

ASX Release

Amendments to Constitution

3 February 2014

Charter Hall
Retail Management Limited
ACN 069 709 468
AFSL 246996

Responsible entity of
Charter Hall Retail REIT
ABN 34 357 213 849

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Sydney NSW 2000
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Charter Hall Retail REIT's (ASX:CQR) (the REIT) Extraordinary Meeting of Unitholders was held today.

The resolution proposed at the Meeting to amend the constitution of the REIT was approved by the requisite majority. Please see attached Supplemental Deed for details of the amendment.



Rebecca Pierro
Company Secretary
Charter Hall Retail Management Limited, as responsible entity of the REIT

About Charter Hall Retail REIT

Charter Hall Retail REIT is a leading listed real estate investment trust with a portfolio of predominantly high quality Australian supermarket anchored neighbourhood and sub-regional shopping centres.

Charter Hall Retail REIT is managed by Charter Hall Group (ASX:CHC), one of Australia's leading fully integrated property groups, with over 22 years' experience managing high quality property on behalf of institutional, wholesale and retail clients. Charter Hall has over \$10 billion of funds under management across the office, retail and industrial sectors. The Group has offices in Sydney, Melbourne, Brisbane, Adelaide and Perth.

The Group's success is underpinned by a highly skilled and motivated team with diverse expertise across property sectors and risk-return profiles. Sustainability is a key element of its business approach and by ensuring its actions are commercially sound and make a difference to its people, customers and the environment, Charter Hall can make a positive impact for its investors, the community and the Group. For further information on Charter Hall Group and Charter Hall Retail REIT go to www.charterhall.com.au

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Charter Hall Retail Management Limited as responsible entity of Charter Hall Retail REIT

Supplemental Deed Poll

Amending the constitution of Charter Hall Retail REIT

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Sydney NSW 2000
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This Deed is made on 3 February 2014

Party

Charter Hall Retail Management Limited (ACN 069 709 468) of Level 11, 333 George Street, Sydney NSW 2000 (the **Responsible Entity**).

Recitals

- A The Responsible Entity is the responsible entity of the trust known as Charter Hall Retail REIT.
- B The Trust has been registered pursuant to section 601EB of the Corporations Act as a managed investment scheme.
- C Clause 22 of the Constitution provides that, subject to the Corporations Act, the Responsible Entity may amend the Constitution by deed.
- D The Responsible Entity amends the Constitution to the extent set out in this Supplemental Deed Poll and reasonably considers such amendments will not adversely affect the members' rights. On 3 February 2014, the members resolved that the Constitution be amended in accordance with this Supplemental Deed Poll. Accordingly, this Supplemental Deed Poll amends the Constitution to give effect to the resolution of the members.
- E Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll do not take effect until a copy has been lodged with ASIC.

It is declared as follows.

1 Definitions and Interpretation

1.1 Definitions

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

ASIC means the Australian Securities and Investments Commission.

Constitution means the constitution constituting the Trust, dated 21 July 1995, as amended from time to time.

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

Effective Time means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

Trust means Charter Hall Retail REIT (ARSN 093 143 965).

1.2 Interpretation

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

- (b) Clauses 27.1 (Definitions) and 27.2 (Interpretation) of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of members jointly and severally.

2 Amendment of Constitution

On and from the Effective Time, the Constitution is amended in the manner set out in the Schedule.

3 No Resettlement

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

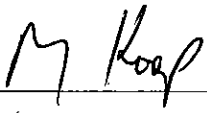
- (a) settle or re-declare the Trust under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

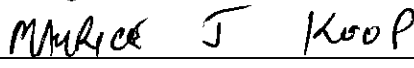
4 Governing law and Jurisdiction

This Supplemental Deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

Executed and delivered as a deed in Sydney.

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Charter Hall Retail Management Limited
as responsible entity of Charter Hall
Retail REIT:



Director Signature


Print Name



Director/Secretary
REBECCA KATER PIERRO
COMPANY SECRETARY
(CHARTER HALL RETAIL REIT)

Print Name

Schedule

Amendments to the Constitution of Charter Hall Retail REIT

Consolidated Constitution of the Charter Hall Retail REIT

Date: 21 July 1995

1 Name of Trust

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

2 Assets held on trust

- 2.1 The Trustee declares that it will hold the Trust Fund upon Trust for the Unit Holders and act in the interests of the Unit Holders on and subject to the term and conditions of this deed².
- 2.2 Any Assets held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Law so requires³.

3 Units, and Options and Financial Instruments

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit each Fully Paid Unit confers an equal undivided interest and, unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate to the amount paid up on the Unit.
- 3.3 Subject to the rights, obligations or restrictions attaching to any particular Unit a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

Options

- 3.4 The Manager may issue Options:
 - (a) on the basis that the price for a Unit to be issued on exercise of the Option (the "Exercise Price"):

¹ See Corporations Regulation 5C.1.02

² See section 601FC(2) of the Corporations Law

³ See section 601FC(1)(i)

- (i) if the Unit is Officially Quoted, is the Market Price of the Unit as at the date of issue of the Option; or
 - (ii) if the Unit is not Officially Quoted, is the Application Price determined in accordance with clause 4.1, calculated as at the last Valuation Time before the date of issue of the Option; or
 - (iii) is a price determined by the Manager in accordance with clause 4.6, 4.6A or 4.10; or
 - (iv) subject to clause 3.5, is a price determined by the Manager other than in accordance with subparagraphs (a)(i) to (a)(iii);
- (b) for consideration of \$1 or, subject to clause 3.5, for other consideration determined by the Manager (including no consideration); and
- (c) on such other terms as the Manager determines,
- subject to any requirements of the Listing Rules.

3.5 The Manager may issue an Option:

- (a) on the basis that the Exercise Price is a price determined by the Manager other than in accordance with subparagraphs (a)(i) to (a)(iii) of clause 3.4 and provided that the Exercise Price is less than the price that would otherwise apply under clause 3.4(a) by a percentage not exceeding 20%; and
- (b) for consideration other than \$1 (including for no consideration),

when the Manager offers the Option to persons who are Unit Holders (or who are Unit Holders holding Units in a particular class of Units) on a date determined by the Manager ("Entitled Unit Holders"), in proportion to the value of each Entitled Unit Holder's Units in the Trust or the value of each Entitled Unit Holder's Units in a particular class of Units (as applicable) on that date, subject to the exclusion of any Unit Holder from the offer where it is not a contravention of section 601FC(1)(d) of the Corporations Act.

3.6 The entitlement of Holders of Partly Paid Units will be determined by reference to the amount of the Application actually paid up on those Partly Paid Units at the relevant time.

3.7 In relation to Options:

- (a) Subject to the Listing Rules, the Manager may at any time reorganise Options in accordance with their terms.
- (b) Options may only be exercised in accordance with their terms.
- (c) The Manager must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an

application for Units but the Manager must not refuse to issue any Units except if the terms of issue and, if applicable, the Listing Rules permit (or if any applicable law requires) such refusal.

Financial Instruments

3.7A Subject to the Corporations Act and the Listing Rules:

- (a) the Manager may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi debt, quasi equity or hybrid nature) ("Financial Instruments"); and
- (b) Financial Instruments may be issued:
 - (i) for consideration or no consideration;
 - (ii) where applicable, on the basis that the price for a Unit to be issued on conversion, or exercise of any other right attaching to the Financial Instrument, is a price determined by the Manager in accordance with clause 4.4, 4.6, 4.6A or 4.10; and
 - (iii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Manager determines

Rights attaching to Options and Financial Instruments

- 3.7B An Option will not confer any interest in, or any rights to participate in the income or capital of, the Trust Fund.
- 3.7C Subject to the terms of the Financial Instrument, a Financial Instrument will not confer any interest in, or any right to participate in the income or the capital of, the Trust Fund.
- 3.7D Each Option Holder and, subject to the terms of the Financial Instrument, each Financial Instrument Holder agrees not to:
 - (a) interfere with any rights or powers of the Manager under this constitution;
 - (b) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (c) require an Asset to be transferred to them (or any other person).
- 3.7E Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is entitled to attend any meeting of Unit Holders but is not entitled to receive notice of or speak or vote at such a meeting.

3.7F Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is not entitled to any other rights of a Unit Holder.

3.7G If an Option or a Financial Instrument constitutes an interest in the Trust for the purposes of the Corporations Act, the terms of issue must be set out in this constitution (which may include in a schedule).

