

ARGOSY PROPERTY NO. 5 LIMITED

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED

**ARGOSY PROPERTY TRUST
UNIT TRUST DEED
AMENDED AND RESTATED AS AT [] 2011**

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1. DEFINITIONS AND INTERPRETATION

1.1 In this deed, unless the context otherwise requires:

“**Annual Meeting**” means an annual meeting of Unit Holders convened in accordance with clause 28.2(a).

“**Act**” means the Unit Trusts Act 1960.

“**Auditor**” means the auditor of the Trust Fund for the time being appointed pursuant to section 27.

“**Authorised Investments**” means any investment, interest or estate situated in New Zealand or elsewhere whether legal or equitable, freehold, leasehold or some other tenure in or in relation to any or all of:

- (a) real estate of every description (including any interest or estate therein) whether improved or unimproved and all improvements standing on land including (without limitation) buildings, fixtures and fittings;
- (b) plant, equipment and furnishings used in association with the foregoing
(the property described in sub-clauses (a) and (b) of this clause together “real estate”);
- (c) Cash;
- (d) mortgages of or other security interests in any real estate (or any interest therein) which are certified by the Manager to be incidental to the assets of the Trust and appropriate for the Trust to acquire, hold or deal with;
- (e) any share, security (as defined in the Securities Act 1978) or like interest in any Person:
 - (i) no less than 90% of the assets of which consist of real estate (or any other Authorised Investment) while any interest therein is held by the Trust; or
 - (ii) any interest in which is owned by the Trust and which is formed for financing, asset holding or similar purposes of the Trust;
- (f) without in any way limiting paragraphs (c) or (d) above, deposits with or loans to (with or without security) a Registered Bank or, if not a Registered Bank, a Person approved by the Trustee;
- (g) without in any way limiting paragraphs (c) or (d) above, debentures, bills of exchange, bonds, notes, debt securities (as defined in the Securities Act 1978) or similar obligations (with or without security) issued, made, drawn or accepted by a Registered Bank or, if not a Registered Bank, a Person approved by the Trustee;
- (h) any right or option to acquire any of the above; and
- (i) any other investment, right, interest or property of any nature whatsoever, nominated by the Manager and approved by the Trustee.

"Borrow" means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments or otherwise howsoever in any currency (but does not include any borrowing or raising of money that is, with the concurrence of the Auditor, treated for accounting purposes as capital, equity or other Unit Holders' Funds and does not include any Debt Security which is Convertible or may be Converted into a Unit or into any other Equity Security) and "Borrowing" and "Borrowed" have a corresponding meaning.

"Business Day" means a day on which NZX is open for trading.

"Cash" includes a cheque.

"Class" means a class of Securities having identical rights, privileges, limitations and conditions, and includes or excludes Securities which NZX in its discretion deems to be, or not to be, of that Class.

"Director" means a director of the Manager.

"Employee" in relation to the Manager includes an employee or officer of the Manager or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Manager or any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

"Extraordinary Resolution" has the meaning set out in paragraph 11.1 of the Schedule.

"Financial Year" in relation to the Trust means the period of twelve months ending on 31 March in each year, provided that the last financial year of the Trust shall be deemed to be the period commencing on 1 April immediately preceding the date of termination of the Trust and ending on the date of termination of the Trust.

"Gross Value of the Trust Fund" in respect of any day means such sum as is ascertained and fixed by the Manager in respect of that day as being the aggregate of:

- (a) the Market Value of all of the Investments; and
- (b) the amount of Cash forming part of the Trust Fund.

"Group" means the Trustee as trustee of the Trust and all subsidiaries of the Trustee acting in that capacity.

"Initial Offer Document" means the offer document dated 31 October 2002 pursuant to which Units were initially offered for subscription to the public.

"Interest Group", in relation to any action or proposal affecting rights attached to Securities, means a group of holders of Securities:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and

- (c) who comprise holders of Securities of one or more Classes, except where action is taken in relation to some holders of Securities in a Class and not others, or a proposal expressly distinguishes between some holders of Securities in a Class and other holders of Securities in that Class, in which case the holders of Securities in that Class may fall into two or more interest groups.

