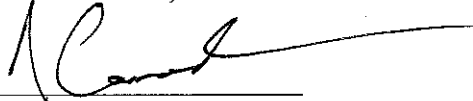


# MALLESONS STEPHEN JAQUES

*This is annexure A of 74 pages referred to in form 5101 (change to registered scheme's constitution).*



\_\_\_\_\_  
*Director/Secretary*

27/2/2007  
*Date*

## Supplemental deed - Multiplex Property Income Fund

Dated 21 FEBRUARY 2007

Multiplex Capital Securities Limited (ACN 103 736 081) ("Manager")

**Mallesons Stephen Jaques**

Level 60  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
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DX 113 Sydney  
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# Supplemental deed - Multiplex Property Income Fund Details

<b>Parties</b>	<b>Manager</b>	
<b>Manager</b>	Name	<b>Multiplex Capital Securities Limited</b>
	ACN	103 736 081
	Address	1 Kent Street, Sydney, NSW 2000
<b>Recitals</b>	<b>A</b>	The constitution of Multiplex Property Income Fund ARSN 117 674 049 (" <b>Scheme</b> ") was dated 21 December 2005 (" <b>Constitution</b> "). The Scheme was registered as a managed investment scheme under Chapter 5C of the Corporations Act on 3 January 2006. The Manager is the responsible entity of the Scheme. At the date of this deed, no interests in the Scheme are on issue and the Scheme has no members.
	<b>B</b>	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: <ul style="list-style-type: none"> <li>(a) by special resolution of the members of the scheme; or</li> <li>(b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.</li> </ul>
	<b>C</b>	Under clause 22.1(b) of the Constitution, the Manager has power, subject to any approval required under the Corporations Act, to amend the Constitution by deed executed by the Manager.
	<b>D</b>	As the Scheme has no members, there cannot be any adverse effect on members' rights and no approval is required.
	<b>E</b>	The Manager makes the amendments to the Constitution as set out in this supplemental deed.
<b>Governing law</b>	New South Wales	
<b>Date of deed</b>	See Signing page	

# General terms

---

## **1 Amendments to the Constitution**

### **1.1 Amendment**

The Manager declares that by this supplemental deed, the Constitution is modified by:

- (a) inserting the text that is underlined; and
- (b) deleting the text that is shown as deleted,

in the copy of the Constitution set out in the schedule to this supplemental deed.

---

## **2 No redeclaration etc**

The Manager declares that it is not, by this deed:

- (a) redeclaring the Scheme or declaring any trust;
  - (b) resettling the Scheme; or
  - (c) causing the transfer, vesting or accruing of property in any person.
- 

## **3 Effective Time**

The amendments made by this supplemental deed take effect from the date a copy is lodged with ASIC pursuant to section 601GC(2) of the Corporations Act.

---

## **4 Governing law**

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

---

## **5 Interpretation**

### **5.1 Terms defined in Constitution**

The terms used in this supplemental deed have the same meaning as in the Constitution unless the contrary intention appears.

### **5.2 Definitions**

These meanings apply unless the contrary intention appears:

**Constitution** means the constitution dated 21 December 2005.

**Details** means the section of this supplemental deed entitled "Details".

**Scheme** means Multiplex Property Income Fund ARSN 117 674 049.

**5.3 Deed supplemental to Constitution**

This deed is supplemental to the Constitution.

**5.4 Headings**

Headings are inserted for convenience only and do not affect the interpretation of this supplemental deed.

**EXECUTED** as a deed

**Supplemental deed - Multiplex Property  
Income Fund  
Schedule**

# Constitution of Multiplex Property Income Fund

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Multiplex Capital Securities Limited ("Manager")  
(ACN 103 736 081)

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**Mallesons Stephen Jaques**  
Level 60  
Governor Phillip Tower  
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DX 113 Sydney

# Constitution of Multiplex Property Income Fund

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# Constitution of Multiplex Property Income Fund

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## Details

**Interpretation** – definitions are at the end of the General terms

<b>Manager</b>	<b>Name</b>	<b>Multiplex Capital Securities Limited</b>
	<b>ACN</b>	103 736 081

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<b>Trust Name</b>	Multiplex Property Income Fund
-------------------	--------------------------------

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<b>Governing law</b>	New South Wales
----------------------	-----------------

<b>Date of deed</b>	See Signing page
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# Constitution of Multiplex Property Income Fund

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## General terms

---

### 1 The Trust

#### 1.1 Declaration of Trust

This deed poll is declared by the Manager to be the constitution of the Multiplex Property Income Fund.

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#### 1.2 Name

The Trust is called the Multiplex Property Income Fund or by such other name as the Manager determines from time to time<sup>1</sup>.

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#### 1.3 If Manager retires

If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not contain the words "Multiplex" or otherwise imply an association with the former Manager or its business.

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#### 1.4 Listing

The provisions in Schedule 1 apply while the Trust is Listed.

---

### 2 Assets held on trust

#### 2.1 Assets held on trust

The Manager must hold the Assets on trust for Members<sup>2</sup>.

#### 2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires<sup>3</sup>.

---

### 3 Units

#### 3.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units, being Ordinary Units and Income Units.

<sup>1</sup> See Corporations Regulation 5C.1.02

<sup>2</sup> See section 601FC(2) of the Corporations Act

<sup>3</sup> See section 601FC(1)(i)

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### 3.2 Units confer equal undivided interest

Subject to any special rights conferred upon the Units in a Class, each fully paid Unit confers an equal undivided interest. All Units in a Class rank equally.

### 3.3 Interest in Assets

A Unit confers an interest in the Assets as a whole, subject to the Liabilities. A Unit does not confer an interest in a particular Asset.

### 3.4 Classes of Units

The Manager may issue Units of different Classes, with different rights and liabilities as specified in their terms of issue, including Ordinary Units, and Income Units of different Classes that have different income entitlements and conversion or withdrawal arrangements.

**Deleted:** provisions

**Deleted:** The Manager may issue different Series of Income Units with such name for each Series as the Manager may determine.

### 3.5 Rights attaching to Units

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. Income Units entitle the Members holding Income Units to a preferential distribution of Distributable Income up to the Distribution Rate and to a preferential return of capital on termination as set out in this constitution.

### 3.6 No fractions of Units

Fractions of a Unit may not be issued by the Manager.

### 3.7 Rounding of fractions

Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this constitution, to be rounded down to the nearest whole Unit.

### 3.8 Rounding

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

### 3.9 Consolidation, division and conversion of Units

Subject to the Corporations Act, Units may be consolidated, divided or converted in a ratio determined by the Manager<sup>4</sup>.

### 3.10 Form of transfer

Subject to this constitution, a Unit may be transferred in any form approved by the Manager, accompanied by any evidence reasonably required by the Manager to show the right of the transferor to make the transfer and (if the Manager requires) be presented for Registration duly stamped.

<sup>4</sup> If applicable, refer Listing Rules, Chapter 7 - reorganisations of capital.

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### 3.11 Registration

A transfer is not effective until Registered.

### 3.12 Manager must retain instruments of transfer

The Trust must retain every instrument of transfer which is registered for such period as the Manager determines.

### 3.13 Return of refused transfers

If the Manager refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### 3.14 When transfers may be refused

The Manager may only refuse to record any transfer in the Register if, in the opinion of the Manager:

- (a) the transfer does not comply with clause 3.10;
- (b) the creditworthiness of the proposed transferee suggests that the transfer would be materially prejudicial to the interests of the balance of the other Members or the Manager;
- (c) the transferee is not an investor who has the financial ability and willingness to accept the risks and lack of liquidity inherent in an investment in the Trust; or
- (d) there are material legal, tax or regulatory reasons which mean the transfer would be prejudicial to the balance of the other Members or the Manager, or contrary to any law including anti-money laundering or counter-terrorism laws.

### 3.15 Joint tenancy

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

### 3.16 Death, legal disability of Member

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

### 3.17 Income entitlement of Units

Except as otherwise expressly provided in this constitution, the Manager may in its discretion issue Units on terms that such Units:

- (a) participate fully for Distributable Income of the Trust in respect of the Distribution Period in which they are issued;

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- (b) do not entitle the holder of such Units to receive a distribution of Distributable Income of the Trust in respect of the Distribution Period in which such Units are issued;
- (c) entitle the holder of such Units to receive a distribution of 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 allotment 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 Income Units to receive a distribution of Distributable Income in accordance with the Appendix

Deleted: to this constitution

## 4 Application Price for Units<sup>5</sup>

### 4.1 Ordinary Units issued on or before First Closing Date

- (a) The first 10 Ordinary Units to be issued on the initial settlement of the Trust<sup>6</sup> in accordance with clause 20.1 will be issued at an Application Price of \$1.00 per Unit payable in full on or before the time of issue.
- (b) The Manager may issue additional Ordinary Units on or before the First Closing Date at an Application Price of \$1.00 per Unit payable in full on or before the time of issue.

### 4.2 Ordinary Units issued after First Closing Date

The Application Price for an Ordinary Unit issued in respect of an application accepted after the First Closing Date where there are Ordinary Units on issue must be calculated as:

$$\frac{\text{Net Asset Value - Income Units Value}}{\text{number of Ordinary Units in issue}}$$

where the Income Units Value means the aggregate of the sum of the number of Income Units then on issue multiplied by \$1.00, plus the aggregate Accrued Income Entitlement of all Income Units at that time.

