

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL COURT

LIST D  
S CI 2011 6606

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS  
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2 and others (according to the schedule  
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012  
Filed on behalf of: The First and Second Defendants  
Prepared by:  
**Maddocks**  
Lawyers  
140 William Street  
Melbourne VIC 3000

Solicitor's Code: 230  
DX 259 Melbourne  
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Ref: 5885053.001  
Attention: Philip Jones  
Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-1" now produced and shown to **Alan David Fisher** at the time of  
swearing his affidavit on 20 September 2012.

Before me:



Signature of person taking affidavit

STEVEN MICHAEL TANG  
140 William St Melbourne 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**Exhibit "ADF-1"**  
**Copy of Constitution of TOT#2**

1.4



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## First Supplemental Deed

OIM #2 Pty Ltd

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Timbercorp Orchard Trust #2

### BAKER & MCKENZIE

Solicitors  
Level 39, Rialto  
525 Collins Street  
MELBOURNE VIC 3000  
Tel: (03) 9614-4200  
Fax: (03) 9614-2103  
Email: [Lewis.Apostolou@BAKERNET.com](mailto:Lewis.Apostolou@BAKERNET.com)



Ref: 57715-v1\LA3

## Contents

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Clause Number	Heading	Page
1	Interpretation	1
2	Amendments	1
3	Effect of amendments	2
4	Trust not redeclared, etc	2
5	Costs	2
6	Governing law and jurisdiction	2
	Schedule 1	1
	Amendments to the Constitution	1

Date

9 September

2005

Parties

OIM #2 Pty Ltd (ACN 112 691 997) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (*Trustee*)

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## Recitals

- A By trust deed dated 25 February 2005 made by the Trustee, the Trust was established.
- B By clause 25.1 of the Constitution provides that the Constitution may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this deed poll as a *variation*) by the Trustee, unless the variation concerns any matter specified in clause 25.1(d), in which case the variation is not effective unless the Members have by Special Resolution approved the proposed variation, on or before the instrument of variation is executed Special Resolution of the Members.
- C Two variations set out in Annexure 1 to this deed poll concern matters specified in clause 25.1(d), and accordingly, the sole Member, TAT, passed a Resolution approving all the variations set out in Annexure 1 to this deed poll and directing the Trustee to enter into this deed poll.
- D The Trustee resolved to effect the variations and enter into this deed poll in accordance with the sole Member's Resolution and clause 25.1.

## Operative Provisions

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### 1 Interpretation

- 1.1 Except where otherwise provided in this deed poll, terms used in this deed poll have the same meaning as in clause 1.1 of the Constitution.
  - 1.2 For the purposes of this deed poll:
    - (a) *Constitution* means the trust deed dated 25 February 2005 made by the Trustee establishing the Trust;
    - (b) *Trust* means Timbercorp Orchard Trust #2.
- 

### 2 Amendments

#### The amendments

- 2.1 The Constitution is amended by:
  - (a) inserting all clauses and words that are underlined in the copy of the Constitution that forms Annexure 1 to this Deed; and

- (b) deleting all clauses and words that are struck out or crossed through in the copy of the Constitution that forms Annexure 1 to this Deed.

### **Effect of amendments**

- 2.2 The amendments made to the Constitution by this deed poll take effect, and are binding on the Trustee and each present and future Member and any person claiming through any of them, on the date of this deed poll.
- 2.3 This deed poll is supplemental to the Constitution, and the amendments made to the Constitution by this deed poll are not to affect the validity or enforceability of the Constitution.

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### **3 Trust not redeclared, etc**

- 3.1 The Trustee declares that nothing expressly or impliedly contained in this deed poll is to:
- (a) redeclare the trust declared under the Constitution;
- (b) cause the transfer to, vesting in or accruing to any person of property held on trust as at the date of this deed poll.

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### **4 Costs**

- 4.1 All taxes, stamp duty, registration costs and other charges, expenses and outgoings arising out of, or in connection with, this deed poll are to be an expense of the Trust.

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### **5 Governing law and jurisdiction**

- 5.1 This deed poll is governed by the laws of Victoria and where applicable the laws of the Commonwealth of Australia.
- 5.2 Each person affected by this deed poll irrevocably and unconditionally submit to the non-exclusive jurisdictions of the courts of Victoria.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.

## Execution

Executed as a deed poll

Signed sealed and delivered  
by OIM #2 Pty Ltd in its capacity as  
trustee for the Timbercorp Orchard  
Trust #2

by a director and secretary/director:



Signature of secretary/director



Signature of director

ANDREW ASHBOLT

Name of secretary/director (please print)

T. Ashbolt

Name of director (please print)

## **Schedule 1**

### **Amendments to the Constitution**

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## **Constitution**

**OIM #2 Pty Ltd**

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**Timbercorp Orchard Trust #2**

**BAKER & MCKENZIE**

Solicitors

Level 39, Rialto

525 Collins Street

MELBOURNE VIC 3000

Tel: (03) 9617-4200

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Ref: 57714-v3\LA3





## Contents

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Clause Number	Heading	Page
1	Preliminary	1
2	Assets held on trust	8
3	Units	8
4	Members	11
5	Application for Units	12
6	Redemption price of Units	14
7	Redemption procedures	15
8	Valuation of Assets	17
9	Confirmations	17
10	Trust Income and entitlement of Members	18
11	Distribution of income	19
12	Variation of Distribution Period	24
13	Taxation of Trust	24
14	Taxation of Members	25
15	Payments	25
16	Powers and duties of the Trustee	26
17	Retirement of Trustee	27
18	Notices to Members	28
19	Notices to the Trustee	29
20	Meetings of Members	29
21	Rights and liabilities of Trustee	31
22	Limitation of liability and indemnity in favour of Trustee	32
23	Liability of Members	33
24	Remuneration and expenses of Trustee	33
25	Amendments to this Constitution	36
26	Inspection and copies of the Constitution	37
27	Audit	37

<b>28</b>	<b>Documents of title</b>	<b>38</b>
<b>29</b>	<b>Reserves</b>	<b>38</b>
<b>30</b>	<b>Duration of the Trust</b>	<b>38</b>
<b>31</b>	<b>Procedure on termination</b>	<b>39</b>
<b>32</b>	<b>General provisions</b>	<b>40</b>

**Date** ~~25 February~~ 25 February 2005

**Parties** **OIM #2 Pty Ltd** (ACN 112 691 997) of Level 68, ~~505 St Kilda Road~~ 461 Bourke Street, Melbourne, Victoria 30004 (*Trustee*)

## Recitals

- A. This deed poll comprises the Constitution of the Trust and is made with the intent that it be legally enforceable as between the Trustee and each Member.
- B. The Trust Fund is to be held and administered by the Trustee with, and subject to, the powers and provisions of this Constitution.

## Operative provisions

This deed poll records and the Trustee covenants and declares as follows:

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### 1 Preliminary

#### Declaration

- 1.1 This deed poll is declared by the Trustee to be the constitution of the Trust.
- 1.2 OIM #2 Pty Ltd hereby agrees to act as trustee of the Trust on the terms of this Constitution.
- 1.3 The Trust commences when Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust gives the Trustee A\$100.00 for 100 Units, and the Trustee issues 100 Units in return.
- 1.4 Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust will give the Trustee A\$100.00 immediately following execution of this Constitution.

#### Name of Trust

- 1.5 The Trust is called the *Timbercorp Orchard Trust #2* or such other name as the Trustee determines from time to time.
- 1.6 If Timbercorp Asset Management Pty Limited ceases to be the Asset Manager, the Trustee must, unless otherwise agreed by Timbercorp Asset Management Pty Limited, change the name of the Trust to a name that does not imply an association with Timbercorp Asset Management Pty Limited or its business.

