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ASX RELEASE

29 November 2018

AMENDMENTS TO ARDENT LEISURE TRUST CONSTITUTION

Attached is the consolidated Constitution of the Ardent Leisure Trust, which has been amended by a supplemental Trust Constitution Deed Poll in accordance with a resolution of securityholders on 20 November 2018. The Trust Constitution Deed Poll will be lodged with the Australian Securities and Investments Commission today, 29 November 2018, and is then effective on and from that date.

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Constitution Ardent Leisure Trust

Manager: Ardent Leisure
Management Limited
(ACN 079 630 676)

This document is a consolidated copy of the version of the trust deed dated 6 February 1998 for Ardent Leisure Trust ("Original Constitution") adopted on 9 December 1999 pursuant to the transition under the provisions of the Managed Investments Act, as amended by the Supplemental Deeds dated 1 June 2000, 28 April 2003, 27 June 2003, 5 July 2005, 23 December 2005, 25 June 2009, 30 June 2009, 28 August 2009, 29 October 2009, 30 October 2014 and 29 November 2018.

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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Constitution of the Ardent Leisure Trust

Date: 6 February 1998

1 Name of Trust

- 1.1 The Trust is called the Ardent Leisure Trust 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 terms and conditions of this constitution.
- 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 Act 2001 so requires².

3 Units and Options

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.

¹ See Corporations Regulation 5C.1.02

² See section 601FC(1)(i)

Issue of Units

- 3.3A The Manager may issue Units or Options in accordance with this constitution. While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Shares, or Options over unissued Shares on the same terms as the Options, on the basis that Units are to be Stapled to Shares and Options are to be Stapled with options in respect of unissued Shares.

Number of Units and Options

- 3.3B While Stapling applies the number of issued Units at any time must equal the number of issued Shares and the number of issued Options must equal the number of issued options to subscribe of Shares which are to be Stapled to Units.

Options

- 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.

While Stapling applies, an offer or issue of Options may only take place if it is part of a concurrent offer or issue of Shares on the basis that the Options are in respect of Stapled Securities.

- 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 Act 2001 (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 person 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.

Effect of Stapling

- 3.7A While Stapling applies an Option may only be exercised if at the same time as Units are acquired under the Option the same person contemporaneously acquires on exercise of an option over Shares an identical number of Shares which are then Stapled to the Units.

Rights attaching to Units and Options

- 3.8 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.

Partly Paid Units

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

-
- 3.10 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.
- 3.10A While Stapling applies:
- (a) Partly Paid Units may not be issued unless there is a contemporaneous and corresponding issue of Shares which are to be partly paid and are to be Stapled to the Partly Paid Units; and
 - (b) any issue of Partly Paid Units must be on the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Shares Stapled to those Units is also paid.
- 3.11 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 offer under the product disclosure statement pursuant to which the Units were offered for sale.
- 3.12 The Manager may not waive an instalment which is due and payable.
- 3.13 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.
- 3.14 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

- 3.15 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. If Stapling applies, the notice must also state that an equal number of Shares will also be liable to be forfeited.

- 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 (concurrently with the forfeiture of the same number of Shares if Stapling applies); 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

- 3.17 If the Manager offers a forfeited Unit for sale it does so as agent for the holder of the forfeited Unit (and while Stapling applies as agent for the holder of the Share Stapled to the forfeited Unit).
- 3.18 Subject to the Listing Rules and the terms of any necessary ASIC Relief, a forfeited Unit (together with the Share to which it is Stapled) may be sold or otherwise disposed of as a Fully Paid Stapled Security or a Partly Paid Stapled Security, by public auction, private treaty or in the normal course of business on ASX. The consideration attributable to the forfeited Unit will be the sale price of the Stapled Security less the fair value of the Share as determined by the Manager.

Any such sale or other disposal must also be with respect to the same number of Shares while Stapling applies.

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

- 3.19 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 (including any amounts due in respect of the same number of Shares if Stapling applies) together with any other amounts in respect of the forfeiture.

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- 3.20 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 and including any amounts due in respect of the same number of Shares Stapled to those Units if Stapling applies) 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.
- 3.21 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 (which statement must include reference to the same number of Shares if Stapling applies) is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.
- 3.22 Where a Partly Paid Unit is forfeited under clause 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 (which transfer must include the same number of Shares if Stapling applies) 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 the person has paid for the Unit is paid to the former holder of the Unit nor shall the person's 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.
- 3.23 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, appropriately weighted as between the Trust and the Company if Stapling applies. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.
- 3.24 Income and distributions of capital in accordance with clause 9.15 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.

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- 3.25 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

- 3.26 Fractions of a Unit (calculated to 2 decimal places) may be issued by the Manager. However, while Stapling applies, a fraction of a Unit may only be issued if a fraction of a Share stapled to the fraction of a Unit is also issued.
- 3.27 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

- 3.28 Units and Options may be consolidated or divided as determined by the Manager³. While Stapling applies, Units may only be consolidated or divided if the related Shares are also consolidated or divided at the same time and to the same extent.

Transfer of Units and Options

- 3.29 Subject to clause 3.30, Members may transfer Units and, subject to their terms and conditions, Options.
- 3.30 While the Trust is Listed and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.31 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, if the Manager requires, and be presented for Registration duly stamped.
- 3.32 A transfer is not effective until Registered.
- 3.33 Subject to the Listing Rules while the Listing Rules apply⁴, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while the Trust is Listed, must refuse to record a transfer in the Register which would be in breach of clause 3.30.

Entitlement to certificates

- 3.33A The Manager may determine that all the Units of a class of Units in the capital of the Trust are to be allotted on the terms that they may be held only as uncertificated holdings under the SCH business rules. A Member holding Units of that class is not entitled to require the Manager to issue or deliver

³ Refer Listing Rules, Chapter 7 - reorganisations of capital.

⁴ Listing Rule 8.10 restricts the Manager's ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

certificates as evidence of title to the Units. The Manager may at any time revoke a determination under this clause.

- 3.33B The Manager may permit a Member's holding of Units to be held as an uncertificated holding under the SCH business rules and they must do so if the Listing Rules or the SCH business rules require that Units are to be held as uncertificated holdings.
- 3.33C Every Member whose Units are not held as an uncertificated holding of Units is entitled without payment to receive a certificate in respect of Units allotted.
- 3.33D The Manager may cancel without replacing a certificate for Units held by a Member whose Units are to be held as an uncertificated holding.

Effect of Stapling

- 3.34 While Stapling applies:
- (a) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 3, the transfer is accompanied by a transfer of the Share to which the Unit is Stapled in favour of the same transferee;
 - (b) a transfer of a Unit which is not accompanied by a transfer of the Share to which the Unit is Stapled will be taken to authorise the Manager as agent for the transferor to effect a transfer of the Share to which the Unit is Stapled to the same transferee;
 - (c) a transfer of any Share to which a Unit is Stapled (other than a transfer of the Shares to the Manager as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Manager as agent for the transferor to effect a transfer of the Unit to which the Share is Stapled to the same transferee;
 - (d) any provision of this constitution which contemplates the transfer of a Unit will be taken to be a reference to the transfer of a Stapled Security unless the contrary intention expressly applies; and
 - (e) the same rules as for the transfer of Units and Shares apply to Options over Stapled Securities.

Joint tenancy

- 3.34A Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

Death, legal disability of Member

- 3.35 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.
- 3.36 A person who becomes entitled to a Unit or an Option because of the death, bankruptcy, insanity or other disability of a Member or Option Holder is entitled to receive and may give a discharge for all money payable in respect of the Unit or Option but is not entitled to receive notices of or to attend or vote at any meetings of Members or Option Holders until that person is Registered as the holder of the Unit or Option.

Income Entitlements of Units

- 3.37 The Manager may in its discretion issue Units on terms that such Units:
- (a) participate fully for entitlement to the Distributable Amount 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 an amount of the Distributable Amount 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 an amount of the Distributable Amount 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.

Stapled Security Register

- 3.38 The Manager must cause to be kept and maintained a stapled security register which:
- (a) may incorporate or form part of the Register;
 - (b) records the names of the members, the number of Units held, the number of Stapled Shares held by the Members to which each Member's Units are Stapled and any additional information required by the Corporation Act 2001 or the Listing Rules or determined from time to time by the Manager.

4 Application Price for Units⁵

- 4.1 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;
 - (b) in the case of a placement while the Trust is Listed and Units or Stapled Securities are not suspended from quotation, in accordance with clause 4.6;
 - (c) in the case of reinvestment of income, in accordance with clauses 4.7 and 4.8;
 - (ca) in the case of an issue of Stapled Securities in payment of Performance Fees, at a price calculated in accordance with clause 19.2.
 - (d) in the case of issues pursuant to the exercise of an Option, a price calculated in accordance with clause 3.6;
 - (e) subject to paragraphs (a), (b), (c), (ca), (d) and (g) in all other cases while the Trust is listed, and Stapled Securities or Units are not suspended from quotation, the Average Market Price of Stapled Securities less the issue price of the Shares Stapled to the Units in question or the Units (as applicable); and
 - (f) while the Trust is not Listed, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid up Proportion}}$$
 - (g) in the case of an issue of Units to effect an Exchange of Exchangeable Notes into Stapled Securities, at a price per Stapled Security in accordance with clause 4.10.
- 4.2 Each of the variables in clause 4.1(f) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
 - (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.
- 4.3 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

⁵ Required to be included by Section 601GA(1)(a)

money or property which results from rounding becomes an Asset of the Trust.

