

NSX Announcement

APN Property Group Limited
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Responsible Entity:
APN Funds Management Limited
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28 October 2016

The Manager
Company Announcements Office
National Stock Exchange of Australia Limited
Level 2, 117 Scott Street
NEWCASTLE NSW 2300

Dear Sir/Madam

APN Regional Property Fund: Constitution amendments (NSX code: APR)

We enclose a copy of the Fund's amended constitution as foreshadowed on 20 October 2016. The amendments enable the Fund to opt-in and apply the new Attribution Managed Investment Trust (or 'AMIT') regime. The Responsible Entity has complied with ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489, and as no unitholders in the Fund requested a general meeting to consider and approve the proposed constitutional amendments, the amendments have now been adopted.

Yours sincerely



John Freemantle
Company Secretary

About APN Property Group

APN Property Group (ASX code: APD) is a specialist real estate investment manager.

Since 1996, APN has been actively investing in, developing and managing real estate and real estate securities on behalf of institutional and retail investors.

APN's focus is on delivering superior investment performance and outstanding service. Performance is underpinned by a highly disciplined investment approach and a deep understanding of commercial real estate.

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Supplemental Deed Poll

APN Funds Management Limited

**Amending the Constitution of the APN Regional
Property Fund**

Supplemental Deed Poll

Date

28 October 2016

Party

APN Funds Management Limited ACN 080 674 479 of Level 30, 101 Collins Street, Melbourne, Victoria (**Manager**)

Recitals

- A The Manager is the trustee and responsible entity of the registered scheme known as the APN Regional Property Fund ARSN 110 488 821 (**Fund**) established under a constitution dated 18 December 2002 and amended from time to time (**Constitution**).
- B Clause 24.1 of the Constitution provides that subject to any approval required by law, the Manager may by deed amend the Constitution.
- C On 22 June 2016, the Australian Securities and Investments Commission issued ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 (**ASIC Instrument**), which permits the responsible entity of a registered scheme to modify the constitution of the scheme to the extent that the responsible entity reasonably considers that the modification is necessary for, or incidental to, the scheme being able to be operated in a manner permitted by the *Income Tax Assessment Act 1997* (Cth) as an attribution managed investment trust (**AMIT**) with the responsible entity as its trustee.

It is declared as follows:

1 Definitions and interpretation

1.1 Definitions

Unless otherwise defined in this Supplemental Deed Poll (including the recitals), terms defined in the Constitution bear the same meaning when used in this Supplemental Deed Poll.

1.2 Interpretation

- (a) Clause 29 of the Constitution applies to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.
- (b) Headings are inserted for convenience only and do not affect the interpretation of this Supplemental Deed Poll.

1.3 Benefit of the Supplemental Deed Poll

- (a) This Supplemental Deed Poll is made by the Manager with the intent that the benefit of this Supplemental Deed Poll shall apply to the benefit of Members jointly and severally.

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- (b) This Supplemental Deed Poll amends the Constitution and is binding on:
 - (i) all Members (as they are constituted from time to time); and
 - (ii) the Manager.

2 Amendment of Constitution

In exercise of the power contained in clause 24.1 of the Constitution, the Manager:

- (a) amends clause 3.4 of the Constitution by adding after the word 'determines' in the first sentence of the clause the following:

'... and may provide for conversion of Units from one Class to another Class.'

- (b) inserts a new clause 3A of the Constitution after clause 3 by adding:

'3A Application of the AMIT Regime to the Fund

- (a) *If the Fund meets the qualification requirements set out in the AMIT Regime, the Manager may make an AMIT Choice.*
- (b) *If an AMIT Choice is made, then subject to clause 3A(c), the provisions in the Schedule will prevail over any other provisions of this Constitution to the extent of any inconsistency, if such an inconsistency is not adverse to Members' rights.*
- (c) *If the Fund ceases to be an AMIT for any reason, including but not limited to the Fund ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:*
 - (i) *the provisions of the Schedule, except those in clause 1 of the Schedule which will continue to be applied by the Manager, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Fund when it is not an AMIT; and*
 - (ii) *any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Fund.*
- (c) *Nothing in this clause 3A imposes an obligation on the Manager to:*
 - (i) *enter into or facilitate the entry of the Fund into the AMIT Regime;*
 - (ii) *make any changes to this Constitution; or*
 - (iii) *make an AMIT Choice.'*
- (c) amends the current clause 7.15 of the Constitution to be sub-clause 7.15(a) and inserts a new sub-clause 7.15(b) of the Constitution by adding:
 - (b) *The Manager may direct an amount arising from the sale of an Asset to a particular Member if the Member redeems one or more of their Units and the direction is made to fund the redemption.'*

- (d) amends clause 9.2(a) of the Constitution by adding at the end of the sentence the following:

‘...taking into account any adjustments required as a result of any direction made by the Manager under clause 7.15(b);’

