
Replacement Constitution – CFMG Land Opportunity Fund ARSN 602 610 006

CFMG Equity and Income Funds Limited ACN 112 753 876

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Constitution – CFMG Land and Opportunity Fund ARSN 602 610 006

Dated

Manager **CFMG Equity and Income Funds Limited ACN 112 753 876**
of Level 2, 117 McLachlan Street, Fortitude Valley, Queensland 4006

In favour of

Members

Background

- A The Manager originally established the Scheme by deed poll (**Trust Deed**).
- B Clause 24.1 of the Trust Deed provides that, subject to the *Corporations Act 2001* (**Corporations Act**), the Manager may by deed amend the Trust Deed.
- C Section 601GC(1)(b) of the Corporations Act provides that the constitution of a managed investment scheme may be modified by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.
- D The Manager wishes to amend the Trust Deed as set out in this deed poll.
- E The Manager reasonably considers that the amendments to the Trust Deed contained in this deed poll will not adversely affect Members' rights.
- F In accordance with section 601GC(2) of the Corporations Act, the amendments to the Trust Deed contained in this deed poll will take effect when a copy of this deed poll is lodged with ASIC.

Agreed terms

1 Amendments to the Trust Deed

The Trust Deed is amended by:

- (a) deleting clauses 1 to 25; and
- (b) inserting the provisions in the schedule to this deed.

2 Trust not confirmed

2.1 No declaration or imposition of trust

Nothing expressly or impliedly contained in this supplemental deed (including the background) is effective to confirm, declare or otherwise acknowledge the trust declared under the Trust Deed, or to impress any new or additional trusts upon property held on trust as at the date of this supplemental deed.

2.2 No creation of trust

Nothing in this supplemental deed should be interpreted as creating any new or further trust and, at all times, the Scheme remains a simple trust.

3 Manager and Members bound

The Manager and Members are bound by the terms of the Trust Deed as amended by this document.

4 Governing law

This document will be construed in accordance with the laws of Queensland.

5 Severance

Any provision of, or the application of any provision of, this supplemental deed which is:

- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of the prohibition; or
- (b) void, illegal or unenforceable in any jurisdiction does not effect the validity, legality or unforeseeability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Replacement Constitution

1 Definitions

1.1 Definitions

In this document:

Term	Definition
Accounting Standards	means to the extent they apply to the Scheme: (a) the accounting standards as defined in the Corporations Act; (b) where not inconsistent with the accounting standards referred to in clause (a) generally accepted accounting principles and practices in Australia consistently applied.
Applicable Standards	means to the extent they apply to the Scheme: (a) the Corporations Act including any regulations made under it, subject to any relief, exemption, declaration or modification granted or made by ASIC; (b) any Australian Financial Services Licence issued to the Manager; (c) this document; and (d) other relevant legislation including any regulations made under it, as applying to the Scheme or the Manager.
Application	means an application for a Unit under clause 7.
Application Form	has the meaning set out in clause 7.1(b) and as the context requires refers to the Application Form attached to either the Disclosure Document, or both.
Application Moneys	means any form of valuable consideration received by the Manager for a Unit.
Approved Valuer	means any person who is duly qualified to value or appraise any Assets or Units.
ASIC	means the Australian Securities and Investments Commission.
ASIC Exemption	means: (a) an exemption or modification granted by ASIC under part 5C.11 Corporations Act; and (b) any other instrument issued by ASIC which relates to the Manager or the Scheme.

Term	Definition
Asset	means any asset of the Scheme, including but not limited to: <ul style="list-style-type: none"> (a) a Loan Investment; (b) contributions of money or money's worth to the Scheme; (c) money that forms part of the Scheme property under provisions of this Corporations Act; (d) money borrowed or raised by the Manager for the purpose of the Scheme; (e) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraphs (b), (b) or (d); and (f) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (b),(c), (d) or (e).
Associate	has the meaning given to that term in part 1.2 Corporations Act for the purposes of chapter 5C Corporations Act.
Auditor	means the auditor of the Scheme appointed under part 2M.4 Corporations Act.
Australian Financial Services Licence	has the meaning given to that term in section 761A Corporations Act.
Authorised Investment	means any investment the Manager is not prohibited from making under the Applicable Standards.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Brisbane.
Completion of a Loan Investment	is the date the Loan Investment is repaid in full or such lesser amount as the Manager is able to recover from, or on behalf of, the borrower of that Loan Investment.
Compliance Committee	means the compliance committee, appointed by the Manager for the purposes of part 5C.5 Corporations Act.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
Current Market Value	of an Authorised Investment or Asset means the amount calculated under clause 12 or, if the Manager reasonably believes that value does not accurately reflect the market value of the Authorised Investment or Asset, the amount calculated by the Manager under the prevailing market practice at the time of the valuation.
Custodian	has the meaning set out in clause 15.2.
Derivative	has the meaning given to that term in section 761D Corporations Act.
Disclosure Document	means a product disclosure statement, supplementary product disclosure statement or as the context requires, in accordance with the Applicable Standards, constituting an offer by the Manager inviting Applications for an interest in the Scheme.
Direct Vote	means a vote by a Member in relation to any business at a general meeting at which the Member is not in attendance.
Dispute Resolution Service	means the dispute resolution service approved by ASIC of which the Manager is a member.
Distribution	means a distribution of income or capital of the Scheme under this document.

Term	Definition
Distribution Date	means, for any Distribution Period, the date not more than 90 days after the end of that Distribution Period, or any other time required by the Applicable Standards or determined by the Manager.
Distribution Calculation Date	the last day of each financial year and any other days the Manager designates.
Distribution Period	means: <ul style="list-style-type: none"> (a) for the first distribution, the period from the establishment of the Scheme to the next Distribution Calculation Date; (b) for the last distribution, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Scheme; and (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next Distribution Calculation Date.
Expenses	means all expenses, costs, losses and liabilities of the Scheme (whether paid or unpaid, actual or contingent, present or future) including, all expenses, costs, losses, liabilities and Taxes incurred by the Manager in establishing the Scheme, offering interests, administering the Scheme, winding up the Scheme or otherwise performing its obligations under this document or the Applicable Standards.
GST	has the meaning given to that term in the GST Act.
GST Act	means <i>A New Tax System (Goods & Services Tax) Act 1999</i> (Cth).
Income	means, for any period, the net income of the Scheme determined by the Manager in accordance with generally accepted accounting principles or if no determination is made, it means 'net income' of the Scheme under section 95(1) of the Tax Act.
Income Distribution	means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 13.7.
Issue Price	in relation to a Unit, means the dollar value of the total consideration payable at any time for the issue of that Unit determined in accordance with clause 8 pursuant to which the Unit was issued .
Land	means: <ul style="list-style-type: none"> (a) a freehold estate or Crown leasehold, or interest in real property, or inundated leasehold land, or inundated freehold land in any part of the Commonwealth of Australia or any State or Territory; and (b) includes without limitation buildings, fixtures and fittings (including furnishings) and other erected or installed improvements.
Liquid Scheme	has the meaning in part 5C.6 of the Corporations Act.
Loan Investment	means a loan or equity investment which may (but is not required) be secured by any, some or all of a registered mortgage or charge over the assets and undertaking of a person, a registered mortgage over Land or a charge over property.
Manager	means the person acting as trustee and, if applicable, the responsible entity of the Scheme from time to time.
Market Value	means the market value of an Asset determined by an Approved Valuer.
Member	means a member of the Scheme.