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### 4.3 Determination of variables in clause 4.2

Each of the variables in clause 4.2 must be determined as at the Set Time on the next Transaction Day after:

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- (a) the Manager receives the application for Ordinary Units; or

<sup>5</sup> Required to be included by Section 601GA(1)(a)

<sup>6</sup> See clause 20, "Duration of the Trust"

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

#### 4.4 Application Price for Income Units

The Application Price for an Income Unit of a Class will be \$1.00 if the Income Unit is issued on the first day of a Distribution Period but will be \$1.00 plus the amount per Income Unit of the Accrued Income Entitlement for Income Units of that Class from the beginning of the Distribution Period to the date of issue of the Income Units if the Income Unit is issued on any other date. The Application Price is payable in full on or before the time of issue.

#### 4.5 Application Price on reinvestment

The Application Price of a Unit where reinvestment occurs pursuant to clauses 9.13 to 9.16 will be:

- (a) in the case of Ordinary Units the Application Price pursuant to clause 4.2 on the Business Day prior to the date upon which the Ordinary Units are issued; and
- (b) in the case of Income Units, the Application Price pursuant to clause 4.4 on the day on which the Income Units are issued.

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#### 4.6 Transaction Days and Set Times

- (a) The Manager may determine that one or more days in a month will be a Transaction Day, but must designate at least one such day in each calendar month.
- (b) The Manager may determine that there will be one or more Set Times on each Transaction Day, but must designate at least one such time applicable to each Transaction Day. The Set Time may differ between different Transaction Days.

## 5 Application procedure

### 5.1 Application form

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

### 5.2 Payment

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application; or

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- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Manager decides.

### 5.3 Manager may reject

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

### 5.4 Minimum amounts

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

### 5.5 Issue Date

Units are taken to be issued;

Deleted: when

- (a) at the Set Time on the Transaction Day which occurs immediately after the Manager accepts the application, which may be up to one month after the Manager receives the application; or
- (b) When the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later. In the case of reinvestment, Units are taken to be issued on the date referred to in clause 9.15.

### 5.6 Uncleared funds

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

## 6 Redemption Price of Units<sup>7</sup>

### 6.1 Redemption Price

- (a) An Income Unit must only be redeemed at a Redemption Price of \$1.00.
- (b) An Ordinary Unit must only be redeemed at a Redemption Price calculated as follows:

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<sup>7</sup> Required to be included by Section 601GA(4) if the Manager wishes to offer Members a right to withdraw from the scheme.

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Net Asset Value - Income Units Value  
number of Ordinary Units in issue

less the Accrued Income Entitlement attributable to the Ordinary Unit

where "**Income Units Value**" means the number of Income Units then on issue multiplied by \$1.00, plus the aggregate Accrued Income Entitlement of all Income Units at that time.

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## 6.2 Determination of variables

Each of the variables in clause 6.1(b) must be determined:

- (a) while the Trust is Liquid, at the last Valuation Time prior to the redemption of the Ordinary Units;
- (b) ~~while the Trust is not Liquid, at the time the withdrawal offer closes.~~

**Deleted:** <#>, as at the next Valuation Time after the Manager receives the redemption request, or determines that the Units are to be redeemed, whichever is the earlier, or<sup>¶</sup>

## 6.3 Rounding

The Redemption Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1 cent.

## 6.4 Distribution of Accrued Income Entitlement

Immediately prior to the redemption of a Unit, the Manager must distribute to the Member in whose name that Unit is Registered (and the Member becomes presently entitled to) the Accrued Income Entitlement in respect of the Unit. The Accrued Income Entitlement is to be paid at the time of payment of the Redemption Price.

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## 6.5 If Accrued Income Entitlement not an income distribution

If the right of a Member to receive at the time of redemption of Units the Accrued Income Entitlement in relation to the Units would in the opinion of the Manager not be fully recognised as being an income distribution for the purposes of any Tax, the Manager may determine that the right shall not apply and in that event the reference to the deduction for Accrued Income Entitlement in clause 6.1 and the entire clause 6.4 will not operate.

# 7 Redemption procedures<sup>8</sup>

## 7.1 Request for redemption

A Member may make a request for the redemption of some or all of:

- (a) their Class A Income Units at any time after 12 months from the date of issue of the relevant Units;
- (b) their Class B Income Units or Ordinary Units at any time;

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In the circumstances described in paragraph 3.2 in the Appendix to this Constitution, a Final Distribution Payment must be made to Members holding Income Units on the redemption of their Income Units<sup>¶</sup>

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<sup>8</sup> Section 601GA(4)

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(c) any other Class of Income Units, in accordance with the relevant terms of issue;

(d) their Ordinary Units, at any time;

and the request may be made in any manner approved by the Manager. While the Trust is Liquid, the Manager may (but is not required to) give effect to the request at the time and in the manner set out in this clause 7.

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## 7.2 When Trust is Liquid

Clauses 7.3 and 7.4, apply only while the Trust is Liquid.

## 7.3 Manager may redeem

The Manager may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request.

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## 7.4 Time for payment of Redemption Price

(a) If the Manager decides to satisfy a Redemption Request in respect of a Unit it must pay from the Assets within 12 months of receipt of the Redemption Request the Redemption Price calculated in accordance with this constitution.

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(b) In the case of Income Units redemption occurs and the payment of the Redemption Price must be made on the first Business Day of a Month or at such other time as determined in accordance with the Income Units Terms of Issue. A Member wishing to redeem or Convert must give at least the period of notice specified in the Income Units Terms of Issue or such lesser period as may be approved by the Manager. In the case of redemption of Class A Income Units (and any other Class of Income Units that may, according to their terms of issue be converted into MPF Units), if the Manager has elected to Convert the Income Units in accordance with the Income Units Terms of Issue, it must apply the Redemption Price on behalf of the Member in subscribing for MPF Units in accordance with the Income Units Terms of Issue.

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(c) In the case of Ordinary Units, the Manager may redeem the Ordinary Units and pay the Redemption Price immediately following acceptance of the request. The Manager may transfer Assets in payment of the Redemption Price in accordance with clause 7.11, including a transfer of a significant proportion of total Assets.

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## 7.5 Manager not obliged to pay Redemption Price out of own funds

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

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**7.6 When Trust is not Liquid<sup>10</sup>**

While the Trust is not Liquid<sup>11</sup>, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager, which if the Trust is a Registered Scheme is in accordance with the provisions of the Corporations Act<sup>12</sup> or any relief granted by ASIC to the Manager. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust. The Manager may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.

**7.7 Manager not obliged to make a withdrawal offer**

The Manager is not at any time obliged to make a withdrawal offer.

**7.8 Redemption Request received before withdrawal offer**

If the Manager receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

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**7.9 Clauses applicable whether or not the Trust is Liquid**

Clauses 7.10 and 7.11 apply whether or not the Trust is Liquid.

**7.10 Sums owed to Manager**

The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

**7.11 Transfer of Assets**

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a Redemption Request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the Redemption Request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). 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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**7.12 Manager's power of redemption**

The Manager may, with the consent of a Member, redeem the Units of that Member without the need for a Redemption Request. The Manager may redeem Income Units in accordance with the Income Units Terms of Issue.

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<sup>10</sup> Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

<sup>11</sup> For definition of a liquid scheme see Section 601KA(1)

<sup>12</sup> Refer sections 601KB to 601KE

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### 7.13 Discretionary redemption

Subject to the Corporations Act, if the Manager is not obliged to give effect to a Redemption Request, it may redeem some or all of the Units which are the subject of the request.

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### 7.14 Manager as agent

The Manager is irrevocably appointed as agent of each holder of Units to do or cause to be done anything that is necessary or desirable to effect redemption.

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## 8 Valuation of Assets

### 8.1 Manager may value

The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.<sup>13</sup>

### 8.2 Determination of Net Asset Value

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

### 8.3 Value of Assets

(a) The Manager may determine valuation methods and policies for each category of Assets and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be:

(i) for real property, its historical cost, and

(ii) for property securities and other assets, its market value<sup>14</sup>

(b) If the Manager values an Asset at other than its historical cost or market value (as applicable), then the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Withdrawal Price for Ordinary Units that is independently verifiable.

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## 9 Income and distributions to Members

### 9.1 Manager must determine distributable income

The Manager must determine the distributable income of the Trust for each Financial Year, Half Year and each Distribution Period (“**Distributable Income**”). The Manager may do this by way of a standing determination of principles for calculating the Distributable Income, and may change the principles from time to time.

<sup>13</sup> See section 601FC(j) for Manager’s obligations concerning valuation

<sup>14</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

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For Distribution Periods of less than 6 months that end on a date other than 31 December or 30 June in any year, the Manager may determine the Distributable Income for the Distribution Period based on an estimate and need not, unless otherwise required by law, have accounts prepared to support its estimate before paying the Distributable Income for that Distribution Period to Members. The Distributable Income for the last Distribution Period of a Half Year will be equal to the Manager's calculation of Distributable Income for that Half Year, after deducting the Distributable Income payable in respect of all the prior Distribution Periods in that Half Year.