#### Definitions

- 1.7 In this Constitution, unless there is something in the subject matter or context that is inconsistent:

*Accounting Principles* mean generally accepted Australian accounting principles and accounting standards determined by the Trustee after consultation with the Auditor;

*Application Price* means the application price for a Unit calculated in accordance with this Constitution;

**Approved Valuer** means a person who is appointed to act as a valuer or an expert by the Trustee in relation to the Trust (including any Asset of the Trust or the Units), who is independent of the Trustee and is experienced in relation to the valuation or assessment of assets, investments or proposals of the kind required to be valued or assessed;

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

**Asset Manager** means any person appointed by the trustee of the Timbercorp Agribusiness Trust to manage the assets of the Timbercorp Agribusiness Trust and the Controlled Entities of the trustee of the Timbercorp Agribusiness Trust;

**Assets** means 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, any Redemption Price not yet paid or any Distributable Income or Amount payable but not paid;

**Auditor** means a person appointed in accordance with clause 27.1 to act as an auditor of the Trust;

**Business Day** means:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne; and
- (b) any other day specified by the Trustee to be a business day for the purposes of this definition;

**Cash** means money in any currency and includes cheques drawn in such currency;

**Class** means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class;

**Commencement Date** means the date of the issue of the first Unit in accordance with clause 1.3;

**Confirmation** means a transaction statement issued by the Trustee, or if the law permits, the custodian, confirming the number of Units Registered in the name of the Member or person named in that statement;

**Constitution** means this deed poll;

**Controlled Entity** means an entity, including a body corporate or trust, directly or indirectly controlled by TAT, including this Trust;

**Corporations Act** means the *Corporations Act 2001 (Cth)* and the Corporations Regulations;

**Custodian** means the custodian for the time being of the Trust (if any);

**Designated Time** means 5 pm or such other time as may be specified by the Trustee in the jurisdiction in which the Office is located;

**Disclosure Document** includes a disclosure document (as that expression is defined in section 9 of the Corporations Act) and any information memorandum under which offers to subscribe for the Units in the Trust are made;

**Distributable Amount** means the amount, if any, determined by the Trustee in accordance with clause 11.10(c);

**Distributable Income** in respect of a Distribution Period or Financial Year, as the case requires, means the amount, if any, determined by the Trustee in accordance with clauses 10.4 to ~~10.5~~10.6 for the Distribution Period;

**Distribution Calculation Date** means the last day of each Distribution Period or such other days as the Trustee designates;

**Distribution Account** means the account described in clause 11.33;

**Distribution Period** means each of the periods commencing on the day after the last day of the last preceding Distribution Period and ending on:

- (a) the last day of June and December; or
- (b) such other day as the Trustee specifies in accordance with clause ~~10.12~~,

in each year during the continuance of the Trust, and includes the period commencing on the Commencement Date and terminating on the next Distribution Calculation Date with the exception of the last Distribution Period which commences on the day after the last day of the last preceding Distribution Period and ends on the date of termination of the Trust;

**Dollars, A\$ and \$** means the lawful currency of the Commonwealth of Australia;

**Financial Statements** means the financial statements prepared by the Trustee from time to time in respect of the Trust;

**Financial Year** means:

- (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;

**Governmental Agency** means:

- (a) an Australian government, whether Commonwealth, State, municipal or local;
- (b) a foreign government, whether unitary, federal, provincial, regional, municipal or local; and
- (c) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation, statutory or otherwise, of a government referred to in paragraph (a) or (b);

**GST** means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

**GST Rate** means the rate of GST under the GST Law;

**Income Distribution** means the amount distributed in accordance with clause 11.1 in respect of a Member for a Distribution Period;

**Liabilities** means all present liabilities of the Trust including any provisions and reserves which the Trustee decides should be taken into account in determining the liabilities of the Trust, including:

- (a) proceeds of redemption which have not yet been paid;
- (b) any amount in the ~~distribution~~ Distribution ~~account~~ Account which has yet to be distributed; and
- (c) such other amounts as are required to meet contingent liabilities of the Trust;

but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the Financial Statements of the Trust;

**Market Value of the Assets** means the aggregate market value of the Assets calculated in accordance with clauses 8.4 to 8.6;

**Member** means the person Registered as the holder of a Unit including persons jointly Registered;

**month** means calendar month;

**Net Asset Value** means the amount calculated in accordance with clause 8.2 from time to time as ascertained by the Trustee by deducting from the aggregate of:

- (a) the Market Value of all Assets of the Trust; and
- (b) any other amounts which should be included in the aggregate for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time,

the aggregate of:

- (c) all Liabilities of the Trust; and
- (d) any other amounts which should be included in the aggregate:
  - (i) for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time; and
  - (ii) as a provision for income tax or capital gains tax which would be payable by the Trustee or the Members on the disposal of all or any of the Assets of the Trust;

**Notional Income** means any notional or deemed amount that will not result in the receipt of cash or property, such as franking and foreign tax credits (which, for the avoidance of doubt,

includes any notional amounts in the Trust's assessable income under sections 207-35 and 6AC of the Tax Acts);

**Office** means the registered office from time to time of the Trustee;

**Ordinary Resolution** means a Resolution that has been passed by at least 50% of the total votes that may be cast by Members at the relevant meeting (including Members who are not present in person or by proxy);

**Other Instrument Holder** means a holder of an Other Instrument;

**Other Instruments** has the meaning given to that expression in clause 3.24;

**person** includes a company, corporation, firm, authority, unincorporated association or body of persons;

**Redemption Price** means the redemption price for a Unit calculated in accordance with this Constitution;

**Register** means the register of Members kept by the Trustee under the Corporations Act;

**Registered** means recorded in the Register;

**Registration** means recording in the Register;

**Resolution** means a resolution passed at a meeting of Members in the Trust:

- (a) 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
- (b) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (c) 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 majority;

**Security Interest Rules** means the rules and policies adopted by the Trustee from time to time for the recognition of encumbrances over Units in accordance with clause 3.22;

**Special Resolution** means a Resolution where the required majority is 75% of votes cast at the relevant meeting (whether in person or by proxy);

**TAT** means Orchard Investments Management Limited (ACN 105 684 231) of Level 6, 505 St Kilda Road, Melbourne, Victoria 3004, as the trustee or responsible entity (as the case requires) of the Timbercorp Agribusiness Trust, and any replacement trustee or responsible entity of the Timbercorp Agribusiness Trust;

**Tax** means all kinds of taxes, duties, imposts, deductions and charges imposed by a government, including GST or any amounts recovered from the Trustee by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Trustee on account of GST, together with interest and penalties on such amounts;

**Tax Acts** means:

- (a) the *Income Tax Assessment Act 1936* (as amended);
- (b) the *Income Tax Assessment Act 1997* (as amended);
- (c) the *Income Tax (Transitional Provisions) Act 1997* (as amended);
- (d) *Taxation Administration Act 1953* (as amended); and
- (e) the taxation rating legislation,

of the Commonwealth of Australia, as the case requires;

**Taxable Income** means *net income* as defined by section 95 of the Tax Act of the trust estate constituted by the Trust for a year of income, or if repealed or replaced, any concept enacted to replace the definition of *net income*,

**Transaction Costs** mean:

- (a) when calculating the Application Price of a Unit, the Trustee's estimate of the *total cost* of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's estimate of the *total cost* of selling the Assets and any Tax that the Trustee determines would be payable by the Trust if all such Assets had been disposed of on that date,

as if the Assets were acquired or sold on the relevant calculation date at the respective amounts at which each of the Assets is brought to account in computing the Net Asset Value at that date.

For the purposes of this definition, *total cost* means the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be incurred if all the Assets held at the date of calculation were acquired or sold, as the case requires;

**Trust** means the trust constituted or governed by this Constitution;

**Trustee** means OIM #2 Pty Ltd (ACN 112 691 997), the trustee of the Trust, and any replacement trustee;

**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;

**Trust Income** means the net income of the Trust determined by the Trustee having regard to Accounting Principles for a Distribution Period or Financial Year, as the case requires;

**Unit** means an undivided share in the beneficial interest in the Trust as provided in this Constitution;

**Valuation Time** means the valuation time as determined by the Trustee in accordance with clause 8.

## Interpretation

1.8 Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act 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) words importing a gender include any gender;
- (e) where a word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form in respect of such word or phrase unless the context otherwise requires has a corresponding meaning;
- (f) the words *includes, 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;
- (g) amend includes delete, modify or replace;
- (h) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution; and
- (i) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

#### **Other documents**

- 1.9 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 binding**

- 1.10 This Constitution binds, and is legally enforceable as between, the Trustee 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.

#### **Governing law**

- 1.11 The laws of Victoria, and where applicable the laws of the Commonwealth of Australia, govern this Constitution.
- 1.12 The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria.

#### **Other obligations excluded**

- 1.13 Except as required by the Corporations Act and this Constitution all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Trustee in its capacity as trustee of the Trust arising under any statute.