Pro rata issues

- 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 under offers made at substantially the same time to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:
- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable) provided that the entitlement of holders of Partly Paid Units shall be determined by reference to the Paid-up Proportion;
 - (b) the Manager complies with the Listing Rules applicable to the issue and also complies with the terms of any applicable ASIC Relief;
 - (c) the Application Price of the Units is not less than 50% of the Average Market Price for the Units or, while Stapling applies, the Average Market Price of Stapled Securities minus that proportion of the value of the Application Price of the Stapled Security which is attributable to the application price of the Share, as at a date not more than 5 Business Days prior to the date of the offer document under which the offer is made;
 - (d) while Stapling applies, any offer of Units to a Member must be accompanied by a contemporaneous and corresponding offer of Shares by the Company which offer is capable of acceptance only if the Member takes up an identical number of Units

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 Australia and such other jurisdiction (if any) as the Manager may determine⁶.

Terms of pro rata issues

- 4.5
- (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

⁶ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1

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) 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 and provided further that while Stapling applies any offer of Units must be accompanied by a contemporaneous and corresponding offer of Shares by the Company which offer is capable of acceptance only if the offeree takes up an identical number of Units.
- (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 (with the underwriter of the offer being bound by the same rules as Members concerning Stapling).

Placements and other issues

4.6 While the Trust is listed and Units or Stapled Securities are not suspended from quotation, the Manager may at any time issue Units to any person by way of a placement, under a security purchase plan or in any other case where the terms of applicable ASIC Relief allow at a price and on terms determined by the Manager provided that:

- (a) while Stapling applies any offer of Units must be accompanied by a contemporaneous and corresponding offer of Shares which are to be Stapled to the Units and which offer is only capable of acceptance if the offeree takes up an identical number of Shares that correspond with the number of Units; and
- (b) the Manager complies with the Listing Rules applicable to the issue and the terms of any applicable ASIC Relief.

Reinvestment

4.7 While the Trust is Listed, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is the Average Market Price of Stapled Securities less the issue price of the Shares Stapled to the Units in question or the Units (as applicable) less, if the Manager complies with the terms of any applicable ASIC Relief, such discount, if any, not exceeding 10% as the Manager may determine.

-
- 4.8 While the Trust is not Listed, 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.

Determination of Application Price when Stapling applies

- 4.9 Where Stapling applies and this constitution contains a provision for the calculation or other determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of the Stapled Security represents the Application Price for the Unit under this constitution.

Issue on Exchange

- 4.10 The Application Price at which Stapled Securities are to be issued upon the Exchange of the Exchangeable Notes is the average of the daily volume weighted average sale price per Stapled Security sold on ASX during the 10 Business Days immediately prior to but not including the Realisation Date, but does not include any transaction defined in the ASX Market Rules as a "special", crossings prior to the commencement of normal trading, crossing during the after hours adjust phase, crossings during the closing phase, overnight crossings or any overseas trades or trades pursuant to the exercise of options over Stapled Securities. For the purposes of calculating the Application Price if, on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as cum dividend or cum any other distribution or entitlement, but the Stapled Securities will be issued ex such dividend other distribution or entitlement, then the daily volume weighted average price on the Business Days on which those Stapled Securities have been quoted cum dividend, other distribution or entitlement shall be reduced by an amount equal to:
- (a) in the case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of the recipient of the dividend or other distribution who is a natural person;
 - (b) in the case of an entitlement which is traded on ASX on any of those Business Days, the average of the daily volume weighted average sale price for such entitlement sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
 - (c) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the Issuer.

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.

Effect of Stapling

- 5.1A While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Shares to be Stapled to those Units.

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 or Partly Paid Unit contemplate; or
 - (c) comprise a reinvestment of distribution in accordance with clause 9.22.

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 rejection⁷. If Stapling applies, the Manager must reject an application if the application for Units is not also for an identical number of Shares to be Stapled to those Units.

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 time⁸.

Issue date

- 5.5 Units are taken to be issued when:

⁷ Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

⁸ While Units are Officially Quoted, see clause 26 regarding the sale of small holdings.

- (a) the Manager accepts the application; or
- (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 Units⁹

Redemption Price

- 6.1 A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs} + \text{Aggregate Unpaid Amount}}{\text{number of Units in issue}}$$

less any amount unpaid on 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.

7 Redemption procedures¹⁰

- 7.1A While the Trust is Listed, none of the provisions of this clause 7 apply except clause 7.10¹¹.

⁹ Required to be included by Section 601GA(4) if a right of redemption is to be offered.

¹⁰ These procedures must be fair to all Members: Section 601GA(4)

¹¹ Refer Listing Rule 1.1 condition 5

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 Liquid¹²

- 7.3 Clauses 7.4 to 7.10 apply only while the Trust is Liquid¹³.
- 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.
- 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.

¹² Required to be included by Section 601GA(4)(b)

¹³ For definition of a liquid scheme see Section 601KA

- 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 Act 2001 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 request¹⁴.

When Trust is not Liquid¹⁵

- 7.11 While the Trust is not Liquid¹⁶, 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 Act 2001 regulating offers of that kind¹⁷. 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.

Effect of Stapling

- 7.16 While Stapling applies the Manager must not redeem a Unit unless the Share to which the Unit is Stapled is also redeemed, bought back or otherwise cancelled by the Company.

¹⁴ See section 601FC(1)(d) and Chapter 5C.6

¹⁵ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹⁶ For definition of a liquid scheme see Section 601KA(1)

¹⁷ 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 Act 2001.¹⁸
- 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 value¹⁹.
- 8.4 While the Trust is not Listed, 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 Members²⁰

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
 - (a) The Manager must determine for each Distribution Period the Net Income and the Taxable Period Income. The Manager may do this by way of a standing-determination of principles for calculating the Net Income, and may change the principles from time to time.

¹⁸ See section 601FC(j) for Manager's obligations concerning valuation

¹⁹ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

²⁰ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

- (b) The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Net Income of the Trust pursuant to clause 9.3(a).

Net Income

- 9.4 To the extent to which no determination is made under clause 9.3(a) in respect of a Distribution Period prior to the end of that Distribution Period, then the Net Income of the Trust for that Distribution Period shall be 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 Taxable Period Income) must not be included in calculating the Net Income of the Trust for the Distribution Period unless the Manager determines that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Net Income.

Entitlement

- 9.5
 - (a) The Distributable Amount for any Distribution Period shall be equal to the amount of the Net Income together with any additional amount determined under clause 9.15.
 - (b) At the end of each Financial Year, the Members are presently entitled to the sum of any Distributable Amounts for any Distribution Periods which end during that Financial Year in proportion to their Unit holdings (adjusted for partly Paid Units on a similar basis as set out in clause 9.11).
 - (c) Any obligations of the Manager under clause 9.5(b) are satisfied in full by compliance by the Manager in respect of those Distribution Periods with the provisions of clause 9 other than clause 9.5(b).

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 Distributable Amount 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. Following the end of each Distribution Period, the Manager may notify the Members of the extent to which a distribution under this clause 9 is composed of, and the types of, income and capital gains making up the Taxable Period Income.

Distribution Account

- 9.7 The Distributable Amount 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 on trust for distribution in accordance with this clause 9. The Manager may invest any moneys standing to the credit of the Distribution Account in investments 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 or expense incurred in a Distribution Period when, in the opinion of the Manager, it is not practicable to distribute the income in the distribution or recognise the expense for that Distribution Period, then the Manager may treat the income as having accrued during and the expense as having been incurred in the next following Distribution Period and such amounts will be recognised accordingly in determining the Net Income for that Distribution Period.
- 9.9 The determination of the identity of and Units held by Members shall be determined:
- (a) in respect of any Distribution Period (including any Distribution Period ending on the same day as a Financial Year), and for all purposes in this clause 9 other than clause 9.5(b), as at the relevant books close date in respect of that Distribution Period while the Trust is Listed and otherwise on the last day of the Distribution Period; and
 - (b) for the purposes of clause 9.5(b) only, in respect of the Financial Year, as at the end of the last day of that Financial Year.

Participation in distribution of income

- 9.10 Subject to clause 9.11 a Member is entitled to receive a distribution of the Distributable Amount in accordance with the following formula:

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

where:

- A = the Distributable Amount;
- B = the aggregate of the number of Units held by the Member which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds 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.
- 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 (not credited).

Deduction of Tax

- 9.12 The deduction of the following amounts from each Member's entitlement to the Distributable Amount 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 Distributable Amount 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 the Distributable Amount 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 9.22 at the end of the then current Distribution Period, the Manager must distribute to that Member the Member's entitlement to the Distributable Amount 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 Distributable Amount 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.

Distributions of capital

- 9.15 The Manager may determine from time to time in respect of any Distribution Period that an amount representing capital shall form part of the Distributable Amount in respect of that Distribution Period such that a distribution of capital is made to Members.

Reserves

- 9.16 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

- 9.17 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 capital gains credited to the Reserve Account as the Manager may determine. The Manager must adjust the Reserve Account for the amount so distributed.

- 9.18 A distribution under clause 9.17 shall be made to Members in the same proportions as a distribution of Distributable Amount under clause 9.10 and as if the relevant Distribution Period ended on a date determined by the Manager.

Capitalisation

- 9.19 Any amount standing to the credit of a capital reserve account may be capitalised by a determination of the Manager. Subject to clause 9.20, 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.

- 9.20 The number of additional Units created under clause 9.19 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.

- 9.21 For the purposes of clauses 9.19 and 9.20 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.

Effect of Stapling

- 9.21A While Stapling applies the Manager must not issue any Unit on a capitalisation unless a Share to which the Unit is to be Stapled is also issued by the Company.