## 9.2 Distributable Income

If no determination is made or to the extent to which no determination is made under clause 9.1 prior to the end of a Distribution Period, the Distributable Income of the Trust will be the net income of the Trust calculated in accordance with the Tax Act reduced by any amount which would be included in the assessable income of the Trust in accordance with section 6AC or Division 207 of the Tax Act.

## 9.3 Trust accounts

Notwithstanding that the Distributable Income of the Trust may be calculated in accordance with clauses 9.1 and 9.2, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clauses 9.1 and 9.2. The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

## 9.4 Distribution account

The Distributable Income of the Trust in respect of a Distribution Period (after deducting the amount of Accrued Income Entitlements paid on the redemption of Units during the Distribution Period) is to be transferred to a special account in the name of the Manager or its agent and designated a Distribution Account. Any amount in the Distribution Account does not form part of the Assets but must be held by the Manager, on trust for distribution among the Members entitled to that Distributable Income. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

## 9.5 Present entitlement

Unless the Manager determines otherwise prior to the end of the Financial Year, a person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the Distributable Income of the Trust for the Financial Year, in the proportion that the Income Distributions made (or allocated under the clause next following) including Accrued Income Entitlements paid on the

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redemption of Units to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) including Accrued Income Entitlements paid on the redemption of Units to all persons who are or have been Members at any time during the Financial Year.

## 9.6 Income Distributions

Subject to the rights conferred on a Class of Units, the provisions of clause 3.17 and adjustment for any Accrued Income Entitlements, paid on the redemption of Units during the Distribution Period, an Income Distribution in respect of a Member in respect of a Distribution Period means an amount calculated by the Manager as follows:

(a) the Members holding Income Units are entitled to receive in preference to the holders of Ordinary Units distributions up to a maximum amount calculated at the Distribution Rate on the sum of \$1.00 per Income Unit, for the number of days in the Distribution Period, and

Subject to clause 3.17, the Members holding Income Units at the close of business on the Distribution Record Date are to be paid from the Distributable Income for the Distribution Period credited to the Distribution Account their respective entitlements to Income Distributions based on:

(i) the respective numbers of Income Units of which they are the registered holders at the close of business on the Distribution Record Date; and

(ii) the Distribution Rate for their relevant Income Units.

(b) any excess Distributable Income for the Distribution Period credited to the Distribution Account after such allocation of Distributable Income to the holders of Income Units shall be allocated among the Members holding Ordinary Units at the close of business on the Distribution Record Date in proportion to their respective holdings of Ordinary Units at the close of business on the Distribution Record Date.

## 9.7 Interim distributions

Members whose Income Units are redeemed during a Distribution Period are to be paid their Accrued Income Entitlement in accordance with clause 6.4.

## 9.8 Satisfaction of present entitlement

The present entitlement of a Member to Distributable Income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year and Accrued Income Entitlements made in respect of Units redeemed during the Distribution Periods in the Financial Year. Income Distributions must be paid to Members within two months after the Distribution Record Date or in accordance with clause 6.4.

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<del>Deleted:</del> <del>the</del> fact that some Income Units may be entitled to receive the Step-up Rate for all or part of the Distribution Period. ¶ Such distributions are to be paid from the Distributable Income for the Distribution Period credited to the Distribution Account. ¶
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<del>Deleted:</del> The Manager may determine to make interim distributions to
<del>Deleted:</del> If an amount of Distributable Income is paid to any holder of Income Units on redemption pursuant to this clause 9.7 there is to be an equivalent reduction in the amount required to be transferred to the Distribution Account pursuant to clause 9.4 in respect of the relevant Distribution Period and the provisions of clause 9.6 will apply in relation to the balance of the Distributable Income of the Trust transferred to the Distribution Account.
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**9.9 Minimum distribution**

The Manager may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the Manager as trustee of the Trust becoming assessable to pay tax under the Tax Act.

**9.10 Other distributions**

The Manager may at any time distribute any amount of capital to Members in addition to any other distributions to be made to Members in respect of a Distribution Period. The Manager must transfer capital to the Distribution Account for the purpose of enabling a distribution to Members. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Distributable Income. The distribution may be in cash or by way of additional Units.

**9.11 Position on transfer of Units**

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

**9.12 Deductions from Distributable Income**

The Manager may deduct from any Distributable Income or other distribution payable to a Member any sums of money presently payable by the Member to the Manager.

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**9.13 Manager may permit reinvestment**

The Manager may decide whether to permit the Members holding any Class of Units to reinvest some or all of any distribution to acquire Units of the same Class, but may not require reinvestment.

**9.14 Notification of reinvestment procedures**

If the Manager decides to permit reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

**9.15 Deemed application if reinvestment applies**

If reinvestment applies, the Manager is deemed to have received and accepted an application to reinvest the distribution in Units of the same Class as the Units to which the distribution relates, after the deduction of

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- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that distribution by law or by this constitution or which the Manager considers should be deducted, on the date upon which the distribution is to be paid, whether or not that is a Transaction Day.

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### **9.16 Money held for future reinvestment**

If the amount to be reinvested in additional Units results in a fraction of a Unit, and the number issued is therefore rounded down, the money representing that fraction will be held on behalf of a Member for future reinvestment. On each occasion this money and any other money held for reinvestment under this constitution reaches the Application Price of a Unit, it will be applied in the subscription for a new Unit for issue to the Member.

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## **10 Payments**

### **10.1 Manner of payment to Members**

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

### **10.2 Unpresented cheques**

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

### **10.3 Unsuccessful transfers**

Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

### **10.4 Only whole cents to be paid**

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

### **10.5 Payment to joint Members**

A payment to any one of joint Members will discharge the Manager in respect of the payment.

### **10.6 Manager may deduct amounts**

The Manager 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 other amount owed by the Member to the Manager or any other person,

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

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## 11 Powers of the Manager

### 11.1 General powers

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

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### 11.2 Contracting powers<sup>15</sup>

Without limiting the effect of clause 11.1, the Manager in its capacity as trustee of the Trust has power to:

- (a) incur all types of obligations and liabilities including guarantees; and
- (b) enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Manager.

### 11.3 Borrowing powers

Without limiting the effect of clause 11.1, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security over the Assets) and to incur all types of obligations and liabilities.

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### 11.4 Investment powers

Without limiting the effect of clause 11.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>16</sup>

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The principal investment policy of the Manager in relation to the Trust is investment in listed and unlisted property securities, direct investments in property and other direct or indirect interests in properties or securities which may convert into direct or indirect property interests. The Manager may vary the principal investment policy, provided reasonable notice is given to Members in order that Members may, if they see fit, dispose of their Units prior to the variation taking effect.

### 11.5 Power of delegation<sup>17</sup>

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

### 11.6 Protection and assistance for those dealing with agents and delegates

The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

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### 11.7 Agents and delegates may be associates

The agent or delegate may be an associate of the Manager.<sup>18</sup>

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<sup>15</sup> Required to be included by Section 601GA(3)

<sup>16</sup> Subject to Section 601FC(4)

<sup>17</sup> See also Section 601FB

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## 11.8 Exercise of discretion

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

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## 11.9 Instructions from Members with respect to voting rights attached to Assets

The Manager may in its absolute discretion seek, and act on, instructions from Members on how the Manager should exercise voting rights attached to Assets.

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## 11.10 Listing of the Trust

The Manager may apply for the Trust to be Listed and for Ordinary Units or one or more Classes of Income Units (or all or any of them) to be officially quoted on ASX at any time after the First Closing Date and for this purpose the Manager is authorised on behalf of the Trust to do all things necessary to effect a Listing.

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Without limiting the effect of clause 11.1, the Manager may in its capacity as trustee of the Trust apply for registration of the Trust as a Registered Scheme and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.¶

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## 12 Retirement of Manager

### 12.1 Voluntary retirement

The Manager may retire as the responsible entity of the Trust as permitted by law<sup>19</sup>. If permitted by law or by any relief from the Corporations Act granted by ASIC, the Manager may appoint its successor by deed.

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### 12.2 Compulsory retirement

The Manager must retire as the responsible entity of the Trust when required by law<sup>20</sup>.

### 12.3 Release

When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.<sup>21</sup>

## 13 Notices to Members

### 13.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

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

<sup>18</sup> Subject to Part 5C.7

<sup>19</sup> See Section 601FL. The change does not take effect until ASIC alters its records: Section 601FJ.

<sup>20</sup> See Section 601FM and 601FA.

<sup>21</sup> See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

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### 13.2 Cheques payable to Members

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member<sup>22</sup>.

### 13.3 Joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

### 13.4 Receipt of communications

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax (except a fax containing a notice of meeting of Members) is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act<sup>23</sup>, the Manager may determine<sup>24</sup> the time at which other forms of communication will be taken to be received.

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## 14 Notices to the Manager

### 14.1 Form of notices

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

### 14.2 When notice effective

The notice is effective only at the time of receipt.

### 14.3 Signing of notices

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member<sup>25</sup> unless the Manager dispenses with this requirement.