Term	Definition
Member's Fund	means each individual Member's interest in the Scheme established in accordance with this document and is equal to the Member's proportionate interest in the funds paid into the Scheme Accounts in accordance with clause 3.6 upon, as applicable, Completion of a Loan Investment or Partial Completion of a Loan Investment and recognising a Member may have more than one Member's Fund.
Member Liabilities	means the liability of the Scheme to the Members for their undivided interest in the Assets.
Net Asset Value	means the Current Market Value of all Assets in the relevant class less all Scheme liabilities (excluding Member Liabilities) relevant to that class.
Partial Completion of a Loan Investment	is the date upon which a Loan Investment is partially repaid in accordance with the terms and conditions on which the Loan Investment was made.
Record Date	means the date set by the Manager (under the Applicable Standards if relevant) for ascertaining entitlements to Distributions, new Units or other benefits.
Register	has the meaning set out in clause 14.
Registered	means where the Scheme is a registered managed investment scheme under the Corporations Act.
Scheme	means the trust created by this document.
Scheme Accounts	means the total of all Members' Funds and Units as held in Authorised Investments but does not include Loan Investments.
Scheme Fund	includes: <ul style="list-style-type: none"> (a) amounts subscribed for any Units; (b) each Sub Scheme; (c) any Authorised Investment made by the Manager; (d) the proceeds of sale, redemption or other dealing with any Authorised Investment; (e) all accretions to, or the income, profits or gains of any Authorised Investment; (f) money lent to or advanced to the Manager under this document; (g) amounts owing by debtors to the Scheme; and (h) any other property of any description held on the Scheme of this document.
Scheme Value	means the value of the Assets calculated under clause 12.
Scheme Liabilities	means, as at a particular day, the total of losses, Taxes, fees and expenses and other liabilities of the Manager relating to the Scheme and includes accrued but unpaid Member entitlements in connection with the Scheme, but excludes Member Liabilities.
Security	means a financial product, as defined in section 764A Corporations Act and including an interest in a managed investment scheme which does not require registration because of section 601ED(1) Corporations Act, acquired, and held, as an Asset.

Term	Definition
Security Property	means property that is property of the Scheme for the purposes of the Corporations Act being property held by or for the Manager in connection with the Scheme.
Sub Scheme	means a Loan Investment or money attributable to a specific Member in a Scheme bank account and not allocated to a Loan Investment.
Supply	has the meaning given to that term in the GST Act.
Tax Act	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth), as the case may be, as amended and a reference to any section of the 1936 Act includes a reference to the corresponding or rewritten section in the 1997 Act.
Tax Invoice	has the meaning given to that term in the GST Act.
Tax or tax	means income tax, tax on the acquisition of any Asset, tax on the disposal of any Asset, goods and services tax, debits tax, land tax, withholding tax, financial institutions duty, stamp duty and other taxes, duties, levies, imposts and charges payable by the Manager to any person, in relation to the Scheme or the Units, and includes related interest, penalties and other amounts, but does not include Tax payable by the Manager for income or gains earned in performing its functions as Manager.
Taxable Supply	has the meaning given to that term in the GST Act.
Termination Date	means the date the Scheme is terminated under clause 20.1.
Unit	means the beneficial interest of a Member in a Member's Fund constituted for that Member and forming part of this Scheme.
Units on Issue	means the number of Units on issue at the date of calculation.
Valuation Date	means the latest date on which the Market Value of an Asset was calculated.
Value of the Loan Investment	is the outstanding value of the Loan Investment (including any interest or costs capitalised to the outstanding loan principal) on which interest is calculated as at the date of calculation.
Withdrawal Request Form	means the withdrawal request form in the form acceptable to the Manager from time to time.

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.
- (l) a reference to '\$' or 'dollar' is to Australian currency;
- (m) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (n) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (o) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (p) a power to do something includes a power, exercisable in like circumstances, to revoke or undo it. A reference to a power is also a reference to authority or discretion; and
- (q) the following words have the meaning given to that term in the Corporations Act:

administrator	property	responsible entity
deed	registered company auditor	securities
entity	registered office	solvent
insolvent	registered scheme	substantial holding
managed investment scheme	related body corporate	
month	related entity	

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Registered managed investment scheme

The Scheme may be Registered.

1.5 If there are exemptions or modifications

If relief from the provisions of the Corporations Act is given by an ASIC instrument:

- (a) the provisions of this document operate subject to the ASIC instrument;
- (b) if relief from the provisions of the Corporations Act is given by an ASIC instrument on condition that this document includes specified provisions, then, while the condition applies, the provisions:
 - (i) are taken to be included in this document; and
 - (ii) prevail over the other provisions of this document to the extent of any inconsistency;
- (c) if the relief is granted by class order (rather than specifically for the Scheme), the ASIC instrument applies.

1.6 Inconsistency

Where the Scheme is Registered, to the extent there is any inconsistency between this document and the Corporations Act, the Corporations Act will prevail.

2 The Scheme

2.1 Vesting of Assets

- (a) The Assets of the Scheme vest in the Manager on trust for the Members on the terms of this document.
- (b) The Scheme is established for, and must be maintained for, the benefit of the Members, on the terms of this document.

2.2 Establishment of the Scheme

The Scheme was established on the date of execution of this document by the Manager's nominee who subscribed \$10 to the Scheme and was issued 10 Units in return for its payment.

2.3 Name

- (a) The Scheme is called CFMG Land and Opportunity Fund.
- (b) If the Manager ceases to hold office under this document, the newly appointed responsible entity must, on request by the retired Manager, amend this document so that the current name or any former name of the retired Manager, or any similar name, or name reasonably connecting the Manager or its Associates to the Scheme, does not appear in the name of the Scheme.

2.4 Change of name generally

The Manager may change the Scheme's name at its discretion.

2.5 Members bound

This document binds each Member and all persons claiming through each of them as if each Member was severally a party to this document.

3 The Manager

3.1 Appointment

The Manager:

- (a) declares it will hold all Assets on trust for the Members on the terms of this document; and
- (b) in the event the Scheme is Registered, appointed responsible entity for the Scheme.

3.2 Management of Scheme Assets

The Manager must manage the Assets and perform its obligations to the Scheme under this document and the Applicable Standards.

3.3 Separate funds

The Manager declares that it holds and will at all times hold each Member's Fund on separate trusts and the Manager must maintain adequate records to identify each Member's Fund. The Member's Funds may be held together with any Assets, including in a single bank account, and with other Member's Funds.

3.4 Powers and duties

- (a) The Manager has all the powers of a natural person over the Assets and the Scheme.
- (b) The Manager may exercise any of its powers in relation to the Scheme as it considers necessary or desirable.
- (c) The Manager may, subject to its obligations at law, exercise any of its powers in relation to the Scheme even if it has a personal interest in the mode or result of exercising the power.
- (d) The Manager may, subject to its obligations at law, do whatever it thinks proper in the management and operation of the Scheme.
- (e) Without limiting the operation of this clause, and without prejudice to the Manager's obligations under this document, the Manager has the following powers in respect of the Scheme:
 - (i) to make, purchase and sell any Authorised Investment for cash or upon terms;
 - (ii) to borrow and incur liabilities and obligations of any kind either unsecured or secured (and acquire Derivatives relative to borrowings), and in no circumstances will the Manager be liable to satisfy any rights in respect of any matter

undertaken in respect of this power out of any funds, property or assets other than the Assets;

- (iii) to enter into contracts of all kind, including contracts of guarantee and indemnity; and
- (iv) all the powers necessary or desirable for the performance of its duties in respect of the Scheme (including its obligations under the document).
- (f) The Manager need not perform any acts for which it considers it may not have a right of full indemnity from the Scheme, other than to the extent it is required to act under the Applicable Standards.

3.5 Investment power

- (a) Subject to the Applicable Standards, the Manager may invest or apply the Assets as it thinks fit.
- (b) The Manager has, subject to the terms of this document, complete and unfettered discretion to invest Member's Funds.

3.6 Repayment of a Member's Funds

The Manager must within 30 days of the Completion of a Loan Investment, deposit those Members' Funds which constitute the Loan Investment in the Scheme Accounts and make them available for withdrawal by those Members in accordance with clause 11.

3.7 Retirement

The Manager:

- (a) may retire as Manager of the Scheme under the Applicable Standards; and
- (b) must retire as Manager of the Scheme if it is removed from its office.

3.8 Appointment of new Manager

On the retirement or removal of the Manager, the new Manager must be appointed under the Applicable Standards.

3.9 Consequences of change of trustee

If the trustee changes:

- (a) the new trustee must settle with the former trustee the amount of any money payable to the former trustee under this document;
- (b) where the Assets are held by the trustee in its own name as trustee, the former trustee must vest the Assets in the new trustee; and
- (c) subject to the Applicable Standards the former trustee is released from all obligations in relation to the Scheme arising after the time it retires or is removed.