Information from Option Holders or Financial Instrument Holders

3.43.7H Subject to the terms of the Option or Financial Instrument, clauses 3.41 to 3.47 (inclusive) apply to a Holder who is not a Unit Holder as if they were a Unit Holder.

~~3.4 The Manager may create and issue Options on such terms and conditions as the Manager determines and offer them for subscription, but only to Members who:~~

- ~~(a) have received an offer to subscribe for a specified number of Options and a specified number of Units; or~~
- ~~(b) were Members on a date determined by the Manager which may not be more than 30 days before the date of the offer.~~

~~3.5 An offer made under clause 3.4(b):~~

~~(a) must be expressed as a proportion of the number of Units held by the Member on the date determined by the Manager, with Partly Paid Units regarded as a fraction of a Unit, calculated by dividing the instalments paid or due but unpaid by the Application Price of the Unit. The Manager may ignore fractions and adjust an entitlement as follows:~~

~~(i) if the last number of the entitlement is 5 or more, by rounding it up to the nearest multiple of 10; or~~

~~(ii) if the last number of the entitlement is less than 5, by rounding it down to the nearest multiple of 10;~~

~~(b) may be renounced in favour of another person unless the offer is expressed as non-renounceable.~~

~~3.6 Subject to this constitution, the Corporations Law (and the conditions of any applicable relief from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:~~

~~(a) for consideration or no consideration;~~

~~(b) pursuant to pari passu offers to all existing Members on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 20%; and~~

~~(c) conferring on the Option Holder such other entitlement under this constitution as the Manager determines;~~

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

~~Subject to the Listing Rules and the conditions of any applicable ASIC relief, if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.~~

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

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

Rights attaching to Units, ~~and Options~~ and Financial Instruments

~~3.73.8 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. An Option Holder holds an Option subject to the terms and conditions attaching to that Option. A Financial Instrument Holder holds a Financial Instrument subject to the terms and conditions attaching to that Financial Instrument.~~

Partly Paid Units

~~3.83.9 The Application Price of Units may be payable by instalments as set out in clauses 3.10 to 3.14.~~

~~3.93.10 The Manager may determine at any time that Units to be offered for sale in accordance with clause 4 are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines. All the terms and conditions of such an offer must be set out in the document offering the Units for sale.~~

~~3.103.11 Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale on terms and conditions determined and set out in accordance with clause 3.10, those terms and conditions may be varied or compliance therewith waived only with the consent of the Manager. The variation or waiver must not take effect during the currency of the prospectus pursuant to which the Units were offered for sale.~~

~~3.113.12 The Manager may not waive an instalment which is due and payable.~~

~~3.123.13 Despite anything in this constitution or in any offer of Partly Paid Units, the whole of the unpaid Application Price of each Partly Paid Unit is payable immediately upon termination of the Trust.~~

~~3.133.14 The Manager must serve each holder of a Partly Paid Unit with a notice not later than 14 days before the payment of an instalment is due unless the terms of the offer for the Partly Paid Unit otherwise~~

provide. The omission to give such a notice or the non-receipt of notice by the holder does not affect the obligation of the holder to pay the instalment.

Failure to pay instalments

~~3.14~~3.15 If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager must serve a notice on that Member not later than 14 days after the due date requiring payment of so much of the instalment as is unpaid and any interest calculated from the due date until payment of the instalment at a fair market rate as determined by the Manager. The notice must specify a further time and day (not earlier than 7 days from the date of service of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non-payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.

~~3.15~~3.16 If the requirements of any notice issued under clause 3.15 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice, be forfeited if the Manager so determines; and
- (b) all voting rights and entitlements to the distribution of income in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Manager.

Sale of forfeited Units

~~3.16~~3.17 If the Manager offers a forfeited Unit for sale it does so as agent for the holder of the forfeited Unit.

~~3.17~~3.18 A forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:

- (a) at a price that is no less than a price calculated in accordance with clause 4.1(~~f~~); or
- (b) while the Units are Officially Quoted, at a price determined by the Manager where the sale of the forfeited Unit is in accordance with section 254Q of the Corporations Law other than subsections 254Q(1), (10) and (13) as if the Units were shares, the scheme was the company and the responsible entity was the directors of the company; or
- (c) in accordance with any applicable ASIC relief in relation to the sale of forfeited units, if the Manager complies with the conditions of the relief; or
- (d) subject to the Corporations Law and while Units are Officially Quoted, on the ASX.

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

- 3.183.19 At any time before a sale or disposition the forfeiture may be cancelled if the holder of the forfeited Unit pays the Manager the full amount of the instalment due together with any other amounts in respect of the forfeiture.
- 3.193.20 The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by the Member to the Manager in respect of the forfeited Units (including costs associated with the forfeiture and all proceedings instituted against the Member to recover the amount due) but the Member's liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.
- 3.203.21 A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.
- 3.213.22 Where a Partly Paid Unit is forfeited under clauses 3.17 to 3.21 the Manager may receive the consideration, if any, given for a forfeited Unit on its sale or disposal, and the Manager may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of and that person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which he has paid for the Unit is paid to the former holder of the Unit nor shall his title to that Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.
- 3.223.23 Where forfeited Units are sold or disposed of for cash, the Manager must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any costs associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.
- 3.233.24 Income and distributions of capital in accordance with clause 9.31 to which the holder of a forfeited Unit is entitled and which have not been paid prior to forfeiture must be paid to the holder of the forfeited Unit as if it formed part of the proceeds of sale of a forfeited Unit.
- 3.243.25 Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

Fractions of Units

3.253.26 Fractions of a Unit (calculated to 2 decimal places) may be issued by the Manager.

3.263.27 The provisions of the constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

Consolidation and division of Units, ~~and Options and Financial Instruments~~

3.273.28 Units, ~~and Options and Financial Instruments~~ may be consolidated or divided as determined by the Manager⁴.

Transfer of Units, ~~and Options and Financial Instruments~~

3.283.29 Subject to clause 3.30, Members may transfer Units and, subject to their terms and conditions, Option Holders and Financial Instrument Holders may transfer Options and Financial Instruments (as applicable).

3.293.30 While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.

3.303.31 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and, if the Manager requires, be presented for Registration duly stamped.

3.313.32 A transfer is not effective until Registered.

3.323.33 Subject to the Listing Rules while the Listing Rules apply⁵, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.30.

Joint tenancy

3.333.34 Persons Registered jointly as the holder of a Unit, ~~or Option or Financial Instrument~~ hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

Death, legal disability of ~~Holder~~ Member

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

3.353.36 A person who becomes entitled to a Unit, ~~or an Option or a Financial Instrument~~ because of the death, bankruptcy, insanity or other disability of a Member, ~~an or Option Holder or a Financial Instrument Holder~~ is entitled to receive and may give a discharge for

⁴ Refer Listing Rules, Chapter 7 - reorganisations of capital.

⁵ Listing Rule 8.10 restricts the Manager's ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

all money payable in respect of the Unit, ~~or Option or Financial Instrument~~ but is not entitled to receive notices of or to attend or vote at any meetings of Members, ~~or Option Holders or Financial Instrument Holders~~ until that person is Registered as the holder of the Unit, ~~or Option or Financial Instrument~~.

Income entitlement of Units

~~3.363.37~~ The Manager may in its discretion issue Units on terms that such Units:

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

Manager may request holding lock or refuse to register transfer

~~3.373.38~~ If the Units, ~~or Options or Financial Instruments~~ are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

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

Manager must request holding lock or refuse to register transfer

~~3.383.39~~ The Manager must:

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

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

Notice of holding locks and refusal to register transfer

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

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

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

Information from Unit Holders

3.41 Each Unit Holder must provide to the Manager any information requested by the Manager ("Required Information") in a notice sent to the Unit Holder (a "Required Information Request").

3.42 Subject to clause 3.43:

- (a) the Manager may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
- (b) each Unit Holder authorises the Manager to use Required Information in any way, including providing it to third parties.

3.43 The Manager may only issue a Required Information Request if it believes the Required Information is necessary to:

- (a) comply with any law of Australia (including AML Legislation) or any other jurisdiction or a request for information by a Government Authority where that request is binding on the Manager; or
- (b) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or
- (c) lessen the risk of the Trust or any Unit Holder suffering a material detriment (whether or not financial).

and the Required Information Request specifies a reasonable period within which the Unit Holder must provide the Requested Information.