- (e) amends the description of item C of the formula in clause 9.5(a) of the Constitution by inserting after the words ‘were a year of income)’:

‘...taking into account any adjustments required as a result of any direction made by the Manager under clause 7.15(b);’

- (f) deletes clause 11.6 and replace with the following:

‘11.6 Withholding Tax

- (a) *The Manager may recover from the Member an amount that the Manager has paid as paid in Tax on behalf of or in respect of a Member (including in respect of a distribution or an amount attributed to a Member) as a debt.*

- (b) *The Manager is entitled to set off an amount that the Manager can recover from the Member under clause 11.6(a) against debts due, or owed, by the Manager to the Member.’*

- (g) amends the current clause 12.1 of the Constitution to be sub-clause 12.1(a) and inserts a new sub-clause 12.1(b) of the Constitution by adding:

‘(b) In exercising its powers and carrying out its duties, the Manager must treat the Members who hold interests in the same Class equally and Members who hold interests of different Classes fairly except to the extent that the Manager directs an amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 7.15(b).’

- (h) amends clause 24.1(b) of the Constitution by adding the following words after the word ‘Manager’:

‘...if the Manager reasonably considers the change will not adversely affect Members’ rights.’

- (i) inserts a new clause 24.1A of the Constitution after clause 24.1 by adding:

‘24.1A Compliance with the AMIT Regime

Without in any way limiting the Manager’s powers in clause 24.1, the Manager may make any change to this Constitution or take any other action which the Manager reasonably believes is necessary or desirable to:

- (a) *facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Fund; or*
- (b) *ensure that there is an appropriate and equitable application of the powers and rights of the Manager and Members that arise under the AMIT Regime.’*

- (j) amends clause 29.1 of the Constitution by:

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- (i) adding the defined term 'AMIT' by adding the following:
- 'AMIT'** means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Tax Act*
- (ii) adding the defined term 'AMIT Election' by adding the following:
- 'AMIT Choice'** means a choice made by the Manager pursuant to section 276-10(1)(e) of the Tax Act that the Fund be an AMIT for the purposes of the AMIT Regime.'*
- (iii) adding the defined term 'AMIT Regime' by adding the following:
- 'AMIT Regime'** means the regime for the taxation of AMITs and Members contained in the:*
- (A) *Tax Act ;*
- (B) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016;*
- (C) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016; and*
- (D) *Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016.'*
- (iv) adding the defined term 'AMMA Statement' by adding the following:
- 'AMMA Statement':** has the meaning given to that phrase in section 276-460 of the Tax Act.'*
- (v) deleting the defined term 'Class' and replacing it as following:
- 'Class':** a class of Units as determined by the Manager under clause 3.'*
- (vi) adding the defined term 'Clearly Defined Rights' by adding the following:
- 'Clearly Defined Rights':** where the rights to income and capital arising from each of the Units in the Fund are "clearly defined" at all times when the Fund is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.'*
- (vii) adding the defined term 'Determined Member Component' by adding the following:
- 'Determined Member Component':** has the meaning given to that term in section 276-205 of the Tax Act.'*
- (viii) adding the defined term 'Determined Member Component Choice' by adding the following:
- 'Determined Member Component Choice':** a choice made by a Member under section 276-205 of the Tax Act.'*

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- (ix) adding the defined term 'Determined Trust Component' by adding the following:

***'Determined Trust Component':** has the meaning given to that term in section 276-255 of the Tax Act.'*
 - (x) adding the defined term 'Member Component' by adding the following:

***'Member Component':** has the meaning given to that term in section 276-210 of the Tax Act.'*
 - (xi) amending the defined term 'Tax Act' by replacing the word 'or' with ',' and adding the following after 'the 1997 Act' and before 'as appropriate':

'...or the Income Tax (Transitional Provisions) Act 1997...'
 - (xii) adding the defined term 'Trust Component' by adding the following:

***'Trust Component':** has the meaning given to that term in section 276-260 of the AMIT Bill.'*
 - (xiii) adding the defined term 'Unders and Overs Rules' by adding the following:

***'Unders and Overs Rules'** means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Fund level are to be carried-forward and dealt with in future income years.'*
 - (k) amends the Constitution to insert a new Schedule by adding:

'Schedule - AMIT Provisions'

1 Members' clearly defined interests
 - (a) *The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Member in the Fund constitute Clearly Defined Rights.*
 - (b) *To the extent required by the AMIT Regime in order for the Members to have Clearly Defined Rights,*
 - (i) *the Manager may not exercise any right or power, whether it is one provided to the Manager under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Fund arising from each Unit in each relevant AMIT for the Fund to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;*
 - (ii) *the Manager must treat Members who hold Units of the same class equally and Members who hold Units of a different class fairly except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 7.15(b); and*
 - (iii) *in addition to the requirements of clause 24, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this*

Constitution) which would or may cause the requirements of this clause to not be met.