4 Assets

4.1 Assets held for Members

The Manager holds the Assets on trust for the Members on the terms of this document.

4.2 Holding of Assets

All Assets must be held:

- (a) by the Manager; or
- (b) if required by the Applicable Standards or the Manager thinks it necessary or appropriate, by a Custodian appointed by the Manager.

4.3 Custodian holding Assets

The Custodian of any Assets must hold it either:

- (a) directly in its name; or
- (b) indirectly by any asset title, transfer or holding system approved by the Manager.

5 Scheme divided into Units

5.1 Units

- (a) The beneficial interest in the Scheme will be divided into Units. Subject to the provisions of this document, and any class rights each Unit represents an undivided part of the beneficial interest in the Sub Scheme.
- (b) The Manager will create and issue Units. The Manager may create and issue Units of different classes with different entitlements and priorities as determined by the Manager on their issue.
- (c) Subject to any exception contained in this document or an ASIC Exemption, Units must be issued at the Issue Price.

5.2 Liability of Scheme and Member's Funds

The Member of each Member's Fund is not responsible for, or subject to, any claim in respect of a liability incurred in respect of the Scheme, another Sub Scheme, another Member's Fund or a Loan Investment.

5.3 Nature of beneficial interest

Subject to clause 5.4, a Member is entitled, as provided in this document or as provided by the Applicable Standards, to a specific beneficial interest in each Loan Investment to which the Member's Funds are allocated in proportion to their investment and subject to any particular rights and restrictions applicable to their Unit but such Unit does not entitle the Member other than is provided by this document:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

5.4 Additional classes

Notwithstanding any other provision in this Constitution, the Manager may create separate classes with Members being allocated to those classes within a Loan Investment. The terms of issue of the classes will be disclosed in the relevant Disclosure Document.

5.5 Priority Units

Where a borrower in a Loan Investment is in default or in arrears on its interest payments and the Manager considers it is necessary or appropriate to advance further funds on the Loan Investment to:

- (a) pay rates, land taxes or any other taxes;
- (b) meet the cost of improving the security property the subject of the Loan Investment;
- (c) undertake any action the Manager considers appropriate in the circumstances,

then the Manager can create and issue Units which have a priority (for the payment of income and capital) to the existing Units on issue to the Members in the Sub Scheme (**Priority Units**), provided:

- (d) before the offer of Priority Units is made to the public, the offer of Priority Units is first made to existing Members in the Sub Scheme in proportion to their current Unit holding; and
- (e) the Manager considers the issue of Priority Units is in the best interests of Members of the Sub Scheme.

5.6 Fraction of Units permitted

- (a) Units may be issued in fractions at the discretion of the Manager, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit in the same class, the Manager may consolidate such fractions.
- (c) The Manager may consolidate or split the Units. The Manager must in respect of any such consolidation or split:
 - (i) immediately amend the Register to record the consolidation or split;
 - (ii) notify the Members of the consolidation or split; and
 - (iii) ensure that each Unit in a class is consolidated or split on the same basis as each other Unit in that class.

- (d) Subject to any law or the Applicable Standards, the Manager may split Units pursuant to clause 5.6(c) to create additional Units of the same class or Sub-Scheme or to split the Units according to rights or characteristics attaching to those Units so that two or more additional classes of Units are created comprising a sub-set of rights attaching to the split Units.

5.7 Rounding

Where the Manager chooses not to issue a fraction of a Unit, the Manager may round the number of Units issued down to the nearest whole number, with the balance remaining an asset of the Scheme.

5.8 Converting Units

The Manager may (but is not required) on request of a Member or at the Manager's discretion convert Units in one Sub-Scheme or class to Units of another Sub-Scheme or class provided in undertaking the conversion the conversion must be at the then Market Value of the Units.

5.9 Consolidation and division of Units

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

6 Members

6.1 Limited entitlement of Members

Subject to this document, a Unit does not entitle a Member to:

- (a) interfere with the powers of the Manager;
- (b) exercise any right or lodge any caveat or other notice affecting an Asset or claim any interest over any Asset; or
- (c) require the transfer to it of any Asset.

6.2 Members bound

This document binds each Member and all persons claiming through each of them as if each Member was severally a party to this document.

6.3 Member joint tenancy

Where two or more persons are registered as the holder of a Unit, they hold it as joint tenants and not tenants in common.

7 Application for and issue of Units

7.1 Application

- (a) The Manager may seek and receive Applications in a form which it approves and which are in accordance with the Applicable Standards.

- (b) Subject to the Applicable Standards a person wishing to subscribe for a Unit must complete an application form (**Application Form**) and lodge it with the Manager.
- (c) Despite any other provision in this document, every Application is deemed to contain an acknowledgment that:
 - (i) the Application is subject to the terms and conditions of this document; and
 - (ii) the Manager gives no warranties and makes no representations about the Scheme, the future price or value of Units, or any income payable on Units, other than as set out in any Disclosure Document under which the Units are issued.
- (d) Subject to the Applicable Standards and this document, Applications may not be withdrawn unless the Manager agrees.

7.2 Discretion to accept or refuse

- (a) The Manager may, subject to the Applicable Standards, reject any Application in whole or in part and is not required to give any reason for the rejection.
- (b) If an Application is rejected in whole or in part by the Manager, the Manager must promptly return the Application Moneys or proportional part of them to the applicant, less any costs, expenses or Taxes the Manager is entitled to retain under the Applicable Standards.
- (c) Any interest earned on Application Moneys until the Application is:
 - (i) accepted and Units issued; or
 - (ii) rejected and Application Moneys refunded under clause 7.2(b),
 must be treated in the manner set out in the Disclosure Document.
- (d) Without limiting clause 7.2(c), the Manager may deal with interest by:
 - (i) adding to the Application Moneys for the purpose of issuing Units;
 - (ii) paying it to the applicant;
 - (iii) retaining it as an Asset; or
 - (iv) paying it to the Manager.
- (e) If the treatment of interest is not specified in the Disclosure Document the interest must be retained as an Asset.

7.3 Date of receipt and issue

Subject to the Applicable Standards and clause 3.1, if the Application is accepted by the Manager, the Units are to be issued on the date set by the Manager, or if no date is set, the date upon which the name of the person to whom it is issued is entered into the Register as the holder of the Units.

8 Two-part disclosure

8.1 General

The Manager may issue disclosure for the acquisition of a Unit in two parts.

8.2 Member's election

A Member may elect to either:

- (a) acquire an interest in a specific Loan Investment; or
- (b) allow the Manager to exercise its discretion in selecting a particular (i.e. specific) Loan Investment for the Member.

8.3 Disclosure requirements

- (a) The Disclosure Document may include any of the following:
 - (i) describe the relationship between the Manager and the Members;
 - (ii) the rights of the Scheme;
 - (iii) the fees and charges that will apply;
 - (iv) the valuation practices the Manager will use;
 - (v) indicative rates of return;
 - (vi) procedures in place to address risks associated with the investment;
 - (vii) a description of the types of Loan Investments which constitute the Scheme; and
 - (viii) any other matters required under Applicable Standards.
- (b) The supplementary disclosure may include any of the following:
 - (i) the borrower offering the Loan Investment, including their creditworthiness;
 - (ii) the Loan Investment details and the rights that go with it;
 - (iii) a description of the property that is to be mortgaged, how it has been valued and what is its value;
 - (iv) the loan to valuation ratio;
 - (v) any prior securities over the property;
 - (vi) the interest the borrower will pay;
 - (vii) the anticipated duration of the Loan Investment; and
 - (viii) the arrangements for repaying the Loan Investment.
- (c) The Disclosure Document and supplementary disclosure must clearly state that:

- (i) it is to be read together; and
- (ii) the Manager will provide a copy of the Disclosure Document, supplementary disclosure and the Application Form, free of charge, upon request, to a person to whom an offer for subscription of Units has been issued.