3.44 If any Required Information is not provided by the Unit Holder within the time and in the manner specified in a Required Information Request then, despite any other provision of this constitution, the Unit Holder must indemnify the Manager for any loss suffered by the Manager in relation to the Unit Holder's failure to provide the Required Information.

3.45 Each Unit Holder undertakes that any payment of money by the Manager in accordance with instructions provided by the Unit Holder (or any agent of the Unit Holder) will not breach any law of Australia or any other jurisdiction.

3.46 The Manager may enter into agreements with any Government Authority in any jurisdiction where the Manager believes it is reasonably necessary to do so to:

(a) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or

(b) lessen the risk of the Trust or any Unit Holder suffering a material detriment (whether or not financial).

This includes any agreement with the United States Internal Revenue Service under Chapter 4 of subtitle A of the Internal Revenue Code of 1986.

3.47 If the Manager is required to provide any information about Unit Holders under any agreement made with a Government Authority then, to the extent permitted by law, each Unit Holder consents to the Manager providing that information.

4 Application Price for Units⁶

Application Price while Units are not Officially Quoted

~~(a)~~ Subject to clause 20.1, a Unit must only be issued at an Application Price calculated as:

~~(a)~~ in the case of a proportionate offer (including a rights issue), in accordance with clause 4.4 or 4.5A (to the extent permitted by an ASIC instrument of relief);

~~(b)~~ in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.6 or 4.6A (to the extent permitted by an ASIC instrument of relief);

~~(c)~~ in the case of reinvestment of income, in accordance with clauses 4.7 and 4.8;

~~(d)~~ in the case of Units issued pursuant to the exercise of an Option, a price calculated in accordance with clause 3.6;

~~(e)~~ subject to paragraphs (a), (b), (c) and (d) in all other cases while Units are Officially Quoted, the Market Price of Units immediately prior to the date on which or as at which the Application Price is to be determined; and

~~(f)~~ 4.1 Subject to clauses 4.4 to 4.10 (inclusive) and to clause 20.1, for Units that are not Officially Quoted, the Application Price for any Unit will

⁶ Required to be included by Section 601GA(1)(a)

~~be equal to while Units are not Officially Quoted, in accordance with the following formula:~~

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid-up Proportion}}$$

~~Each of the variables in clause 4.1(f) must be determined~~

~~all determined~~ as at the next Valuation Time after:

~~(f)(a)~~ the Manager receives the application for Units; or

~~(g)(b)~~ the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager
whichever happens later.

~~4.34.2~~ The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset of the Trust.

Application Price while Units are Officially Quoted

~~4.3~~ Subject to clauses 4.4 to 4.10 (inclusive), for Units that are Officially Quoted, the Application Price for any Unit will be the Market Price of a Unit immediately prior to the date on which or as at which the Application Price is to be determined.

Pro rata rights issues

~~4.4~~ The Manager may issue Units at an Application Price determined by the Manager, being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2, or clause 4.3 (as applicable), by way of rights issue or similar offering when the Manager offers the Units to persons who are Unit Holders (or who are Unit Holders holding Units in a particular class of Units) on a date determined by the Manager ("**Rights Unit Holders**"), in proportion to the value of each Rights Unit Holder's Units in the Trust or the value of each Rights Unit Holder's Units in a particular class of Units (as applicable) on that date, subject to the exclusion of any Unit Holder from the offer where it is not a contravention of section 601FC(1)(d) of the Corporations Act.

~~4.4~~ The Manager may (subject to the terms of any applicable ASIC relief instrument) offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 20 Business Days immediately prior to the date of the offer, provided that:

~~(a)~~ all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable) provided that the entitlement of holders of Partly Paid Units shall be determined by reference to the Paid-up Proportion; and

(b) either:

(i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with clause 4.1(f); or

(ii) where Units are Officially Quoted, the Application Price is not less than 50% of the current Market Price;

but, subject to the Listing Rules and any applicable ASIC relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia⁷.

Terms of pro rata issues

4.34.5

- (a) Any offer made under clause 4.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.4, provided that the Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Subject to clause 4.5(d), any Any Units offered for subscription under clause 4.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.4, such underwriter may take up any Units not subscribed for by Members.

4.5A

- (a) ~~Units in the Trust may be issued, at a price determined by the Manager, pursuant to offers made within a period not exceeding 14 days to only and all the then Members of the Trust if:~~
 - ~~(i) all the Units offered are in the same class; and~~
 - ~~(ii) the price of all the Units offered is the same; and~~
 - ~~(iii) the amount by which the price of the Units is less than any amount that would otherwise apply under the constitution does not exceed a maximum percentage specified in the constitution; and~~

⁷ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

~~(iv) the amount of Units offered to each Member is proportionate to the value of that Member's Unit; and~~

~~(v) a Product Disclosure Statement is given to each Member to whom the offer is made and to whom it is required to be given;~~

~~where if the Manager reasonably considers that it would not be practical to make offers to certain Members that are connected to a place outside this jurisdiction ("foreign members"), the Manager need not offer or issue the Units to the foreign members, provided that the Manager:~~

~~(vi) sends the foreign members notice in writing, at or before the time of the offer:~~

~~(A) that the offer is being made to other Members of the Trust but not to the foreign members; and~~

~~(B) of the terms of the offer; and~~

~~(vii) takes reasonable steps to ensure that the foreign members to whom the offer is not made are provided with the compensation commensurate with the value of the entitlements that were not offered to them; and~~

(d) ~~(b)~~ — Units in the Trust that were offered to, but not acquired by, Members of the Trust in accordance with subclause 4.44.5A(a) (or which were not offered to foreign members in accordance with subclause 4.94.5A(a)) may be issued at a price determined by the Manager to:

- (i) persons, other than the Manager or an associate of the Manager (unless that associate is a bona fide underwriter) who have received a Product Disclosure Statement for the offer; or
- (ii) persons, other than the Manager or an associate of the Manager (unless that associate is a bona fide underwriter), to whom a Product Disclosure Statement is not required to be given; or
- (iii) a bona fide underwriter or sub-underwriter under an underwriting agreement; or
- (iv) a person, who is not an associate of the Manager, nominated by a bona fide underwriter or sub-underwriter, pursuant to an underwriting agreement.

(e) ~~(c)~~ — For the purpose of subclause 4.5(d)A(b) and subclauses 4.6(d) and 4.6A(d)A(b), an associate of the Manager ("the associate") is a bona fide underwriter or sub-underwriter if:

- (i) the associate enters into an underwriting agreement or sub-underwriting agreement with the Manager, the terms of which would be reasonable in the circumstances if the Manager and the associate were dealing at arms length; and
- (ii) the terms of the underwriting agreement or sub-underwriting agreement are summarised in the Product Disclosure Statement or other relevant disclosure document for the offer made in accordance with clause 4.4 and subclauses 4.5(d) 4.5A(a) and 4.5A(b); and
- (iii) the associate disposes of any Units it acquires under the underwriting agreement or sub-underwriting agreement as soon as reasonably practicable and, in any case, within 6 months of the date the underwriter or sub-underwriter acquires the Units; and
- (iv) where the associate disposes of Units otherwise than in the ordinary course of trading on the financial market operated by the ASX - the persons who acquire the Units from the associate are not the Manager or an associate of the Manager.