2 Manager powers in relation to AMIT Regime

- (a) *The Manager has all of the powers and rights which are necessary and expedient to enable the Fund to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.*
- (b) *Without limiting the Manager's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Manager has the power to:*
 - (i) *work out the Trust Component of each applicable character of the Fund, or each Class, for a Financial Year;*
 - (ii) *attribute all of the Trust Components and Determined Trust Components of the Fund, or each Class, to Members under the AMIT Regime, including making an attribution of income of a particular category, source or character for tax purposes;*
 - (iii) *make an alteration to the Manager's attribution of the Trust Components and Determined Trust Components of the Fund, or each Class, for a Financial Year, under the AMIT Regime including, without limitation, making alterations as a result of the Manager applying the Unders and Overs Rules;*
 - (iv) *issue (or reissue as the case may be) an AMMA Statement;*
 - (v) *where the Fund has more than one Class of Units on issue, to make a choice that each Class be treated as a separate AMIT. If the Manager has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;*
 - (vi) *make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;*
 - (vii) *allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis; and*
 - (viii) *issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.*
- (c) *Subject to the Corporations Act, the Manager is not liable to any Member or former Member with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Manager makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Manager results in a different attribution outcome for the Member than if the Manager had not made the choice, or had made the choice in a different way.*

3 Attribution of trust components

(a) *The Manager must attribute all of the Trust Components and Determined Trust Components of:*

- (i) *the Fund; or*
- (ii) *if the Manager has made a choice that each Class will be treated as a separate AMIT, each Class in the Fund,*

in respect of a Financial Year, to the Members or former Members under the AMIT Regime.

(b) *The Manager undertakes to perform attribution under clause 3(a) in accordance with the following principles:*

- (i) *the amount of each Member's or former Member's Member Components and Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units in the Fund held by the Member or former Member, having regard to the provisions of this Constitution;*
- (ii) *subject to clause 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Fund;*
- (iii) *subject to clause 3(b)(iv), the Manager must not attribute any part of a Determined Trust Component to a Member or former Member because of the tax characteristics of the Member or former Member;*
- (iv) *the Manager may direct an amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 7.15(b);*
- (v) *if there is more than one Class on issue in the Fund and the Manager has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Manager must only attribute Determined Trust Components of a particular Class to Members of that Class (and not any other Class); and*
- (vi) *the Manager must attribute to each Member or former Member, so much of the Determined Trust Components of the Fund or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Member or former Member has become entitled to during the Financial Year;*

(c) *Where the Manager exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:*

- (i) *it is not intended the Manager make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement allocation provisions or amount payable to a Member under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this Constitution);*
- (ii) *the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital*

contemplated in the existing Distribution Entitlement allocation provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this Constitution) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Fund ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Fund for any subsequent Financial Year and to the extent required by the AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Fund was an AMIT.

5 Determined Member Component Choice

- (a) *If a Member makes or intends to make a Determined Member Component Choice (in this clause, a **Choice**) for the purposes of the AMIT Regime, the Member must:*
- (i) *before providing notice of such Choice to the Commissioner of Taxation, provide the Manager not less than seven days' notice of its intention to do so and a summary of the reasons why the Member considers the attribution to be inappropriate;*
 - (ii) *provide to the Manager all information the Manager reasonably requests in relation to any act, matter or thing relating to the Choice;*
 - (iii) *consent to the Manager becoming a party to any proceedings with the Commissioner of Taxation relating to the objection.*
- (b) *The Member acknowledges that if a Member makes a Determined Member Component Choice it may be necessary or desirable for the Manager to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Members for the purposes of the AMIT Regime.*
- (c) *The Manager shall have no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to a Determined Member Component Choice.*
- (d) *The Manager has the right to issue or reissue any AMMA Statement to the Member or other Members if a Member makes a Determined Member Component Choice.*

6 Debt-like AMIT instruments

The Members and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.'

3 No resettlement

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

- (a) *resettle or redeclare the unit trust declared under the Constitution; or*

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- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

4 Effect of amendments

The amendments to the Constitution do not affect the validity or enforceability of any other provisions of the Constitution.

5 When amendments take effect

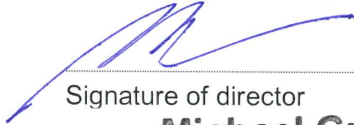
The amendments to the Constitution set out in this deed take effect immediately upon the conditions set out in paragraph 3(b) of the ASIC Instrument having been met.

6 Governing law and jurisdiction

This Supplemental Deed Poll shall be governed by the laws of Victoria and the Manager submits to the non-exclusive jurisdiction of its Courts. This deed has been executed and delivered on the date of this deed.

Signing page

**EXECUTED as a deed by APN FUNDS
MANAGEMENT LIMITED ACN 080 674 479** in
accordance with the *Corporations Act 2001* by
being signed by the following officers:



Signature of director

Michael Groth
Director

Name of director *(please print)*



Signature of director / company secretary

John Freemantle
Director / Secretary

Name of director / company secretary *(please print)*