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## 15 Meetings of Members

### 15.1 Convening of meetings

The Manager may at any time convene a meeting of Members, and must do so if the Corporations Act requires.<sup>26</sup>

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<sup>22</sup> See "Manager may rely" under "Rights and liabilities of Manager" - clause 16.3

<sup>23</sup> See Section 601FC(1)(d)

<sup>24</sup> See Section 252G(4)

<sup>25</sup> See "Manager may rely" under "Rights and liabilities of Manager" - clause 16.3

<sup>26</sup> Refer Part 2G.4

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### 15.2 Manager may determine

Subject to the specific provisions of this constitution relating to meetings of Members and to the Corporations Act<sup>27</sup>, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

### 15.3 Notice of meeting

Notice of a meeting of Members must be given in accordance with the Corporations Act.

### 15.4 Quorum

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

### 15.5 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Manager decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### 15.6 Chairman

Subject to the Corporations Act<sup>28</sup> the Manager may appoint a person to chair a meeting of Members.

### 15.7 Role of chairman

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

<sup>27</sup> Refer Part 2G.4

<sup>28</sup> Refer Part 2G.4 and Section 601FC(1)

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- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting.

and a decision by the chairman under this clause 15.7 is final.

#### **15.8 Postponement or cancellation**

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

#### **15.9 Notice of cancellation or postponement of meeting**

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

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

#### **15.10 Contents of notice or postponement of meeting**

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

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

#### **15.11 Number of clear days for postponement of meeting**

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

#### **15.12 Business at postponed meeting**

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

#### **15.13 Proxy, attorney or representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of

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Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and

- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

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

#### **15.14 Proxies and voting**

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

#### **15.15 Proxies containing some of the required information**

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

#### **15.16 Adjournment of meeting**

The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **15.17 Notice of adjourned meeting**

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

#### **15.18 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

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**15.19 Declaration of poll**

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

**15.20 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

**15.21 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

**15.22 Equality of votes - no casting vote for chairman**

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

**15.23 Entitlement to vote**

Subject to any rights or restrictions (if permitted by the Corporations Act) for the time being attached to any Class or Classes of Units and to this constitution:

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

**15.24 Joint Members' vote**

If a Unit is held jointly and more than one Member votes in respect of that Unit, only the vote of the Member whose name appears first in the Register counts.

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**15.25 Vote of Member of unsound mind**

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

**15.26 Objection to voting qualification**

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

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

A vote not disallowed under the objection is valid for all purposes.

**15.27 Validity of vote in certain circumstances**

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

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that holder,

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

**15.28 Meetings by technology**

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

**15.29 Other attendees**

The Manager and the auditor of the Trust may attend and speak at any meeting, or invite any other person to attend and speak.

**15.30 Meetings of Class holders**

If any meeting of the holders of a Class is required to be held the foregoing provisions of this clause 15 will to the maximum extent permitted by the Corporations Act apply with any necessary amendments.

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## 16 Rights and liabilities of Manager

### 16.1 Holding Units

The Manager and its associates may hold Units in the Trust, or interests in any related trust or company, in any capacity<sup>29</sup>.

### 16.2 Other capabilities

Subject to the Corporations Act<sup>30</sup>, the Manager (or its associates) may:

- (a) deal with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Member or retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme.

### 16.3 Manager may rely

The Manager may take and may act upon:

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

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

### 16.4 Reference to exercising power or discretion

The reference to exercising any power or discretion includes carrying out the Manager's functions and duties and identifying Members' rights and interests.

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<sup>29</sup> See Section 601FG, Section 253E and Part 5C.7

<sup>30</sup> Refer Part 5C.7

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## **17 Limitation of liability and indemnity in favour of Manager**

### **17.1 Manager not liable except to the extent Corporations Act imposes liability**

The Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

### **17.2 Limitation on Manager's liability**

Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.

### **17.3 Indemnity in favour of Manager**

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust<sup>31</sup>.

### **17.4 Indemnity includes acts and omissions of an agent or delegate**

To the extent permitted by the Corporations Act<sup>32</sup>, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

### **17.5 Indemnity in addition to indemnity allowed by law**

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

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## **18 Liability of Members**

### **18.1 Liability limited**

Subject to clauses 18.2 and 18.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

### **18.2 Recourse limited to the Assets**

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

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<sup>31</sup> See Section 601GA(2)

<sup>32</sup> See Sections 601FB(2) and 601GA(2)

### 18.3 Tax and User Pays Fees

The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

### 18.4 Joint Members

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which clause 18.3 applies, and User Pays Fees.

### 18.5 Deficiency in the Assets

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

### 18.6 Restrictions on Members

Except as otherwise set out in this constitution, a Member:

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

## 19 Remuneration and expenses of the Manager

### 19.1 Application Fee

Subject to the Corporations Act, the Manager is entitled to be paid from the Assets when an application for Income Units (other than Class B Income Units) is accepted an Application Fee equivalent to 2% of the application money.

### 19.2 Management fee

Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee calculated at the rate of 0.5% per annum of the value of the Assets. The management fee accrues daily and is to be calculated at the end of each Month and is payable within 14 days from the end of each Month.

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### 19.3 Waiver of fees

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

### 19.4 Expenses

All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust<sup>33</sup> are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a registered scheme;
- (b) the preparation, review, distribution and promotion of any product disclosure statement or offering memorandum in respect of Units and other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) 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 Manager of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (i) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (j) financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers)

<sup>33</sup> Refer Section 601GA(2)(b)

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whether or not the agents, valuers, contractors or advisers are associates of the Manager;

- (l) preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.4(n) must be repaid;
- (o) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums<sup>34</sup> in respect of, compliance committee members;
- (p) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (q) the preparation, implementation, amendment and audit of the compliance plan;
- (r) the appointment of any compliance officer to undertake compliance work for the Trust;
- (s) the preparation of reports including compliance reports;
- (t) the promotion of the Trust generally;
- (u) recording, responding to and dealing with any complaints from Members in connection with the Trust; and
- (v) complying with any law, and any request or requirement of ASIC.

## 19.5 GST

The User Pays Fees and other fees payable by an applicant or Member and the fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST unless otherwise stated. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable

<sup>34</sup> See Section 601JG

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supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

#### 19.6 Input tax credits

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

#### 19.7 GST and expenses

Where an expense covered by clause 19.4 is paid from the Assets to the Manager, the payment shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

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## 20 Duration of the Trust

### 20.1 Initial settlement

The Trust commences when such person as is nominated by the Manager subscribes \$10 for 10 Ordinary Units in the Trust. Such person must be issued with 10 Ordinary Units in return for that payment.

### 20.2 Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Manager as the date of termination of the Trust in a notice given to Members;
- (b) the date specified in a notice given by the holder (or all holders) of the Ordinary Units, following a proposal to change the responsible entity of the Trust to a company that is not a related body corporate of Multiplex Capital Securities Limited; and
- (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law<sup>35</sup>.

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<sup>35</sup> See Part 5C.9 on winding up

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### 20.3 Restriction on issue and redemption of Units

Despite any other provision in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day before the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities or any other rule of law or equity. This restriction does not require that the Trust terminate on the expiration of that period, but requires that the Trust be fully vested by the end of that period.

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## 21 Procedure on termination

### 21.1 Realisation of Assets

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

### 21.2 Audit of winding up

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

### 21.3 Distribution following termination

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 Members as follows:

- (a) First, to the Members holding Income Units of an amount equal to their Accrued Income Entitlements plus the Redemption Price of their respective Income Units plus, if they are entitled to this, or if there is insufficient money available to make this payment in full the available amount is to be paid to them proportionately based on the respective aggregate Redemption Prices of the Income Units held by each of them as at termination and their respective Accrued Income Entitlements; and
- (b) Secondly, the balance (if any) to the Members holding Ordinary Units proportionately based on their respective numbers of Ordinary Units held as at termination.

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The Manager may distribute the proceeds of realisation in instalments.

### 21.4 Constitution applies until date of final distribution

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

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## 22 Amendments to this constitution

### 22.1 Manager may amend

Subject to any approval required under the Corporations Act and to clause 22.3, this constitution may be amended:

- (a) by Resolution<sup>36</sup>; or
- (b) by deed executed by the Manager.

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

### 22.2 Statutory requirements

If:

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

then, to the extent the Corporations Act allows, this constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

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

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

<sup>36</sup> The required majority for such a Resolution under section 601GC(1)(a) is 75%.

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### 22.3 Class rights

The rights attaching to Units in a Class cannot be cancelled, varied or adversely affected without a Special Resolution of Members of the Class affected. In particular, clause 20.2(b) may not be amended without a Special Resolution of the holder or holders of Ordinary Units.

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## 23 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act<sup>37</sup>.

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## 24 Complaints

If a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

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

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<sup>37</sup> See section 601JF

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- (iii) information regarding any further avenue for complaint.

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## **25 Credit Rating**

### **25.1 Trust may be rated**

The Manager may arrange to have the Trust or a Class given a credit rating by a Credit Rating Agency.