“Investment” means any investment, asset, right, or property of any nature at any time forming part of the Trust.

“Investment Policies” means the policies in relation to investment and other matters in respect of the Trust adopted from time to time in accordance with clause 10.2.

“Listing Rules” means the Listing Rules applying to the NZSX market (or any successor to that market) from time to time.

“Manager” means the Manager for the time being of the Trust.

“Market Value” of any Investment as at any day means an amount agreed upon, or determined in a manner agreed upon, between the Manager and the Trustee, or failing such agreement an amount determined by a Qualified Adviser in its most recent valuation of that Investment for the purposes of the Trust.

“Minimum Number” in relation to any Class of Securities means such number of Securities of that Class as the Manager may from time to time, with the approval of the Trustee, designate as the minimum number which may be held by a holder of those Securities, provided that in relation to any Class of Securities listed on NZX, the Minimum Number shall mean a “Minimum Holding” of those Securities as that term is defined in the Listing Rules.

“Month” means calendar month.

“Net Asset Value” of the Trust Fund on any day means such sum as is ascertained and fixed by the Manager by deducting from the Gross Value of the Trust Fund at the close of business on the immediately preceding Business Day, an amount equivalent to the debts and other obligations of the Trustee and the Manager (acting in their capacity as Trustee and Manager respectively of the Trust) determined on an accrual basis up to the close of business on that immediately preceding Business Day, being those payable from the Trust Fund, together with such other provisions as the Manager considers are necessary or desirable, but excluding contingent liabilities (except to the extent that the Manager, with the approval of the Auditor, resolves that an allowance should properly be made for such contingent liabilities) and excluding debts and obligations of the Trustee and the Manager in respect of which they are not entitled to be reimbursed or indemnified under this deed.

“New Zealand Dollars” means the lawful currency of New Zealand and references to **“money”, “dollars”, “cents”** or **“\$”** shall have a corresponding meaning.

“NZSX” means the main board equity market operated by NZX.

“NZX” means NZX Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Markets Disciplinary Tribunal).

“Office” means the registered office from time to time of the Manager.

“Ordinary Resolution” means (subject to Listing Rule 1.6.8) a resolution that is approved by a simple majority of the Votes of those holders of Securities of the Trust which carry Votes, are entitled to vote and do vote on the question.

“Person” includes an individual, a trust, partnership, firm, association, company, government or government agency or department, municipal or local authority and any body of persons or entity (whether incorporated or unincorporated and whether or not having a separate legal personality).

“Qualified Adviser” means an appropriately qualified independent Person appointed by the Manager with the approval of the Trustee for the purpose of determining the value of any of the Investments.

“Quotation” means, in relation to a Class of Securities of the Trust, the granting of a right for Trading Participants to quote bids and offers for that Class of Securities on NZX and **“Quote”** and **“Quoted”** have corresponding meanings.

“Recognised Stock Exchange” has the meaning given to the term in the Listing Rules.

“Record Date” means a time fixed by the Manager for the determination of the Security holders to whom an entitlement, right or obligation relating to the Securities applies.

“Register” means the Register described in section 12.

“Registered Bank” has the meaning given to that term in section 20 of the Reserve Bank of New Zealand Act 1989 and any equivalent entity in any jurisdiction outside New Zealand.

“Related Company” has the meaning given to that term in section 2(3) of the Companies Act 1993 (read together with section 2(4) of that Act).

“Renounceable” in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of Securities to which the Right or offer relates).

“Representative” means:

- (a) a person appointed as a proxy under section 9 of the Schedule;
- (b) a personal representative, a manager of a mentally disordered person or a person entitled to a Unit as a consequence of the death or bankruptcy of a Unit Holder; or
- (c) a representative appointed by a corporation under section 10 of the Schedule.

“Right” means a right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.

“Ruling” means any decision or determination by NZX as to the meaning or interpretation or application of the Listing Rules and includes any ruling, waiver, or revocation of a waiver given pursuant to the Listing Rules.

