includes by e-mail)).



## **28.2 Quorum**

The quorum for a meeting of Unitholders is as determined by the Corporations Act. If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is adjourned to such place and time as the Trustee decides. If there is no quorum at an adjourned meeting, those Unitholders or Unitholders of the class present in person or by proxy constitute a quorum.

## **28.3 Appointment of Chair**

The Trustee may appoint a person to chair a meeting of Unitholders. A poll cannot be called by Unitholders on the issue of appointment of the chair unless the Trustee agrees.

## **28.4 Powers of Chair**

The decision of the chair on any matter relating to the conduct of the meeting (such as who can address the meeting) is final.

## **28.5 Adjournment**

The chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit. A poll cannot be called by Unitholders on the issue of adjournment unless the Trustee agrees.

## **28.6 Minutes**

The minutes of a meeting of Unitholders or class of Unitholders signed by the chair of the meeting are conclusive evidence of the matters stated in them, unless the contrary is proved.

## **29. RESOLUTIONS**

### **29.1 Effect of resolution**

A resolution binds all Unitholders or Unitholders of a class, whether or not they were present at the meeting.

### **29.2 Voting**

For each resolution:

- (a) Voting is by a show of hands, unless a poll is demanded.
- (b) Who can demand a poll, and when, is governed by the Corporations Act.



- (c) The value of a vote (on a show of hands or a poll) is governed by the Corporations Act.
- (d) The chair of the meeting has no casting vote.
- (e) The Corporations Act governs the number or, on a poll the value, of votes required to pass a resolution.

### **29.3 Voting for an Unitholder**

A Unitholder which is:

- (a) a body corporate may be represented at a meeting by a person appointed in the manner provided in the Corporations Act; or
- (b) not a body corporate may be represented at a meeting by proxy. Proxies are governed by the Corporations Act except that proxies may be accepted up to the start of the relevant business being considered, whether at the meeting or any adjournment.

## **30. CHANGE OF TRUSTEE**

### **30.1 Retirement of Trustee**

The Trustee may retire from that office:

- (a) if the Trust is not a Registered Scheme by notice in writing to Unitholders; or
- (b) if the Trust is a Registered Scheme in the way the Corporations Act contemplates.

### **30.2 Removal of Trustee**

If the Trust is a Registered Scheme, the Trustee must retire when required by the Corporations Act. Unitholders have no right to remove the Trustee in any other circumstances.

### **30.3 Appointment of replacement Trustee**

When the Trustee changes while the Trust is:

- (a) not a Registered Scheme the Trustee must choose a replacement which holds an Australian Financial Services Licence permitting it to carry on a financial services business as trustee of the Trust; or



- (b) a Registered Scheme, the Unitholders must choose a replacement as the Corporations Act contemplates.

#### **30.4 New Trustee to be bound**

Any replacement Trustee chosen under clause 31.3 must agree to be bound by this Constitution as if it had originally been a party.

#### **30.5 Release of retiring Trustee**

When the Trustee changes, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed except, if the Trust is a Registered Scheme, for those obligations which the Corporations Act continues to impose.

### **31. COMPLAINTS HANDLING**

#### **31.1 Application**

This clause 32 applies only while the Trust is a Registered Scheme.

#### **31.2 Complaints handling officer**

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

#### **31.3 A Unitholder may make a Complaint**

Any Unitholder may make a Complaint about any aspect of the Trust by contacting the Trustee (in writing or otherwise) at any place where the Trustee has an office from time to time.

#### **31.4 Form of Complaint**

The Complaint must specify:

- (a) the name and contact details of the Complainant making the Complaint; and
- (b) the details of the Complaint in as much detail as is reasonably required to allow the Trustee to deal with the Complaint in accordance with this clause 32.



If the Complaint does not meet the requirement in clause 32.4(b), then the Trustee must make reasonable inquiries to try to ascertain the required detail.

### **31.5 Provision of assistance**

The Trustee must provide reasonable assistance to any Unitholder:

- (a) who has either attempted to make a Complaint but has not done so in a manner which allows the Trustee to handle the Complaint; or
- (b) who the Trustee reasonably believes wants to make a Complaint, but for some reason is unable to do so.