#### **Wholly-owned sub-trust**

- 1.14 Whilst TAT holds the entire beneficial interest in the Trust, the Trustee must:
- (a) only issue Units to TAT;
- (b) appoint the auditor of TAT from time to time as the Auditor of the Trust under clause 27;

- (c) the Trustee may only invest in Assets which TAT is authorised to invest in under TAT's trust deed;
- (d) act on the instructions of TAT and do such other things to ensure as far as possible that TAT has day to day control of the Trust (including that the Member has day to day control over the use of any contribution to the Trust to generate any return or benefit).

1.15 Clause 1.14 takes precedence over any other term or condition of this Constitution to the extent of any inconsistency, except that TAT may by written Resolution vary clause 1.14.

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## **2 Assets held on trust**

### **Assets vested in Trustee**

2.1 The Assets will be vested in and held by the Trustee on trust for Members on the terms and subject to the conditions of this Constitution.

### **Assets must be held separately by the Trustee**

- 2.2 The Trustee must clearly identify the Assets as property of the Trust and hold the Assets separately from the assets of the Trustee and any other trust or managed investment scheme.
- 2.3 The Trustee may from time to time appoint a Custodian to hold the Assets on trust for Members of the Trust, and subject to the terms, of this Constitution and the Custodian agreement.
- 2.4 All Assets must be registered or otherwise held in the name of the Trustee or any Custodian.

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## **3 Units**

### **Nature of Units**

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to the rights, obligations or restrictions attaching to any particular Unit, each Unit other than a Fractional Unit, confers an equal undivided interest in the Trust and a Fractional Unit confers an interest of the same nature which is proportionate.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer:
- (a) an interest in a particular Asset;
  - (b) an entitlement to lodge a caveat in respect of a particular Asset;
  - (c) an entitlement to interfere with the rights or powers of the Trustee in its dealings with the Assets;
  - (d) an entitlement to exercise any rights, powers or privileges in respect of any Asset, other than as provided in this Constitution or permitted by the Corporations Act.
- 3.4 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

### **Income entitlement of Units**

- 3.5 Except as otherwise expressly provided in this Constitution, the Trustee may in its discretion issue Units on terms that such Units:
- (a) participate fully in the Distributable Income of the Trust 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 the Distributable Income of the Trust 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 the Distributable Income of the Trust in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distributable Income of the Trust to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of issue of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period; or
  - (d) entitle the holder of such Units, including Partly Paid Units, to a fixed rate of distribution for a period to be determined by the Trustee.

### **No fractions of Units**

- 3.6 Fractions of a Unit may not be issued by the Trustee. Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is to be rounded down or up respectively to the nearest whole Unit.

### **Rounding of amounts**

- 3.7 Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset of the Trust.

### **Additional Units and bonus Units**

- 3.8 The Trustee may from time to time create additional Units. The number of additional Units created must be determined by the Trustee in accordance with clause 5.
- 3.9 Subject to this Constitution, the Trustee may issue Units subject to any rights, restrictions and obligations determined by the Trustee.
- 3.10 The Trustee may distribute capital of the Trust to Members by appropriating the whole or part of the amount standing to the credit of the reserve referred to in clause 29, such distribution to be satisfied by the payment of Cash or the issue of Units to Members in proportion to the number of Units held by them respectively (taking into account the number of Fully Paid Units and Partly Paid Units held by the Member).

### **Reconstruction, consolidation, division and reclassification of Units**

- 3.11 Units may be reconstructed, consolidated, divided or reclassified as determined by the Trustee or any Resolution of Members, provided such reconstruction, consolidation, division or reclassification does not result in the proportionate interest of Members being affected.

### **Transfer of Units**

- 3.12 Subject to this Constitution, Members may transfer Units.

- 3.13 Transfers must be in a form approved by the Trustee and if necessary be presented for Registration duly stamped, and must be accompanied by any evidence reasonably required by the Trustee to show the right of the transferor to make the transfer.
- 3.14 The transferee in respect of a transfer of Units is deemed to have agreed to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer and to be bound by this Constitution.
- 3.15 A transfer is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the Transfer is Registered.
- 3.16 The Trustee may refuse to record any transfer of Units in the Register without giving any reason for the refusal.
- 3.17 The Trustee may refuse to record any transfer of Units in the Register during the 5 Business Days immediately preceding any distribution.
- 3.18 The Trustee may refuse to record any transfer of Units in the Register which is in breach of the Security Interest Rules.
- 3.19 The Trustee is not required to give effect to any transaction, transfer or dealing at the request of or for the benefit of a Member unless the Member has paid to the Trustee's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.
- 3.20 The Trustee may Register a transfer notwithstanding that the Trustee at the time of Registration has notice of the transferor Member's death.
- 3.21 Other than as provided in clauses 3.16 to 3.20, there is no restriction on the transfer of Units.

#### **Security Interest Rules**

- 3.22 The Trustee may make and amend rules and policies from time to time for the recognition of encumbrances over Units.

#### **Rights Attaching to Units**

- 3.23 The holders of Units issued by the Trustee hold those Units subject to the rights, restrictions and obligations attaching to those Units.

#### **Creation and issue of Other Instruments**

- 3.24 The Trustee may issue any other interests, rights or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (*Other Instrument*) which the Trustee determines.
- 3.25 Such Other Instruments may be issued for such consideration and with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls, redemption, conversion or otherwise, as the Trustee decides.
- 3.26 The holders of Other Instruments issued by the Trustee hold those Other Instruments subject to the rights, restrictions and obligations attaching to those securities or instruments.

### **Rule against perpetuities**

3.27 The perpetuity period applicable to the Trust for the purposes of the rule against perpetuities or any other rule of law or equity is the period from the Commencement Date until the date which is the 80<sup>th</sup> anniversary of the day before the Commencement Date.

3.28 No Units may be issued or redeemed after the 80<sup>th</sup> anniversary of the day before the Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

---

## **4 Members**

### **Non-Resident Members**

4.1 A person who is not a resident of Australia may be a Member.

### **Joint tenancy**

4.2 Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

4.3 Any person registered jointly may give an effective receipt on behalf of the joint holders.

### **Death or legal disability of a Member**

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

(a) *the survivor*, where the deceased was a joint holder holding as a joint tenant; or

(b) *the legal personal representative*, in any other case,

will be the person recognised as having any claim to Units Registered in the Member's name.

4.5 The survivor or legal personal representative, as the case may be:

(a) may elect in a form approved by the Trustee either to be Registered, or for a nominee to be Registered, as the holder of those Units, subject to the production of any evidence which may be required by the Trustee from time to time; and

(b) will be entitled to receive and may give a discharge for all moneys payable in respect of the Units.

4.6 The survivor or legal personal representative, as the case may be, is not entitled to receive notices of or to attend or vote at any meetings of Members until Registered as a Member.

### **Register of Members**

4.7 The Trustee must keep a Register at the Office in accordance with the Corporations Act.

### **Changes in Member's details**

4.8 A Member must notify the Trustee of any change in its details kept in the Register.

## **5 Application for Units**

### **Application form**

- 5.1 An applicant for Units must complete a form which is approved by the Trustee and leave it for, or deliver it to, the Trustee at its Office, if the Trustee so requires.
- 5.2 The form may be transmitted electronically to the Trustee with its approval, provided the original application form is left for, or delivered to, the Trustee at its Office.

### **Payment of application moneys**

- 5.3 Payment in a form acceptable to the Trustee or a transfer of property of a kind acceptable to the Trustee and able to be vested in the Trustee, must accompany the application form and be received by or be made available to the Trustee within such period before or after the Trustee receives the application form as the Trustee determines from time to time.
- 5.4 The Trustee may require property other than Cash being transferred to it under clause 5.3 to be valued by an Approved Valuer.
- 5.5 If the Trustee accepts a transfer of property other than Cash, any costs associated with the valuation or transfer of the property are to be paid or reimbursed out of the property being transferred.