“Schedule” means the schedule to the Trust Deed.

“Section 18 Resolution” has the meaning given to that term in paragraph 11.2 of the Schedule.

“Shareholder” means the shareholder(s) for the time being of the Manager.

“Shareholding Deed” means the deed or other document made between the Manager and the Shareholder recording (amongst other things) the terms on which the share(s) in the Manager are held by the Shareholder.

“Trust” means the Trust constituted by the Trust Deed.

“Trust Fund” means the Trust Fund described in clause 3.2.

“Trustee” means the Trustee for the time being of the Trust.

“Unit” means an undivided part or share in the Trust Fund.

“Unit Holder” means the person for the time being entered on the Register as the holder of a Unit.

“Unit Holders’ Funds” means the amount disclosed as equity (whether described as equity, Unit Holders’ Funds, or otherwise) by the most recent published group financial statements of the Trust and its Subsidiaries provided that if at any time at which Unit Holders’ Funds are required to be determined there has been a material decline in the consolidated equity of the Trust and its Subsidiaries since the date of the most recent published group financial statements then Unit Holders’ Funds at that time shall be determined by a reference to the position which would be disclosed if group financial statements were prepared at that time.

“Unpaid Amount” means, in respect of a Unit, the amount of the issue price which has not been paid under this deed.

“Vote” means a right to vote at meetings of holders of Securities of the Trust other than:

- (a) a right to vote solely upon matters of a nature immaterial or inconsequential to the control of the Trust, or to the control of any material part of the business or operations of the Trust;
- (b) a right to vote only when a payment in respect of the Security in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Unit, or in other circumstances of a special or remote nature; or
- (c) a right to vote attaching to Securities which are not Equity Securities, exercisable only at meetings of holders of those Securities.

1.2 **Definitions in the Listing Rules:** Words and expressions in this deed which commence with initial capital letters and are not defined in this deed but are defined in the Listing Rules have the respective meanings given to them by the Listing Rules.

1.3 **Interpretation:** In this deed, unless the context otherwise requires:

- (a) Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) Reference to a statute or regulation includes all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (c) Headings have been inserted in this deed for guidance only and shall not be deemed to form any part of the context.
- (d) Where under or pursuant to this deed or anything done under this deed the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.

- (e) If it shall be necessary for any of the purposes of this deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager with the prior approval of the Auditor may select.

1.4 **Trustee approval:** Where this deed provides for the approval of the Trustee to be obtained, in determining whether or not to give its approval, the Trustee shall have due regard to the best interests of the Unit Holders.

1.5 **Manager:** Upon Implementation (as defined in a Transaction Implementation Deed dated 14 July 2011 to which the Manager, the Trustee and others are party):

- (a) Argosy Property Management Limited shall cease to be manager of the Trust; and
- (b) the Manager shall become manager of the Trust for all purposes of the Act and this deed.

2. COMPLIANCE WITH LISTING RULES

2.1 **Compliance:** While the Trust is Listed, the Manager shall comply with the Listing Rules subject to:

- (a) the requirements of the Act and any other applicable legislative or regulatory requirements; and
- (b) the terms of any Ruling given from time to time by NZX.

In particular, but without limitation, the Trustee shall, for the purpose set out in this clause 2.1, have the power to enter into any guarantee, indemnity, set-off or other security arrangement for the purposes of procuring the provision of a security obligation in favour of NZX.

2.2 **Incorporation of Listing Rules:** While the Trust is Listed, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this deed, as they may be modified by any Ruling relevant to the Trust, shall be deemed to be incorporated in this deed as though set out herein in full with any necessary modification.

2.3 **Listing Rules to prevail:** While the Trust is Listed, if this deed contains any provision which is inconsistent with the Listing Rules as modified by any Ruling relevant to the Trust, the Listing Rules shall prevail.

2.4 **Spirit and intent of Listing Rules:** For the purposes of this section 2, there shall be deemed to be made to the Listing Rules such modifications as may be necessary to enable their spirit and intent to be achieved in their application to the Trust.