### **31.6 Acknowledgment of a complaint**

If any Unitholder makes a Complaint, then the Trustee must, immediately after receiving the Complaint, write to the Complainant either to:

- (a) acknowledge the Complaint; or
- (b) respond fully to the Complainant in respect of the Complaint made.

### **31.7 Form of response**

The Trustee must include in its written response to the Complainant:

- (a) the procedure used by the Trustee upon receiving a Complaint;
- (b) the name, title and contact details of the present complaints handling officer; and
- (c) if the Complaint is not fully dealt with in the letter, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the Complaint.

### **31.8 Consideration of Complaints**

The Trustee must:

- (a) treat all Complaints seriously and deal with them in a timely manner, having regard to the nature of the Complaint;
- (b) provide a final response to the Complainant within 45 days after the acknowledgment of the Complaint is made by the Trustee; and
- (c) if the Complaint cannot be resolved within 45 days after the



acknowledgment of the Complaint is made by the Trustee, inform the Complainant of the reason for the delay.

### **31.9 Resolving a Complaint**

The Trustee must act reasonably in attempting to resolve a Complaint. However nothing in this clause 32 compels the Trustee to resolve a Complaint in favour of the Complainant.

### **31.10 Notification to Complainant**

Any notification to the Complainant by the Trustee under clause 32.8(b) or 32.8(c) must also inform the Complainant of:

- (a) their right to lodge a complaint with an external complaints resolution body of which the Trustee is a member; and
- (b) the name and contact details of that external complaints resolution body.

### **31.11 Further avenues open to Unitholders**

If a Complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may:

- (a) lodge a complaint with an external complaints resolution body of which the Trustee is a member; or
- (b) take whatever other action is open to the Complainant under the general law.

### **31.12 Recording Complaints**

The Trustee must make a record of Complaints.

### **31.13 Disclosure of existence of complaints handling procedure**

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

## **32. NOTICES**

### **32.1 Form of notice**

Any notice, document or other communication required to be given to the





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

### **32.2 Effect of notice**

Every person who becomes entitled to the Units of a Unitholder is bound by every notice in respect of those Units that was properly given to the person registered as the Unitholder.

### **32.3 Address for service**

The address for:

- (a) the Trustee will be the address most recently given to the Unitholders; and
- (b) a Unitholder will be as appears in the Register. In the case of joint Unitholders, the physical or electronic address of the Unitholder means the physical or electronic address of the Unitholder first named in the Register and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unitholders.

### **32.4 Deemed date of receipt**

Subject to the Corporations Act, a notice or other communication sent by:

- (a) post is taken to be received by Unitholders on the second Business Day after it is posted;
- (b) electronic mail is taken to be received by the Unitholder at the time of transmission; or
- (c) any other form, is taken to be received by the Unitholder at such time as the Trustee may determine.

### **32.5 Proof of receipt**

For any notice or other communication sent to Unitholders, proof of receipt is not required.

## **33. MISCELLANEOUS PROVISIONS**

### **33.1 Payments**



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

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

Unsuccessful payments can be reinvested. Units issued for reinvested payments are priced using the Issue Price next calculated.

### 33.2 Discharge of Trustee

The Trustee will receive a good discharge on:

- (a) payment of every cheque if duly presented and paid; or
- (b) in the case of money credited to any account with a financial institution, the receipt of the financial institution of the amount paid.

### 33.3 Retention of documents

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

### 33.4 Relationship between Trustee and Unitholders

Each and every Unitholder and the Trustee agree:

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and the Constitution are in every case several and not joint or joint and several;
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other;



- (c) each Unitholder does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder; and
- (d) except as otherwise specifically provided in this Constitution or as the Trustee accepts, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

33.5 Applicable law

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

EXECUTION:

Executed as an Agreement.

EXECUTED by BRINDABELLA )  
INVESTMENT GROUP PTY LTD )  
(ACN 626 692 984) in )  
accordance with section 127(1) of )  
the Corporations Act 2001 (Cth) )

Signed by: 9/12/2024 | 1:47:27 PM AEDT  
Paul Nathan Reese  
19E5E470869D4AA...

Signature: Director  
Paul Nathan Reese

Signed by: 9/12/2024 | 2:52:25 PM AEDT  
Carmelo Santo Salerno  
73C4BC70BDBC443...

Signature: Director  
Carmelo Santo Salerno