Placements and other issues without Unit Holder Approval

4.6 Without limiting clauses 3.4 and 3.7A, the Manager may issue Units at an Application Price determined by the Manager being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2, or clause 4.3 (as applicable), by way of a placement of Units or other non-proportionate offer of Units without Unit Holder approval to the extent it is permitted to do so by ASIC Relief and subject to the following conditions:

- (a) the Units (or if the Units to be issued are of a class of Units, Units in that class) are Officially Quoted and that quotation is not suspended;
- (b) the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC Relief;

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

- ~~(d) at the current Market Price of Units; or~~
- ~~(e) at a price which is not less than 85% of the weighted average market price as referred to in clause 4.1(e) and on terms determined by the Manager;~~

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

4.6A

~~(f) — Units in the Trust may be issued at a price determined by the Manager while Units of that class are included in the official list of the financial market operated by the ASX or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and those Units, or if those Units are in a class of Units, Units of that class, have not been suspended from quotation, where the issue is not to the Manager and Units are only issued to an associate of the Manager in accordance with clause 4.6A(b) and, in the case where:~~

(c) in relation to a placement of Units (other than in connection with an issue under clause 3.4 or 3.7A):

(i) the issue together with any other issue of Units up to one year previously, at a consideration determined by the Manager, other than:

(A) an issue approved or ratified by Members in accordance with ~~subclauses clause 4.6A(a)(iii) to (viii);~~ and

(B) issues in accordance with other provisions of the constitution, ~~—except issues in accordance with subsection 601GA(1)(a)(i), as modified by ASIC class order 98/52, that have not been approved by Members in accordance with subsection 601GA(1)(a)(i)(C) to (H)~~

is of Units that would, immediately before the issue, not comprise more than 15% of either:

(C) all of the Units in the Trust; or

(D) the Units on issue in the Trust in the same class as the Units comprised in the issue; ~~and~~

(ii) the amount by which the issue price of the Units is less than the current Market Price (or if applicable, of that class) ~~does not exceeds~~ 10%; ~~and~~

(d) the Manager may only issue Units pursuant to this clause 4.6 to a person associated with it ("the associate") if the associate acquires the Units:

(i) as manager of another registered managed investment scheme in which no interests are held the manager of that scheme or its associates; or

(ii) an approved trustee of a regulated superannuation fund in compliance with the Superannuation Industry (Supervision) Act 1993 in which no interests are held by the approved trustee or its associates; or

(iii) as trustee of a unit trust that is not required to be registered as a managed investment scheme; or

(iv) as a bona fide underwriter or sub-underwriter.

Placements and other issues with Unit Holder Approval

4.6A Without limiting clauses 3.4 and 3.7A, the Manager may issue Units at an Application Price determined by the Manager being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2, or clause 4.3 (as applicable), by way of a placement of Units or other non-proportionate offer of Units with Unit Holder approval to the extent it is permitted to do so by ASIC Relief and subject to the following conditions:

(a) the Units (or if the Units to be issued are of a class of Units, Units in that class) are Officially Quoted and that quotation is not suspended;

(b) the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC Relief;

(c) the following requirements are also satisfied:

(iii)(i) the Members of the Trust approve the issue; and

(iv)(ii) if the Units to be issued are in a particular class, Members in that class approve the issue; and

(v)(iii) unless the Manager reasonably considers that the issue will not adversely affect the Units of Members in another class, Members in that other class approve the issue; and

(vi)(iv) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue; and

(vii)(v) an approval for the purposes of subclauses 4.6A(a)(iii), (iv) or (v) is given by special resolution of the Members where Members with at least 25% of the total value of all the Units of Members entitled to vote on the question vote on the question at the meeting; and

(viii)(vi) if in making the calculations referred to in subclauses 4.6A(a)(vii) any vote cast by or on behalf of a person who obtained, or will obtain, beneficial ownership of Units that were issued, or are to be issued, or any vote of any associate of that person, were not counted, the resolutions would be passed; and-

(g)(d) theThe Manager may only issue Units pursuant to subclause 4.6A(a) to a person associated with it ("the associate") if the associate acquires the Units:

- (i) as manager of another registered managed investment scheme in which no interests are held the manager of that scheme or its associates; or
- (ii) an approved trustee of a regulated superannuation fund in compliance with the *Superannuation Industry (Supervision) Act 1993* in which no interests are held by the approved trustee or its associates; or
- (iii) as trustee of a unit trust that is not required to be registered as a managed investment scheme; or
- (iv) as a bona fide underwriter or sub-underwriter.

Reinvestment

4.7

- (a) The Manager may issue Units at an Application Price determined by the Manager, being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2, or clause 4.3 (as applicable) under a distribution reinvestment arrangement referred to in clause 9.23 to the extent it is permitted to do so by ASIC Relief.
- (b) If an underwriter has underwritten any offer for subscription of Units under clause 9.23, such underwriter may take up any Units not subscribed for by Members provided that the Application Price payable in relation to such further offer by the underwriter is the same price at which the Units were originally offered to Members.

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

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

Unit purchase plan

- 4.8 The Manager may issue Units at an Application Price determined by the Manager being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2, or clause 4.3 (as applicable) under a Unit purchase plan undertaken in accordance with applicable ASIC Relief.

Foreign Unit Holders

- 4.9 To the extent permitted by the Listing Rules, the Corporations Act and any applicable ASIC Relief, the Manager is not required to offer Units

under clauses 3.5, 4.5, 4.7 and 4.8 to Unit Holders whose address on the Register is outside Australia.

General

- 4.10 Despite any other provision in this clause 4 but subject to any applicable ASIC Relief and the Listing Rules, the Manager may issue Units at an Application Price determined by the Manager, being a price other than the Application Price calculated in accordance with clauses 4.1 and 4.2 (as applicable), to the extent the Manager is permitted under the Corporations Act to do so.

5 Application procedure

Application form

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

Payment

- 5.2 Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application;
 - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Option, Financial Instrument or Partly Paid Unit contemplate; or
 - (c) comprise a reinvestment of distribution in accordance with clause 9.23.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable by the Member concerned.

Manager may reject

- 5.3 The Manager may reject an application in whole or in part without giving any reason for the rejection⁸.

Minimum amounts

- 5.4 The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time⁹.

Issue date

- 5.5 Units are taken to be issued when:
- (a) the Manager accepts the application; or

⁸ Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

⁹ While Units are Officially Quoted, see clause 26 regarding the sale of small holdings.

- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

Uncleared funds

- 5.6 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

6 Redemption Price of Units¹⁰

Redemption Price

- 6.1 While the Units are not Officially Quoted, a Unit must only be redeemed at a Redemption Price calculated as:
- $$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue} + \text{Paid-up Proportion}} \times \frac{\text{amount paid up on that Unit}}{\text{Application Price of that Unit}}$$
- 6.2 Each of the variables in clause 6.1 must be determined:
- (a) while the Trust is Liquid, as at the close of business on the day before the payment of the Redemption Price; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.
- 6.3 The Redemption Price must be rounded down to the nearest whole cent.
- 6.4 While the Units are Officially Quoted, the Redemption Price pursuant to a withdrawal offer is the average of the Daily VWAP for each of the 10 Business Days immediately prior to the date upon which the withdrawal offer is announced by the Manager. For this purpose the Daily VWAP is the volume weighted average of the prices for that Business Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units.
- 6.5 While Units are Officially Quoted the Manager may (subject to the terms of any applicable ASIC relief instrument) purchase a Unit under clause 7.16 provided that the purchase price does not exceed 105% of the average market price (as "market price" is defined in the Listing Rules on 31 August 2007) of Units calculated over the last 5 days in

¹⁰ Required to be included by Section 601GA(4) if a right of redemption is to be offered.

which Units were traded on the ASX before the day on which the Units were purchased.

7 Redemption procedures¹¹

- 7.1A While Units are Officially Quoted, none of the provisions of this clause 7 apply except this clause and clauses 7.10 to 7.16¹².

Request for redemption

- 7.1 A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid, the Manager must give effect to that request at the time and in the manner set out in this clause 7.
- 7.2 A Member may not withdraw a redemption request unless the Manager agrees.

When Trust is Liquid¹³

- 7.3 Clauses 7.4 to 7.10 apply only while the Trust is Liquid¹⁴.
- 7.4 The Manager must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 7.5. The day of receipt of the redemption request is:
- (a) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
 - (b) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.
- 7.5 If the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- 7.6 The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.
- 7.7 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

¹¹ These procedures must be fair to all Members: Section 601GA(4)

¹² Refer Listing Rule 1.1 condition 5.

¹³ Required to be included by Section 601GA(4)(b)

¹⁴ For definition of a liquid scheme see Section 601KA

- 7.8 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.
- 7.9 If the Manager increases the minimum holding amount, the Manager may, after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount, redeem that Member's holding without the need for a redemption request.

Discretionary redemption

- 7.10 Subject to the Corporations Law and the Listing Rules, if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request¹⁵.

When Trust is not Liquid¹⁶

- 7.11 While the Trust is not Liquid¹⁷, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Law regulating offers of that kind¹⁸. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
 - (b) giving a copy to all Members.
- 7.13 If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Clauses applicable whether or not the Trust is Liquid

- 7.14 Clause 7.15 applies whether or not the Trust is Liquid.

Sums owed to Manager

- 7.15 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member.

Buy-back of Units

- 7.16 While Units are Officially Quoted the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase Units at a price that complies with clause 6.5 and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

¹⁵ See section 601FC(1)(d) and Chapter 5C.6.