### **Receipt of application**

- 5.6 For the purposes of this clause 5, an application for Units is only taken to have been received by the Trustee when it has:
  - (a) received an application form for Units completed in full; and
  - (b) received the application moneys relating to the application for Units or had the property against which the Units are to be issued vested in it.
- 5.7 For the purposes of this clause 5, the Trustee may treat receipt of a cheque or other promise or direction to pay as receipt of the application moneys.
- 5.8 For the purposes of this clause 5, an application for Units or application moneys relating to the application for Units will be deemed to have been received by the Trustee at the following times:
  - (a) if left for or delivered personally to the Trustee at its Office during business hours on a Business Day, on the date and time of being so left or delivered;
  - (b) if left for or delivered at the Trustee's Office on a day that is not a Business Day or outside business hours on a Business Day, at 9:00 am on the next Business Day;
  - (c) if sent by post to the Trustee's Office, on the date and time of delivery to the Office; or
  - (d) if transmitted electronically to the Trustee's Office, at 9:00 am on the Business Day on which the Trustee receives the deposit of the application moneys in a bank account of the Trust.
- 5.9 In the case where the Trustee does not require an application form for Units to be completed, the Trustee may determine that it is deemed to have received the application at the time it receives the application moneys or the property against which the Units are to be issued are vested in it.

### **Trustee may reject application for Units**

- 5.10 The Trustee may reject an application for Units in whole or in part without giving any reason for the rejection.
- 5.11 Where the Trustee rejects an application for Units, it must return any application moneys and property to the applicant not later than the next Business Day after it is deemed to have received the application in accordance with clause 5.6.

### **Acceptance of application**

- 5.12 Where an application for Units is received and accepted by the Trustee not later than the Designated Time on a Business Day, the application for Units is received and accepted on that Business Day.
- 5.13 Where an application for Units is received and accepted:
- (a) after the Designated Time on a Business Day; or
  - (b) on a day that is not a Business Day,
- the application for Units is deemed to have been received and accepted on the next Business Day before the Designated Time.

### **Application Price of Units**

- 5.14 Subject to clauses 5.16 and 5.17, all Units must only be issued at the Application Price equal to:

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

- 5.15 Each of the variables in clause 5.14 must be determined as at the next Valuation Time after:
- (a) the Trustee receives the application for Units; or
  - (b) the Trustee receives the application money, or the property against which Units are to be issued or vested in the Trustee,
- whichever happens later.
- 5.16 All Units issued to TAT and / or its nominee on or before 30 June 2005 will be issued at the Application Price of A\$1.00 per Unit, including the Units issued under clause 1.3.
- 5.17 While the Trust is a wholly-owned sub-trust of TAT, ~~the Trustee may determine that the~~ Application Price for additional Units will be A\$1.00 unless otherwise determined by the Trustee.

### **Issue date**

- 5.18 Subject to clauses 1.3 and 5.19, Units are taken to be issued on:
- (a) except in the case of a reinvestment of distribution in accordance with clause 11.14, when:
    - (i) the Trustee accepts the application; or







where

- A* is the amount the member requested to redeem;
- B* is the aggregate of the amounts that all Members requested to withdraw;
- C* is the amount available to satisfy redemption requests made in response to the offer.

7.8 The Trustee may decide to satisfy a redemption request in relation to only some of the Units which are the subject of the request, if it is in the best interests of Members to do so.

#### **Cancelling an offer**

- 7.9 The Trustee may by notice in writing to the Members cancel an offer before it closes if:
- (a) the offer contains a material error; or
  - (b) it is in the best interests of Members to do so.

#### **Request for redemption**

7.10 Other than as set out in clauses 7.1 to 7.9, the Trustee is not required to give effect to any redemption request by a Member.

#### **Redemption request**

- 7.11 Where a redemption request is received by the Trustee not later than the Designated Time on a Business Day, that redemption request is deemed to be received on that Business Day.
- 7.12 Where a redemption request is received:
- (a) after the Designated Time on a Business Day; or
  - (b) on a day that is not a Business Day,
- that redemption request is deemed to have been received on the next Business Day before the Designated Time.

#### **Processing of a redemption request**

- 7.13 Subject to clauses 7.7, 7.8 and 7.9, a redemption request received in accordance with clauses 7.11 and 7.12 will be:
- (a) processed as at the Designated Time on the Business Day following the day on which the offer closes; and
  - (b) satisfied in accordance with clause 7.5.

#### **Obligation to pay Redemption Price**

7.14 The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

#### **Sums owed to Trustee**

7.15 The Trustee may deduct from the proceeds of redemption any money due to it by the Member.

## **Transfer of Assets**

- 7.16 The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request.
- 7.17 The Assets together with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request.
- 7.18 If the Trustee requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

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## **8 Valuation of Assets**

### **Valuations**

- 8.1 The Trustee may cause an Asset to be valued at any time.
- 8.2 The Trustee may determine Net Asset Value at any time, including more than once on each day.

### **Valuations for applications and redemptions**

- 8.3 The Trustee must cause:
- (a) the Application Price to be calculated at the Designated Time on each Designated Application Date;
  - (b) the Redemption Price to be calculated in accordance with clause 6.4.

### **Trustee may value**

- 8.4 The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- 8.5 Unless the Trustee determines otherwise, the value of an Asset will be its market value.
- 8.6 Where the Trustee values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Trustee must be reasonable and capable of resulting in a calculation that is independently verifiable.

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## **9 Confirmations**

### **No Certificate issued**

- 9.1 No certificate will be issued by the Trustee evidencing the title of a person to Units in respect of which that person is Registered.

### **Confirmation**

- 9.2 Within 1 month of issuing, transferring or redeeming any Unit to a person, the Trustee must issue a Confirmation to that person.

## 10 Trust Income and entitlement of Members

### Income distributions

10.1 Clauses 11.1 to 11.7 will apply unless the Trustee makes a determination under clause 11.10.

### Income for each Financial Year

10.2 The Trustee must receive and collect all income of the Trust.

10.3 The Trustee must determine;

- (a) the Trust Income of the Trust for each Distribution Period and Financial Year;
- (b) the Taxable Income of the Trust for each Distribution Period and Financial Year;
- (c) the Distributable Income for each Distribution Period and Financial Year; and
- (d) the entitlement of the ~~Unitholder~~Members to Distributable Income for each Distribution Period.

### Calculation of Distributable Income

10.4 Subject to clause 10.5, the distributable income of the Trust for each Financial Year is the Taxable Income of the Trust ~~Trust Income~~ for that Financial Year.

~~10.5 If it is necessary in calculating the Taxable Income of the Trust to gross up any amount of income, or include any amount of deemed assessable income or to make any deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deductions must not be included in calculating the Taxable Income of the Trust unless the Trustee determines that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Taxable Income of the Trust.~~

~~10.5 The Trustee may determine that the distributable income for a Financial Year will be:~~

- ~~(a) the Taxable Income for that Financial Year, if it exceeds the Trust Income for that Financial Year; or~~
- ~~(b) some other amount not less than the Trust Income for that Financial Year and not greater than the Taxable Income for that Financial Year.~~

10.6 The Trustee must determine the Distributable Income of the Trust for each Distribution Period in accordance with clauses 10.4 to 10.5 with any necessary modifications, as if the Distribution Period were a Financial Year.

### Preparation of Financial Statements

10.7 Notwithstanding that the Distributable Income of the Trust may, in accordance with clause 10.4, be calculated in the same manner as the Taxable Income of the Trust, The the Financial Statements of the Trust are to be prepared in accordance with Accounting Principles.

10.8 The preparation of the Financial Statements of the Trust in accordance with clause 10.7 is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 10.4.

## Classification of income and capital

~~10.8~~10.9 The classification of any item as being on income or capital account, and the extent to which reserves or provisions need to be made, must be determined by the Trustee in accordance with legal principles and Accounting Principles.

## Entitlement to Distributable Income of the Trust

~~10.9~~10.10 At the end of each Distribution Period the Members on the Register on the last day of the Distribution Period have a vested and indefeasible interest in, and are presently entitled to, the Distributable Income of the Trust for that Distribution Period in accordance with the Income Distributions made (or allocated) under clause 11.1.

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## 11 Distribution of income

### Income Distribution

11.1 An income distribution in respect of a Member means an amount calculated by the Trustee as follows, and any amount so calculated is taken to be allocated to the Member:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is an estimate of the Distributable Income of the Trust for the Distribution Period calculated as if the Distribution Period were a Financial Year; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is the amount (if any) by which the Distributable Income of the Trust for the Financial Year exceeds the aggregate of the estimates of Distributable Income of the Trust calculated for the purposes of variable *C* in clause 11.1(a) in respect of the previous Distribution Periods of the Financial Year.