Member reinvestment

- 9.22 The Manager may in its discretion from time to time by notice to all Members confer or withdraw upon Members of the Trust the right of reinvestment in further Units of entitlements to Distributable Amounts 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 any or all of the Member's entitlement to the Distributable Amount in any Distribution Period.
- 9.22A While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units the Member subscribes for an identical number of Shares which are subsequently Stapled to the Units in question.
- 9.22B While Stapling applies the Manager may make provision for and may make payment for the subscription of Shares to be Stapled to Units out of any distribution of income which is otherwise available for investment in Units.
- 9.23 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 9.22 (so long as, while Stapling applies, any such notice also applies to an equivalent number of Shares which are Stapled to those Units). The Member is entitled to give a further notice under clause 9.22 at any time in respect of any subsequent Distribution Period (and on the same basis as regards the effect of Stapling).
- 9.24 In the event that a notice under clause 9.22 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 9.23 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 (so long as, while Stapling applies, that reinvestment results in an equivalent number of Shares Stapled to the Units being issued).
- 9.25 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 9.22 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.

- 9.26 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 (so long as, while Stapling applies, that reinvestment results in an equivalent number of Shares Stapled to the Units being issued).

Notice of reinvestment

- 9.27 Where a Member has made a request under clause 9.22, 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.
- 9.28 For all purposes the Distributable Amount 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

- 9.29 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.

9A Capital Distributions and Capital Reallocation

- 9A.1 The Manager may at any time, with the approval by ordinary resolution of Members ("**the Capital Reallocation Resolution**"), distribute capital of the Trust to the Members on terms that the amount distributed in respect of each Unit is to be applied by the Manager as agent for and on behalf of the each Member by paying that amount at the direction of each Member to the Company as an additional capital payment in respect of the Share in the Company already issued to which that Unit is Stapled.
- 9A.2 Subject to the rights, obligations and restrictions attaching to any particular Unit, a Member is entitled to that proportion of the capital to be distributed under this clause 9A as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date as at the end of the day.

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- 9A.3 If at any time the Manager distributes capital of the Trust to the Members under clause 9A.1 on terms that the amount distributed in respect of each Unit ("**the Capital Reallocation Amount**") is to be paid by the Manager as agent for and on behalf of the Member to the Company as an additional capital payment in respect of the Share to which that Unit is Stapled, then:
- (a) each Member is taken to have directed the Manager to pay the Capital Reallocation Amount to the Company on that basis;
 - (b) the Manager must pay the Capital Reallocation Amount to the Company on that basis and in accordance with the Capital Reallocation Resolution; and
 - (c) each Member will be deemed to have irrevocably (subject to clause 22) appointed the Manager as its attorney and agent to:
 - (i) do all things the Manager considers necessary to give effect to the Capital Reallocation Resolution; and
 - (ii) without limiting clause 9A.3(c)(i), to agree in writing to be bound by the modification of the constitution of the Company to include corresponding provisions relating to a Capital Reallocation Resolution.

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 powers ²¹

- 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 liabilities²².

Borrowing

- 11.3 [Deleted].

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.²³

²¹ Required to be included by Section 601GA(3)

²³ Subject to Section 601FC(4)

Power of delegation²⁴

- 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 in the authorisation provisions 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.²⁵

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 Act 2001, 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 direct or indirect interests in real property and associated assets (with an emphasis on assets and investments connected with the leisure and entertainment industries, including investment in companies which manage real property in connection with the leisure or entertainment industries or both) including interests held through companies, trusts or other forms of holding structure which may be wholly or partly owned by the Trust, 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 and associated assets. 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.
- 11.11 The Manager is specifically authorised to hold the 'Special Share' in the Company having the rights specified in the constitution of the Company.

²⁴ See also Section 601FB.

²⁵ Subject to Part 5C.7

Power to un-Staple Units

- 11.12 The Manager may, in accordance with the terms of this constitution, determine that the Units should be un-Stapled from the Shares and effect that un-Stapling.

12 Retirement of Manager²⁶

Voluntary retirement

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law²⁷.

Compulsory retirement

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law²⁸.

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.²⁹

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 Holders³⁰

- 13.1 Subject to the Corporations Act 2001, a notice or other communication required to be given to a Member or Option Holder in connection with the Trust must be given in writing (which includes a fax) or in such other manner as the Manager

²⁶ Refer to Listing rule 3.16.2(a)

²⁷ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

²⁸ See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

²⁹ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

³⁰ While Units are Officially Quoted, notices to Members must be copied to ASX - refer Listing Rule 3.17.

determines, and be delivered or sent to the Member or Option Holder at the Member's or Option 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 may be posted to the Member's or Option Holder's physical address or handed to the Member or Option Holder or a person authorised in writing by the Member or Option Holder.³¹
- 13.3 In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option 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 law³², the Manager may determine³³ 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 Holder³⁴ unless the Manager dispenses with this requirement.

³¹ See Clause 16.3(c)

³² See Section 601FC(1)(d)

³³ See Section 252G(4)

³⁴ See Clause 16.3(c)

15 Meetings of Members

Corporations Act 2001

- 15.1 The Manager may at any time convene a meeting of Members or Option Holders, and must do so if required by the Corporations Act 2001.³⁵

Manager may determine

- 15.2 Subject to this clause 0, the Corporations Act 2001³⁶ 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 conducted³⁷.

Quorum

- 15.3 The quorum for a meeting of Members is at least 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 Act 2001³⁸ 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 has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

Proxies and voting

- 15.8 Subject to clause 15.10, the provisions of the Corporations Act 2001 governing proxies and voting for meetings of members

³⁵ Refer Part 2G.4

³⁶ Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

³⁷ Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

³⁸ Refer Part 2G.4 and Section 601FC(1)

of registered managed investment schemes apply to the Trust³⁹.

- 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 Act 2001.⁴⁰
- 15.10 A poll may be demanded by Members present in person or by proxy holding 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

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

Effect of Stapling

- 15.15 While Stapling applies, the directors or other representatives of the Company may attend and speak at any meeting of Members, or invite any other person to attend and speak.
- 15.16 While Stapling applies, if permitted by the Corporations Act 2001 and any applicable ASIC Relief, any meeting of Members may be held with and as part of a meeting of the members of the Company. If such a joint meeting is permitted:
- (a) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Members and the members of the Company, which such modifications as the Manager decides; and
 - (b) any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Members.

16 Rights and liabilities of Manager

Holding Units

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity⁴¹.

³⁹ This provision is included for completeness - the law operates of its own force.

⁴⁰ Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

Other capacities

- 16.2 Subject to the Corporations Act 2001⁴², the Manager (or its associates) may:
- (a) deal with itself (as trustee of the Trust or in another capacity), the Company or with any Member;
 - (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Company or with any Member or retain for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (c) act in the same or a similar capacity in relation to any other managed investment scheme.

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.

Effect of Stapling

- 16.4 While Stapling applies, the Manager may in exercising any power or discretion have regard to the interests of the Members and the members of the Company as a whole and not only to the interests of the Members alone. This is the case notwithstanding any other provision of this constitution, or any

⁴¹ See Section 601FG, Section 253E and Part 5C.7

⁴² Refer Part 5C.7, and see also Listing Rule 10.1

rule of law or equity to the contrary, other than any relevant provision of the Corporations Act 2001.

17 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 17.1 Subject to the Corporations Act 2001, if the Manager acts in good faith and without negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 17.2 Subject to the Corporations Act 2001, the liability of the Manager to any person other than a 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 Trust⁴³.
- 17.4 To the extent permitted by the Corporations Act 2001⁴⁴, 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.

Right of indemnity not affected by unrelated breach

- 17.6 Where a Liability is incurred pursuant to a proper exercise of the Manager's powers under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Manager (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of 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.

⁴³ See Section 601GA(2)

⁴⁴ See Sections 601FB(2) and 601GA(2)

- 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

Management Fees

- 19.1A Subject to the Corporations Act, the Manager is entitled to be paid out of Assets a management fee equal to the Manager's reasonable estimate of its costs (including all overheads and whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate) in providing its services as Manager for which it is not otherwise reimbursed pursuant to clause 19.5 plus a margin of 10%, up to a limit for any Distribution Period of the amount which would otherwise have been payable under clause 19.1 for that Distribution Period. This fee is to be payable from time to time upon demand by the Manager. The Manager may make a demand for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs.

The fees payable pursuant to this clause 19.1A are payable within one month after the end of each Distribution Period from 1st September 2009 to the date of the final distribution in accordance with clause 21.3.

The Manager must produce a statement within 1 month from the end of each 6 month period setting out the fee for the period and any amount unpaid.

For so long as the Manager remains a wholly owned subsidiary of the Company this clause 19.1A shall take precedence over clause 19.1 (Base Management fee) and clause 19.2 (Performance fee) and any such fees payable under clauses 19.1 and 19.2 shall be waived in accordance with clause 19.4 (Waiver of fees).

Base Management Fees

- 19.1 The Manager is entitled to base management fees calculated as follows:
- (a) until 30 June 2005 0.25% per annum and from 1 July 2005 0.2% per annum of the value of the Trust's direct or indirect proportionate interest in properties and other assets, based on the fair market value of those properties and assets as at the last Business Day of a Distribution Period; plus
 - (b) 3.5% of the Distributable Amount for each Distribution Period (before deduction of the base management fees payable under this clause 19.1 and the performance fee under clause 19.2),

The fees payable pursuant to this clause 19.1 are payable within one month after the end of each Distribution Period from the date the Trust commences to the date of the final distribution in accordance with clause 21.3.