9 Issue Price of Units

9.1 Issue Price

Subject to clause 9.2 the Issue Price of Units is:

- (a) for the first issue, \$1 per Unit; and thereafter
- (b) the Net Asset Value

Units on Issue in that Sub Scheme

9.2 General

- (a) Despite any other provision in clause 9, but subject to any applicable ASIC Exemption, the Manager:
 - (i) may where the Scheme is Registered issue Units at an Issue Price determined by the Manager being a price other than the Issue Price calculated in accordance with clause 9.1, if the Manager is permitted under the Corporations Act to do so; or
 - (ii) where the Scheme is not Registered issue Units at an Issue Price determined by the Manager being a price other than the Issue Price provided the Manager complies with its duties as a trustee.
- (b) This includes determining the Issue Price by reference to a specified criteria or formula set out in a document other than this document.

9.3 Restriction on issue and redemption of Units

The Manager may not issue or redeem Units after the 80th anniversary of the day the Scheme was established if the issue or redemption will contravene the rule against perpetuities or any rule of law or equity.

10 Transfer of Units

- (a) Subject to the provisions of this document and the Applicable Standards, a Unit may be transferred or transmitted at the risk of the Unitholder.
- (b) Any transfer of a Unit must be effected under the Applicable Standards.
- (c) Subject to the Applicable Standards the Manager may at its sole discretion accept the transfer of a Unit in any form it considers acceptable or appropriate.
- (d) The Manager may refuse to register or fail to register or give effect to any transfer of a Unit without assigning a reason.

- (e) The Manager has the same right to refuse to register a personal representative or person entitled to Units on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.
- (f) The Manager may suspend registration of transfers of Units at the times and for the periods it thinks fit.

11 Withdrawal of Member's Funds

11.1 Right of Member to withdraw

- (a) The Scheme will operate as a non-Liquid managed investment scheme.
- (b) Members do not have a right of withdrawal other than in response to a withdrawal offer by the Manager in accordance with:
 - (i) part 5C.6 of the Corporations Act;
 - (ii) any current withdrawal offer made by the Manager in accordance with the Corporations Act.
- (c) Subject to the Applicable Standards, the Manager may, from time to time, impose conditions on the withdrawal of Member's Funds by Members.
- (d) A Member may withdraw from the Scheme in accordance with this clause 11.1 and (where applicable) the Corporations Act and if the Member has lodged a Withdrawal Request Form with the Manager.
- (e) A Member may not revoke or retract a request for withdrawal without the Manager's consent.
- (f) Unless the Manager otherwise notifies, the amount paid to a Member upon their withdrawal of a Member's Fund from the Scheme is comprised of capital only. The Manager may notify a Member that the withdrawal amount is comprised of part capital and part income. Where the amount paid to a Member is comprised of income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the income component and the Manager must notify the Member of the income component of the amount paid to them. This notice may be given at the time of withdrawal but must in any case be given within three months of the end of the financial year in which the redemption or repurchase occurs.

11.2 Form of Member's request

The Manager may prescribe from time to time a Withdrawal Request Form.

11.3 Accompanying evidence

Any Member who makes a request for withdrawal must do so using any current Withdrawal Request Form and also provide satisfactory evidence to the Manager of the Member's title or authority to deal with the Member's Fund. The Manager must act reasonably in determining what is satisfactory evidence.

11.4 Calculation of the Member's entitlement

A Member's entitlement on a withdrawal must be calculated as:

- (a) the balance of the Member's Fund to which the withdrawal request relates as recorded in the accounts of the Scheme or part thereof to which the Manager agrees to redeem;
- (b) less any fees and charges payable by the Member;
- (c) plus any interest or income to which that Member's Fund is entitled from a Loan Investment or from the Scheme Accounts that has accrued but has not yet been distributed.

11.5 Compulsory withdrawal

The Manager must redeem a Member's Fund at:

- (a) Completion of a Loan Investment; or
- (b) Partial Completion of a Loan Investment to which that Member's Fund relates; or
- (c) on partial repayment of Loan Investment monies,

on the terms set out in this clause 11 to the extent applicable.

11.6 Compulsory transfer

The Manager may at any time cause a Members Units to be transferred to another party provided the consideration for the transferred Units is their Market Value and the consideration is paid to the Member. For the purposes of this clause only, the Manager is irrevocably appointed the attorney of the Member with the authority to sign any transfer or other document the Manager consider necessary to facilitate the transfer.

11.7 Cancellation of Units

Units which:

- (a) have been redeemed out of the Scheme; or
- (b) have a Market Value of nil,

must be cancelled and the Manager must record the cancellation in the Register.

11.8 Transfer of specific Assets

The Manager may decide that the amount payable to a Member upon withdrawal will be satisfied wholly or in part by the transfer of investments of the Scheme at their Current Market Value. Expenses incurred in respect of the transfer must be paid by the Member unless the Manager decides otherwise.

11.9 Manager no obligation to pay a Distribution or withdrawal

Notwithstanding any other provision in this Constitution the ability of the Manager to pay a Distribution or meet a withdrawal request is dependent on the relevant borrower to the Loan

Investment complying with the terms and conditions of the Loan Investment. An investment in the Scheme is not capital or income guaranteed.

12 Valuation of Assets

- (a) The Manager may at its discretion cause all or any Assets to be valued by an Approved Valuer. The cost of any valuation is an Expense.
- (b) The Manager may, at any time, ascertain the Scheme Value, and must do so when the Manager considers it in the best interest of Members to do so.
- (c) The most recently calculated Scheme Value must be recorded by the Manager, but if the Manager reasonably believes that the value is inaccurate, incomplete or out of date, then the Manager must recalculate the Scheme Value or have the Scheme Value revalued by an Approved Valuer.
- (d) The determination of the Scheme Value or the value of an Asset binds all the Members.
- (e) The Manager must maintain a record of the value of the Assets.
- (f) In calculating Scheme Value, the Manager may confer with the Auditor to ensure the methodology used is consistent with the Applicable Standards.
- (g) An Approved Valuer appointed by the Manager must:
 - (i) not be a related entity or Associate of the Manager; and
 - (ii) have sufficient experience in valuing or assessing a particular kind of asset or property to be valued.

13 Distribution of income and capital

13.1 Manager to receive income

The Manager will collect all income of the Scheme.

13.2 Payment of Expenses

The Manager may in each Distribution Period cause all Expenses to be paid, in the first instance out of the income of the Scheme according to Accounting Standards and then, if the income is insufficient, out of the Scheme Fund.

13.3 Income of Scheme

The decision of the Manager about whether any item is income or capital is final.

13.4 Distributable income and Income

The Manager must determine the distributable income and the Income of the Scheme for each financial year.

13.5 Determination of distributable income

Unless the Manager decides otherwise prior to the end of the financial year, distributable income is:

- (a) the Income for the financial year; and
- (b) any additional amount which the Manager considers appropriate for distribution in the period.

13.6 Classification of distributable income

- (a) The Manager may decide the classification of any item as either income or capital and the extent to which reserves or provisions need to be made.
- (b) The Manager may keep separate accounts of different categories and sources of income, and, subject to clause 13.7, allocate the income from any category or source to any Member.

13.7 Income of the Scheme

Each Member is severally and presently entitled to the following sources of Income:

- (a) interest earned on the Member's Funds and received by the Manager whilst they are part of the Scheme Accounts less any fees, expenses and charges payable, including the Manager's remuneration, as provided for in clause 19; and
- (b) income Distributions payable to the Member as determined by the Manager on that Member's Funds and received by the Manager whilst they form part of a Sub-Scheme or Loan Investment less any fees, expenses and charges payable, including the Manager's remuneration, provided for in clause 19.

13.8 Manager liable to account and determine

The Manager is liable to determine the Members' Income earned and received by the Manager on each Member's Funds in any Distribution Period and to account to each Member for that Member's Income.

13.9 Transfer of Distributions to distribution account

As soon as practicable after the Distribution Date, the Manager must transfer the amount of each Member's Distribution for the relevant Distribution Period to the relevant Member.

13.10 Satisfaction of present entitlement

The present entitlement of a Member to Income of the Scheme for a financial year will be satisfied by the payment of the Income Distributions to the Member in accordance with this document in respect of the financial year.