2.5 **Amendments:** A reference in this deed to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

2.6 **Authorisation of act or omission:** If NZX has given a Ruling authorising any act or omission, which in the absence of that Ruling would be in contravention of the Listing Rules or this deed, that act or omission is, unless a contrary intention appears in this deed, deemed to be authorised by the Listing Rules and by this deed notwithstanding such contravention or inconsistency.

2.7 **Validity and enforceability:** Failure to comply with any of the Listing Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Manager or the Trustee provided that:

- (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules, is not entitled to enforce that transaction or contract; and
- (b) this provision shall not affect the rights of any holder of Securities of the Trust against the Manager arising from failure to comply with the Listing Rules.

2.8 **Manager responsible for compliance:** While the Trust is Listed, the Manager shall ensure that this deed complies with the Listing Rules, and the Trustee shall be under no obligation to do so. If the Listing Rules are amended, the Manager shall immediately advise the Trustee of any amendments which affect the provisions of this deed and propose to the Trustee amendments to this deed to ensure compliance with the Listing Rules.

3. CONSTITUTION OF THE TRUST FUND

3.1 **Trustee:** The Trustee has been appointed as the trustee of the Trust and agrees to act as trustee for the Unit Holders to hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed.

3.2 **Trust Fund:** The Trust Fund shall consist of all the Cash, Investments, assets, rights, and other property for the time being held by the Trustee upon the trusts of this deed including:

- (a) the proceeds of subscriptions for Units;
- (b) the proceeds of sale of any Investments;
- (c) all additions or accretions thereto; and
- (d) all income and gains held pending distribution or reinvestment.

3.3 **Vesting of Investments:** The Trustee shall be entitled in accordance with section 6 of the Act to nominate one or more eligible persons in which any of the Investments shall be vested. The Trustee shall (without prejudice to its liability under section 6(2) of the Act) cause any such nominated person to comply with the covenants and obligations on the part of the Trustee expressed or implied in this deed to the extent that the same are applicable to such nominated person as a consequence of Investments being vested in it.

4. UNITS

4.1 **Beneficial interest in Trust Fund:** The beneficial interest in the Trust Fund shall be divided into Units. Subject to the rights attaching to unpaid or partly paid Units and other Units with special or restricted rights, and to clause 11.8, each Unit shall confer an equal interest in the Trust Fund.

4.2 **Rights of Unit Holders:** No Unit shall confer any interest in any particular part of the Trust Fund and no Unit Holder shall be entitled to require the transfer to that Unit Holder of any of the Investments nor (subject to the rights of Unit Holders created by this deed and by law) shall any Unit Holder be entitled to interfere with or question the exercise or non-exercise by the Manager or the Trustee of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this deed or in respect of the Trust Fund or any part or parts thereof. Except where expressly provided to the contrary in

this deed or where the context does not so permit, all the benefits and provisions (including but not limited to those expressed to enure for the benefit of and bind the Unit Holders of any Class or Classes) contained in this deed enure for the benefit of and bind each Unit Holder of the relevant Class or Classes.

4.3 **Quotation:** The Manager may at its discretion at any time apply to NZX or any other stock exchange for quotation of the Units, and any other Securities of the Trust, of any Class.

4.4 **Part Units:** If the Manager so determines, part of a Unit may be created and shall be denoted by figures up to two decimal places. In the absence of such a determination by the Manager parts of a Unit, and following such a determination, smaller parts of a Unit, shall be ignored for all purposes of this deed. References in this deed to a Unit shall include references to part of a Unit, unless the context otherwise requires.

5. ISSUE OF NEW SECURITIES

5.1 **Issue of new Securities:** The Manager may invite offers, subscriptions or applications for Securities of any Class and may issue Securities of any Class upon and subject to the terms and conditions contained in this deed and otherwise in such manner and upon such terms and conditions as the Manager shall determine, provided that while the Trust is Listed, the issue is made in compliance with the Listing Rules.

5.2 **Statutory compliance:** The Manager shall in inviting offers in terms of this section 5 comply with all of the relevant provisions of the Act and of the Securities Act 1978.