Manager's Performance Fees

- 19.2
- (a) The Manager, in addition to its Base Management Fees under clause 19.1, will be entitled to have a certain number of Stapled Securities issued to it in respect of each Financial Year if the performance of MLE for the Financial Year exceeds the stated benchmark. The formula for determining the number of Stapled Securities (if any) to be issued to the Manager in respect of a Financial Year is set out below. If MLER (as defined below) for a Financial Year is negative, the Stapled Securities (if any) to which the Manager would have been entitled as a performance fee in respect of the Financial Year will not be issued to the Manager until the end of the first succeeding year in which the MLER is positive.

$$\text{Number of Stapled Securities to be issued to the Manager} = \frac{(\text{PF} + \text{EPF})}{P_c}$$

where

$$\text{PF} \quad (\text{Tier 1 Performance}) = (\text{NPc} - 5\%) \times \text{MCo} \times 10\%, \text{ but equals zero if NPc is not greater}$$

	Fees)	than 5%
EPF	(Tier 2 Performance Fees)	= (NPc-10%) x MCo x 5% but equals zero if NPc is not greater than 10%
NPc		= MLER-BM (expressed as a percentage)
NPo	(Opening Net Performance)	= NPc of prior Financial Year except in the Financial Year commencing 1 July 2005 when NPo = zero
MILER	(MLE Return expressed as a percentage) where	= $\frac{MLEc-MLEo}{MLEo} \times 100$
	MLEc	= MLE Index at the close of the Financial Year based on the VWAP of the Stapled Securities for the ten ASX Business Days from and including the date upon which the Stapled Securities trade ex-entitlement for the Distribution for the Distribution Period ending at the end of that Financial Year
	MLEo	Opening MLE Index being the MLE Index at close of the prior Financial Year or if NPo < 0 then MLEo = the MLE Index used as the opening MLE Index (MLEo) from the prior Financial Year and in the case of the Financial Year commencing 1 July 2005 is 100 based upon the VWAP of the Stapled Securities for the ten ASX Business Days from and including the date upon which the Stapled Securities trade ex-entitlement for the distribution for the Distribution Period ending 30 June 2005
BM	(Benchmark Return expressed as a percentage) Where	= $\frac{Bc-Bo}{Bo} \times 100$
	Bc	= Benchmark Index at the end of the Financial Year
	B o	= Opening Benchmark Index being the Benchmark Index at close of the prior Financial Year or if NPo < 0 then Bo = the Benchmark Index

		used as the opening Benchmark Index (Bo) from the prior Financial Year and in the case of the Financial Year commencing 1 July 2005 means the Benchmark Index as at 30 June 2005
MCo	(Market Capitalisation) where	= $P_o \times U_o$
	Po	= The VWAP of the Stapled Securities over the ten ASX Business Days from and including the date upon which the Stapled Securities trade on ASX ex the distribution entitlement for the period ending on the last day of the prior Financial Year
	Uo	= Stapled Securities on Issue at the close of the last day of the prior Financial Year
Pc		= The greater of the VWAP of the Stapled Securities over the ten ASX Business Days from and including the date upon which the Stapled Securities trade on ASX ex the distribution entitlement for the period ending on the last day of the relevant Financial Year and the net tangible asset backing per Stapled Security at the end of the Financial Year

- (b) If a Trigger Event occurs within a Financial Year, the Manager is entitled to payment in cash in lieu of Stapled Securities with the amount of the cash payment to be calculated in accordance with clause 19.2(d). If for any reason it is not permissible for the Manager to have Stapled Securities issued to it in accordance with this clause 19.2 or if the issue would require express approval at a meeting of Members then the Manager may require a cash payment in lieu of Stapled Securities being issued to it such payment to be calculated based on the number of Stapled Securities which would otherwise have been issued to the Manager under clause 19.2(a) and the relevant issue price of those Stapled Securities determined in accordance with item "Pc" in clause 19.2(a).
- (c) The Manager's entitlement to Base Management Fees plus Performance Fees in respect of a Financial Year is subject to a maximum limit of 2.5% of the volume

weighted average market capitalisation of MLE during the Financial Year calculated on the basis of the closing price and number of Stapled Securities on issue at the end of each Business Day.

- (d) If a Trigger Event occurs, the Manager is entitled to be paid in addition to the Base Management Fees a cash payment calculated as follows in lieu of Stapled Securities which might otherwise have been issued to the Manager as Performance Fees in respect of the Financial 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:
- (i) the cash payment is to be equal to the Performance Fees calculated in accordance with clause 19.2(a) as if the date of the occurrence of the Trigger Event was the end of a Financial Year but in determining the MLE Index at the close of the period there is to be substituted for the market price of the Stapled Securities:
- (A) in the case of a takeover bid, the price per Stapled Security 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);
- (B) in the case of a scheme of arrangement, the mid-point of the value range for the Stapled Securities 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 Stapled Security as determined by an independent accountant appointed by the Manager;
- (C) in the case of delisting, the weighted average market price of the Stapled Securities traded on the Australian Stock Exchange during the ten ASX Business Days prior to the Date of Delisting;
- (D) in the case of termination of the Trust, the amount per Unit to be received by the Members from the Trust after accruing the amount payable to the Manager for

Performance Fees plus the value of a Stapled Share.

- (ii) The cash payment is payable as soon as it can be calculated. If there has been any accrual of the Performance Fees from any prior Financial Year, which has not been paid or satisfied by the issue of Stapled Securities, whether due to the MLE Return being negative although exceeding the Benchmark Return or otherwise, the amount accrued shall be paid in cash rather than Stapled Securities on the date of occurrence of the Trigger Event.

Fees Offset

19.2A

- (a) If the Manager or a related body corporate of the Manager receives in a given period management fees (whether base fees or performance fees) for managing any trust or company in which the Trust has at least a 50% direct or indirect equity interest ("Sub-Entity Fees") then the fees to which the Manager is entitled under clauses 19.1 and 19.2 will be reduced for that period by an amount equal to a proportion of the Sub-Entity Fees based on the proportion of the trust or company which is directly or indirectly owned by the Trust at the end of the relevant period.
- (b) If the Sub-Entity Fees include an amount which is a substitute for the issue of Stapled Securities which would otherwise have been issued to the Manager pursuant to clause 19.2, then the entity receiving that part of the Sub-Entity Fees may be granted a right to convert that sum into Stapled Securities so long as the issue price of those Stapled Securities is the same as if the equivalent number of Stapled Securities had been issued to the Manager and the total number of Stapled Securities to be issued on account of Performance Fees is not increased.

Retirement of Manager

- 19.3 If the Manager retires or is removed, it is entitled to be paid fees calculated up to the date of its retirement on a pro rata basis.

Waiver of fees

- 19.4 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.

Expenses

- 19.5 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust⁴⁵ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act 2001. 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, Stapled Securities 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 or Stapled Securities;
 - (f) the admission of the Trust to the official list of ASX and compliance with the Listing Rules;
 - (g) underwriting of any subscription or purchase of Units or Stapled Securities, 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 of its obligations, representations or warranties under any such underwriting agreement;
 - (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members (including any meetings held in conjunction with members of the Company);
 - (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;

⁴⁵ Refer Section 601GA(2)(b)

- (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 premiums⁴⁶ 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 Act 2001;
- (r) the preparation, implementation, amendment and audit of the compliance plan;
- (s) complying with any law, and any request or requirement of the ASIC; and
- (t) custodian fees.

Effect of Stapling

- 19.5A While Stapling applies the Manager may in its absolute discretion agree the apportionment of expenses incurred in connection with both the Trust and the Company or with Stapled Securities, as between the Trust and the Company. Any such apportionment could result in the Trust bearing the entirety of the expense or it being shared with the Company or borne totally by the Company.

GST

- 19.6 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or

⁴⁶ See Section 601JG

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.

- 19.7 In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.
- 19.8 Where an expense covered by clause 19.5 is paid from the Assets to the Manager, the payment shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.
- 19.9 An amount may only be paid or reimbursed out of the Assets under clauses 19.5 to 19.8 if it relates to the proper performance of the Manager's duties.

Priority of Manager's remuneration

- 19.10 The remuneration of the Manager has priority over the payment of all other amounts payable from the Assets of the Trust. The Manager has a first and paramount lien over any Assets of the Trust held by it from time to time for all amounts owing to it under clauses 19.1 and 19.2. The Manager may withhold and set-off such amounts against any moneys so held by it.

20 Duration of the Trust

Initial settlement

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

Termination

- 20.2 The Trust terminates on the earliest of:
- (a) the Date of Delisting;
 - (b) a date which the Members determine by special resolution; and
 - (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law⁴⁷.

Restriction on issue and redemption of Units

- 20.3 Despite any other provision of 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.
- 20.4 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 Manager may distribute proceeds of realisation in instalments. The net proceeds of realisation, after making

⁴⁷ See Part 5C.9 on winding up

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 formula for the amount a particular Member is to receive:

$$\frac{(A+X) \times B}{C} - Y$$

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 number of Fully Paid Units and Partly Paid Units held by the Member as at termination;
- C = the aggregate number of Fully Paid Units and Partly Paid Units in issue as at termination;
- X = the Aggregate Unpaid Amount (if any) and interest (if applicable); and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination and interest (if applicable).

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 21.3 results in a negative dollar amount, then that Member must pay to the Manager within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Manager may distribute proceeds of realisation in instalments.

- 21.4 Subject to the Corporations Act 2001 and the terms of 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 Act 2001 allows⁴⁸, this constitution may be amended:

⁴⁸ 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

- (a) by Resolution⁴⁹; 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 2001; or
 - (b) a condition of any relief from the provisions of the Corporations Act 2001 granted by the ASIC on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager

requires that this constitution contain certain provisions (including a requirement that provisions be included for the relief to operate in relation to the Trust and the Manager), then those provisions are deemed to be incorporated into this constitution at all times at which they are so required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 22.1 does not apply to provisions deemed by this clause 22.2 to be incorporated in the constitution.