### **25.2 Compliance by the Manager**

Subject to clause 25.3, during such period as a credit rating is maintained in respect of the Trust or a Class, the Manager will comply with all undertakings given or made to the Credit Rating Agency from time to time in order to maintain any credit rating assigned to the Trust or Class. The obligation of the Manager to comply with such undertakings will at all times be subject to the following:

- (a) the undertakings given or made to the Credit Rating Agency must not be inconsistent with the powers of the Manager in relation to making investments of, or otherwise dealing with, the Assets as provided for in this Constitution;
- (b) compliance with those undertakings does not constitute a breach of the duties of the Manager contained in this Constitution or imposed by any relevant statute or regulation from time to time; and
- (c) compliance with those undertakings does not limit any protection, benefit or indemnity conferred on the Manager under this Constitution.

### **25.3 Notice to cease credit rating**

The Manager must give not less than 90 days' notice to the Credit Rating Agency of its intention to cease to have the Trust or a Class assigned a credit rating, and during the notice period it must continue to comply with all written undertakings given or made to the Credit Rating Agency.

### **25.4 Release from undertakings**

After the expiry of the notice period the Manager will be released from any undertakings given or made to the Credit Rating Agency.

### **25.5 Notice to Holders on change to or cessation of credit rating**

The Manager must notify Members:

- (a) upon receipt of notice from the Credit Rating Agency of any change to or suspension or withdrawal of the credit rating for the Trust or a Class;
- (b) if the Manager notifies the Credit Rating Agency of its intention to cease to have the Trust or a Class assigned a credit rating,

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as soon as possible upon either event occurring.

## 25.6 Copies of undertakings

The Manager must keep copies of all written undertakings given or made to the Credit Rating Agency in relation to a credit rating assigned to the Trust or a Class available for inspection by Members during ordinary business hours at its registered office.

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## 26 References to Corporations Act

Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act (as modified by any ASIC Relief) while the Trust is a Registered Scheme.

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## 27 Limitation on holding of Income Units

### 27.1 Application

This clause 27 applies only when the Trust is not Listed.

### 27.2 Limit on holdings of Income Units

Except as provided in this clause 27, a person may not, either alone or together with another person or other persons, acquire Income Units if the person does not hold Income Units or holds less than the Prescribed Percentage of the Income Units in Issue and would, immediately after the acquisition, be entitled to ask to be registered as the holder of more than the Prescribed Percentage of the Units in Issue<sup>38</sup>. In applying the Prescribed Percentage to a holding or acquisition of Income Units, amounts held or to be acquired by a person are not to be aggregated unless they are held or acquired by that person for the same beneficial owner or owners, provided that no person may be Registered as the holder of more than 19.9% of the Income Units on issue.

### 27.3 Substantial holdings

The provisions of sections 671B to 672B inclusive, 672E and 672F of the Corporations Act apply to the Trust and to Members holding, and persons seeking to acquire, Income Units with such adaptations as are necessary to those sections and any regulations made, or any forms prescribed under them, and in particular:

- (a) any uses of the word "listed" are to be disregarded;
- (b) any reference to ASIC or its powers is to be disregarded;
- (c) the provisions will apply as contractual obligations only and any reference to an offence is to be disregarded.

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<sup>38</sup> The power to determine the Prescribed Percentage should be exercised so that it applies equally among Members of the same Class, and fairly as between Classes (CA section 601FC(1)(d)).

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#### **27.4 Register**

The Manager must keep a register for the Trust in which it must promptly enter:

- (a) the names of persons from whom it has received notices under clause 27.3; and
- (b) against each name so entered, the information given in the notices.

#### **27.5 Register open for inspection**

The Manager must keep the register referred to in clause 27.4 open for inspection:

- (a) by any Member without charge; and
- (b) at the discretion of the Manager by any other person upon payment for each inspection of such amount as the Manager reasonably requires.

#### **27.6 No issue or transfer in contravention**

No Income Unit may be issued and no transfer or transmission of an Income Unit may be registered if the allotment or registration would result in or have the effect of causing a contravention of clause 27.2.

#### **27.7 Divestiture**

Where:

- (a) a person has acquired Income Units in circumstances that would result in a contravention of clause 27.2; or
- (b) a Member has failed to comply with the obligations imposed by clause 27.3,

the Manager may dispose of all or some of the Member's Income Units either by transfer or redemption, but must promptly give notice in writing to the Member of the disposal (which may be given before or after the disposal occurs) but the Member is not entitled in any way to set aside or cancel any transaction under which they acquired the Income Units referred to in the notice, nor to claim any refund or to otherwise recover any money paid for the Income Units.

#### **27.8 Disposal**

The Member appoints the Manager as its agent to carry out the disposal contemplated by clause 27.7. The Manager must account to the Member for the net proceeds of disposal, after deducting the costs of disposal and other expenses reasonably incurred. The Manager may appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 27.7 and to receive and give good discharge of the proceeds.

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## 27.9 Manager not liable

Nothing in this clause 27 makes the Manager liable or responsible to any person by reason of any person acquiring Income Units in contravention of clause 27.2 or failing to comply with the obligations imposed by clause 27.3.

## 27.10 Manager may require information

The Manager, before or at any time after issuing any Income Units, or approving or rejecting any transfer or transmission of Income Units, or at any other time and from time to time, may by notice in writing require an applicant, allottee, transferee, transmittee or Member, (or, where such person is a corporation, an officer of the corporation) to furnish to the Manager such information or evidence (on oath or otherwise verified if the Manager should so require) as the Manager may consider likely to be of assistance in determining whether or not such person is eligible to become or to remain a holder of Income Units without contravention of this clause 27.

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## 28 Interpretation

### 28.1 Definitions

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

**Accounting Standards:** has the meaning in the Corporations Act.

**Accrued Income Entitlement:** in relation to a Unit means the Manager's estimate of the appropriate share of the Distributable Income of the Trust accrued or attributable to the period from the commencement of the Distribution Period to the date as at which the calculation is to be made. In the case of Income Units this will, if the Manager in its discretion determines to pay it, be calculated at the Distribution Rate applicable to the relevant Income Units from the commencement of the Distribution Period to and including the day prior to the date of redemption of the Income Unit.

**Deleted:** plus, if applicable to particular Income Units, the Step-up Rate

**Appendix** means the appendix to this constitution.

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**Application Price:** the application price for a Unit calculated in accordance with this constitution<sup>39</sup>.

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

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

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the Distribution Account.

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<sup>39</sup> See clause 4, "Application Price for Units"

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**ASX:** ASX Limited, or the market operated by it, as the context requires.

**Deleted:** Australian Stock Exchange

**ASX Market Rules:** the market rules of ASX.

**Business Day:** has the meaning given in the ASX Listing Rules.

**Class:** A class of Units, being Ordinary Units, Class A Income Units, Class B Income Units or any other class of Units established pursuant to clause 3.4.

**Deleted:** Each Series is a separate Class.

**Class A Income Units:** means Income Units other than Class B Income Units.

**Class B Income Units:** means Income Units issued to an IDPS Operator.

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

**Convert:** means redeem Class A Income Units (or Income Units of another Class that may, according to their terms of issue be converted into MPF Units) and apply the redemption proceeds to subscribe for MPF Units.

**Conversion** has a corresponding meaning.

**Corporations Act:** the Corporations Act 2001 (Cwlth).

**Credit Rating Agency:** any credit rating agency determined by the Manager and notified to Members from time to time.

**Details:** means the section of this constitution headed "Details".

**Distributable Income:** has the meaning given in clauses 9.1 and 9.2.

**Distribution Account:** the special account so designated pursuant to clause 9.4.

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**Distribution Payment Date:** has the meaning given in the Appendix.

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**Distribution Rate:** has the meaning given in the Appendix.

**Distribution Record Date:** the last day of each Distribution Period.

**Distribution Period:** unless otherwise determined by the Manager from time to time, each calendar month but:

- (a) for the first distribution period, the period from (and including) the First Closing Date to (and including) the next following month end date; and
- (b) for the last distribution period, the period from the start of the calendar month to the date of distribution on winding up of the Trust (or, in the case of Income Units, to and including the date of their redemption).

**Financial Year** means:

**Deleted:** Final Distribution Payment: has the meaning given in the Appendix to this Constitution.

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

This is not a determination of the Trust's financial year under section 323D of the Corporations Act.

**Financial Year Termination Date** means:

- (a) 30 June; and
- (b) the day on which the Trust becomes a "subsidiary unit holder" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a "subsidiary unit holder" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act).

**First Closing Date:** means the date of first allotment of Income Units pursuant to the first product disclosure statement pursuant to which Income Units are offered to the public or such other date as is determined by the Manager.

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

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

**Half Year** means a period of six months ending on 30 June or 31 December in any year, except that the first Half Year is the period from commencement of the Trust to the next following 30 June or 31 December, and the last half year is the period ending on the date of final distribution on winding up of the Trust and commencing on the next preceding 1 July or 1 January.

**IDPS Operator:** means the operator of an IDPS or IDPS like scheme as defined in ASIC Class Order 02/294 or any ASIC instrument or legislation that amends or replaces it.

**Income Distribution:** in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 9.6.

**Income Unit:** a Unit with an undivided and preferential share in the beneficial interest in the Trust, having the rights, obligations and restrictions set out in this constitution and in the Income Units Terms of Issue.