5.3 **Underwriting:** Any proposed issue of Securities may in the Manager's discretion be underwritten. The Manager shall have power to:

- (a) appoint underwriters, organising brokers and brokers in respect of any issue of Securities and enter into agreements to give effect to such appointments on such terms and conditions as the Manager may determine;
- (b) pay out of the Trust Fund such management fees, underwriting fees, brokerage, or other similar fees as the Manager may agree with any such underwriters, organising brokers, brokers or others.

5.4 **No maximum number of Securities:** There is no maximum number of Securities which may be issued.

6. ISSUE PRICE

6.1 **Issue price:** Subject to any provision to the contrary in this deed, the prices at which issues of Units may be made shall be determined by the Manager, provided that:

- (a) if the Units of the relevant Class are listed on NZX, the issue price for each such Unit shall be at least 90% of the weighted average of the prices at which Units of that Class were sold through NZX during the period of seven days immediately preceding the date of the invitation, provided that if no sale occurred on any such day, clause 6.1(b) shall apply;
- (b) in any other case, the issue price for each such Unit shall not be less than 90% of the Net Asset Value per Unit on the date immediately preceding the date of the invitation.

- 6.2 **Certain issues excluded:** The provisions of clause 6.1(a) shall not apply in respect of the issue of any Unit:
- (a) pursuant to Listing Rule 7.3.1(a). The issue price of any such Unit shall be as provided for in the relevant notice of meeting;
 - (b) pursuant to Listing Rule 7.3.4. The issue price of any such Unit shall be determined by the Manager with the approval of the Trustee; or
 - (c) in exchange for, or upon the Conversion of, any Convertible Security. The issue price of any such Unit shall be determined pursuant to the terms of issue of the relevant Convertible Security.
- 6.3 **Issue pursuant to dividend reinvestment scheme:** For the purposes of the issue of any Unit pursuant to a dividend reinvestment scheme constituted under clause 11.4:
- (a) the seven day period referred to in clause 6.1(a) shall be such period of seven consecutive days as the Manager with the approval of the Trustee shall determine; and
 - (b) the date for determination of the Net Asset Value per Unit pursuant to clause 6.1(b) shall be such date as the Manager with the approval of the Trustee shall determine.
- 6.4 **Net Asset Value per Unit:** The Net Asset Value per Unit shall be calculated by dividing the Net Asset Value of the Trust Fund on the relevant date by the number of Units then on issue. In making this calculation, adjustment shall be made for partly paid Units in a manner determined by the Manager and approved by the Auditor.
- 6.5 **Issue fee:** The Manager may, with the consent of the Trustee, require any applicant for Securities to pay, in addition to the basic issue price of those Securities, such fee as the Manager may fix as a condition of issue of those Securities provided that, in respect of any particular issue of Securities, each applicant shall be required to pay the same fee as each other applicant. The Manager may deduct and retain such fee from the subscription moneys received by the Manager in respect of those Securities. In this event, the number of Securities issued shall be that number which has an aggregate issue price equal to the subscription moneys received or receivable by the Manager less the amount of such fees.
- 6.6 **Subscription moneys:** All subscription moneys received by the Manager upon an issue of Securities (other than any amounts deducted in accordance with clause 6.5) shall become subject to the trusts created by this deed upon receipt by the Manager. The Manager shall in accordance with section 14 of the Act pay all such moneys into a separate bank account and shall pay such moneys to the Trustee within seven days of receipt. If the Manager decides to reject any application for Securities (in whole or in part) it shall forthwith return, or direct the Trustee to return, the subscription moneys (or the relevant portion thereof) to the applicant.
- 7. PURCHASE OR REDEMPTION OF SECURITIES BY THE MANAGER**
- 7.1 **Purchase by Manager:** Subject to clauses 7.2 and 7.3, the Manager may, but shall not be obliged to, purchase or otherwise acquire the Securities from one or more holders of Securities. Securities purchased or otherwise acquired by the Manager itself out of its own funds shall be the property of the Manager. The Manager shall be at liberty to deal with such Securities, as a holder of Securities, as it sees fit.