¹⁶ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹⁷ For definition of a liquid scheme see Section 601KA(1)

¹⁸ Refer sections 601KB to 601KE

8 Valuation of assets

Periodic valuations

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Law.¹⁹
- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value²⁰.
- 8.4 While Units are not Officially Quoted, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

9 Income and distributions to Members²¹

Collection of Income

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

Nature of Receipts

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

Determination of Net Income

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

Net Income

- 9.4 If no determination is made or to the extent to which no determination is made under clause 9.3 prior to the end of a Distribution Period, then the Net Income of the Trust for that Distribution Period is calculated in the same manner as the Taxable Period Income provided always that where in calculating the Taxable Period Income for a Distribution Period it is necessary to gross up any amount of income or to make any deemed deductions, or include any amount of deemed assessable income or deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) must not be included in calculating the net income of the Trust for the Distribution Period unless the Manager determines before the end of the Distribution Period that the grossing up or deemed assessable

¹⁹ See section 601FC(j) for Manager's obligations concerning valuation

²⁰ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

²¹ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

income or deemed deductions should be included in calculating the Net Income.

Accounting standards

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

Entitlement

- 9.5 At the end of each Distribution Period the Members are presently entitled to the Net Income together with any further amount which the Manager determines in accordance with clause 9.15 or clause 9.31 to distribute to the Members in respect of that Distribution Period.

Apportionment

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

Distribution Account

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

Postponement of distribution

- 9.8 In determining the Net Income for a Distribution Period (but not the Taxable Period Income) if any income is received in a Distribution Period when, in the opinion of the Manager, it is not practicable to distribute it in the distribution for that Distribution Period, it may be treated by the Manager as having accrued during the next following Distribution Period and be distributed accordingly.

Interim distributions

- 9.9 The Manager may determine to make interim distributions to Members of the estimated net income for the Quarters ending 31 March and 30 September. If the Manager determines to make a distribution in respect of such a Quarter the estimated Net Income in respect of that Quarter is to be transferred to the Distribution Account and the provisions of this clause 9 will apply in relation to the distribution of that income to the Members as at the end of that Quarter in the same manner as Net Income is distributed in relation to a Distribution Period. If an amount is transferred to the Distribution Account pursuant to this clause 9.9 there is to be an equivalent reduction in the amount required to be transferred to the Distribution Account pursuant to clause 9.7 in respect of the relevant Distribution Period and the provisions of clause 9.10 will apply in relation to the balance of the Net Income transferred to the Distribution Account.

Participation in distribution of income

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

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

where:

- A = the amount credited to the Distribution Account in respect of the relevant Distribution Period calculated to two decimal points of one cent and rounded down;
- B = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the last Business Day of the Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate number of such Units held by that Member multiplied by the relevant proportion; and
- C = the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with clause 3.37(c), the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on that last Business Day of that Distribution Period.
- 9.11 A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:

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

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

Deduction of Tax

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

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

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

Distribution of income

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

Fractions

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

Taxable income greater than Net Income

- 9.15 Subject to this constitution the Manager may transfer capital to the Distribution Account for the purpose of enabling a distribution to Members of a total amount up to the Taxable Annual Income in instances where the Taxable Annual Income exceeds the Net Income for a year of income. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Net Income.

Treatment of tax credits or rebates

- 9.16 A transfer under clause 9.15 may not be made to the extent that the excess of the Taxable Annual Income over the Net Income for a year of income is due to the grossing up of any amount of income of the Trust in respect of any tax credit or rebate unless the Manager is of the opinion that Tax is likely to become payable by the Manager if it does not make the transfer or unless the benefit of a tax credit or rebate cannot be made available to Members. If a transfer is not made for this reason the excess Taxable Annual Income and the benefit of any tax credit or rebate is deemed to have been distributed to Members pro rata to their entitlement to any Net Income of the category or source of income in respect of which the credit or rebate applied.

Reserves and bonus issues

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

Distributions from Reserve Account

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

Calculation of distributions from Reserve Account

- 9.19 The distribution of cash or other Assets to each Member under clause 9.18 is to be calculated in accordance with the following formula or in any other manner determined by the Manager:

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

where:

- A = the amount of cash or the value of Assets (determined by the Manager) to be distributed;
- B = the aggregate of the number of Units held by the Member as at the close of business on the date of calculation; and
- C = the aggregate of the total number of Units on issue as at the close of business on the date of calculation.

Capitalisation

9.20 Any amount standing to the credit of a capital reserve account may be capitalised by a determination of the Manager. Subject to clause 9.21, the capitalisation is to be effected by dividing the number of Units held by Members by a proportion determined by the Manager which takes into account the number of Units held by the Member, the amount to be capitalised and other matters in relation to the particular Member determined by the Manager. Following the capitalisation:

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

9.21 The number of additional Units created under clause 9.20 must not be less than the number calculated in accordance with the following formula:

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

where:

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

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

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

9.22 For the purposes of clauses 9.19, 9.20 and 9.21 a Partly Paid Unit is treated as a fractional Unit, calculated by dividing the total amount of instalments paid in respect of that Partly Paid Unit by the Application Price of that Partly Paid Unit.

Member reinvestment

9.23 The Manager may in its discretion from time to time by notice to all Members confer upon Members of the Trust the right of reinvestment of income in further Units during such period as the Manager may determine. This right if conferred by the Manager may be exercised by the Member by giving notice in writing to the Manager (in the form determined by the Manager from time to time) to request that the

Manager retain and reinvest in Units the money or part of the money to be distributed to the Member under clauses 9.9, 9.10, 9.15 and 9.31.

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

Notice of reinvestment

- 9.28 Where a Member has made a request under clause 9.23, the Member is to be provided by the Manager with a notice to the effect that the whole or part (as the case may be) of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Manager. The notice is to be given by the Manager upon the issue of the additional Units.
- 9.29 For all purposes the Net Income to be distributed to a Member is deemed to have been received by the Member on a reinvestment of that income in additional Units under the terms of this clause 9.

Liability

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

Distributions of capital

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

10 Payments

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

11 Powers of the Manager**General powers**

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

Contracting powers²²

- 11.2 Without limiting clause 11.1 but subject to clause 11.3, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities²³.

²² Required to be included by Section 601GA(3)

²³ Refer Listing Rule 13.2 - the total liabilities of a listed trust must not exceed 60% of its total tangible assets.

Borrowing

- 11.3 The Manager must not incur a borrowing or raise money in respect of the Trust if to do so would, at the time of incurring the borrowing or raising the money, cause the total Liabilities of the Trust to exceed 60 % of the value of the Assets determined in accordance with clause 8.

Investment powers

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

Power of delegation²⁵

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

Exercise of discretion

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

Underwriting

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

Principal Investment Policy

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

²⁴ Subject to Section 601FC(4)

²⁵ See also Section 601FB.

²⁶ Subject to Part 5C.7

12 Retirement of Manager²⁷

Voluntary retirement

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law²⁸.

Compulsory retirement

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law²⁹.

New responsible entity

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

Release

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

Retirement benefit

- 12.5 The Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:
- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement; or
 - (b) its retirement as Manager
- and is not required to account to Members for such remuneration or benefit.

13 Notices to Members, ~~and~~ Option Holders and Financial Instrument Holders³¹

- 13.1 Subject to the Corporations Law, a notice or other communication required to be given to a Member, ~~an~~ Option Holder or Financial Instrument Holder in connection with the Trust must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member, ~~or~~ Option Holder or Financial Instrument Holder at the Member's, ~~or~~ Option Holder's or Financial Instrument Holder's physical or electronic address last advised to the Manager for delivery of notices.
- 13.2 A cheque payable to a Member, ~~or~~ Option Holder or Financial Instrument Holder may be posted to the Member's, ~~or~~ Option Holder's or Financial Instrument Holder's physical address or handed to the

²⁷ Refer to Listing rule 3.16.2(a)

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

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

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

³¹ While Units are Officially Quoted, notices to Members must be copied to ASX - refer Listing Rule 3.17.

Member, ~~or~~ Option Holder or Financial Instrument Holder or a person authorised in writing by the Member, ~~or~~ Option Holder or Financial Instrument Holder³².

- 13.3 In the case of joint Members, ~~or joint Option Holders or joint Financial Instrument Holders~~, the physical or electronic address of the Member, ~~or Option Holder or Financial Instrument Holder~~ means the physical or electronic address of the Member, ~~or Option Holder or Financial Instrument Holder~~ first named in the Register.
- 13.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law³³, the Manager may determine³⁴ the time at which other forms of communication will be taken to be received.