13.11 Other distributions

The Manager may at any time distribute any amount of capital or income of the Scheme to the Members:

- (a) a person is entitled to any such distribution pro rata in accordance with their interest in a particular Loan Investment or Sub-Scheme; and
- (b) the Distribution may be in cash, in specie or by way of bonus Units, with such bonus Units to rank with existing Units for the purposes of distributions of income and capital as determined by the Manager.

13.12 Deductions that may be made from Distribution

The Manager may deduct from a Member's Distribution:

- (a) the amount of any Taxes, fees and charges relating to the Member or its investment in the Scheme accrued for the relevant Distribution Period (or an amount the Manager reasonably decides); and
- (b) any fees or other amounts payable by the Member to the Manager,

before paying the Member's Distribution or reinvesting it to acquire Units.

13.13 Time for Distribution

Any Member's Distribution the Manager decides to distribute to Members must be distributed no later than the applicable Distribution Date.

13.14 Ranking for Distribution

All Units rank for Distributions relative to their Sub Scheme or Loan Investment, and for that purpose are considered of a different class.

13.15 Other Distributions

The Manager may at any time distribute any amount of capital or income of the Scheme to Members. Subject to the rights attached to any class the distribution may be, at the discretion of the Manager, in cash, in specie or by way of bonus Units ranking equally with existing Units.

13.16 Distribution equalisation reserve

Subject to the Applicable Standards, the Manager may require the withholding from Distributions to Members during any Distribution Period or month, financial year or any other period, an amount which the Manager considers is necessary to minimise variability in income Distributions over a Distribution Period, months, financial years or any other period.

13.17 Tax attribution under the AMIT regime

- (a) Where the Scheme is an AMIT in accordance with the Tax Act for any financial year then the Manager must attribute each 'determined trust component' to Members for the purposes of the Tax Act under the following principles:
 - (i) firstly, allocating the estimated determined trust component calculated for each distribution to each Member at the end of that distribution period on a similar basis to clause 13.7.

- (ii) secondly, for each Member adding the amounts allocated to that Member for each distribution in the financial year;
 - (iii) where the total of the allocated amounts of a particular character to the Member is more than the determined trust component for the financial year the amount calculated to each Member in item (ii) is adjusted downwards on a pro rata basis such that the aggregate of the allocated amounts is equal to the determined component of each particular character;
 - (iv) by way of example, (iii) may apply in circumstances such as where there are losses in one Distribution Period and profits in another Distribution Period in the same financial year;
- (b) the Manager may apply the unders and overs system as provided for in Division 276 of the Tax Act to adjust a trust component in the income year in which the under or over is discovered.

14 Registers

The Manager must keep a register of Members and record in each Register the information required by the Applicable Standards.

15 Agents and Custodian

15.1 Agents

The Manager may appoint any person, including employees or Associates of the Manager, as its agent (**Agent**) with the duties, powers, authorities and discretions it thinks fit, including the power to sub-delegate. The Manager is liable for the acts or omissions of any Agent as if they were the acts or omissions of the Manager. The remuneration of an Agent is fixed by the Manager and, subject to clause 19.8, payable as an Expense.

15.2 Custodian

Without limiting clause 15.1, the Manager may appoint a Custodian for any Asset:

- (a) having the powers the Manager sees fit, including the power to appoint a sub-custodian;
- (b) on terms decided by the Manager, considering the Applicable Standards; and

fix the remuneration of the Custodian, which is, subject to clause 19.8, payable as an Expense.

15.3 Associates

Subject to the Applicable Standards, the Manager and any Associate may:

- (a) act for other persons in a similar capacity to which it acts under this document or in any other capacity;
- (b) hold Units;

- (c) except in its capacity as Manager, act for or represent individual Members;
- (d) buy Assets in its own right or any other capacity and sell any assets held by it in its own right or in any other capacity to the Scheme; and
- (e) deal with each other.

16 Meetings of Members

16.1 Convening of meetings

The Manager may at any time convene a meeting of Members, and must do so if the Applicable Standards require.

16.2 Conduct of meetings

- (a) Subject to the specific provisions of this document relating to meetings of Members and to the Applicable Standards, the Manager may decide the time and place to hold a meeting of Members and the manner in which the meeting will be conducted.
- (b) The Manager may, by notice in writing to Members, adjourn any meeting convened by the Manager, to a time and place the Manager sees fit.

16.3 Notice of Meeting

- (a) Notice of meeting of Members must be given to each director of the Manager and, where applicable, the Auditor and the compliance plan auditor.
- (b) Any notice sent by post is deemed to have been served at the expiration of two Business Days after posting, and in proving service it is sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. A notice sent by fax or other electronic means is deemed to be given on the Business Day after it is sent.

16.4 Quorum

- (a) The quorum for a meeting is two Members present in person.
- (b) If at any time the Scheme has only one Member, that Member or his or her representative or proxy constitutes a quorum.

16.5 No quorum

- (a) If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Members – dissolved; or
 - (ii) otherwise – adjourned to the same day in the next week at the same time and place, or to such other day, time and place decided by the Manager and notified in writing to Members and others entitled to a notice of meeting.

- (b) If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

16.6 Chairman

Subject to the Corporations Act, the Manager may appoint a person to chair a meeting of Members.

16.7 Role of chairman

The chairman of a meeting of Members convened by the Manager:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting;
- (c) may, subject to the Corporations Act:
 - (i) terminate discussion on any matter if the chairman considers it is necessary or desirable for the proper conduct of the meeting;
 - (ii) cancel or postpone a meeting for any reason to a place and time as the chairman thinks fit;
 - (iii) at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place,

and a decision by the chairman under this clause is final.

16.8 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member (and, in the case of joint holders, given to the holder whose name is shown first in the Register); and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

16.9 Content of notice or postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting; and
- (b) a place for holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting.

16.10 Business of postponed or adjourned meeting

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

16.11 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date no later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

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

16.12 Proxies containing some of the required information

The Manager may decide that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

16.13 Delivery of proxies

At any meeting of Members in order for a proxy to be valid the Member must complete the proxy and return the proxy directly to the registered office of the Manager or such other address as nominated by the Manager. If a Member's proxy is not received by the Manager directly from the Member, that proxy shall be invalid.

16.14 Appointment of attorney

A Member may appoint any person as that Member's attorney or representative, however no person other than the chairman of the meeting may be appointed the attorney or representative of more than ten Members. Nothing in this clause prevents a person from holding an unlimited number of proxy appointments.

16.15 Adjournment of meeting

In exercising the discretion under clause 16.7(c)(iii), the chairman need not seek the approval of Members present.

16.16 Notice of adjourned meeting

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

16.17 Demand for a poll

- (a) A poll may be demanded by:
 - (i) at least five Members entitled to vote on the resolution;
 - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) by the chairman.
- (b) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (c) An Extraordinary Resolution put to the vote at a meeting of Members must be decided on a poll.

16.18 How voting is carried out

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Scheme, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

16.19 Poll

- (a) If a poll is properly demanded or required, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.

16.20 Direct voting

- (a) The Manager may decide that, for a meeting of Members, a Member who is entitled to attend and vote at that meeting may cast their vote by Direct Vote. The Manager may set rules to govern direct voting including rules as to its form, method and timing.
- (b) Direct Votes will be voted by the Chairman and will be voted by way of poll.

16.21 Equality of votes – no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

16.22 Entitlement to vote

Subject to any rights or restrictions for the time being attached to any class or classes of Units and to this document:

- (a) on a show of hands, each Member present and each other person present as a proxy, attorney or representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.

16.23 Joint Members' vote

If a Unit is held jointly and more than one Member casts the vote attaching to that Unit, only the vote of the Member whose name appears first on the Register counts.

16.24 Vote of Member of unsound mind

If a Member is of unsound mind or someone whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

16.25 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

16.26 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid despite:

- (a) the previous revocation of that person's authority by the death of the holder of the Units;
or
- (b) the execution of the transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Manager or by the chairman of the meeting before the vote is cast.

16.27 Meeting of classes

If any meeting of a class of Units is required to be held the provisions of clause 16 apply with any necessary amendments.

17 Manager's rights

17.1 Manager may hold Units

- (a) The Manager and its Associates may hold and deal with Units in any capacity.