- 7.2 **Redemption by Manager:** Subject to clauses 7.3 and 7.4 the Manager may, with the approval of the Trustee, redeem or repurchase Equity Securities on behalf of the Trust and may pay for such Equity Securities from the Trust Fund. Equity Securities so redeemed or repurchased by the Manager shall cease to exist and shall be deemed to be cancelled forthwith upon redemption or repurchase. The Manager shall make an appropriate entry on the Register in respect of such cancellation.
- 7.3 **Conditions of purchase or redemption:** The Manager shall not redeem or otherwise acquire any Equity Securities pursuant to clause 7.2 unless:
- (a) the redemption or acquisition is effected by offers made by the Manager through the order matching market of NZX, or of a Recognised Stock Exchange; or
 - (b) the redemption or acquisition is approved in accordance with clause 7.5; or;
 - (c) the redemption or acquisition is effected in accordance with section 60(1)(b)(ii) of the Companies Act 1993, on the basis that references in that section to:
 - (i) “shares” shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the redemption or acquisition and references to “shareholders” shall be deemed to be references to holders of those Equity Securities;
 - (ii) “company” shall be deemed to be references to the Trust, or where the context requires, references to the Manager, and references to “directors” and the “board” of a company (where applicable) shall be deemed to be references to the Manager;
 - (iii) “constitution” shall be deemed to be references to this deed;
 - (iv) where the context requires, “acquire” shall be deemed to be references to redeem and references to “acquisition” shall be deemed to be references to redemption;

and

 - (v) is not made from the Manager, the Trustee in its capacity as trustee of the Trust, any Associated Persons of the Manager or of the Trustee in its capacity as trustee of the Trust or of any Director of the Manager or the Trustee, or any Employee of the Manager or the Trustee;
 - (vi) the total number of Equity Securities of the same Class redeemed, together with all other Equity Securities of the same Class redeemed pursuant to this sub-clause (c) during the period of 12 months preceding the date of the redemption will not exceed 15% of the total number of Equity Securities of that Class on issue at the commencement of that period,

provided that for the purposes of this sub-clause (c):

 - (vii) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert; and
 - (viii) where the Conversion ratio is fixed by reference to the market price of the underlying Securities, the market price for the purposes of this sub-clause (c) shall be the average end of day market price over the 20 Business Days before the earlier of the day the redemption or acquisition is entered into and the day it is announced to the market;

- (d) the redemption or acquisition:
 - (i) is effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993; or
 - (ii) is an acquisition of the nature referred to in section 61(7) of the Companies Act 1993; or
 - (iii) is effected in compliance with section 69(1)(a) of the Companies Act 1993, on the basis that references in those sections to “shares”, “shareholders”, “company”, “constitution”, “acquire” and “acquisition” shall be deemed to have the meaning attributed to them respectively in clauses 7.3(c)(i) to 7.3(c)(iv);
- (e) the Equity Securities that are the subject of the redemption or acquisition have been issued in accordance with Listing Rule 7.3.1(a) or Listing Rule 7.3.4 and the Manager is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
- (f) those Equity Securities are Debt Securities which may be Converted into Securities in the Trust, and, before that Conversion, they are redeemed in cash.

7.4 **Notice to NZX:** Before the Manager redeems any Equity Securities, other than a redemption from a holder of Securities who holds less than a Minimum Number, the Manager shall give at least three Business Days notice to NZX specifying:

- (a) a period of time, not exceeding 12 months from the date of the notice, within which the Manager will redeem the Equity Securities; and
- (b) the Class and maximum number of Equity Securities to be redeemed in that period,

provided that the Manager may, at any time, cancel any notice so given, or, by three Business Days notice to NZX, vary any such notice.

7.5 **Resolution approving purchase or redemption:** The Manager may redeem or otherwise acquire Equity Securities pursuant to clause 7.2 if the precise terms and conditions of the specific proposal (“**Proposal**”) to redeem or otherwise acquire those Equity Securities have been approved by separate resolutions (passed by a simple majority of Votes) of the members of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the Proposal and any redemption is completed within 6 months and any acquisition is completed within 12 months after the passing of the relevant resolutions.