14 Notices to the Manager

- 14.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member, ~~or Option Holder or Financial Instrument Holder~~³⁵ unless the Manager dispenses with this requirement.

15 Meetings of Members

Corporations Law

- 15.1 The Manager may at any time convene a meeting of Members, ~~or~~ Option Holders or Financial Instrument Holders, and must do so if required by the Corporations Law.³⁶

Manager may determine

- 15.2 Subject to this clause 15, the Corporations Law³⁷ and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted³⁸.
- 15.2A A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as

³² See Clause 16.3(c)

³³ See Section 601FC(1)(d)

³⁴ See Section 252G(4)

³⁵ See Clause 16.3(c)

³⁶ Refer Part 2G.4

³⁷ Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

³⁸ Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

Quorum

- 15.3 The quorum for a meeting of Members is 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

No quorum

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

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

Chairman

- 15.5 Subject to the Corporations Law³⁹ the Manager may appoint a person to chair a meeting of Members.
- 15.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

Adjournment

- 15.7 The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at such place and time as the chairman thinks fit.
- 15.7A In exercising this discretion, the chairman may, but need not, seek the approval of Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.
- 15.7B Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Notice of adjourned meeting

- 15.7C It is not necessary to give any notice of any adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

³⁹ Refer Part 2G.4 and Section 601FC(1)

Proxies and voting

- 15.8 Subject to clause 15.10, the provisions of the Corporations Law governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust⁴⁰.
- 15.9 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Law⁴¹.
- 15.10 A poll may be demanded by Members present in person or by proxy holding at least 20,000 Units.

Resolutions binding

- 15.11 A Resolution binds all Members, whether or not they were present at the meeting.
- 15.12 No objection may be made to any vote cast unless the objection is made at the meeting.

Non-receipt

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

Option Holders and Financial Instrument Holders

- 15.14 The provisions of this clause relating to meetings of Members also apply to meetings of Option Holders and Financial Instrument Holders with any necessary modifications.

Postponement or cancellation

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

Notice of Cancellation or postponement of meeting

- 15.16 Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:
- (a) to each Member individually; and
 - (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

Contents of notice or postponement of meeting

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

⁴⁰ This provision is included for completeness - the law operates of its own force.

⁴¹ Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

Number of clear days for postponement of meeting

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

Business at postponed meeting

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

Proxy, attorney or representative at postponed meeting

- 15.20 Where:

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

then, by force of this clause 15.20, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

16 Rights and liabilities of Manager**Holding Units**

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity⁴².

Other capacities

- 16.2 Subject to the Corporations Law⁴³, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity) or with any Member;
 - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

⁴² See Section 601FG, Section 253E and Part 5C.7

⁴³ Refer Part 5C.7, and see also Listing Rule 10.1

Manager may rely

16.3 The Manager may take and may act upon:

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

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

17 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 17.1 The Manager is not liable in contract, tort or otherwise to ~~Holders~~~~Members~~ for any loss suffered in any way relating to the Trust except to the extent that the Corporations Law imposes such liability.
- 17.2 Subject to the Corporations Law, the liability of the Manager to any person other than a ~~Holder~~~~Member~~ in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

Indemnity in favour of Manager

- 17.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust⁴⁴.
- 17.4 To the extent permitted by the Corporations Law⁴⁵, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

⁴⁴ See Section 601GA(2)

⁴⁵ See Sections 601FB(2) and 601GA(2)

Indemnity unaffected by unrelated breach of trust

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

18 Liability of Members**Liability limited**

- 18.1 Subject to clauses 18.3 and 18.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 18.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 18.3 applies.

Recourse

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

Restrictions on Members

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

19 Remuneration and expenses of Manager**Base fee**

- 19.1 As from 1 March 2000, the Manager's entitlement to fees for managing the Trust is calculated on a half yearly basis as at 30 June and 31 December in each year as a percentage per annum of the value of all Assets of the Trust at the end of the relevant Half Year in accordance with the following scale:

First \$700 million of Assets	0.45% p.a.
Excess above \$700 million	0.40% p.a.

The Manager was entitled to fees up to 29 February 2000 in accordance with previous provisions of this constitution. For the period from 1 March 2000 to 30 June 2000 the fee will be calculated as provided in this clause 19.1 but pro rata according to the number of days in the period 1 March 2000 to 30 June 2000 compared with the period from 1 January 2000 to 30 June 2000.

- 19.2 The fee under clause 19.1 is payable to the Manager at the end of each Quarter. Payments in respect of the Quarters ending 31 March and 30 September will be based on the value of all assets at the end of the previous Half Year and will represent a part payment on account for the fee for the current Half Year.

Waiver of fees

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

Manager's Performance Units

- 19.4 Subject to clause 19.4A, the Manager, in addition to its remuneration under clause 19.1, will be entitled to have a certain number of Units issued to it in respect of each Half Year if the performance of the Trust for the Half Year exceeds a stated benchmark. The formula for determining the number of Units (if any) to be issued to the Manager in respect of a Half Year is set out below. If the TR (as defined below) for the Trust for a Half Year is negative, the Performance Units (if any) to which the Manager would have been entitled will not be issued to the Manager until the end of the first succeeding Half Year in which the TR is positive:

Number of Performance Units to be issued to the Manager =

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

where

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

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

$NPc = TR - BM$;

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

TR (Trust Return percentage) = $\frac{(Tc - To)}{To} \times \frac{100}{1}$

where

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

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

$$BM \text{ (Benchmark Return percentage)} = \frac{(Bc - Bo)}{Bo} \times \frac{100}{1}$$

where

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

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

$$MCo \text{ (Market capitalisation)} = Po \times Uo$$

where

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

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

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

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

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

If and when Performance Units are issued to the Manager in respect of a Half Year where the Trust Index is below its historical Half Year end high achieved since the new fee structure was implemented on 29 February 2000, the Manager may not sell or otherwise dispose of the Performance Units until a time after the Trust Index equals or exceeds that prior peak and until the time the Manager is entitled to sell the Performance Units all distributions in respect of those Performance Units must, if a distribution reinvestment plan then applies, be reinvested pursuant to the distribution reinvestment plan and the Units

received pursuant to the reinvestment will be subject to the same restriction on sale or disposal. The restriction on sale or disposal will cease if a Trigger Event occurs.

19.4A

- (a) Except as provided in clause 19.4A(c) the maximum fees to be paid to the Manager in respect of any Financial Year including the Base Fee and the Performance Fee is to be an amount equal to 0.8% per annum of the value of all Assets of the Trust at the end of the Financial Year. In applying this limit, if a Performance Fee becomes payable in respect of the Half Year ending 31 December the maximum amount which may be paid in respect of that Half Year comprising both the Base Fee and the Performance Fee for that Half Year will be an amount equal to 0.4% of the value of all Assets of the Trust at the end of that Half Year and will represent a part payment on account of the total fees payable in respect of the Financial Year up to the limit for that Financial Year calculated in accordance with this clause 19.4A(a).
- (b) If the amount of the total fees for a Financial Year as calculated in accordance with clauses 19.1 and 19.4 exceeds the limit for the Financial Year specified in clause 19.4A(a) the Base Fee for that Financial Year shall be payable and only that number of Performance Units with an aggregate value, based on the issue price under clause 19.4, equal to the balance of the fees up to that limit will be issued to the Manager and the remaining Performance Units which would otherwise have been issued in respect of that Financial Year if the limit in clause 19.4A(a) did not apply ("Excess Performance Units") will not be issued at that time. The number of Excess Performance Units and their issue price or issue prices determined in accordance with clause 19.4 must be recorded as a liability to the Manager and those Excess Performance Units shall be issued to the Manager in future Half Years if, and to the extent, that the total fees payable to the Manager in relation to any future Half Year are less than the limit referred to in clause 19.4A(a). The number of Excess Performance Units to be issued in relation to a Financial Year shall be that number having an aggregate value, based on the issue price or prices under clause 19.4, equal to the difference between the total fees for that Financial Year before the issue of Excess Performance Units and the limit for that Financial Year under clause 19.4A(a). In carrying forward Excess Performance Units into future Half Years to supplement the Manager's total fees up to the limit under clause 19.4A(a) the Excess Performance Units shall be issued in the order in which they accrued as liabilities and their value for the purpose of calculating the number of Excess Performance Units which may be issued in any future period shall be calculated at the same rate at which they accrued as a liability.
- (c) If at the end of any Half Year there shall be any Excess Performance Units which accrued as a liability at least three

years prior to the end of that Half Year and which have not been issued to the Manager those Excess Performance Units will be issued to the Manager, and disregarded for the purpose of calculating the limit under clause 19.4A(a) in relation to the Financial Year in which they are issued, if the accumulated return of the Trust for that three year period expressed as a percentage exceeds the movement in the Benchmark Index over that three year period expressed as a percentage. If Charter Hall Retail Management Limited ceases to be the Manager of the Trust, Charter Hall Retail Management Limited shall be entitled to a cash payment in lieu of all Excess Performance Units which have not previously been issued to it on the date upon which it ceases to be the Manager or within seven days thereafter. If a Trigger Event occurs at a time when there are any Excess Performance Units which have not been issued then the Manager is entitled to a cash payment in lieu of those Excess Performance Units. These cash payments are to be based on the number of Excess Performance Units and their respective issue prices determined under clause 19.4. Any cash payment under this clause 19.4A(c) will be disregarded for the purposes of clause 19.4A(a).