- 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 the Trust is Listed:
- (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;

⁴⁹ The required majority for such a resolution under section 601GC(1)(a) is 75%.

- (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 Act 2001.

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 Act 2001⁵⁰.

24 Complaints

If and for so long as the Corporations Act 2001 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;

⁵⁰ See section 601JF

- (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.

While Stapling applies the Manager may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 24 to ensure an efficient and equitable resolution of the complaint.

25 Restricted Securities

- 25.1 Clause 25.2 only operates:
- (a) while the Trust is Listed 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 Act 2001.
- 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 (together with any Shares Stapled to those Units) held by a Member is less than \$2000; or
 - (b) while the Trust is Listed, the Units (together with any Shares Stapled to those 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 (together with any Shares Stapled to those 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 (together with any Shares Stapled to those Units) under this clause 26.
- 26.3 The Manager will not sell or redeem the relevant Units (together with any Shares Stapled to those 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 (together with any Shares Stapled to those Units); or
 - (ii) the market value of the Units (together with any Shares Stapled to those 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 (together with any Shares Stapled to those 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 (together with any Shares Stapled to those 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 (together with any Shares Stapled to those Units) under this clause 26.

27 Proportional takeover approval provisions

Definitions

- 27.1 In this clause 'approving resolution', 'proportional takeover bid' and 'approving resolution deadline' have the meanings given to those terms in the Corporations Act 2001.

Manager to refuse to register transfers

- 27.2 While clause 27 has effect, the Manager must refuse to register a transfer of Units which are not entered on the Register that would give effect to a contract resulting from the acceptance of a proportional takeover bid in respect of the Units unless and until an approving resolution is passed, or deemed to be passed, in accordance with this document.

Manager to ensure an approving resolution is voted on

- 27.3 If a proportional takeover bid is made in respect of Units the directors of the Manager must ensure that an approving

resolution is voted on in accordance with this document by the approving resolution deadline.

- 27.4 The approving resolution must be voted on at a meeting convened and conducted as if it is a general meeting of the Trust convened and conducted in accordance with this constitution and the Corporations Act 2001 or by means of a postal ballot conducted by the Manager in accordance with the Corporations Act 2001.

Entitlements to vote

- 27.5 The bidder under the proportional takeover bid and any person who is associated with the bidder for the purposes of the Corporations Act 2001 must not vote on an approving resolution.
- 27.6 The persons entitled to vote on an approving resolution are those persons, other than the bidder or an associate of the bidder, who, at the end of the day when the first offer was made under the proportional takeover bid, held bid class securities.
- 27.7 Each person who is entitled to vote is entitled to one vote for each Unit of that class held at the end of the day when the first offer was made.

When an approving resolution is taken to be passed

- 27.8 An approving resolution is taken to be passed if the proportion of the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half. If it is not so passed, it is taken to be rejected.

Bidder and the ASX to receive written notice

- 27.9 If a resolution to approve the bid is voted on in accordance with the provisions of this constitution before the approving resolution deadline the Manager must, on or before the approving resolution deadline, give the bidder and the ASX a written notice stating that a resolution to approve the bid has been voted on and whether the resolution was passed or rejected.

Effect of failure to pass resolution in certain time

- 27.10 If the approving resolution is not voted on by the approving resolution deadline a resolution to approve the proportional takeover bid is deemed to have been passed in accordance with this document.

Cessation of effect of clause

- 27.11 This clause 27 ceases to have effect on the day 3 years after the later of the following dates:
- (a) the date when those clauses first became binding on the Trust; and
 - (b) the date when those clauses are last renewed by the Members passing a special resolution for its renewal.

28 [Deleted]

29 Stapling

29.1 Stapling

- 29.2 Each Unit is Stapled to a Share to form a Stapled Security and each Stapled Security must be registered in the Joint Register. The intention being that a Unit and a Share which are Stapled together are treated as one security to the extent possible at law.

Ability of Manager to Staple

- 29.3 The Manager may at any time staple an un-Stapled Unit to a Share which is not Stapled.

Issue of Stapled Securities required

- 29.4 While Stapling applies, the Manager must not issue Units unless satisfied that each of those Units will be Stapled to a Share to form a Stapled Security.

Paramountcy of Stapling

- 29.5 While Stapling applies, the Manager and the Members must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security.
- 29.6 While Stapling applies, the Manager must use every endeavour to procure that the Stapled Securities are Listed as one joint security and that Units are dealt with under this constitution in a manner consistent with the provisions of the constitution of the Company as regards Shares Stapled with those Units.
- 29.7 However, nothing in clause 29 prohibits the Manager from determining the Unstapling Date.

Unstapling Date

- 29.8 Subject to the Corporations Act 2001, the Listing Rules and approval by special resolutions of the Members and the members of the Company respectively, the Manager may determine that the Stapling provisions of this constitution will cease to apply and that a particular date is to be the Unstapling Date.
- 29.9 On and from the Unstapling Date, each Unit ceases to be Stapled to a Share and the Manager must do all things reasonably necessary to procure that each Unit is Unstapled.
- 29.10 If the Manager determines to Unstaple the Stapled Securities, this does not prevent the Manager from (subject to the same resolutions of the Members and members of the Company):

- (a) subsequently determining that the Stapling provisions should recommence; and
- (b) stapling an Unstapled Unit to a Share which is not Stapled.

Variation of Stapling provisions

- 29.11 While Stapling applies, the consent of the Company must be obtained to any amendment to this constitution which:
- (a) directly affects the terms on which Units are Stapled; or
 - (b) removes any restriction on the transfer of a Stapled Security unless that restriction also exists for Unstapled Shares and is simultaneously removed for Unstapled Shares.

30 The Proposal

Appointment of Manager as agent and attorney

- 30.1 The Manager is irrevocably appointed the agent and attorney of each Member to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Member to effect the Proposal, including in relation to:
- (a) the Stapling of each Unit held by that Member on the Stapling Date to a corresponding number of Shares; and
 - (b) arranging for each Member to be registered as the holder of those Shares.
- 30.2 The Manager is authorised to execute these documents and do these things without needing further authority or approval from the Members.

Power to implement the Proposal, limitation of liability and approval of documents to implement the Proposal

- 30.3 Having regard to the functions of the Manager and without limiting anything else in this clause 30, the Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to effect the Proposal and those powers apply notwithstanding, and are not limited by, any provision of this constitution. This includes without limitation:
- (a) procedures with respect to any Member or member of the Company to whom an issue of Shares as part of the Proposal may be void or illegal to ensure that those Members or members of the Company either receive Stapled Securities in a manner which is valid and legal or to ensure that the Units, Shares or Stapled Securities of those Members or members of the Company are sold

at fair market value, with the reasonable costs of sale deducted by the Manager; and

- (b) the procedures necessary to ensure that participants in the distribution reinvestment plan of the Trust for the period ending 30 June 2003 are issued with Stapled Securities.
- 30.4 Subject to the Corporations Act 2001, the Manager will not have any liability of any nature whatsoever to Members arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the implementation of the Proposal.
- 30.5 Without limiting any other provision of this clause 30, the execution by the Manager of the legal deeds, agreements and other documents that provide for the implementation of the Proposal and any amending deed, agreement or document is authorised, approved and ratified.

Costs of the Proposal

- 30.6 The Manager is authorised to pay all costs relating to the Proposal which in its absolute discretion are appropriately paid out of the Trust as a duly authorised expense of the Trust.

Issue of Units under the Proposal

- 30.7 The Manager is authorised to effect the issue of Units to Leisure Equity Partners Pty Limited ACN 104 542 127 under the Proposal, at an issue price of \$0.702 per Unit.

Paramountcy

- 30.8 This clause 30 has effect notwithstanding any other provision of this constitution and any provision of this constitution which is inconsistent with this clause 30 does not operate to the extent of any inconsistency.

Definitions

- 30.9 In this clause 30 **Proposal** means the restructuring propels detailed in the explanatory memorandum issued by the Manager and the Company and dated on or about 2 May 2003.

31 Top Hat Proposal generally

Definitions

- 31.1 In clauses 32 to 36, unless the context otherwise requires:
- ASX** means ASX Limited or the Australian Securities Exchange, as appropriate.
- CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by the ASX Settlement Pty Ltd ABN 49 008 504 532.

Company means Ardent Leisure Limited (ABN 22 104 529 106).

Company Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act 2001 between the Company and all Company Shareholders substantially in the form annexed to the Securityholder Booklet, together with any alterations or conditions made by the Company to which NewCo agrees or made or required by the Court under section 411(6) of the Corporations Act 2001, or otherwise desirable or necessary to comply with applicable law.

Company Shareholder means a person registered as the holder of a Share, including any person jointly registered and **Company Shareholders** means all of them.

Consolidated NewCo Share means a NewCo Share on issue immediately subsequent to the conversion of NewCo Shares into that number of NewCo Shares equal to the number of Stapled Securities that had been on issue at the Record Date.

Court means the Supreme Court of New South Wales.

Effective means all of the following events taking place:

- (a) in relation to the Company Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act 2001, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) but in any event at no time before an office copy of the orders of the Court is lodged with ASIC; and
- (b) in relation to the Trust Scheme, the Trust Constitution Amendments coming into effect pursuant to section 601GC(2) of the Corporations Act 2001.

Effective Date means the earliest date on which both of the Schemes become Effective.

Effective Time means the earliest time and date on which both of the Schemes become Effective.

Eligible Securityholder means the Scheme Participants (other than Ineligible Foreign Securityholders) and the Sale Agent in respect of the Ineligible Securities.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

Foreign Securityholder means a Securityholder as at the Record Date:

- (c) who is (or who is acting on behalf of) a citizen or resident of a place outside Australia and its external territories; or
- (d) whose address shown in the Stapled Security Register is a place outside Australia and its external territories (or who is acting on behalf of such a person).