### Satisfaction of present entitlement

- 11.2 The present entitlement of a Member to the Distributable Income of the Trust for a Financial Year will be satisfied by:
- (a) the payment of the Income Distributions to the Member in respect of the Financial Year;
  - (b) if an Income Distribution is not paid to the Member by reason of a transfer of Units by the Member, the payment by the Trustee of an amount equal to that Income Distribution in respect of those Units to the person to whom the Units have been transferred; or
  - (c) the reinvestment of the Income Distribution in Units in accordance with clauses 11.11 to 11.19.
- 11.3 Income Distributions must be paid within two months after the Distribution Calculation Date.
- 11.4 The Trustee must have distributed all of the Distributable Income of the Trust for the Financial Year within two months after the end of the Financial Year.

### Excess distribution

~~11.5 If at the end of a Financial Year, the Auditor of the Trust determines that the amount distributed as Distributable Income under clause 11.1 of the Trust exceeds the aggregate of Trust Income for that Financial Year, the excess will be taken to be a distribution of capital.~~

### Additional distributions to avoid taxation of the Trustee

~~11.6~~ 11.5 The Trustee may distribute amounts in a Distribution Period in addition to, ~~and in the same manner as,~~ the amounts calculated in accordance with clauses 10.4 to ~~10.5~~ 10.6, ~~including where it is necessary~~ to enable distributions to Members of the minimum amount necessary to avoid the Trustee as trustee of the Trust becoming assessable to pay tax under the Tax Acts.

~~11.6~~ The Members on the Register on the last day of the Distribution Period will have a vested and indefeasible interest in, and be presently entitled to, any amount distributed (or allocated) to them under clause 11.5. The present entitlement of a Member to any amount distributed (or allocated) to them under clauses 11.5 is to be satisfied in the same manner as clause 11.2 (with any necessary modifications).

### Notional Income

- 11.7 The benefit of any tax credit or rebate attributable to Notional Income is deemed to have been distributed to Members in proportion to their entitlement to any Distributable Income of the Trust for a Distribution Period of the category or source of income in respect of which the credit or rebate is referable.

### Other distributions

- 11.8 The Trustee may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Trustee. The distribution may be in cash, by way of additional Units or of Assets (pursuant to clause 11.22 ~~to 11.27~~).
- 11.9 The distribution of cash or other Assets to each Member under clause 11.8 is to be calculated in accordance with the following formula or in any other manner determined by the Trustee:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member on the day of calculation;
- B* is the aggregate of the number of Units in issue on the day of calculation;
- C* is the amount of cash or the Value of Assets (determined by the Trustee) to be distributed.

#### **Trust taxed as a company**

11.10 If the Trust is to be taxed as if it were a company, the Trustee may determine that this clause 11.10 applies to a Distribution Period instead of clauses 11.1 to 11.8. If it does so:

- (a) as soon as practicable after the end of the Distribution Period the Trustee must determine the income in respect of the Distribution Period. Unless the Trustee determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with Accounting Principles.
- (b) the Trustee must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) the Trustee may, in its discretion from time to time determine to pay such amount or amounts (if any) of income as a distribution in respect of the Distribution Period (each a ***Distributable Amount***) to the Members on the register on any date determined by the Trustee (***Books Closing Date***).
- (d) in respect of a Distributable Amount being paid to Members pursuant to this clause 11.10:
  - (i) the Trustee must comply with the provisions of the Tax Act and take all necessary or desirable steps to do so, including the franking of the distributions; and
  - (ii) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) a Member is entitled to a portion of the Distributable Amount, calculated as follows:

$$(A/B) \times C$$

where

- A* is the aggregate of the number of Units held by the Member at the Books Closing Date for the Distributable Amount;
- B* is the aggregate of the number of all Units in issue as at the Books Closing Date;
- C* is the Distributable Amount; and
- (f) the Distributable Amount must be paid to Members within two months after the Books Closing Date.

## Reinvestment

- 11.11 The Trustee may decide whether to permit or require the Members to reinvest some or all of any distributions made to them under this clause 11 to acquire Units.
- 11.12 If the Trustee decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- 11.13 Any right of reinvestment conferred by the Trustee may be exercised by the Member by giving notice in writing to the Trustee (in the form determined by the Trustee from time to time) to request that the Trustee retain and reinvest in Units the money or part of the money to be distributed to the Member.
- 11.14 If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- 11.15 The Trustee may make provision for, and make payment of, the Application Price subscription or purchase price for the additional Units out of the distribution or income (as applicable) which is otherwise available for reinvestment.
- 11.16 If reinvestment applies the Application Price for each additional Unit and the Application Price for the Units:
- (a) while the Trust is a wholly-owned sub-trust of TAT, will be A\$1.00 unless otherwise determined by the Trustee; and
  - (b) otherwise is to be calculated in accordance with clause 5.14, less such discount, if any, not exceeding 10% as the Trustee may determine.
- 11.17 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 and the Trustee for Members, in such proportions as the Trustee may determine on behalf of the relevant Member.
- 11.18 If the Member has cancelled any previous notice under clause 11.13, 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.
- 11.19 The Trustee may arrange for any reinvestment of distributions to Members to be underwritten, in which case any Units issued to the underwriter or any nominee of the underwriter will be issued at the Application Price determined in accordance with clause 11.16.

## Aggregation of money held on behalf of Members

- 11.20 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.

## Position on transfer of Units

- 11.21 Distributable Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

## Distribution on transfer of Assets

- 11.22 The Trustee may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units.



- 11.23 If the Trustee wishes to do so, it must effect the distribution to all Members in the same way.
- 11.24 The Assets transferred to each Member must be of the same type, have the same rights and be fully paid.
- 11.25 The Assets transferred may comprise solely a beneficial interest in tangible or intangible property.
- 11.26 In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Trustee:
- (a) to act as their agent to agree to obtain the Assets; and
  - (b) where the Assets comprise shares or an interest in shares in a company, to agree to become a member of that company.
- 11.27 The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Trustee requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

#### **Categories and sources of income**

- 11.28 The Trustee 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.
- 11.29 The Trustee may allocate to a Member all or part of the Distributable Income to which the Member is entitled from a particular category or source of income in which case the Trustee must advise the Member of the extent to which Distributable Income allocated to the Member consists of income from a particular category and / or source.

#### **Deductions from Income**

- 11.30 The Trustee may deduct from any Income Distributions or other distribution payable to a Member any sums of money presently payable by the Member to the Trustee on account of an instalment due in respect of Units or otherwise.

#### **Liability**

- 11.31 The Trustee does not incur any liability and is not 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 11 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.

#### **Rounding**

- 11.32 If the Member's entitlement to a distribution 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.

#### **Distribution Account**

- 11.33 The Distributable Income of the Trust in respect of a Distribution Period and any other amounts to be distributed in accordance with this Deed are to be held in a separate account in the name of the Trustee and designated as a *Distribution Account*.

- 11.34 Any amount in the Distribution Account (including any Distributable Income to be distributed) does not form part of the Trust Fund but must be held by the Trustee, subject to clause 11.30, on trust for distribution to the Members entitled to the amount.
- 11.35 The Trustee may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Trustee will 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.
- 11.36 Income earned from the investment of any moneys standing to the credit of the Distribution Account is deemed to be income of the Trust and must be dealt with accordingly.
- 11.37 If the Trustee has exercised its power under clauses 11.28 and 11.29 the separate categories and sources of income must be shown in the Distribution Account.
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## **12 Variation of Distribution Period**

- 12.1 If the Trustee decides that the Distribution Period should end on a date other than the date from time to time prevailing under the provisions of this Constitution, it may change that date subject to:
- (a) the new date being not later than the pre-existing date, and
  - (b) Members receiving notice of the new Distribution Period at least 30 days before the commencement of the new Distribution Period.
- 

## **13 Taxation of Trust**

### **Payment of Tax**

- 13.1 The Trustee will determine and pay all Taxes payable in respect of the Trust under the Tax Act or imposed by any foreign government or authority in respect of any Financial Year.
- 13.2 The Trustee may realise any Assets to pay Taxes.

### **Provision for Tax**

- 13.3 The Trustee may at any time make provision for such Tax in respect of the Trust as it in its absolute discretion estimates will be payable from time to time by the Trust under the Tax Acts in respect of that Financial Year having regard to:
- (a) taxation losses accumulated in the Trust;
  - (b) capital gains and losses realised on the Assets of the Trust; and
  - (c) any other matter or thing which the Trustee in its absolute discretion considers appropriate.
- 13.4 Any provision may be made against such Assets or categories of Assets as the Trustee in its absolute discretion deems appropriate.