8. RESTRICTIONS ON FINANCIAL ASSISTANCE

8.1 **No financial assistance:** The Manager shall not cause the Trust to give financial assistance for the purpose of, or in connection with, the purchase of Equity Securities issued, or to be issued, by the Trust unless the giving of that assistance complies with clause 8.2 or is approved in accordance with clause 8.3.

8.2 **Financial assistance:** The Manager may cause the Trust to give financial assistance of the nature referred to in clause 8.1 if:

- (a) the financial assistance is not given in whole or in part to the Manager, the Trustee, or any Director of the Manager or the Trustee or any Associated Person of the Manager, the Trustee or any Director of the Manager or the Trustee, or any Employee of the Manager or of the Trustee and the amount of the financial

assistance, together with the amount of all other financial assistance given by the Trust under this sub-clause (a) during the period of 12 months preceding the date of the giving of the financial assistance does not exceed 10% of Unit Holders' Funds; or

- (b) the financial assistance is offered or given so that all holders of Equity Securities are treated, or given the opportunity to be treated, on the same basis; or
- (c) the financial assistance is given to Employees of the Manager and:
 - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (c) by the Manager during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Trust was Listed to the date of giving of the financial assistance, does not exceed 5% of Unit Holders' Funds; and
 - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (c) during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from the date on which the Trust was Listed to the date of giving of the financial assistance, does not exceed 10% of the Unit Holders' Funds; and
 - (iii) the financial assistance is not given to any Director of the Manager or Associated Person of a Director. Financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee Security scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.

8.3 Resolution approving financial assistance: The Manager may cause the Trust to give financial assistance of the nature referred to in clause 8.1 if:

- (a) the precise terms and conditions of the specific proposal ("**Proposal**") to give that financial assistance have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the Proposal; and
- (b) the giving of the financial assistance is completed within six months after the passing of the relevant resolutions.

9. ALTERATION OF RIGHTS OF SECURITY HOLDERS

9.1 Manager to comply with Companies Act 1993: The provisions of sections 116 and 117 of the Companies Act 1993 shall be deemed to apply to the Trust and the Manager shall, before taking action affecting the rights attached to any Equity Security (excluding those Equity Securities to which Listing Rule 8.3.2 applies), comply with the provisions of sections 116 and 117 of the Companies Act 1993 as far as possible on the basis that:

- (a) references in those sections to "shares" are deemed to include references to all Equity Securities, and references to "holders of shares" and "shareholders" shall be construed accordingly;

- (b) references in those sections to the “company” shall be deemed to be references to the Trust, or, where the context requires, to the Manager and references to pre-emption rights under section 45 of the Companies Act 1993 shall be deemed to be deleted from section 117 of the Companies Act 1993;
- (c) the reference in section 117 to a “special resolution” is deemed to be a reference to an Extraordinary Resolution; and
- (d) the references in section 117 to the “constitution” are deemed to be references to this deed or any other document which governs the rights attaching to those Equity Securities as the case may require,

but the provisions of section 118 of the Companies Act 1993 shall not apply to any Equity Securities.

- 9.2 **Actions deemed not to affect rights:** For the purposes of clause 9.1, the issue of further Equity Securities (in accordance with section 5) which rank equally with, or in priority to, any existing Equity Securities, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Equity Securities.