- (b) Unless otherwise expressly provided by this document or the Applicable Standards, the Manager and its Associates, as Members, have all the rights of a Member in the Units they hold.

17.2 Manager may deal with itself in other capacities

Subject to the Applicable Standards, the Manager (or any of its Associates) may:

- (a) deal with itself (in any capacity), an Associates or a Member, including:
 - (i) buying Assets;
 - (ii) selling property into the Scheme;
 - (iii) offering Members a Loan Investment over Land or other assets owned by the Manager or an Associate;
 - (iv) underwriting any issue of Units;
 - (v) paying any fee,
 in its own right, as trustee of another scheme or in another capacity;
- (b) be interested in any contract or transaction with itself (in any capacity), an Associate or a Member; or
- (c) act in the same or similar capacity for another managed investment scheme or trust.

17.3 Manager not accountable

The Manager and its Associates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 17.2.

17.4 Attorney

Each person who completes an Application accepted by the Manager or acquires a Unit, appoints the Manager and any director, officer, attorney or substitute nominated by the Manager severally for this purpose as its attorney with the rights and powers to:

- (a) sign complete or otherwise arrange any loan, mortgage, charge and all other documents required by the Manager in respect of any Loan Investment;
- (b) appoint substitutes or otherwise delegate its powers (including this power of delegation);
- (c) execute any document or take any action which, in the Manager's opinion, is reasonably necessary to protect the interests of the Member, Members or the Manager in respect of any Loan Investment;
- (d) conduct or deal with any security property provided in respect of a Loan Investment where the borrower under a Loan Investment defaults;

- (e) exercise any rights (including its right to exercise a power of sale) pursuant to any mortgage, charge, the *Property Law Act 1974* Qld (or equivalent legislation in other jurisdictions), or the Corporations Act;
- (f) subject to any mortgage or charge documentation, execute any document or instrument required for conducting any power of sale, transfer, lease or other disposition (partial or in full) of the property offered as security for the Loan Investment;
- (g) may incur any debts in relation to any property offered as security for a Loan Investment and generally manage the Scheme property on behalf of the Members; and
- (h) without limitation, do everything and anything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any rights of the Manager, the Member or the Members under the Loan Investment in relation to any Loan Investment or the Scheme property.

18 Indemnities

18.1 Indemnification

- (a) The Manager is indemnified out of the Scheme Fund for all expenses, losses, damage and liabilities (whether actual, contingent, prospective or otherwise) incurred, arising out of or in connection with acting in connection with the Scheme or in connection with any of the matters listed in clause 18.2. This indemnity:
 - (i) is without prejudice to any indemnity allowed by law;
 - (ii) survives the termination of this document; and
 - (iii) may be claimed from the Assets,
 but the indemnity is not available where the indemnity is not permitted under the Applicable Standards.
- (b) The Manager has a lien on and may use the Assets for the purpose of this indemnity and generally for the payment of all legal and other costs, charges and expenses of administering or winding up the Scheme and otherwise properly performing its duties to the Scheme.

18.2 Liability is limited

Subject to the Applicable Standards, the Manager is not liable to any person because of:

- (a) the Assets not maintaining or realising any specific value, price or reserve or yielding any specific return;
- (b) not exercising any power which is reasonably impracticable to exercise;
- (c) making any payment to any person in good faith, even if a payment ought or need not have been made;
- (d) the acts, omissions or default of any person (including any Adviser);

- (e) acting in good faith on the advice or opinion of or information obtained from, any person (including any Adviser);
- (f) the misconduct, mistake, oversight or error of judgment of any person (including any Adviser);
- (g) any act performed or omission made by it in reliance on any document or information which was reasonably believed by it to be accurate, genuine, properly signed or signed by a person with appropriate authority;
- (h) performing any act or making any omission under a resolution passed at a Members' meeting;
- (i) waiving, exercising, not exercising or delay in the exercise of any function by another person;
- (j) liability attaching to any property accepted from any Member; or
- (k) that arises because Assets or property securing a Loan Investment which is auctioned does not attract a particular price.

18.3 Liability of Members limited

- (a) A Member is not, by virtue of being a Member, liable to make any payment to the Manager.
- (b) No Member is under any obligation to indemnify the Manager or any creditor of it for any liabilities in connection with the Scheme.
- (c) Clause 18.3 must be read subject to clause 18.4.

18.4 Indemnity by Members

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 fees as a result of:

- (a) the Member's or former Member's action or inaction;
 - (b) any act or omission requested by the Member or former Member, or
- any other matter arising in connection with Units held by the Member or former Member.

18.5 Manager's indemnity additional to those at law and is a continuing one

The indemnity under clause 18.1 is:

- (a) in addition to any indemnity the Manager may have at law or in equity; and
- (b) a continuing indemnity and, subject to the Corporations Act, it applies to the Manager after it retires or is removed as manager or responsible entity of the Scheme.

18.6 Indemnity for Compliance Committee members

Subject to the Corporations Act and only where a Compliance Committee is appointed, the Manager (in its capacity as trustee of the Scheme) must, to the extent the person is not otherwise indemnified, indemnify every member of the Compliance Committee against a liability:

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

18.7 Insurance for Compliance Committee members

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

18.8 Compliance Committee members' indemnity is a continuing one

The indemnity in favour of Compliance Committee members under clause 18.6 is a continuing indemnity. It applies for all acts of a person while a member of the Compliance Committee even though the person is not a member at the time the claim is made.

18.9 Manager may enter into agreement

Subject to the Corporations Act and without limiting a person's rights under clause 18, the Manager may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the person under clause 18 on any terms that the Manager thinks fit.

19 Fees and expenses

19.1 Manager's fees

- (a) The Manager is entitled to be paid out of the Assets of the Scheme a management fee for managing the Scheme of up to 1% per annum of the funds invested in the Scheme. The management fee is calculated and paid monthly in arrears.
- (b) The Manager is entitled to be paid out of the Assets of the Scheme of up to 4% of the value of all funds raised by the Scheme from Members. This fee is payable on the issue of Units.
- (c) The Manager is entitled to be paid out of the Assets of the Scheme an administration fee for administering the Scheme of up to 0.5% per annum of the funds invested in the Scheme. The administration fee is calculated and paid monthly in arrears.

- (d) The Manager is entitled to be paid out of the Assets of the Scheme a removal fee of 5% of the value of the Trust Assets provided the Manager is not removed for failing to properly perform its duties.

19.2 Interest on Application Moneys

Subject to clause 7.2(c), the Manager is entitled to any interest earned on Application Moneys.

19.3 Reimbursement of costs, charges and expenses

The Custodian (provided it is external and independent of the Manager) and the Manager (in addition to the Managers fees in clause 19.1) must be paid or reimbursed on a full indemnity basis out of the Scheme for all expenses and liabilities which they each incur in connection with the Scheme or in performing their obligations or exercising their powers under this document including:

- (a) preparation, postage, electronic transfer and the like of cheques, certificates, investment advices, accounts, distribution statements, and other communications sent to one or more Members;
- (b) establishment and maintenance of registers and accounting records;
- (c) convening and holding any meetings and the implementation of any resolutions;
- (d) the acquisition, holding, management, maintenance, valuation or disposal or attempted or proposed acquisition or disposal of or any other transaction in relation to investments and the investigation and research of markets including travel and accommodation expenses, investment or portfolio manager's fees and advisors' and consultants' fees incurred in carrying out the functions of the Manager or the Custodian, taxes and rates;
- (e) preparation and auditing of accounts and preparation of taxation returns;
- (f) taxes and bank charges which are or may be imposed on or about the performance or exercise of the duties and powers of the Custodian or the Manager and otherwise in respect of the Scheme;
- (g) establishing the Scheme and any restructuring of the Scheme including costs of preparation of this document and any supplemental deed and the cost of legal, accounting, tax, financial and other services;
- (h) issue of Units, including preparation, registration, promotion and distribution of any Disclosure Document or other offer document;
- (i) retaining delegates, custodians, agents, investment or portfolio managers, economists, researchers, valuers, advisers, brokers, underwriters, contractors, barristers, solicitors (including solicitors' costs on a full indemnity basis) and other persons retained in the exercise of their powers or the discharge of their duties;
- (j) contributions to professional bodies for advocacy and lobbying for mortgage lending or property and real estate interests;
- (k) operation and maintenance of computer hardware and software and other equipment;