**Income Units Terms of Issue:** the terms of issue of Income Units as from time to time varied in accordance with their terms.

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**Liabilities:** all present liabilities of the Trust including any provision taken into account in accordance with Accounting Standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust; or
- (c) accruing Members in respect of Units except Income Distributions to which they become presently entitled.

**Liquid:** has the same meaning as in the Corporations Act<sup>40</sup> provided that the Trust will be regarded as Liquid while ASIC Relief applies to allow Income Units to be redeemed as if the Trust was Liquid.

**Listed:** means admitted to the official list of ASX, and Listing has a corresponding meaning.

**Listing Rules:** the listing rules of ASX, as modified by any applicable waivers granted by ASX.

**Manager:**

- (a) until the Trust is registered with ASIC as a managed investment scheme, Multiplex Capital Securities Limited or any replacement Manager appointed by it; and
- (b) from the time the Trust is registered with ASIC as a managed investment scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act.

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

**Minimum Holding:** means the amount from time to time determined by the Manager pursuant to clause 5.4.

**MPF:** Multiplex Acumen Property Fund ARSN 104 341 988.

**MPF Unit:** an ordinary unit in MPF.

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

**Offer Document:** a product disclosure statement or other offer document pursuant to which Units are offered.

**Ordinary Unit:** an undivided share in the beneficial interest in the Trust, having the rights, obligations and restrictions as set out in the constitution.

<sup>40</sup> Refer Part 5C.6

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Deleted: <#>Market Value of an Asset at a particular time means: ¶ <#>in the case of an Asset that is cash or a deposit with an Australian ADI, at face value plus any accrued interest;¶ <#>in the case of an Asset that is a financial product traded on a financial market, the latest bid price on that market that is readily available to the Manager, unless the Manager reasonably believes that the bid price does not represent the true value of the Asset, in which case paragraph (d) will apply;¶ <#>in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the scheme is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme; ¶ (d) . in the case of any other Asset, the value of the Asset determined in accordance with generally accepted accounting principles or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer approved by the Manager at the expense of the Trust. ¶
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**Prescribed Percentage** in respect of Income Units means 5% of all Income Units on issue, or such other percentage as the Manager may determine from time to time.

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**Priority Distribution Payment:** has the meaning given in the Appendix.

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**Quarter:** each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of termination of the Trust or the date of retirement of the Manager or commences on the date of commencement of the Trust.

**Quarter End Date:** each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Trust or retirement of the Manager is another date, that date.

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**Record Date:** has the meaning given in the Appendix.

**Redemption Price:** the redemption price of a Unit calculated in accordance with this constitution<sup>41</sup>.

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**Redemption Request:** a written request to the Manager to redeem Units.

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

**Registered:** recorded in the Register.

**Registered Scheme:** has the same meaning as in the Corporations Act.

**Registration:** recording in the Register.

**Resolution:**

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

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Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority<sup>42</sup>.

<sup>41</sup> See clause 6, "Redemption Price of Units"

<sup>42</sup> Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

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Set Time means the time of day determined from time to time by the Manager and stated in a PDS or notice to Members as a reference point for dealing with applications and redemptions.

**Deleted:** Series: in respect of Income Units, means a tranche of Income Units issued during a period specified in the Offer Document pursuant to which they are issued and which carry a particular Distribution Rate.¶

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**Special Resolution:** a Resolution where the required majority is 75% of the votes cast in respect of Units entitled to be voted.

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

**Deleted:** Step-up Date: has the meaning given in the Appendix to this Constitution.¶

**Step-up Event:** has the meaning given in the Appendix to this Constitution.¶

**Step-up Rate:** has the meaning given in the Appendix to this Constitution.¶

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

Transaction Day means a day of the month determined from time to time by the Manager and stated in a PDS or other offer document for the Trust or in a notice to Members as a reference point for dealing with applications and redemptions and, if no such statement is made, means each Business Day.

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

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution, being an Ordinary Unit and/or Income Unit as the context requires.

**User Pays Fees:** any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Manager considers should be borne by that Member.

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

## 28.2 Interpretation

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;

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- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (i) a reference to dollars or \$ is a reference to the currency of Australia.

### 28.3 Other documents

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.

### 28.4 Constitution legally binding<sup>43</sup>

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

### 28.5 Severance

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

### 28.6 Governing law

This constitution is governed by the law in force in the place specified in the Details.

### 28.7 Other obligations excluded

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

<sup>43</sup> Refer Section 601GB

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# Constitution of Multiplex Property Income Fund

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## Appendix – Relevant Extract from Terms

Unless expressly stated otherwise, clause references in this Appendix are to clauses in the Income Units Terms of Issue.

### 2 Distributions

#### 2.1 Entitlement to distributions

Each Holder will, to the extent that the Manager determines a level of Distributable Income in accordance with clause 9.1 of the Constitution have an entitlement on the last day of each Distribution Period, in priority to any entitlement of the holders of Ordinary Units in the Income Fund, to receive payments of distributions from all of the Distributable Income of the Income Fund, and any capital of the Income Fund which the Manager may elect in its discretion to distribute in respect of that Distribution Period, in an amount up to the Priority Distribution Payment for the Distribution Period applicable to each Income Unit they hold calculated on the sum of \$1.00 per Income Unit for the duration of the Distribution Period.

#### 2.2 Amount of Priority Distribution Payments

In respect of each Distribution Period, the Priority Distribution Payment applicable to each Income Unit will be an amount, accruing on a daily basis, calculated according to the following formula:

**Priority Distribution Payment per Income Unit**

$$\frac{\text{Distribution Rate} \times \$1.00 \times \text{NI}}{365}$$

Where

Distribution Rate means, in respect of an Income Unit in a particular Class, for each Distribution Period a rate equal to the Set Rate plus the Additional Margin for that Class but the Distribution Rate will be not less than the Minimum Rate nor more than the Maximum Rate; and

NI means the number of days in the Distribution Period.

#### 2.3 Distributions only from trust income derived and not cumulative

- (a) Subject to clause 2.3(b), distributions to Holders will be made from the Distributable Income of the Income Fund. Unless the Manager otherwise decides, all Distributable Income of the Income Fund will be distributed to the holders of Income Units in each income year up

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<#>after the Change Date, for each Distribution Period:¶ <#>the rate determined by the Issuer and notified to Holders of Income Units in that Series in a notice given at least 3 months before the first day of the Distribution Period in which the rate is to apply, but the rate must not be less than 90% of the annualised rate of distribution paid or payable on MPF Units in respect of the Quarter ending on the immediately preceding Quarter End Date; or¶ if the Issuer has not given the notice contemplated in (i) in respect of a Distribution Period, the last rate as applicable u ... [1]

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to the Priority Distribution Payment applicable to each Income Unit on issue.

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- (b) If, and to the extent, in any Distribution Period, the share of the Distributable Income of the Income Fund to which a Holder of an Income Unit is entitled is less than the Priority Distribution Payment applicable to their Income Units for that Distribution Period:

(i) ~~the entitlement of the Holder of the Income Unit is limited to that share of the Distributable Income unless the Manager elects in its discretion to make additional distributions from the capital of the Income Fund; and~~

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(ii) ~~the available Distributable Income will be shared among the Holders of Income Units in proportion to the Priority Distribution Payments applicable to their respective Income Units.~~

- (c) No further entitlement accrues on any part of a Priority Distribution Payment which is not payable because the Income Fund does not have sufficient Distributable Income to distribute that amount and the Manager does not elect to pay a distribution from the capital of the Income Fund.

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## 2.4 Payments of Distributions

- (a) The entitlement of a Holder under clause 2.1 for each Distribution Period is required to be paid within 15 Business Days from the end of the Distribution Period and on the Realisation Date.

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- (b) Notwithstanding anything else in this clause 2, the Priority Distribution Payment:

(i) ~~where the Realisation Date is the last day of a Distribution Period, is to be calculated for the final Distribution Period ending on the Realisation Date; or~~

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(ii) ~~where the Realisation Date in respect of an Income Unit is not the last day of a Distribution Period, is to be the Accrued Income Entitlement calculated from the commencement of the Distribution Period to the day prior to the Realisation Date;~~

~~and is due and payable on the Realisation Date unless the Realisation Date is not a Business Day, then on the following Business Day.~~

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- (c) Any fraction of a cent is disregarded when calculating Priority Distribution Payments payable to any Holder.

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## 3.3 Payment upon redemption

If the Manager determines that redemption is to occur for all or some Income Units the subject of a Realisation Notice, whether given by the Holder or the Manager, then the Manager must redeem the number of Income Units it has determined to redeem for an amount equal to the Redemption Amount per

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Unit, and pay the Accrued Income Entitlement to the Holder on the Realisation Date.

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## Definitions

The following words and expressions have the following meanings:

Accrued Income Entitlement means in relation to an Income Unit the Manager's estimate of the appropriate share of the Distributable Income of the Trust accrued or attributable to the period from the commencement of the Distribution Period to and including the day before date as at which the calculation is to be made, at the Distribution Rate applicable to the Income Unit which the Manager, in its discretion, determines to pay.

Additional Margin means, for Class A Income Units and Class B Income Units, 2.5% per annum, and for any other Class (other than Ordinary Units) means the percentage specified as the additional margin in the Offer Document under which Income Units of the relevant Class are first offered.