Payment in lieu of Performance Units

19.5 If Performance Units are required to be issued to the Manager pursuant to clauses 19.4 and/or 19.4A and those Performance Units may not be issued because of any restriction under the Listing Rules or for any other reason the Manager shall be entitled to a cash payment in lieu of the Performance Units such payment to be calculated based on the number of Performance Units (including Excess Performance Units) which would otherwise have been issued to the Manager and the relevant issue price of those Performance Units determined in accordance with clause 19.4. If a Trigger Event occurs, the Manager is entitled to be paid in addition to the Base Fee a cash payment calculated as follows in lieu of Performance Units which might otherwise have been issued to the Manager in respect of the Half Year in which the Trigger Event occurs, such payment to be made to the entity which was the Manager on the day upon which the Trigger Event occurred notwithstanding that the entity may have ceased to be the Manager or that the Trust has terminated:

- (a) the cash payment is to be equal to the Performance Fees calculated in accordance with clause 19.4 as if the end of the Half Year was the date of the occurrence of the Trigger Event but in determining the Trust Index at the close of the period there is to be substituted for the market price of the Units:
 - (i) in the case of a takeover bid, the price per Unit which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);
 - (ii) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the

- Members in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the Manager;
- (iii) in the case of delisting, the weighted average market price of the Units traded on the Australian Stock Exchange during the 10 Business Days prior to the Date of Delisting; or
 - (iv) in the case of termination of the Trust, the amount per Unit to be received by the Members after accruing the amount payable to the Manager for Performance Fees;
- (b) the cash payment is payable as soon as it can be calculated. If there has been any accrual of the Performance Fee from any prior Half Year whether due to the Trust Return (TR) being negative although exceeding the Benchmark Return (BM) or otherwise, the amount accrued shall be paid in cash rather than Units on the date of occurrence of the Trigger Event.

Expenses

- 19.6 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust⁴⁶ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Law. This includes the following and expenses connected with the following:
- (a) this constitution and the formation of the Trust;
 - (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units, Options, Financial Instruments, or other promotion of the Trust;
 - (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (d) any proposed acquisition, disposal or other dealing with an investment;
 - (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register and any dealings with Units;
 - (f) the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
 - (g) underwriting of any subscription or purchase of Units, Options or Financial Instruments including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager

⁴⁶ Refer Section 601GA(2)(b)

of its obligations, representations or warranties under any such underwriting agreement;

- (h) convening and holding meetings of ~~Holders~~Members, the implementation of any Resolutions and communications with ~~Holders~~Members;
- (i) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (k) preparation and audit of the taxation returns and accounts of the Trust;
- (l) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (m) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.5(m) must be repaid;
- (n) in relation to any real property, real estate agent fees;
- (o) managing agents fees (whether any real property is managed by the Manager, an associate of the Manager or independent managing agent);
- (p) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums⁴⁷ in respect of Compliance Committee Members;
- (q) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Law;
- (r) the preparation, implementation, amendment and audit of the compliance plan;
- (s) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;

⁴⁷ See Section 601JG

- (t) complying with any law, and any request or requirement of the ASIC; and
- (u) custodian fees.

GST

- 19.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 19.8 An amount may only be paid or reimbursed out of the Assets under clauses 19.6 and 19.7 if it relates to the proper performance of the Manager's duties.

20 Duration of the Trust

Initial settlement

- 20.1 The Manager, immediately upon demand being made by the Trustee after the deed has been approved by the Commission must, lodge with the Trustee the sum of \$100 for investment by the Trustee (so far as it extends) in Authorised Investments of the Trust. The beneficial interest in the Trust as constituted by the settlement of the sum of \$100 shall be divided into 100 Units which shall be issued to the Manager⁴⁸.

Termination

- 20.2 The Trust terminates on the earliest of:
- (a) [intentionally deleted];
 - (b) the Date of Delisting;
 - (c) a date which the Members determine by special resolution; and
 - (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law⁴⁹.

Restriction on issue and redemption of Units

- 20.2A Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

⁴⁸ This clause contains terminology no longer used in this constitution because it has been preserved in its original form. The Trust in fact commenced on 21 July 1995.

⁴⁹ See Part 5C.9 on winding up

- 20.3 If at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Manager may summon a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Trust shall be wound up.

21 Procedure on termination

Realisation of Assets

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

Audit of winding up

- 21.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

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

- (a) in the case of a holder of a Fully Paid Unit:

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

where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 21.3;
- B = the aggregate of the number of Fully Paid Units held by the Member as at termination plus the total of all fractions represented by the respective instalments paid or due but unpaid on all the Partly Paid Units held by the Member as at termination (other than instalments due in accordance with clause 3.14); and
- C = the aggregate of the total number of Fully Paid Units in issue as at termination plus the Paid-up Proportion as at termination (excluding instalments due in accordance with clause 3.14);

- (b) in the case of a holder of a Partly Paid Unit:

$$X \times \frac{I}{AP}$$

where:

X = the amount determined in accordance with clause 21.3(a);

I = the instalments paid in respect of that Partly Paid Unit; and

AP = the Application Price for that Partly Paid Unit.

The Manager may distribute proceeds of realisation in instalments.

- 21.4 Subject to the Corporations Law and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 21.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

22 Amendments to this constitution

Manager may amend

- 22.1 If the Corporations Law allows⁵⁰, this constitution may be amended:

- (a) by Resolution⁵¹; or
- (b) by deed executed by the Manager.

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

Statutory requirements

- 22.2 If:

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

then, ~~despite clause 22.1 to the extent the Corporations Act allows~~, this constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail

⁵⁰ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁵¹ The required majority for such a resolution under section 601GC(1)(a) is 75%.

over any other provisions of this constitution to the extent of any inconsistency.

22.2A The Members:

- (a) authorise the Manager to make the amendments referred to in clause 22.2 in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (b) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of clause 22.2.

22.2B Where clause 22.2 and clause 22.2A operate to automatically amend this constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

22.3 If the Manager is of the opinion that as a result of clause 22.2 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

Listing Rules

22.4 While Units are Officially Quoted:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

22.5 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 22.4 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Law.

23 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Law⁵².

24 Complaints

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

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

⁵² See section 601JF

25 Restricted Securities

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

26 Small holdings

- 26.1 Subject to the provisions of this clause 26, the Manager may in its discretion from time to time sell or redeem any Units held by a Member without request by the Member where:
- (a) the market value of Units held by a Member is less than \$2000; or
 - (b) while Units are Officially Quoted, the Units held by a Member comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Manager may only sell or redeem Units on one occasion in any 12 month period.
- 26.2 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26.
- 26.3 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.2; or
 - (b) if, within the 6 weeks allowed by clause 26.3(a):
 - (i) the Member advises the Manager that the Member wishes to retain the Units; or
 - (ii) the market value of the Units held by the Member increases to \$2000 or more.
- 26.4 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.5 The Manager or the purchaser of the Units must pay the costs of the sale or redemption as the Manager decides.

- 26.6 The proceeds of the sale or redemption will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.7 The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 26.

27 Interpretation

Definitions

- 27.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

AML Legislation: the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), the Financial Transaction Reports Act 1988 (Cth) and any similar legislation in any jurisdiction.

Application Price: the Unit price calculated in accordance with clause 4.