- (l) development of computer hardware and software and other equipment;
- (m) any court proceedings, arbitration or dispute and obtaining legal advice;
- (n) retirement or removal of the Custodian or Manager and the appointment of another person as Custodian or Manager;
- (o) the issue, redemption and transfer of Units; and
- (p) promoting the Scheme to, or communicating with, Members, potential investors and their advisers.
- (q) all costs and disbursements and outgoings in connection with the management and administration of the Assets, the Scheme and the performance of the functions and duties of the Manager under the Constitution, including but not limited to:
 - (i) staff, contractors and executives wages (excluding Manager director fees);
 - (ii) office rent;
 - (iii) office equipment and stationary; and
 - (iv) utilities; and
- (r) all expenses, costs, losses and liabilities of the Scheme (whether paid or unpaid, actual or contingent, present or future) including, all expenses, costs, losses, liabilities and Taxes incurred by the Manager in establishing the Scheme, offering Units, administering the Scheme, winding up the Scheme or otherwise performing its obligations under this Constitution or the Applicable Standards.

19.4 Payments to associates

Payments under clause 19.3 may be made to an Associate of the Manager or Custodian.

19.5 Manager acting as custodian

When the Manager appoints an external and independent Custodian, then if at a subsequent date the Manager replaces the Custodian with itself or a related party of the Manager, the Manager or the related party may receive a fee for acting as Custodian, but this fee must not exceed the lesser of:

- (a) the fee previously paid to the external and independent Custodian; or
- (b) the fee which would be reasonable in the circumstances if the Manager and itself (as Custodian) or the related party (as Custodian) were dealing at arm's length.

19.6 Rebate

The Manager may waive, assign, defer or rebate any or all of its fees, or its entitlement to recover or be reimbursed for expenses incurred under this clause, to the benefit of any person on terms and conditions decided by the Manager at its absolute discretion.

19.7 Goods and services tax

- (a) Except under this clause 19.7, all fees and other consideration payable to the Manager do not include GST.
- (b) If any Supply made by the Manager or Custodian to the Members under this Scheme or any variation to it is a Taxable Supply then at or before the time the consideration for the Supply is payable:
 - (i) the Manager or Custodian may recover from the Scheme an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply);
 - (ii) the Manager or Custodian must issue a Tax Invoice for the Supply; and
 - (iii) the Manager, the Custodian and the Members acknowledge and agree that each Supply made by the Manager and Custodian under this document is made:
 - (A) on a progressive or periodic basis;
 - (B) for consideration that is to be provided on a progressive or periodic basis; and
 - (C) each progressive or periodic component of the Supply is to be treated as a separate Supply.

19.8 Expenses

- (a) All Expenses properly incurred in respect of the Scheme must be paid from the Assets of the Scheme although the Manager may pay an Expense and reimburse itself from the Assets.
- (b) The Manager must not reimburse itself for an expense not incurred in the proper performance of its duties in connection with the Scheme.
- (c) The Manager may, following consultation with the Auditor, amortise expenses incurred by it on behalf of the Scheme.

19.9 Proper performance of duties

The rights of the Manager to be paid fees or recover expenses under clause 19 are subject to the Manager properly performing its duties in connection with the Scheme.

19.10 Units in place of cash

Subject to the Applicable Standards:

- (a) the Manager may elect to receive Units as payment of its fees under this document; and
- (b) Units issued under this clause must be issued at the Issue Price.

19.11 Manager's fees accrue daily

The fees payable to the Manager accrue daily and, subject to the specific provisions of this document, are payable at the time specified by the Manager.

19.12 Adjustment of Manager's fees on proportionate basis

Where a fee is payable for a period and the fee commences or ceases to be payable during the period, the fee must be adjusted on a proportionate basis.

19.13 Sums owed to Manager

The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by a Member.

19.14 Class and apportioned expenses

- (a) Subject to the Applicable Standards, where a class of Units is on issue the Manager may decide that all or part of an expense is a class expense, and if no decision is made under this clause, any expense under clause 19 must be apportioned to all Units on an equal basis.
- (b) If an expense or liability relates to the Scheme as well as another scheme, trust or other managed investment of which the Manager is the manager, it may be apportioned between the schemes, trusts or managed investments as the Manager considers appropriate in the circumstances.

20 Termination of Scheme

20.1 Termination of Scheme

The term of the Scheme ends on the earliest date to occur of:

- (a) the date specified by the Manager in a notice to Members as the Scheme termination date;
- (b) the date on which the Scheme terminates under another provision of this document, the Applicable Standards or at law.

20.2 Procedures

As soon as reasonably practicable after the Termination Date, the Manager must cause the Scheme to be wound up under this document, the Applicable Standards and, if relevant, any orders a court makes under the Corporations Act.

20.3 Winding up

After the termination of the Scheme, the Manager:

- (a) must not accept any further Applications;
- (b) must sell and realise the Assets;

- (c) must apply the Assets of the Scheme, or the proceeds of their realisation, to pay any Expenses (including Expenses associated with its remuneration, the remuneration of any Agent or Adviser employed in connection with the termination of the Scheme and any other Expenses associated with the termination of the Scheme);
- (d) may, subject to any class rights, distribute the remaining Assets or the net proceeds to Members in proportion to the number of Units of which they are the registered holder on the Termination Date, but the Manager may retain Assets or their proceeds for contingent Expenses and liabilities;
- (e) must prepare or cause to be prepared accounts which correctly record and explain the winding up of the Scheme, appoint a registered company auditor (within the meaning of the Corporations Act) to undertake an independent audit of those accounts, and send a copy of the auditor's report to each Member.

20.4 Transfer of Assets to Member

- (a) The Manager may transfer Assets to a Member to satisfy the making of that payment or distribution under clause 20.3(d) instead of making it in cash.
- (b) The value of the Assets to be transferred must be based on a valuation to be carried out by an Approved Valuer and the costs associated with the valuation and transfer of the Assets are payable by the Member.

20.5 Receipt and discharge

The Manager may require each Member to give it a receipt and discharge (in a form approved by the Manager) before it makes a payment or distribution under clause 20.

20.6 Provisions continue after termination of Scheme

Subject to the Corporations Act, the provisions of this document continue to apply after the date of termination of the Scheme until the date of final distribution under clause 20.3(d), but during that period the Manager must not accept any applications for Units or make any withdrawal offers.

21 Communications

21.1 When this clause does not apply

This clause does not apply to a Notice of Meeting.

21.2 Address for notices

- (a) The address of a Member is the address shown in the Register, and for joint holders it is the address of the first named holder, but if the address is not in Australia, the Member may notify the Manager of an address in Australia to which notices or other communications may be sent.
- (b) The address of the Manager is the Manager's registered office as recorded with ASIC or any other address notified by the Manager to all Members or contained in the current Disclosure Document.

21.3 When a notice is given

A notice, consent or other communication that complies with clause 21.2 is given and received:

- (a) if it is hand delivered or sent by fax:
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail to the Manager - on actual receipt; and
- (c) if it is sent by mail to a person other than the Manager:
 - (i) within Australia - two Business Days after posting; or
 - (ii) to or from a place outside Australia – five Business Days after posting.

21.4 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
 - (i) delivered by hand to that person or to that person's address;
 - (ii) delivered or sent by pre-paid mail (by and by pre-paid airmail, if the person is overseas) to that person's address;
 - (iii) sent by fax to the fax number (if any) nominated by that person and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iv) delivered by any other means permitted under the Applicable Standards.

21.5 Person entitled to a Unit

Every person who becomes entitled to a Unit is bound by every notice in respect of that Unit which was properly given to the person registered as the holder of the Unit before the transfer or transmission of the Unit was entered in the Register.

21.6 Signature on notices

The Manager may sign a notice or other communication by original or printed signature or in any other way.

21.7 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day the notice is given nor the day the action is to be taken are to be counted in working out the period.