### **Taxation Credits**

- 13.5 Subject to the Tax Acts, where the Trustee is in receipt of any Taxable Income in respect of which there arises any Tax credit or rebate, including without limitation, Notional Income, it may:

- (a) offset such credits or rebates against the provision for Tax established under clause 13.3 in respect of the Trust; and
- (b) accrue such credits or rebates as they arise despite the time at which such credits or rebates are received.

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## **14 Taxation of Members**

### **Definitions**

14.1 In this clause 14, unless there is something in the subject matter or context that is inconsistent:

- (a) **Taxation Amount** means in relation to a Taxpayer an amount of Tax which in the opinion of the Trustee the Taxpayer is primarily liable to pay.
- (b) **Taxpayer** means a person who at any time is, was, or becomes a Member.

### **Deduct Taxation Amount**

14.2 The Trustee may deduct from any amount payable to, or to be applied in respect of, a Taxpayer the Taxation Amount of that Taxpayer which is payable or anticipated to become payable by the Trustee on its own account or out of the Assets.

### **Taxpayer to Supply Details**

- 14.3 The Taxpayer must give the Trustee such details regarding its holding of Units or any other relevant matter necessary for the Trustee to determine whether there exists or may in the future exist a Taxation Amount in relation to that Taxpayer.
- 14.4 The Taxpayer must be given:
- (a) the request in writing; and
  - (b) at least 14 days to respond to the request.

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## **15 Payments**

### **Payments to Members**

15.1 Money payable by the Trustee to a Member may be paid in any manner the Trustee decides.

### **Unpresented cheques**

- 15.2 Cheques issued by the Trustee that are not presented within 6 months may be cancelled.
- 15.3 Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

### **Unsuccessful transfer**

15.4 Where the Trustee attempts to make a payment to a Member by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

### **Fraction of cents**

15.5 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

### **Payments to joint Members**

15.6 A payment to any one of joint Member will discharge the Trustee in respect of the payment.

### **Deduction of amounts payable to Member**

15.7 The Trustee may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any withholding tax required to be deducted by law; or
- (c) any other amount owed by the Member to the Trustee or any other person,

which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted.

15.8 Clause 15.7 is in addition to the powers given to the Trustee under clause 14.

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## **16 Powers and duties of the Trustee**

### **General powers**

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

### **Contracting and borrowing powers**

16.2 Without limiting clause 16.1, the Trustee in its capacity as trustee of the Trust has power to borrow or raise money whether or not on security of the Assets and to incur all types of obligations and liabilities, including guarantees.

### **Underwriting**

16.3 Without limiting the effect of clause 16.2, the Trustee in its capacity as trustee of the Trust has power to enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Trustee determines.

16.4 Unless the agreement between the Trustee and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Trustee.

### **Controlled Entities**

16.5 Without limiting the effect of clause 16.2, the Trustee may provide financial assistance to TAT or any Controlled Entity, including guaranteeing or indemnifying, or granting security in favour of, a creditor of TAT or a Controlled Entity.

### **Investment powers**

16.6 Without limiting clause 16.1, the Trustee may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

### **Power of delegation**

- 16.7 The Trustee may authorise any person to act as its agent, attorney or delegate:
- (a) to hold title to any Asset as Custodian; and
  - (b) perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.
- 16.8 The Trustee may include in the authorisation such provisions necessary to protect and assist those dealing with the agent, attorney or delegate as the Trustee thinks fit.
- 16.9 The agent, attorney or delegate may be an associate of the Trustee.
- 16.10 In the case of a joint appointment, the agent, attorney or delegate will be appointed jointly and severally.

### **Powers of the Trustee**

- 16.11 A reference to the *power* of the Trustee under this clause 16 includes all the powers that a natural person would have in that particular context.

### **Exercise of discretion**

- 16.12 The Trustee may in its absolute discretion decide how and when to exercise its powers, authorities and discretions.

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## **17 Retirement of Trustee**

### **Voluntary retirement**

- 17.1 Subject to clause 17.2, the Trustee may retire as the trustee of the Trust upon giving three months' written notice to Members.
- 17.2 The Trustee's retirement under clause 17.1 will only be effective when:
- (a) a new Trustee's appointment is complete under clauses 17.5 and 17.6; and
  - (b) the appointment of the new Trustee is approved by the passing of a Special Resolution of Members.

### **Compulsory retirement**

- 17.3 The Trustee must retire as the trustee of the Trust:
- (a) as required by law; or
  - (b) upon the passing of a Special Resolution of Members.

### **Transfer of records and property**

- 17.4 Upon the resignation, retirement or removal of the Trustee, the Trustee must promptly, at the expense of the Trust:
- (a) hand to the new Trustee all books, records, documents and other property of or relating to the Trust;
  - (b) do all things necessary to transfer the legal title in the Assets to the new Trustee;

- (c) sign authorities and give directions reasonably required by the new Trustee to give possession or control of any part of the Trust in the hands of third parties; and
- (d) give any assistance reasonably required by the new Trustee to put the new Trustee into full knowledge of the affairs of the Trust.

#### **New Trustee to enter into deed**

- 17.5 Any proposed replacement Trustee must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- 17.6 An appointment of a new Trustee is not complete until the new Trustee covenants by deed poll to be bound by this Constitution.

#### **Release**

- 17.7 When it retires or is removed, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed, except that the Trustee is still obliged to vest the Assets in the new Trustee and to deliver all books and records relating to the Trust to the new Trustee.

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## **18 Notices to Members**

### **Communications with Members**

- 18.1 A notice or other communication required under this Constitution to be given to a Member may be:
  - (a) given in writing or in such other manner, including electronic communication, as the Trustee determines; and
  - (b) delivered or sent to the Member at its physical or electronic address last advised to the Trustee for delivery of notices.
- 18.2 A notice or communication sent by facsimile or electronic mail is deemed to have been given in writing.

### **Cheques**

- 18.3 A cheque payable to a Member may be posted to its physical address or handed to the Member or a person authorised in writing by the Member.

### **Communications with joint Members**

- 18.4 In the case of joint Members, the physical or electronic address of the Member will be the physical or electronic address of the Member first named in the Register.

### **Deemed receipt of communications**

- 18.5 A notice, cheque or other communication sent by post is taken to be received on the third day after it is posted.
- 18.6 A facsimile is taken to be received upon receipt by the sender of an acknowledgement or transmission report generated from the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.

- 18.7 Subject to the law, the Trustee may determine the time at which other forms of communication will be taken to be received.
- 18.8 Proof of actual receipt is not required.
- 18.9 Every person who becomes a Member other than by way of application for Units is bound by every notice which was duly given to the person from whom he derived title to those Units.
- 

## **19 Notices to the Trustee**

### **Communications with the Trustee**

- 19.1 A notice required under this Constitution to be given to the Trustee must be given in writing or in such other manner, including electronic communication, as the Trustee determines.
- 19.2 A notice or communication sent by facsimile is deemed to have been given in writing.

### **Effectiveness of notice**

- 19.3 The notice is effective only at the time of receipt.

### **Signature**

- 19.4 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Trustee dispenses with this requirement.
- 

## **20 Meetings of Members**

### **Convening and adjourning a meeting of Members**

- 20.1 The Trustee may whenever it thinks fit convene a meeting of Members.
- 20.2 The Trustee must convene a meeting of Members if required to do so by a requisition signed by or on behalf of Members registered as the holders in total of 50% or more of Units.
- 20.3 The Trustee may adjourn a meeting of Members, whether called by itself or the Members, to that date and time, being within 21 days of the date of the adjourned meeting, and at that place, as the Trustee may determine.

### **Notice of meetings**

- 20.4 Not less than 14 days' notice must be given of every meeting of Members and any notice must be given to all Members specifying the general nature of the business to be transacted. The date of service of the notice is to be counted as the first day but the day of the meeting is not to be counted.
- 20.5 A meeting may be held at shorter notice, being at least twenty-four hours, with the consent of Members holding 75% or more of the Units entitled to receive notice and attend any meeting.
- 20.6 A meeting may be held at less than 24 hours notice with the consent of all Members entitled to receive notice and attend that meeting.
- 20.7 All meetings must be held in Melbourne, Australia unless the Trustee otherwise determines.