Implementation means the completion of all the Implementation Steps in accordance with clause 6.1(a) of the Implementation Deed.

Implementation Date means the date on which Implementation occurs, being 24 December 2018 (or such other date as the parties to the Implementation Deed may agree).

Implementation Deed means the Implementation Deed between the Company, the Manager and NewCo in connection with the Top Hat Proposal.

Implementation Step means each of the steps set out in Schedule 3 of the Implementation Deed.

Ineligible Share has the meaning in clause 32.4(b).

Ineligible Foreign Securityholder has the meaning given in clause 32.4(a).

Ineligible Securities means Ineligible Shares and Ineligible Units.

Ineligible Unit has the meaning given in clause 32.4(b).

Meetings means the meetings for which notice is given under the Securityholder Booklet.

NewCo means Ardent Leisure Group Limited, the ultimate parent of the MLE following Implementation.

NewCo Constitution means the constitution of NewCo.

NewCo Deed Poll means the deed poll under which NewCo covenants in favour of each Eligible Securityholder and each Ineligible Foreign Securityholder to perform acts attributed to it under the Schemes.

NewCo Shares means fully paid ordinary shares in NewCo.

Operating Rules means the Settlement Operating Rules made by ASX Settlement.

PPSA means the *Personal Properties Securities Act 2009* (Cth)

Record Date means 7.00 pm on Monday, 3 December 2018, or such other date as agreed by the parties to the Implementation Deed.

Registry means Link Market Services Limited (ABN 54 083 214 537)

Relevant Sale Facility Consideration means, in relation to each Ineligible Foreign Securityholder, an amount equal to the average price at which Sale Securities are sold by the Sale Agent under the Sale Facility multiplied by the corresponding number of Sale Securities to which the Ineligible Foreign Securityholder would otherwise have been entitled to under the Schemes, less any applicable brokerage, stamp duty and other selling costs, taxes and charges (to the extent not met by the Company and the Manager) (subject to rounding to the nearest whole cent or, if the amount calculated is exactly half a cent, subject to rounding down to the nearest whole cent).

Requirements means the Corporations Act 2001, the Listing Rules and the Operating Rules, each as modified by any relevant exemption or waiver.

Resolution means a resolution substantially in the form set out in the Securityholder Booklet.

Sale Agent means the entity appointed by the Company and the Manager, to act as the sale facility nominee under the Schemes.

Sale Facility means the facility to be established and implemented by ALL, in agreement with the Manager, under which Ineligible Units (along with Ineligible Shares) are transferred to the Sale Agent and Sale Securities are sold on the ASX in accordance with clause 34.

Sale Facility Account means the account established or already in existence by the Sale Agent in its own name, or in the name of a nominee appointed by the Sale Agent, into which the Sale Agent must deposit the gross sale proceeds received in respect of the Sale Securities.

Sale Period means the 29 Business Day period commencing on the date on which Consolidated NewCo Shares commence trading on a normal (T+2) settlement basis.

Sale Security means a Consolidated NewCo Share held by the Sale Agent following participation by the Sale Agent in the implementation of the Top Hat Proposal in respect of the Ineligible Securities that is, or is to be, sold under the Sale Facility.

Scheme means this Trust Scheme.

Scheme Participant means a Securityholder as at the Record Date, and Scheme Participants means all of them.

Schemes means the Scheme and Company Scheme.

Securityholder means a person who is registered in the Stapled Security Register as the holder of Stapled Securities who is also relevantly a Company Shareholder or Member, whether together as the holder of Stapled Securities or separately as the context may require, and Securityholders means all of them.

Securityholder Booklet means the notices of meeting, explanatory statement and accompanying materials in connection with the Top Hat Proposal despatched to the Securityholders.

Subscription Form means a duly completed and executed proper instrument of subscription for the NewCo Shares, which may be a master subscription form.

Top Hat Proposal means the proposed restructure of MLE, pursuant to which NewCo would be established as the ultimate parent with the MLE becoming wholly owned entities of NewCo, as described in the Securityholder Booklet (including the Schemes).

Transfer Form means a duly completed and executed proper instrument of transfer for the Units for the purposes of section 1071B of the Corporations Act 2001, which may be a master transfer form.

Trust Constitution Amendments means the amendments to this constitution to enable the Trust Scheme.

Trust Scheme means the arrangement, in accordance with Guidance Note 15: Listed Trusts and Managed Investment Scheme Mergers issued by the Takeovers Panel to the extent reasonably applicable, under which NewCo acquires all of the Units facilitated by amendments to this constitution as set out in clauses 32 to 36 of this constitution.

Implementation Steps

- 31.2 The Manager acknowledges that under the Implementation Deed, the Implementation Steps for the Top Hat Proposal will take place at the times and in the order described in the Implementation Deed.

32 Implementation of Scheme

Determination of Ineligible Foreign Securityholders

- 32.1 After the Record Date and prior to the Implementation Date, the Manager must in agreement with the Company determine whether a Foreign Securityholder, or a class of Foreign Securityholders, is eligible to have issued to it NewCo Shares.
- 32.2 The determination under clause 32.1 is to be made having regard to whether the participation of the Foreign Securityholder in the Top Hat Proposal would be lawful and not unduly onerous for NewCo or the MLE under the laws of a place outside Australia and its external territories.
- 32.3 A determination under clause 32.1 may specify that a Foreign Securityholder is eligible to participate in respect of some or all of its Stapled Securities (comprising Shares and Units) held at 7.00 pm on the Record Date, with or without conditions.
- 32.4 A Foreign Securityholder may only receive NewCo Shares in accordance with the determination under clause 32.1 and is not otherwise eligible to receive NewCo Shares in respect of any of its Stapled Securities (comprising Shares and Units). For the purposes of this Scheme:
- (a) each such Foreign Securityholder which is ineligible to receive NewCo Shares in respect of all or some of its Stapled Securities is referred to as an Ineligible Foreign Securityholder;
 - (b) each Share and Unit comprising a Stapled Security in respect of which the Ineligible Foreign Securityholder is ineligible to receive NewCo Shares is referred to as an Ineligible Share or Ineligible Unit; and
 - (c) a reference to an Ineligible Foreign Securityholder only applies in relation to its Ineligible Share or Ineligible Units.
- 32.5 The determination under clause 32.1 is final and conclusive of a Foreign Securityholder's eligibility to receive NewCo Shares.

Transfer to Sale Agent

- 32.6 After the Record Date and on or prior to the Implementation Date, all of the Ineligible Units together with all rights and entitlements attaching to those Ineligible Units will be transferred to the Sale Agent without the need for any further act by any Ineligible Foreign Securityholders (other than acts performed by the Manager (or its directors or officers) as attorney and agent for the Ineligible Foreign Securityholders).
- 32.7 The Manager must procure that the Sale Agent accepts, the transfer of Ineligible Units under clause 32.6 by immediately

executing the Transfer Form as transferee and delivering it to the Manager for registration.

- 32.8 In order to give effect to the transfer of Ineligible Units under clause 32.6, the Manager will:
- (a) as attorney and agent for each Ineligible Foreign Securityholder, execute the Transfer Form, which was previously duly completed and executed by the Sale Agent, to transfer all Ineligible Units to the Sale Agent; and
 - (b) register the transfer of Ineligible Units and enter the name of the Sale Agent in the Register in respect of all Ineligible Units transferred under clause 32.6.

Transfer to NewCo

- 32.9 Following the transfers set out in clauses 32.6 to 32.8 and subject to the provision of the NewCo Shares in the manner contemplated by clause 33:
- (a) on the Implementation Date, all of the Units held by Eligible Securityholders together with all rights and entitlements attaching to those Units will be transferred to NewCo without the need for any further acts by any Eligible Securityholders (other than acts performed by the Manager (or its directors or officers) as attorney and agent for the Eligible Securityholders);
 - (b) the Manager must procure that NewCo accepts the transfer of Units under clause 32.9(a) by immediately executing the Transfer Form as transferee and delivering it to the Manager for registration;
 - (c) in order to give effect to the transfer of Units under clause 32.9(a), the Manager will:
 - (i) as attorney and agent for each Eligible Securityholder, execute the Transfer Form, which was previously duly completed and executed by NewCo, to transfer all Units held by the Eligible Securityholders to NewCo; and
 - (ii) as soon as possible following receipt of the Transfer Form, register the transfer of Units and enter the name of NewCo in the Register in respect of all Units transferred under clause 32.9(a).

Scheme Participants' agreements

- 32.10 Each Scheme Participant agrees to the transfer of all of their Units together with all rights and entitlements attaching to those Units in accordance with this clause 32 and agrees to any

variation, cancellation or modification of their rights constituted by or resulting from this clause 32.

Scheme Participants' warranties

- 32.11 Each Scheme Participant is taken to have warranted to the Manager and NewCo (and in the case of an Ineligible Foreign Securityholder, to the Sale Agent), and appointed and authorised the Manager as its attorney and agent to warrant to NewCo (and in the case of an Ineligible Foreign Securityholder, to the Sale Agent), that:
- (a) to the extent permitted by law, the Units transferred under this clause 32 will be transferred free from all Encumbrances; and
 - (b) they have full power and capacity to sell and to transfer their Units (including any rights and entitlements attaching to those Units) under this Scheme.
- 32.12 The Manager will hold as attorney and agent of each Scheme Participant the benefit of such warranties for NewCo (and in the case of an Ineligible Foreign Securityholder, for the Sale Agent).

Title and rights in Units

- 32.13 To the extent permitted by law, the Units transferred under this clause 32 will be transferred free from all Encumbrances.
- 32.14 NewCo will be beneficially entitled to the Units transferred to it under this clause 32 pending registration by the Manager of NewCo in the Register as Unit Holder.