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Constitution means the constitution of the Income Fund dated 20 December 2005.

~~Deleted: for the first Series of Income Units (including both class A and class B Income Units) - 25%, and for Income Units of other Series or classes, a percentage figure specified in the Offer Document pursuant to which Income Units of that Series or class are issued.~~

Conversion means redemption of Class A Income Units (or any other Class of Income Units that may, according to their terms of issue be converted into MPF Units) by the Manager and the issue of MPF Units to the Holder.

~~Deleted: Change Date means, in respect of a Series, the date which is two years from 31 December in the calendar year in which Income Units of the Series were first issued.¶~~

Convert and Converted have corresponding meanings.

Distributable Income has the meaning given in clauses 9.1 and 9.2 of the Constitution.

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Distribution Payment Date means the date within 2 months after the last day of each Distribution Period as determined by the Manager and, for any Income Units to be redeemed or Converted, includes the Realisation Date.

Distribution Period means unless otherwise determined by the Manager from time to time, each calendar month but:

- (a) for the first distribution period, the period from (and including) the First Closing Date to (and including) the next following month end date; and
- (b) for the last distribution period, the period from the start of the calendar month to the date of distribution on winding up of the Income Fund (or, in the case of all of the Income Units, to and including the date of their redemption).

~~Deleted: Final Distribution Payment means the amount of the Priority Distribution Payment calculated for the final Distribution Period ending on the Business Day prior to the Realisation Date.¶~~

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Distribution Rate has the meaning in clause 2.2.

First Closing Date means the date of first allotment of Income Units pursuant to the first product disclosure statement pursuant to which Income Units are offered to the public or such other date as is determined by the Manager.

~~Deleted: Fixed Rate means for the first Series of Income Units (including both class A and class B Income Units) - 8.25 cents per annum, and for Income Units of other Series the rate specified in the Offer Document pursuant to which the Income Units of that Series are issued.¶~~

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Holder means a holder of Income Units from time to time on the Register.

**Income Fund** means Multiplex Property Income Fund ARSN 117 674 049.

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**Income Unit** means a Unit with an undivided and preferential share in the beneficial interest in the Income Fund, having the rights, obligations and restrictions set out in this constitution and in the Income Units Terms of Issue.

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**Index Yield** means either:

- (a) the distribution yield on the S&P/ASX 200 Property Trust index, which is calculated as a percentage per annum derived substantially in accordance with the formula as set out below, as calculated by ASX and published in the Australian Financial Review:

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$$\frac{\text{SUM (Rolling 12 Months DPS x Month-End FPO)}}{\text{SUM (Last Price x Month-End FPO)}} \times 100$$

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Where:

**SUM** means the summation of all data on entities that belong to the relevant index group, being the S&P/ASX 200 Property Trust Index

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**Last Price** means the last price of the entity's ordinary securities

**Month-End FPO** means the total number of listed/quoted ordinary securities at the end of the month as per records in the ASX database based on information lodged by the entity

**Rolling 12 Months DPS** means the rolling 12 months distribution per security (DPS) based on the most recent 6 months' DPS + the previous 6 months' DPS. DPS data is based on entity announcements to ASX; or

- (b) if ASX ceases to calculate the index yield described in (a), the Australian Financial Review ceases to publish that index yield or the composition of the S&P/ASX 200 Property Trust index changes substantially, an alternative index-based yield that is as comparable as practicable with the index yield in (a) as it was before the change, reasonably selected by the Manager and which is either:

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- (i) published in a newspaper or on a web site which is accessible without charge; or

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- (ii) calculated by the Manager and verified by the auditor of the Trust or an independent accountant.

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**Issue Date** means the date upon which an Income Unit is issued.

**Manager** means the issuer of the Income Units, being Multiplex Capital Securities Limited in its capacity as responsible entity of the Income Fund.

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**Maximum Rate** means, unless the Manager otherwise expressly determines in relation to a Class of Income Units, 8.5% per annum.

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**Minimum Rate** means, unless the Manager otherwise expressly determines in relation to a Class of Income Units, 7.5% per annum.

**MPF Unit** means a fully paid ordinary unit in Multiplex Acumen Property Fund ARSN 104 341 988.

**Offer Document** means a product disclosure statement or other offer document pursuant to which Units are offered.

**Priority Distribution Payment** per Income Unit means the amount calculated in accordance with clause 2.2.

**Quarter** means each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of termination of the Income Fund or the date of retirement of the Manager or commences on the date of commencement of the Income Fund.

**Quarter End Date** means each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Income Fund or retirement of the Manager is another date, that date.

**Realisation Date** means, in relation to an Income Unit, the date determined in accordance with clause 3.4.

**Realisation Notice** means a notice given by a Holder to the Manager or the Manager to a Holder in accordance with clauses 3.1 or 3.2.

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**Record Date** means, in relation to a Distribution Payment Date or any other date on which payments are to be made to Holders, 5.00 pm (Sydney time) on the date which is the last day of the Distribution Period to which that Distribution Payment Date relates (or such other period determined by the directors of the Manager before such Distribution Payment Date or other date).

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**Redemption Amount** means, for each Income Unit, \$1.00.

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**Register** means the register of Holders maintained by or on behalf of the Manager in accordance with the Corporations Act.

**Deleted:** <#>Series in respect of Income Units, means a tranche of Income Units issued during a period specified in the Offer Document pursuant to which they are issued and which carry a particular Distribution Rate.¶

**Set Rate** means:

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(a) for Class A Income Units and Class B Income Units in respect of each Distribution Period, the Index Yield last published or calculated in accordance with the definition of "Index Yield" prior to the commencement of the relevant Distribution Period; and

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(b) for any other Class (other than Ordinary Units) the percentage per annum specified as the set rate (by reference to a number, formula or index) in the Offer Document under which Income Units of the relevant Class are first offered.

**Deleted:** <#>Step-up Date means in respect of a class A Income Unit the first day of the first Quarter after a Step-up Event that applies to that Income Unit.¶  
**Step-up Event** means the notification to the Holder of a class A Income Unit the decision by the Issuer to not redeem or Convert their Income Units on the Realisation Date specified in clause 3.4(a) of the Income Units Terms of Issue.¶  
**Step-up Rate** means 2 cents per annum.¶

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## Schedule 1 - While Trust is Listed

The following provisions apply while the Trust is Listed. A reference to a Unit in this Schedule 1 includes a reference to an Ordinary Unit or an Income Unit that is Officially Quoted, but does not include a reference to any Unit of any Class that is not Officially Quoted.

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### 3 Units

Replacement clause 3.10 applies as follows:

#### 3.10 Transfer of Units

Units may be transferred in any manner permitted by the Operating Rules of a CS Facility. The Manager may require before registration of any such transfer that there be provided to the Manager any documents which the rules of the uncertificated system require or permit the Manager to require be provided to it to authorise registration. This clause 3.10 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a proper transfer in accordance with the Operating Rules of a CS Facility.

Clause 3.14 does not apply. New clauses 3.14A and 3.14B apply as follows:

#### 3.14A Restricted Securities

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

#### 3.14B Transfers

Subject to the Listing Rules, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.14A.

The following new clauses 3.18 to 3.20 apply:

#### 3.18 Manager may request holding lock or refuse to register transfer

If permitted to do so by the Listing Rules, the Manager may:

- (d) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's subregister; or

- (e) refuse to register a transfer of Units to which paragraph (a) does not apply.

### 3.19 **Manager must request holding lock or refuse to register transfer**

The Manager must:

- (a) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's subregister; or
- (b) refuse to register any transfer of Units to which paragraph (a) does not apply;

if:

- (c) the Listing Rules require the Trust to do so;
- (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.

### 3.20 **Notice of holding locks and refusal to register transfer**

If in the exercise of its rights under clause 3.18 and 3.19 the Manager requests application of a holding lock to prevent a transfer of Units or refuses to register a transfer of Unit it must give written notice of the request to the holder of the Units, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Manager.

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## 4 **Application Price and Redemption Price for Units**

A replacement clause 4.2 applies as follows:

### 4.2 **Application price**

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

- (a) in the case of a proportionate issue (including a rights issue) while Units are Officially Quoted, in accordance with clause 4.5;
- (b) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 4.7;
- (c) in the case of a reinvestment of distributions:
  - (ii) while Units are Officially Quoted, in accordance with clause 4.8; and
  - (iii) while Units are not Officially Quoted, in accordance with clause 4.4;

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- (d) subject to paragraphs (a), (b) and (c), in all other cases while Units are Officially Quoted, the weighted average Market Price of Units during the 10 ASX Business Days immediately prior to the date on which or as at which the Application Price is to be calculated;
- (e) while Units are not Officially Quoted:
  - (i) for Ordinary Units
 
$$\frac{\text{Net Asset Value - Income Units Value}}{\text{number of Ordinary Units in issue}}$$
 where the Income Units Value means the aggregate of the Application Prices of all Income Units then on issue plus the Accrued Income Entitlement of the Income Units at that time; and
  - (ii) for Income Units, \$1.00. The Application Price is payable in full on or before the time of issue.