### **Appointment of chairman**

- 20.8 At every meeting of Members the Trustee must nominate some person, whether a Member or not, to preside as chairman.
- 20.9 If there is an equality of votes, the chairman does not have a casting vote.

### **Determination of questions**

- 20.10 Every question arising at a meeting of Members is to be decided in the first instance by a show of hands unless:
- (a) it is a question which under this Constitution must be decided by the holders of a prescribed percentage or more of the Units, in which case a poll is to be taken; or
  - (b) a poll is demanded under clause 20.11.

### **Calling a poll**

- 20.11 A poll may be demanded by Members present in person or by proxy entitled to vote at meetings of the Members or by the chairman of the meeting.

### **One vote per Unit**

- 20.12 Upon a poll every Member present in person or by proxy, subject to any contrary special right, restriction or condition attaching to a Unit, will have one vote for every whole Unit held.

### **Giving of votes**

- 20.13 Votes may be given either personally, by proxy, by attorney or, in the case of a Member which is a company, by a person appointed as an authorised representative of the company under the Corporations Act.

### **Proxies and representatives**

- 20.14 Every instrument of proxy or appointment of a representative must be in the form prescribed by the Trustee or otherwise in a common or ordinary form and must be signed by the Member.
- 20.15 The instrument appointing a proxy must be deposited at the office of the Trustee not less than 24 hours, or any lesser period agreed to by the Trustee, before the time of holding the meeting or adjourned meeting (as the case may be) at which the person named as proxy proposes to vote.

### **Quorum**

- 20.16 The quorum for a meeting is one Member, where there is only one Member, and otherwise 2 or more Members present personally or by proxy or by representative or attorney, who represent in total not less than 50% of the Units.

### **No quorum**

- 20.17 If a quorum is not present within 30 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 a place and time decided by the Trustee.
- 20.18 At any adjourned meeting, those Members present in person or by proxy constitute a quorum.



### **Resolutions binding**

- 20.19 A Resolution by Members binds all Members and the Trustee, whether or not they are present at the meeting.
- 20.20 The Trustee is, subject to clause 20.21, obliged to act in accordance with any Resolution and shall have no liability to any Member for doing so.

### **Trustee may require indemnity**

- 20.21 The obligation of the Trustee to act in accordance with any Resolution or to exercise any power under this Constitution is subject to:
- (a) this Constitution; and
  - (b) if required by the Trustee (in its absolute discretion) the receipt from the Members of an indemnity in a form reasonably satisfactory to the Trustee against all costs, charges, losses, damages and expenses which the Trustee may suffer or incur in giving effect to any such Resolution or exercising any such power.

### **Objections**

- 20.22 No objection may be made to any vote cast unless the objection is made at the meeting.

### **Validity of meeting**

- 20.23 A meeting is still valid even if a Member does not receive a notice of meeting, including where the notice is accidentally not given to the Member.

### **Chairman**

- 20.24 The decision of the chairman on any matter is final.

### **Non-physical meetings**

- 20.25 The Trustee may hold meetings in any manner it determines, including by way of circular resolution or the Members agreeing in writing (such as an exchange of emails or faxes).

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## **21 Rights and liabilities of Trustee**

### **Holding Units**

- 21.1 The Trustee and its associates may hold Units in the Trust in any capacity.

### **Other capacities**

- 21.2 Subject to the Corporations Act, nothing in this Constitution restricts the Trustee (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member;
  - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction;

(c) acting in the same or a similar capacity in relation to any other managed investment scheme; or

(d) dealing with Units in the Trust,

provided that the Trustee, its directors, officers or related bodies corporate act in connection with any such matters in the utmost good faith to all Members.

### **Reliance by Trustee**

21.3 The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or lawyers, whether or not instructed by the Trustee, 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 Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee 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 Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

and the Trustee 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.

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## **22 Limitation of liability and indemnity in favour of Trustee**

### **Limitation on Trustee's liability**

- 22.1 If the Trustee acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 22.2 The limitation of liability under clause 22.1 applies to any liability arising from any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.3 The liability of the Trustee 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 Trustee's ability to be indemnified from the Assets.

### **Indemnity in favour of Trustee**

- 22.4 The Trustee 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 Trust.
- 22.5 To the extent permitted by law, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.6 To the extent permitted by law, the indemnity under clause 22.4 applies notwithstanding the existence of an unrelated breach of trust.

22.7 The indemnity under clause 22.4:

- (a) is in addition to any indemnity allowed by law; and
- (b) continues to apply after the Trustee retires or is removed as trustee of the Trust.

---

## 23 Liability of Members

### Liability limited

- 23.1 Subject to clause 23.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's unpaid application moneys for their Units.
- 23.2 A Member need not indemnify the Trustee if there is a deficiency in the Assets or meet the claim of any creditor of the Trustee in respect of the Trust.

### Recourse

- 23.3 The recourse of the Trustee and any creditor is limited to the Assets, subject to any separate agreement with a Member.

### Restrictions on Members

- 23.4 A Member:
- (a) must not interfere with any rights or powers of the Trustee under this Constitution;
  - (b) must not exercise any right, power or privilege 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.

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## 24 Remuneration and expenses of Trustee

### Remuneration of the Trustee

- 24.1 In this clause 24, unless the context or contrary intention appears *Management Fee* means the management fee calculated in accordance with the following formula as at the last day of each month:

$$F = [(A/B)/100] \times C$$

where:

- F* is the *Management Fee* for the month;
- A* is an amount determined by the Trustee but not exceeding 2;
- B* is 12;
- C* is the aggregate Market Value of the Assets as at the last day of the month;

- 24.2 Subject to clause 24.4, the Trustee is entitled to receive out of the Assets of the Trust and retain for its own use and benefit the *Management Fee* calculated monthly not later than 7

Business Days after the end of each month to which it relates until the date of the final distribution made in accordance with clause 31.3.

- 24.3 The Management Fee is to be adjusted on a pro rata basis if the month in respect of which the calculation is made is the month ending on the date of termination of the Trust or the month commencing on the Commencement Date.
- 24.4 While the Trust is a wholly-owned sub-trust of TAT, the Trustee has no right to fees unless the Member agrees otherwise.

#### **Waiver of fees**

- 24.5 The Trustee may:
- (a) accept or charge lower fees than it is entitled to receive under this Constitution; or
  - (b) postpone or defer payment for any period,
- on such terms as it thinks fit and as notified to Members.

#### **Expenses**

- 24.6 The Trustee, in addition to its remuneration, is entitled to pay, or be reimbursed for, out of the Assets of Trust, all out of pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Trustee connected with:
- (a) this Constitution and formation of the Trust;
  - (b) the preparation, review, distribution and promotion of any Disclosure Document in respect of Units or other promotion of the Trust including all expenses, costs, disbursement and charges incurred in connection with the offering of Units for sale or subscription including legal, valuation, underwriting, brokerage, printing and marketing costs on a cost basis;
  - (c) the preparation of, and compliance with, the Security Interest Rules;
  - (d) such commission, trailing commission, procuration or other fees or brokerage as the Trustee may determine to any person subscribing or obtaining subscriptions for or underwriting the issue or purchase of Units;
  - (e) the acquisition, disposal, insurance, custody and any other dealing with Assets, including all amounts payable under any Custody Agreements;
  - (f) any proposed acquisition, disposal or other dealing with an Asset of the Trust;
  - (g) the administration or management of the Trust or its Assets and Liabilities;
  - (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
  - (i) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), 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 Trustee of its obligations, representations or warranties under any such underwriting agreement;

- (j) the cost of printing Confirmations, Financial Statements, cheques, distribution statements, reports, audit reports, notices of meeting and other documents required to be circulated amongst or sent out to Members under this Constitution;
- (k) costs of postage of all Confirmations, cheques, Financial Statements, distribution statements, notices, reports, audit reports and other documents circulated amongst or sent out to Members under this Constitution or the Corporations Act;
- (l) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (m) Tax and financial institution fees and charges;
- (n) any GST charged by a supplier of goods or services, or both, to the Trustee in connection with the Trust;
- (o) the engagement of administrators, agents, valuers, contractors and advisers (including legal advisers) whether or not the administrators, agents, valuers, contractors or advisers are associates of the Trustee;
- (p) preparation and audit of the taxation returns, Financial Statements and the Register of the Trust and examination of Confirmations by an auditor;
- (q) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;
- (r) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to have acted fraudulently or in wilful default, or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 24.6(r) must be repaid;
- (s) complying with any law, and any request or requirement of ASIC;
- (t) while the Trust is a Controlled Entity, any fees and expenses allocated to the Trust by TAT in accordance with the TAT Constitution.