21.8 Certificate of director or secretary

A certificate signed by a director or secretary of the Manager stating that a notice or other communication was given by the Manager is admissible as evidence, and is conclusive evidence, that the notice or other communication was given.

21.9 Notices to lost Members

- (a) If:
 - (i) on two or more consecutive occasions a notice served on a Member under clause 21 is returned and unclaimed or with an indication that the Member is not known at the address to which it was sent; or
 - (ii) the Manager believes on other reasonable grounds that a Member is not at the address set out in the Register or notified to the Manager under clause 21.9(b),

the Manager may give effective notice to that Member by exhibiting the notice at the Manager's registered office for at least 48 hours.
- (b) Clause 21.9(a) ceases to apply if the Member notifies the Manager of a new address.

22 Payment and discharge

22.1 How payments can be made

The Manager may pay money to a Member:

- (a) by paying it into an account nominated by the Member, where the Manager has not received a written notice that the nomination is withdrawn;
- (b) by sending a cheque crossed 'not negotiable' and drawn in favour of the Member or to bearer, by mail to the address of the Member set out in the Register or notified to the Manager under clause 21.9(b); or
- (c) in any other way it thinks fit.

22.2 Unsuccessful payment

If an attempted payment by the Manager is unsuccessful for any reason, six months (or later at the Manager's discretion) after the date on which the payment was due the amount of the payment may be :

- (a) (if available) reinvested in the manner applicable to the Member; or
- (b) declared unclaimed money and dealt with under clause 22.5.

22.3 Discharge of Manager

- (a) A payment to a Member or, in the case of joint holders of a Unit, to any of them under clause 22.1 discharges the Manager in respect of that payment.
- (b) A discharge or release by a Member, or in the case of joint holders of a Unit by any of them, to the Manager is a good discharge of the liability concerned.

22.4 Deductions for tax

- (a) Clause 22.4 applies to money to be paid to a Member which is not covered by clause 13.11.
- (b) The Manager may deduct from any money to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) that the Manager:
 - (i) is required or authorised to deduct by law; or
 - (ii) in its reasonable opinion, thinks should be deducted.

22.5 Unclaimed money

Subject to the Corporations Act, the Manager must deal with any unclaimed money under this document under the Applicable Standards.

23 Resolution of disputes

23.1 Application

This clause only applies:

- (a) where the Manager has elected this clause applies; or
- (b) while the Scheme is Registered

23.2 Complaints handling system

The Manager must establish a complaints handling framework.

23.3 Essential elements

The complaints handling process must, as a minimum:

- (a) **(recognition of complaint)** recognise that a complaint is an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected;
- (b) **(commitment)** have a commitment to efficient and fair resolution of complaints;

- (c) (**resources**) have adequate resources for complaints handling with sufficient levels of delegated authority;
- (d) (**visibility**) be well publicised to Members and staff of the Manager and must include information to Members about how and where to complain;
- (e) (**accessibility**) be available to all Members, and information must be readily available on the details of making and resolving complaints;
- (f) (**responsiveness**) provide that receipt of each complaint is to be acknowledged to the Member immediately or, otherwise, as soon as possible. Complaints should be dealt with promptly in accordance with their urgency, and Members treated courteously and kept informed of the progress of their complaints;
- (g) (**charges**) not charge the particular complaining Member for handling the Member's complaints (although the Manager may be reimbursed from the Assets for its costs in dealing with all complaints);
- (h) (**objectivity**) ensure complaints are treated in an equitable, objective and unbiased manner;
- (i) (**confidentiality**) recognise that personally identifiable information about the Member should be available when needed but used only to the extent necessary, and be actively protected from disclosure, unless the Member expressly consents to the disclosure;
- (j) (**customer-focused approach**) have a customer-focused approach, facilitate the receipt and collection of feedback and foster commitment to resolving complaints which is demonstrated by the Manager's actions;
- (k) (**collection of information**) appropriately and systematically record complaints by Members and the outcome, whilst protecting any personal information and ensuring the confidentiality of Members;
- (l) (**analysis and evaluation of complaints**) classify and analyse complaints to identify systemic, recurring and single incident problems and trends, and help eliminate the underlying causes of complaints;
- (m) (**accountability**) establish accountability for reporting on actions and decisions regarding complaints; and
- (n) (**continued improvement**) be reviewed at least annually to ensure that it is sufficiently delivering effective outcomes.

23.4 Disputes between the Manager and Members

- (a) A Member claiming that a dispute has arisen may, by writing or by phone, complain to the Manager giving details of the dispute.
- (b) In normal circumstances, anonymous complaints will not be considered unless, in the opinion of the Manager, the issue reported is significant, material or systemic.

23.5 Best efforts to resolve the dispute

- (a) On receipt of a dispute from the Member, the Manager must reply immediately or, where the Manager is unable to reply immediately, as soon as possible acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager must immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer must within 45 days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute, including what avenues of appeal may be available.
- (d) If the Member remains dissatisfied the Member may refer the complaint to the Dispute Resolution Service.
- (e) The Manager may be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

24 Amendments to this document

24.1 Manager may amend

Subject to the Corporations Act (if relevant) the Manager may by deed amend this document.

24.2 Statutory requirements

If the Corporations Act or any declaration or exemption from the provisions of the Corporations Act granted by ASIC requires that this document contain certain provisions, then those provisions:

- (a) are deemed to be incorporated into this document at all times at which, and to the extent to which, they are required to be included; and
- (b) prevail over any other provisions of this document to the extent of any inconsistency.

25 GST

25.1 GST indemnity

If the Manager must pay GST on any supply under or in connection with this document made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Manager may recover the amount of that GST out of the Assets. However, the Manager must not recover out of the Assets any amount for GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.

25.2 Refund to trust for GST overpaid

The Manager must refund to the Scheme any over recovery of GST by it out of the Assets. The Manager need not refund to the Scheme any amount for GST paid to the Commissioner of Taxation unless the Manager has received a refund or credit for that amount.

25.3 GST on claims

If the Manager pays money or distributes property to a Member to satisfy a claim or a right to a claim for a breach of duty by the Manager under or in connection with this document (for example, for breach of trust) and that payment gives rise to a liability to pay GST, the Manager must pay the amount of that GST, and if the Member is liable to pay that GST, the Manager must indemnify the Member against that amount. The Manager must not recover out of the Assets any amount for GST paid by it under clause 25.3.

25.4 GST on expenses

If the Manager has a claim under or in connection with this document for an expense on which it must pay GST, the claim is for the expense plus all GST (except to the extent that the Manager is entitled to an input tax credit for any GST).

Compliance table - matters required by section 601GA and section 601GB

The following table illustrates the manner in which the Constitution deals with the matters prescribed in sections 601GA and 601GB of the *Corporations Act 2001* (Cth) and s601EB(1) of the *Corporations Act 2001* (Cth)).

Section of the <i>Corporations Act 2001</i> (Cth) and Description of Prescribed Content of Constitution	Corresponding clause in the Constitution
Section 601GA(1)(a) - the consideration that is to be paid to acquire an interest in the Trust.	Clause 1.1 - definition of "Issue Price" Clauses 7 and 9
Section 601GA(1)(b) - the powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, Trust Assets.	Clauses 3.4 and 3.5
Section 601GA(1)(c) - the method by which complaints made by Unitholders in relation to the Trust are to be dealt with.	Clause 23
Section 601GA(1)(d) - winding up of the Trust.	Clause 20
Section 601GA(2) - any rights the Responsible Entity has to be paid fees out of Trust Assets, or be indemnified out of Trust Assets for liabilities and expenses incurred in performing its duties. These rights must be available only in relation to the proper performance of the Responsible Entity's duties.	Clauses 18 and 19 see in particular 19.10
Section 601GA(3) - any powers the Responsible Entity has to borrow or raise money for the purposes of the Trust.	Clause 3.4(e)(ii)
Section 601GA(4) - rights of Unitholders to withdraw from the Trust, and the procedures for making and dealing with withdrawal requests.	Clause 11
Section 601GB - the Constitution of a registered trust must be contained in a document that is legally enforceable as between the Unitholders and the Responsible Entity.	Clause 2.5