A replacement clause 4.3 applies as follows:

**4.3 Time for calculation**

Each of the variables in clause 4.2(e)(i) must be determined as at the next Valuation Time after:

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

whichever happens later.

Clause 4.4 is deleted.

Clause 4.5 is renumbered as clause 4.4 and is amended by adding the words “while unlisted” at the end of the heading, and adding the words “While no Units are Officially Quoted,” at the beginning of the clause.

A new clause 4.5 applies as follows:

**4.5 Pro rata rights issue**

The Manager may (subject to the terms of any applicable ASIC Relief instrument) offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable);

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- (b) either:
- (i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with clause 4.2(e); or
  - (ii) where Units are Officially Quoted, the Application Price is not less than 50% of the Market Price as at the date not more than 5 ASX Business Days prior to the date on which the product disclosure statement under which the offer is made is lodged with ASIC,

but, subject to the Listing Rules and any applicable ASIC Relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia, New Zealand and such other jurisdiction (if any) as the Manager may in its absolute discretion determine.

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A new clause 4.6 applies as follows:

#### 4.6 Terms of pro rata issues

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

A new clause 4.7 applies as follows:

#### 4.7 Placements and security purchase plan

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

- (a) at the weighted average Market Price of Units during the 10 ASX Business Days immediately prior to the date on which the Units are offered; or
- (b) at a price and on terms determined by the Manager, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC Relief.

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A new clause 4.8 applies as follows:

#### **4.8 Application Price on reinvestment while Listed**

While Units are Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is the VWAP for a Unit for each of the first 10 ASX Trading Days following the ASX Trading Day after the Distribution Calculation Date for the distribution for the relevant period (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Units during this period in which event the market price used in the calculation of the Application Price of each additional Unit will be as determined by a Valuer) less such discount, if any, not exceeding 10% as the Manager may determine.

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## **7 Redemption procedures**

While Units are Officially Quoted:

- (a) Clauses 7.6 to 7.8 apply only to the extent provided for in clause 7.16;
- (b) Clauses 7.15 and 7.16 apply; and
- (c) the other provisions of clause 7 do not apply.

New clauses 7.15 and 7.16 apply as follows:

#### **7.15 On-market buy backs**

While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

#### **7.16 Withdrawal offers while Listed**

While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 7.6, in which case clauses 7.5 to 7.8 apply in relation to the withdrawal offer.

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## 22 Amendment to this constitution

New clauses 22.4, 22.5 and 22.6 apply as follows:

### 22.4 Compliance with the Listing Rules

While Units in the Trust are Officially Quoted, the Manager and each Member must comply with the provisions of the Listing Rules relevant to them.

### 22.5 Listing Rules

While the Trust is Officially Quoted, the following provisions apply:

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

### 22.6 ASIC class order 98/1808

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

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## 24A Restricted Securities

A new clause 24A applies as follows:

### 24A.1 Operation of clause 24A.2

Clause 24A.2 only operates:

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- (a) while the Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 24A.2; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

#### **24A.2 Breach of Listing Rules or restriction agreement**

During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution of income from the Trust, nor any voting rights, in respect of those Units

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## **24B Small Holdings**

A new clause 24B applies as follows:

#### **24B.1 Manager's right to sell small holdings**

Subject to the provisions of this clause 24B, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.

#### **24B.2 Divestment Notice**

If the Manager determines that a Member is a Small Holder or New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or New Small Holder, the number of Units making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under the Divestment Notice;
- (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CS Facility initiate a holding adjustment to move those Units from that CS Facility to an Issuer Sponsored Holding or certificated holding.

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If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with the those Operating Rules.

#### 24B.3 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

#### 24B.4 Manager can sell Relevant Units

At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:

- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
- (b) the Relevant Units of a Member who is a New Small Holder.

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#### 24B.5 No obligation to sell

The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 24B but unless the Relevant Units are sold within 10 weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

#### 24B.6 Manager as Member's attorney

To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.

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#### 24B.7 Conclusive evidence

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A statement in writing by or on behalf of the Manager under this clause 24B is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 24B is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

#### 24B.8 Registering the purchaser

The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 24B.

#### 24B.9 Payment of proceeds

Subject to clause 24B.10, where:

- (a) Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause; and
- (b) the certificate for the Relevant Units (unless the Manager is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Manager,

the Manager must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this clause is at the risk of the Member to whom it is sent.

#### 24B.10 Costs

In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 24B, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In the case of a sale of the Relevant Units of a Small Holder, the Manager or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.

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#### **24B.11 Remedy limited to damages**

The remedy of a Member to whom this clause 24B applies, in respect of the sale of the Relevant Units of that Member is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this clause 24B and its liability is limited to the value of the Relevant Units at the time of sale.

#### **24B.12 Distributions and voting suspended**

Unless the Manager determines otherwise, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a Small Holder. Any distributions that would, but for this clause 24B.12, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

#### **24B.13 12 month limit**

If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 24B.14).

#### **24B.14 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder, despite clause 24B.13 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.

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## **25 Interpretation**

The following additional or alternative definitions are inserted:

**ASX Business Day** means a business day as defined in the Listing Rules.

**ASX Trading Day** means those ASX Business Days on which buying and selling occurs through SEATS.

**Closing Price on SEATS** has the same meaning as in the Listing Rules.

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**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.<sup>44</sup>

**CS Facility Operator** means the operator of a CS Facility.

**Divestment Notice** means a notice given under clause 24B.2 to a Small Holder.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Manager in accordance with the Listing Rules.<sup>45</sup>

**Market Price** of a Unit in respect of any ASX Business Day while the Units are Officially Quoted means:

- (a) the last sale price per Unit recorded on the ASX on that ASX Business Day (whether or not a sale was recorded on that ASX Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that ASX Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that ASX Business Day (whether or not a sale is recorded on that ASX Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that ASX Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager

**Market Value** in relation to a Unit is the Closing Price on SEATS of the Units.

**New Small Holder:** a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units (arising upon a transfer of a parcel of Units) arising after the date on which clause 24B comes into effect, the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units as provided under the Listing Rules.

**Officially Quoted** means quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated securities as amended, varied or waived (whether in respect of the Trust or generally) from time to time.<sup>46</sup>

<sup>44</sup> See CA 1074A and reg 7.1.03. As at March 2004, ASTC is the only prescribed CS facility.

<sup>45</sup> See Listing Rule 8.2.

<sup>46</sup> See also the definition in CA 761A.

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**Relevant Period** means the period specified in a Divestment Notice under clause 24B.

**Relevant Units** means the Units specified in a Divestment Notice.

**Restricted Securities** means the same meaning as in the Listing Rules.

**SEATS:** has the same meaning as in the ASX Market Rules.

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding.

**Small Holding:** a holding of Units created by the transfer of a parcel of Units the aggregate Market Value of which at the relevant date was less than a marketable parcel of Units as provided under the Listing Rules.

**VWAP** in respect of a Unit for an ASX Trading Day means the volume weighted average of the Unit prices for that ASX Trading Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units, any overnight crossings and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand.

**Valuer** means an independent qualified valuer appointed by the Manager.



until the Change Date, for each Distribution Period from (and including) the Issue Date a rate equal to the Fixed Rate plus the Additional Proportion of the amount (if any) by which the distribution paid or payable on MPF Units in respect of the Quarter ending immediately prior to the relevant Distribution Period (expressed as a percentage rate per annum on the basis of a 365 day year) exceeds the Fixed Rate, or such higher rate as the Issuer may specify by a notice to Holders or in a product disclosure statement. If the Issuer specifies a higher rate it must also specify the date from which that rate takes effect;

after the Change Date, for each Distribution Period:

the rate determined by the Issuer and notified to Holders of Income Units in that Series in a notice given at least 3 months before the first day of the Distribution Period in which the rate is to apply, but the rate must not be less than 90% of the annualised rate of distribution paid or payable on MPF Units in respect of the Quarter ending on the immediately preceding Quarter End Date; or

if the Issuer has not given the notice contemplated in (i) in respect of a Distribution Period, the last rate as applicable up to the first day of the Distribution Period; and

- (a) the first Distribution Period, the number of days from (and including) the First Closing Date to (and including) the first Record Date;
- (b) each subsequent Distribution Period, the number of days from (but excluding) the preceding Record Date or later date upon which the Income Units was issued to (and including) the next following Record Date; and
- (c) the last Distribution Period, the number of days from (but excluding) the preceding Record Date or later date upon which the Income Unit was issued to (and including) the date of redemption.

**N2** means the number of days (if any) during the Distribution Period for which the Step-up Rate applies to the Income Unit.

# Signing page

DATED: 27 FEBRUARY 2007

**EXECUTED** by **MULTIPLEX** )  
**CAPITAL SECURITIES** )  
**LIMITED** in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cwlth) by authority of its directors: )

*[Handwritten Signature]* )  
..... )  
Signature of director )

*BOB LAMNER* )  
..... )  
Name of director (block letters) )

*[Handwritten Signature]*  
.....

Signature of ~~director~~/company  
secretary\*

\*delete whichever is not applicable

*ALEX CARRODUS*.....

Name of ~~director~~/company secretary\*  
(block letters)

\*delete whichever is not applicable