24.7 In clause 24.6, ***charges, expenses and outgoings*** includes:

- (a) internal charges, expenses and outgoings of the Trustee incurred in connection with the items referred to in clause 24.6, including the costs of appointing and maintaining staff in connection with those items; and
- (b) amounts paid or owing by the Trustee to related entities for services provided to the Trustee in connection with the Trust where the amounts would have been payable, or reimbursed to the Trustee, out of Assets had the services been provided to the Trustee by a third party.

## **GST**

24.8 Expression and words defined in the GST Law and used in clauses 24.9 to 24.15 have the meanings defined in the GST Law.

24.9 If any supply made by a party (***Supplier***) to the other (***Recipient***) under this Constitution is a taxable supply so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply does not include any amount referable to GST (the ***GST Exclusive Amount***).

- 24.10 In addition to the GST Exclusive Amount for a taxable supply under this Constitution, and subject to clause 24.11, the Recipient must pay to the Supplier a further amount calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- 24.11 GST payable under clause 24.10 must be payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount.
- 24.12 The right of a Supplier to payment under this clause 24.10 is subject to a valid tax invoice being provided by the Supplier to the Recipient.
- 24.13 If at any time an adjustment is made as between the Supplier and a taxing authority of an amount paid on account of GST on any supply made to the Recipient under or in connection with this Constitution, a corresponding adjustment must be made as between the Supplier and the Recipient.
- 24.14 If either party is required to reimburse to the other any cost, expense or other amount (or part) that the other party has incurred in connection with this Constitution, the amount to be reimbursed must be reduced by any part of that amount which is recoverable by the other party by way of an input tax credit, partial input tax credit or other like set off.
- 24.15 Clauses 24.8 to 24.15 take precedence over any other term or condition of this Constitution to the extent of any inconsistency.

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## **25 Amendments to this Constitution**

### **Amendments to the Constitution**

- 25.1 At any time prior to the termination of the Trust, this Constitution may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this clause 25 as a *variation*) as follows:
- (a) variations may be effected by the passing of a resolution by the Trustee approving the variations;
  - (b) a resolution signed by a duly authorised officer of the Trustee will be a variation to this Constitution on the terms of that resolution;
  - (c) following the passing of a resolution the Trustee may elect to enter into a deed or other document detailing the variation;
  - (d) a variation which concerns:
    - (i) a provision of clause 1.14;
    - (ii) a provision of clauses 3.1 to 3.4;
    - (iii) a provision dealing with the issue, transfer or redemption of Units;
    - (iv) a provision dealing with the appointment or removal of a Trustee;
    - (v) a provision dealing with the audit of the Trust;
    - (vi) a provision of clause 16;
    - (vii) a provision dealing with the remuneration of the Trustee;

(viii) a provision of this clause 25;

~~(ix)(viii)~~ a provision dealing with voting rights at meetings of the Members;

~~(x)(ix)~~ a provision of clause 22; or

~~(x)~~ a provision of this clause 25; or

(xi) a provision of clause 30;

is not effective unless the Members have by Special Resolution approved the proposed variation, on or before the instrument of variation is executed.

25.2 A variation may not:

- (a) prejudicially affect the rights of a Member to ~~Trust Income~~ income of the Trust previously set aside for it or held for its benefit; or
- (b) prejudicially affect the rights of Members, to participate in the income ~~Trust Income~~ or capital of the Trust in accordance with the provisions of this Constitution;

unless the consent of the Member prejudicially affected or the consents of all Members whose rights are to be prejudicially affected are obtained at or prior to the time any such variation is made.

#### Time variation takes effect

25.3 If the requirements of this clause 25 have been complied with, the provisions of this Constitution will be effectively altered, modified, varied, amended, revoked or added to, as the case may be, on the date specified in the resolution or, (if applicable), amending deed, or if no date is specified, the later of the date of the resolution, the deed poll or the date of any necessary approval.

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## 26 Inspection and copies of the Constitution

### Inspection of Constitution

26.1 Members may inspect a copy of this Constitution during usual business hours at the Office.

### Copy of Constitution

26.2 The Trustee must give a Member a copy of this Constitution and any amending deeds within 7 days if the Member:

- (a) asks the Trustee in writing for a copy of the Constitution; and
- (b) pays any reasonable fee required by the Trustee.

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## 27 Audit

### Appointment of Auditor

27.1 The Trustee must from time to time appoint an auditor of the Financial Statements.

- 27.2 The Auditor of the Financial Statements must at all times be a person who is a registered company auditor under the Corporations Act.

### **Retirement of Auditor**

- 27.3 An Auditor of the Financial Statements may:
- (a) retire at any time by notice in writing to the Trustee;
  - (b) be removed from office by the Trustee; or
  - (c) be removed from office by Special Resolution of the Members.

### **Appointment of New Auditor**

- 27.4 Any vacancy in the office of the Auditor must be filled by an appointment made by the Trustee.

### **First audit of the Financial Statements**

- 27.5 Subject to the Corporations Act, the first audit of the Trust's Financial Statements will be in respect of the period commencing on the Commencement Date and ending on 30 June 2006.

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## **28 Documents of title**

- 28.1 The Trustee must:
- (a) hold in custody all documents of title in relation to an Asset; or
  - (b) use reasonable endeavours to ensure documents of title in relation to an Asset are held in safe custody by any of its agents, attorneys or delegates.

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## **29 Reserves**

### **Reserves**

- 29.1 The Trustee may at any time create reserves or provisions in respect of the Trust and debit and credit such reserves to take into account such amounts as it determines in its absolute discretion, including:
- (a) unrealised increases or decreases in the value of the Assets;
  - (b) capital gains and losses which are not assessable or deductible under the Tax Act;
  - (c) Tax that will be payable on realised capital gains of the Trust; or
  - (d) any future expense or liability which may be incurred by the Trustee on account of the Trust.

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## **30 Duration of the Trust**

### **Period of the Trust**

- 30.1 The Trust commences upon the Commencement Date.



## Termination

30.2 Unless otherwise determined pursuant to any other provision of this Constitution, the Trust terminates on the earliest of:

- (a) ~~the 80th anniversary of the day before the Commencement Date~~ [omitted];
- (b) the date specified by the Trustee as the date of termination of the Trust in a notice given to Members;
- (c) the date on which the Trust terminates in accordance with another provision of this Constitution or by law;
- (d) the date on which a court directs the Trustee to wind up the Trust; and
- (e) the date on which the Members resolve that the Trust must terminate as determined by an Extraordinary Resolution of the Members at a meeting called for that purpose.

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## 31 Procedure on termination

### Realisation of Assets

31.1 Following termination of the Trust, the Trustee must realise the Assets. This must be completed in 180 days if practicable and in any event as soon as possible after that.

### Audit of winding up

31.2 The Trustee must arrange for an independent review or audit of the final Financial Statements of the Trust by a registered company auditor.

### Distribution following termination

31.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), and meeting the expenses (including anticipated expenses) of the termination, must be distributed to each Member in accordance with the following formula:

$$A \times (B / C)$$

where:

- A** is the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 31.3;
- B** is the aggregate of the number of Units held by the Member as at termination; and
- C** is the number of Units in issue as at termination.

31.4 The Trustee may distribute proceeds of realisation in instalments.

### Constitution continues to apply during period of termination

31.5 The provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 31.3.

### Dealing in Units after termination

31.6 No Units may be issued, redeemed or transferred after the Trust is terminated.

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## **32 General provisions**

### **Waiver and exercise of rights**

- 32.1 A waiver of a provision or of a right arising under this Constitution must be given in writing signed by the other party.
- 32.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 32.3 A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.
- 32.4 Failure by one party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

### **Rights cumulative**

- 32.5 The rights, remedies and powers of the other parties under this Constitution are cumulative and not exclusive of any rights, remedies or powers conferred on the parties by law.

### **Consents and approval**

- 32.6 A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Constitution expressly provides otherwise.

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**Executed as a deed**

**Signed sealed and delivered**  
**by OIM #2 Pty Ltd**  
by a director and secretary/director:

\_\_\_\_\_  
Signature of secretary/director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of secretary/director (please print)

\_\_\_\_\_  
Name of director (please print)