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

ASIC Relief: ~~an exemption or declaration granted by ASIC which gives relief from certain provisions of the Corporations Act.~~

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

whether in the form of a class order or a specific instrument and whether modifying the Corporations Act, exempting the Manager or others from provisions of that Act or otherwise, and includes Class Order 13/655.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount to which a Member is presently entitled.

ASX: Australian Stock Exchange Limited.

Auditor: means the auditor from time to time appointed by the Manager to audit the Trust.

Australian Accounting Standards:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Authorised Investment: has the meaning as it was set out in this deed at the time the Trust commenced.

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

Benchmark Index: the accumulation index based on the volume weighted average prices recorded on ASX over the 10 Business Days after the Trust goes ex-distribution for the relevant period created from the ASX listed entities that have a principal focus on the retail property sector, as calculated by the ASX, or other suitable body as determined by the Manager from time to time and notified to Members, using closing market price series data. The index will commence at 100 on 29 February 2000. This index does not include Charter Hall Retail REIT. If the market capitalisation of the Trust becomes greater than 40% of the aggregate market capitalisation of the trusts or other entities (including a stapled entity) included in the Benchmark Index and Charter Hall Retail REIT, then the Benchmark Index will be replaced by the S & P/ASX 200 Property Accumulation Index with appropriate transitional adjustments, determined by an independent person appointed by the Manager, to reflect the position of the index as at the time of substitution so as to provide an equivalent benchmark. If the Benchmark Index or any substitute, whether the S & P/ASX 200 Property Accumulation Index or another index, ceases to be calculated or published or, in the Manager's reasonable opinion, to provide a relevant benchmark consistent with the purpose under this constitution, the Manager acting in good faith may substitute the most appropriate available index.

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

Commission: ASIC or its predecessor at the relevant time.

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

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

Corporations Act the *Corporations Act 2001* (Cth), and includes the Act as modified by any ASIC Relief.

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

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

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

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

Derivative has the meaning given in the Corporations Act but also includes:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there

are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or

- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the Manager, for the purpose or anticipated or intended purpose of:
 - (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
 - (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
 - (iii) securing a profit or avoiding a loss,associated with any Commodity, Property or Investment.

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

Distribution Calculation Date: the last day of June and December of each year or such other days as the Manager designates.

Distribution Period:

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

Financial Instrument has the meaning given in clause 3.7A(a).

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

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

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

Government Authority a government or a governmental, semi governmental or judicial entity or authority. It also includes a self regulatory organisation established under statute or a securities exchange.

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

Half Year: a period of six months ending 30 June or 31 December. The first Half Year is the period from 1 March 2000 to 30 June 2000 and in relation to the calculations for that initial Half Year, the expression “last day of the prior Half Year” means the day prior to the commencement of that Half Year.

Holder: a Unit Holder, an Option Holder or a Financial Instrument Holder.

Investment: any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a trustee and includes:

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

Land includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity and any buildings or other improvements on that land.

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

Liquid: has the same meaning as in the Corporations Law⁵³.

Listing Rules: the listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the official list of ASX, each as amended, varied or waived (whether in respect of the Trust or generally) from time to time..

Manager:

- (a) before the Trust is registered as a managed investment scheme, Charter Hall Retail Management Limited (ACN 069 709 468); and

⁵³ Refer Part 5C.6

- (b) from the time the Trust is registered as a managed investment scheme the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Law.

Market Price: of a Unit on a particular Business Day means:

- (a) the weighted average traded price for a Unit for all sales on ASX for the period of 10 Business Days ending on the relevant Business Day (whether or not a sale was recorded on any particular day) provided however that if the Unit to be offered or issued will be offered or issued ex distribution and the weighted average traded price is for a Unit cum distribution, the Market Price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the weighted average traded price were for Units cum distribution); or

~~(i) if a reputable investment bank or independent adviser as referred to in paragraphs (i) or (ii) below determines that a measure of Market Price determined in accordance with paragraphs (i) or (ii) below is a more appropriate measure of Market Price, the other measure will be adopted;~~

~~(i) the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds; or~~

~~(ii)(b) if in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made, the price an amount~~ determined by an adviser who:

~~(A)(i)~~ is independent of the Manager; and

~~(B)(ii)~~ is qualified to determine and has relevant market experience in determining the issue price of units in circumstances similar to those in which the determination of the price of Units is being made;

as being the fair issue price of the Unit, having regard to:

~~(C)(iii)~~ the nature and size of the proposed offer of Units for which purpose the issue price of a Unit is being calculated;

~~(D)(iv)~~ the circumstances in which the proposed offer of Units will be made; and

(E)(v) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

A reference to “current Market Price” in this constitution means the Market Price on the Business Day prior to the day on which the relevant offer or issue of a Unit is made.

If any of paragraphs (a) or (b) in this definition is held to be void, invalid or otherwise unenforceable, it is deemed to be severed from the remainder of this definition, which will remain in full force and effect, and Market Price must be calculated in accordance with the clause which is not thereby deemed to be severed.

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

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

Net Income: the net income of the Trust for a Distribution Period calculated in accordance with clause 9.3.

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

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

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

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

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

Performance Fees: the fees (if any) payable to the Manager pursuant to clause 19.4 being both PF and EPF as defined in that clause.

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

Property: property of any description and includes:

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

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

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

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

Registered: recorded in the Register.

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

Registration: recording in the Register.

Reserve Account: the account established under clause 9.17.

Resolution:

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

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁵⁴.

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

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

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

Taxable Annual Income: the net income of the Trust calculated under the provisions of the Tax Act for a year of income.

Taxable Period Income: the net income of the Trust calculated under the provisions of the Tax Act but under the assumption that a Distribution Period is a year of income for the purposes of that Act.

⁵⁴ Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

Transaction Costs:

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

provided that subject to the Corporations Law⁵⁵ the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trigger Event: Any of the following:

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

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

Trust Fund: all of the Assets, but subject to the Liabilities.

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

Trust Index: the accumulation index for the Trust as calculated by the ASX, or other suitable body as determined by the Manager from time to time and notified to Members, using closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the ten day volume weighted average trading price from and including the date upon which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 on 29 February 2000 utilising the closing market price on that day.

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

Unit Holder: has the same meaning as Member.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or

⁵⁵ See section 601FC(1)(d)

-
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.

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

Interpretation

- 27.2 Unless the contrary intention appears, in this constitution:
- (a) terms defined in the Corporations Law are used with their defined meaning;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
 - (c) the singular includes the plural and vice versa;
 - (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
 - (e) amend includes delete or replace;
 - (f) person includes a firm, a body corporate, an unincorporated association or an authority;
 - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
 - (h) a reference to a year (other than a Financial Year), half-year quarter or month means a calendar year, calendar half-year calendar quarter or calendar month respectively; and
 - (i) any schedule to this constitution is an operative part of it.

Other documents

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

Constitution legally binding⁵⁶

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

Severance

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

⁵⁶ Refer Section 601GB

Governing law

27.6 This constitution is governed by the law of New South Wales.

Other obligations excluded

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

Finding list

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

Corporations Law	Constitution
601GA	
(1)(a)	4.1 - 4.8
(1)(b)	11.1 - 11.4
(1)(c)	24
(1)(d)	21
(2)	17.3 - 17.5, 19.1 - 19.8
(3)	11.2, 11.3
(4)(a)	7.1, 7.4, 7.11, but not a right while listed (7.1A)
(4)(b)	7.3 - 7.10, 6.1 - 6.3
(4)(c)	7.11 - 7.13, 6.1 - 6.3
601GB	27.4

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

Listing Rules	Constitution
1.1, condition 2	22.4
1.1, condition 5	7.1A
15.12.1	3.30
15.12.2	3.33
15.12.3	25
15.13	26
15.14	N/A

Consolidated Constitution Charter Hall Retail REIT

Manager: Charter Hall Retail
Management Limited
(ACN 069 709 468)

This document is a consolidated copy of the trust deed dated 21 July 1995 for Charter Hall Retail REIT (“Original Constitution”) adopted at the time of Managed Investments Act transition, as amended by the Supplemental Deed dated 22 May 2000, the Supplemental Deed dated 24 December 2002, the Supplemental Deed dated 2 March 2005, the Supplemental Deed dated 7 October 2005, the Supplemental Deed dated 13 December 2006, the Supplemental Deed dated 21 December 2006, the Supplemental Deed dated 16 October 2007, and the Supplemental Deed dated 26 February 2010.

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

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