33 NewCo Shares

Subscribing for NewCo Shares

- 33.1 In consideration for the transfer of Units under clause 32.9(a), each Eligible Securityholder will be entitled to receive 1 NewCo Share for every 1 Unit transferred under this Scheme.
- 33.2 The Manager, as attorney and agent for each Eligible Securityholder, will apply for the number of NewCo Shares to be issued to that Eligible Securityholder under this Scheme.
- 33.3 On the Implementation Date and following the transfers set out in clauses 32.6 to 32.8, in order to apply for the issue of NewCo Shares under clause 33.2, the Manager will as attorney and agent for each Eligible Securityholder duly complete and execute the Subscription Form in respect of all the NewCo Shares to be issued under this Scheme for the Eligible Securityholders.
- 33.4 Each Eligible Securityholder:
- (a) accepts the NewCo Shares under this Scheme; and

- (b) agrees to become a member of NewCo and be bound by the NewCo Constitution.

Issue of NewCo Shares

- 33.5 On the Implementation Date, in consideration for the transfer of Units to NewCo, the Manager must procure that NewCo:
 - (a) issues the NewCo Shares to each Eligible Securityholder as it is entitled under this Scheme;
 - (b) enters the name and address of each Eligible Securityholder in the NewCo members register in respect of the NewCo Shares to which it is entitled under this Scheme; and
 - (c) ensures that each such NewCo Share is duly and validly issued in accordance with all applicable laws and the NewCo Constitution.
- 33.6 In the case of Units held in joint names, the NewCo Shares to be issued under this Scheme must be issued to and registered in the names of the joint holders.
- 33.7 The entitlement of the Ineligible Foreign Securityholders under this Scheme is satisfied by the Manager providing the NewCo Shares to which the Ineligible Foreign Securityholder would have been entitled (had they been determined to be eligible) to the Sale Agent, and the Sale Agent and the Manager complying with the sale facility provisions under clause 34.

Status of NewCo Shares

- 33.8 NewCo Shares issued to Eligible Securityholders under this Scheme will rank equally in all respects with all existing NewCo Shares.
- 33.9 On issue, each NewCo Share issued to Eligible Securityholders will be fully paid and free from any Encumbrance.
- 33.10 NewCo must use all reasonable endeavours to ensure that NewCo Shares issued for the Schemes are, by no later than the date after the Effective Date, quoted for trading on the ASX on a deferred settlement and post-share consolidation basis.

Consolidated NewCo Shares

- 33.11 Each Eligible Securityholder agrees and acknowledges that, after the issue of NewCo Shares under the Schemes, the NewCo Shares they hold will be converted into that number of NewCo Shares equal to:
 - (a) for a Scheme Participant (other than an Ineligible Foreign Securityholder), the number of Staped Securities they held on the Record Date; and

- (b) for the Sale Agent, the number of Ineligible Securities held by Ineligible Foreign Securityholders (calculated as a Stapled Security) on the Record Date.

Despatch of holding statements

- 33.12 As soon as practicable after the Implementation Date, NewCo must send a certificate or holding statement (or equivalent document) to the registered address of each Scheme Participant representing the number of Consolidated NewCo Shares each Scheme Participant holds pursuant to the Schemes.

34 Sale Facility

Appointment

- 34.1 The Manager must, prior to the Implementation Date, appoint the Sale Agent and must procure that the Sale Agent perform all acts attributed to it under the Schemes and any other things necessary to give effect to the Sale Facility under this clause 34.

Disposal of Consolidated NewCo Shares

- 34.2 The Manager will enforce its contractual rights against the Sale Agent to require that:
 - (a) as soon as is reasonably practicable after the Implementation Date following the consolidation pursuant to clause 33.11, the Sale Agent sells the Sale Securities in such manner, at such prices and at such times as the Sale Agent sees fit and determines in good faith, with the objectives of:
 - (i) achieving the best price for the Sale Securities that is reasonably obtainable on market at the time of the relevant sale bearing in mind prevailing market conditions and prevailing demand for NewCo Shares;
 - (ii) ensuring all sales of the Sale Securities are effected in the ordinary course of trading on the ASX during the Sale Period; and
 - (iii) complying with the Requirements to the extent applicable.
 - (b) the Sale Agent promptly deposits (or procures the deposit of) the gross sale proceeds received in respect of the Sale Securities into the Sale Facility Account;
 - (c) once all the Sale Securities are sold, the Sale Agent must advise the Company of the completion of the sale of each Sale Security, the aggregate sale price of the Sale Securities, any income attributable to the Sale Securities

and the amount of any applicable brokerage, stamp duty and other selling costs, taxes and charges (to the extent not met by the Company and the Manager) deducted; and

- (d) once settlement of the sale of all the Sale Securities has occurred, and in no case later than 5 Business Days thereafter, the Sale Agent transfers the total gross sale proceeds received in the Sale Facility Account less any applicable brokerage, stamp duty and other selling costs, taxes and charges (to the extent not met by the Company and the Manager) to NewCo or the Registry on trust for the relevant Ineligible Foreign Securityholder.

Update by the Registry

- 34.3 The Manager will procure that NewCo will arrange:
- (a) following receipt of information from the Sale Agent in accordance with paragraph 34.2(c), that the Registry calculates the Relevant Sale Facility Consideration for each Ineligible Foreign Securityholder; and
 - (b) no later than 5 Business Days after the Sale Agent has transferred the total gross sale proceeds received in the Sale Facility Account less any applicable brokerage, stamp duty and other selling costs, taxes and charges (to the extent not met by the Company and the Manager) in accordance with paragraph 34.2(d), arranges in respect of each Ineligible Foreign Securityholder for payment of the Relevant Sale Facility Consideration by either:
 - (i) dispatching by mail to the registered address of that Ineligible Foreign Securityholder a cheque or bank draft of the Relevant Sale Facility Consideration for that Ineligible Foreign Securityholder payable in Australian dollars (provided that, in the case of Ineligible Foreign Securityholders who are joint holders of Units, the cheque will be made payable to the joint holders and sent to the holder whose name appears first in the Stapled Security Register as at 7.00 pm on the Record Date); or
 - (ii) making an electronic funds transfer in Australian dollars to an account nominated by that Ineligible Foreign Securityholder for the purposes of the Sale Facility.

Relevant Sale Facility Consideration

- 34.4 Each Ineligible Foreign Securityholder agrees that the payment of the Relevant Sale Facility Consideration is a full discharge of the obligations of the Manager under this clause 34.

- 34.5 The total consideration received by an Ineligible Foreign Securityholder for their Ineligible Securities (calculated as a Stapled Security) held at 7.00 pm on the Record Date must not exceed the Relevant Sale Facility Consideration, whether received under any or all of the Schemes or otherwise.
- 34.6 Each Ineligible Foreign Securityholder agrees that their entitlement to the Relevant Sale Facility Consideration is subject to compliance with applicable law (including on conduct of the sale facility and remittance of funds).

35 Dealings in Units

Determination of identity

- 35.1 To establish the identity and addresses of the Scheme Participants, dealings in Stapled Securities and other alterations to the Stapled Security Register will only be recognised if:
- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Stapled Security Register as the holder of the relevant Stapled Securities on or before 7.00 pm on the Record Date; and
 - (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00 pm on the Record Date at the place where the Stapled Security Register is kept.

Stapled Security Register

- 35.2 The Manager must register any registrable transmission applications or transfers of the Stapled Securities received in accordance with clause 35.1(b) on or before 5.00 pm on the Record Date.
- 35.3 If the Schemes become Effective, a Securityholder (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Stapled Securities or any interest in them after 5.00 pm on the Record Date.
- 35.4 The Manager will not accept for registration or recognise for any purpose any transmission, application or transfer in registrable form or other request in respect of Stapled Securities received after 5.00 pm on the Record Date, or received prior to such time but not in registrable or actionable form (except a transfer to the Sale Agent or NewCo pursuant to clause 32 and any subsequent transfer by NewCo or its successors in title).
- 35.5 For the purpose of determining entitlements to the NewCo Shares, the Manager will maintain the Stapled Security Register and the Register in accordance with the provisions of this clause 35.5 and, following the registration of the transfer of the Ineligible Units from Ineligible Foreign Securityholders

to the Sale Agent and the entry of the name of the Sale Agent in the Register referred to in clause 32.8, the Register in this form will solely determine entitlements to the NewCo Shares.

- 35.6 Any statements of holding in respect of Stapled Securities will cease to have effect after 7.00 pm on the Record Date as documents of title in respect of those Stapled Securities (other than statements of holding in favour of NewCo and its successors in title). After 7.00 pm on the Record Date, each entry current on the Stapled Security Register as at 7.00 pm on the Record Date (other than entries in respect of NewCo or its successors in title) will cease to have effect except as evidence of entitlement to the NewCo Shares.
- 35.7 As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, the Manager will ensure that details of the names, registered addresses and Stapled Securities holdings for each Securityholder as shown in the Stapled Security Register as at the Record Date are available to NewCo in the form NewCo reasonably requires.

Quotation of Units

- 35.8 The Units will only trade on the ASX as part of the Stapled Securities until the close of trading on the ASX on the Effective Date.
- 35.9 As soon as practical after the Implementation Date, the Manager will apply:
- (a) for termination of the official quotation of the Units on the ASX; and
 - (b) to have the Trust removed from the official list of the ASX.

36 General Scheme provisions

Power in connection with Top Hat Proposal

- 36.1 Without limiting the Manager's powers under this deed, with effect from the Effective Time, the Manager has power to do all things which the Manager considers are necessary, desirable or incidental to give effect to the Top Hat Proposal, including under the Implementation Deed.

Power of attorney

- 36.2 From the Effective Time, each Eligible Securityholder and each Ineligible Foreign Securityholder, without the need for any further act, irrevocably appoints the Manager and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:
- (a) enforcing the NewCo Deed Poll against NewCo; and

- (b) executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by them, including (without limitation) executing the transfer of Units and executing the subscription for NewCo Shares.

36.3 The Manager as attorney and agent of each Eligible Securityholder and each Ineligible Foreign Securityholder, may sub-delegate its functions, authorities or powers under clauses 36.2 and 36.3 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

Instructions

36.4 Binding instructions or notifications between an Eligible Securityholder and the Manager relating to Stapled Securities or an Eligible Securityholder's status as a Securityholder (including, without limitation, any instructions relating to payment of distributions or communications from the Manager) will (to the extent permitted by law), from the Record Date, be deemed by reason of this Scheme to be similarly binding instructions or notifications to, and accepted by, NewCo in respect of the NewCo Shares issued to the Eligible Securityholder until those instructions or notifications are, in each case, revoked or amended in writing addressed to NewCo or its share registry. Each Eligible Securityholder agrees that the Manager holds the benefit of this clause 36.4 for NewCo.

Binding effect of Trust Constitution Amendments

- 36.5 From the Effective Time:
- (a) clauses 32 to 36 bind the Manager and all of the present and future Unit Holders (including those who did not attend the Meetings, did not vote at the Meetings, or voted against the Resolutions) and, to the extent of any inconsistency, overrides any other part of this deed;
 - (b) the Manager and, so far as is relevant, the Unit Holders, must give effect to this Scheme in accordance with its terms;
 - (c) without limiting clause 35.2 to 35.7 and subject to section 601GA(2) of the Corporations Act 2001, the Manager shall not have any liability of any nature to Unit Holders beyond the assets of the Trust out of which the Manager is actually indemnified arising directly or indirectly from the Manager doing or refraining from any act, matter or thing pursuant to or in connection with this Scheme; and
 - (d) the Manager may amend the terms of this Scheme if such amendment is not inconsistent with the approval given by Unit Holders under the Resolutions and clauses 32 to 36 shall apply to this Scheme as amended.

Stamp duty

- 36.6 The Manager must pay all stamp duty (including any fines, penalties and interest) payable in connection with the Scheme out of the assets of the Trust.

Further action

- 36.7 The Manager must do all things and execute all documents (on its own behalf and on behalf of each Eligible Securityholder and each Ineligible Foreign Securityholder) necessary or expedient to give full effect to this Scheme and the transactions contemplated by it.

Consent

- 36.8 Each of the Eligible Securityholders and each of the Ineligible Foreign Securityholders:
- (a) irrevocably consents to the Manager doing all things necessary or expedient for or incidental to the implementation of the Schemes; and
 - (b) acknowledges that this Scheme binds the Manager and each Eligible Securityholder and each Ineligible Foreign Securityholder (including those who did not attend the Trust's extraordinary general meeting to approve the resolutions required to implement this Scheme, did not vote at that meeting or voted against this Scheme at that meeting).

37 Interpretation**Definitions**

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

Aggregate Unpaid Amount: the aggregate of the amounts of the Application Prices of all Partly Paid Units which have not been paid.

Application Price: the Stapled Security or Unit price (as applicable) 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: a declaration, modification or exemption from the provisions of the Corporations Act granted by ASIC.

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 or the market operated by it as the context requires.

Average Market Price:

- (a) in all cases other than paragraph (b) below, the weighted average Market Price of fully paid Stapled Securities or fully paid Units (as applicable) during the 10 Business Days immediately preceding the relevant date; and
- (b) for the purposes of determining the Application Price for the reinvestment of distributions into Units under clauses 4.7 and 4.8, the weighted average Market Price of fully paid Stapled Securities or fully paid Units (as applicable) during the 10 Business Days from and including the date on which the Stapled Securities (or Units, as applicable) trade on ASX ex the distribution entitlement for the Distribution Period or Quarter to which the relevant distribution relates.

Base Management Fees: the fees payable to the Manager pursuant to clause 19.1.

Benchmark Index: the hybrid index created by combining on a 50/50 basis the S&P/ASX 300 XPK Property Accumulation Index "LPT 300 Index" and the S&P/ASX 300 XSO Small Ordinaries Accumulation Index "SmallCap Index" but excluding MILE from each index. The index will commence at 100 as at the end of 30 June 2005. If MLE's market capitalisation becomes greater than 40% of the aggregate market capitalisation of the members of the Benchmark Index and MLE, then the Benchmark Index is to be replaced by the S&P/ASX 200 Accumulation Index or its successor.

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

Company: Ardent Leisure Limited, ACN 104 529 106.

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

Date of Delisting: means the date upon which the Manager receives notification from the ASX of the removal of the Trust from the official list of the ASX.

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

Distributable Amount: the amount, if any, determined by the Manager in accordance with clause 9.5(a).

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.

Exchange: means the redemption of Exchangeable Notes by the Issuer and the issue of Stapled Securities to the Holder under the Terms of Issue of Exchangeable Notes.

Exchangeable Notes: means a subordinated note of the Issuer, having the rights, obligations and restrictions set out in the Terms of Issue of Exchangeable Notes.

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 whose issue price has been paid (not credited) in full.

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

GST Act: *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

Issuer: means the issuer of the Exchangeable Notes, being Ardent Leisure Note Issuer Pty Limited (ACN 137 910 546).

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 including a provision

for income tax or capital gains tax which would be payable by the Manager or the Members on the disposal of all or any of the Assets 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 Act 2001⁵¹. Listed:

- (a) in respect of the Trust, the Trust being admitted to the official list of ASX; and
- (b) in the case of Stapled Securities or Units, being Officially Quoted.

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 or replaced from time to time, except to the extent of any express written waiver by ASX.

Manager:

- (a) before the Trust is registered as a managed investment scheme, LeisureWide Management Limited (ACN 079 630 676); and
- (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 Act 2001.

Market Price: of a Stapled Security or a Unit (as applicable) in respect of any Business Day means:

- (a) the last sale price per Stapled Security or Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Stapled Security or Unit on that Business Day, the mid-point of the bid and offer prices per Stapled Security or Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or

⁵¹ Refer Part 5C.6

- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Stapled Security or Unit on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

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

MLE: the Trust and the Company whose Stapled Securities are traded together on ASX.

MLE Index: the accumulation index for MLE 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 Financial Year which shall be replaced by the VWAP of the Stapled Securities for the ten ASX Business Days from and including the day upon which the Stapled Securities trade ex the distribution for the Distribution Period ending at the end of the Financial Year. The index will commence at 100 as at the opening of 1 July 2005 based on the VWAP of the Stapled Securities for the ten ASX Business Days from and including the day upon which the Stapled Securities trade ex the distribution for the Distribution Period ending 30 June 2005.

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.

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.

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 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 19.2 whether to be paid in cash or satisfied by the issue of Stapled Securities.

Redemption Price: the Stapled Security or Unit price (as applicable) calculated in accordance with clause 6.

Register: the register of Members kept by the Manager under the Corporations Act 2001.

Registered: recorded in the Register.

Registration: recording in the Register.

Reserve Account: the account referred to in clause 9.16.

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 majority⁵².

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

SCH business rules means the business rules from time to time of ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532 or any replacement business rules that apply to trading in the Stapled Securities or Units from time to time.

Share: an ordinary share in the Company.

⁵² 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.

Stapled: in relation to a Unit and a Share, being linked together so that one may not be dealt with without the other.

Stapled Security: one Unit and one Share that are Stapled together.

Stapled Security Register: the register of Stapled Securities to be established and maintained by or on behalf of the Manager in accordance with clause 29.1.

Stapling Date: the date determined by the Manager to be the day on which all Units on issue in the Trust will be Stapled to an equal number of Shares to be issued by the Company.

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 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.

Terms of Issue of Exchangeable Notes: means the terms of issue of the Exchangeable Notes (as amended from time to time).

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 Act 2001⁵³ 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;

⁵³ See section 601FC(1)(d)

- (c) a Date of Delisting occurs;
- (d) the Units or the Stapled Securities are the subject of a takeover bid which achieves the threshold for compulsory acquisition under the Chapter 6A of the Corporations Law;
- (e) the Members approve a formal or informal scheme of arrangement pursuant to which the Trust or MLE 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: means all of the Assets for the time being of the Trust but subject to the Liabilities at that time of the Trust.

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 deed.

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

Unit Holder: means Member.

Unstapled: in relation to a Unit, not being Stapled to a Share.

Unstapling Date: the date determined by the Manager to be the unstapling date pursuant to clause 29.8.

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
- (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.

VWAP: the volume weighted average price of the Stapled Securities traded on ASX but excluding all off-market trades and also excluding those trades with condition codes which are excluded from ASX's calculations of VWAP in accordance with section 6.3 of ASX's Market Information Signal E Manual or as otherwise determined by an independent expert appointed by the Manager.

Interpretation

- 37.2 Unless the contrary intention appears, in this constitution:
- (a) terms defined in the Corporations Act 2001 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), quarter or month means a calendar year, calendar quarter or calendar month respectively; and
 - (i) any schedule to this constitution is an operative part of it.

Other documents

- 37.3 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 binding⁵⁴

- 37.4 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

- 37.5 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.

⁵⁴ Refer Section 601GB

Governing law

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

Other obligations excluded

37.7 Except as required by the Corporations Act 2001 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 Act 2001 for constitutions of registered managed investment schemes.

Corporations Act 2001	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 - 19.10
(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, 6.1-6.34
601GB	29.4

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	27 and 28