10. INVESTMENTS

- 10.1 **Investment procedure:** The assets of the Trust shall from time to time be invested by the Manager in Authorised Investments, provided that the investments satisfy the Investment Policies.
- 10.2 **Investment policies:** The Investment Policies shall initially be the investment policies described in the Initial Offer Document for the Trust. The Manager may vary those policies from time to time in consultation with the Trustee. If the variation is material to Unit Holders, the Manager shall give at least 20 Business Days' prior notice to NZX for public release if the Trust is listed on NZX or, if the Trust is not listed, to Unit Holders directly.
- 10.3 **Trustee's role:** Subject to its duties as trustee, the Trustee must give effect to the Manager's directions in relation to the investment of the assets of the Trust. The Trustee must not acquire or dispose of any asset of the Trust except as directed by the Manager, until the Trust terminates.
- 10.4 **Manager's power of investment:** Subject to section 12.1(c) of the Act and to this clause 10, the Manager shall have absolute discretion as to the investment of any assets and as to how the assets and liabilities of the Trust are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the assets from time to time.
- 10.5 **Proposed investment or divestment:** Where any investment, purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the assets of the Trust (“**Transaction**”) is proposed by the Manager, the Manager shall not commit to the same (except in a form which is conditional on the matters referred to in this section 10) where the investment, purchase, sale, transfer, exchange, lease, alteration or other dealing:
- (a) relates to real estate or securities (as defined in the Securities Act 1978) or similar interests in any Person, the value of which exceeds, in each separate instance, an amount equivalent to 1% of the Unit Holders' Funds (or such other percentage as the Manager and Trustee may agree in writing); or

- (b) relates to a lease of real estate in respect of which either the annual rental exceeds an amount equivalent to 4% of the aggregate gross rental income of the Trust (or such other percentage as the Manager and Trustee may agree in writing) or any rent review period exceeds three years; or
- (c) relates to capital expenditure which exceeds, in each separate instance, an amount equivalent to 1% of the Unit Holders' Funds (or such other percentage as the Manager and Trustee may agree in writing); or
- (d) is otherwise of a capital nature, the value of which exceeds, in each separate instance, an amount equivalent to 1% of the Unit Holders' Funds (or such other percentage as the Manager and Trustee may agree in writing),

unless the Manager shall have first prepared and delivered a submission to the Trustee and received the Trustee's acceptance of the submission or the Transaction is approved by Unit Holders by Extraordinary Resolution. The Manager's submission shall contain a description of the proposal and the cost or estimated cost of the proposal, and where reasonably required by the Trustee (having regard to the nature of the proposed Transaction) shall include a Qualified Adviser's report on the proposed Transaction.

- 10.6 **Trustee's Approval:** The Trustee shall upon receipt of a submission delivered pursuant to clause 10.5 give the Manager written confirmation of that receipt and, having considered the submission, the Qualified Adviser's report (if any), and such other matters as it deems relevant, shall accept each submission so made by the Manager unless in the opinion of the Trustee:
- (a) the proposal involves the acquisition of an investment which is not an Authorised Investment or is not within the Investment Policies; or
 - (b) the proposal is not in the interests of Unit Holders or does not comply with this deed.
- 10.7 **Time for Trustee's Response to a Proposal:** The Trustee's acceptance or rejection of a submission made by the Manager shall be by notice given by the Trustee to the Manager within five Business Days of receipt by the Trustee of such submission or within such extended period as shall be agreed to by the Manager. Where the Trustee rejects the Manager's submission, the rejection shall be accompanied by the reasons of the Trustee for the rejection.
- 10.8 **Meeting of Unit Holders to Consider a Proposal:** In the event that the Trustee rejects any proposal made by the Manager, the Manager may summon a meeting of Unit Holders in accordance with section 28 and shall put before the meeting the Manager's proposal and the Trustee's reasons for rejection. The Trustee's rejection may be cancelled by Extraordinary Resolution and such Extraordinary Resolution shall take effect as if it were an approval by the Trustee.
- 10.9 **Trustee's Obligations:** Subject to the provisions of this deed and the Act and to all proper enquiries and legal steps deemed necessary by the Trustee, the Trustee shall take all steps necessary on the Trustee's part to give effect to, and carry out, any proposal of the Manager.
- 10.10 **Power of the Trustee Not to Act:** Notwithstanding section 25, but subject to clause 10.8, the Trustee shall not act on the direction of the Manager to acquire, dispose of or make any Investment or Borrowing if the Trustee has refused to accept the relevant submission under clause 10.6. The Trustee shall not be liable to the Unit Holders or the Manager for so refusing to act on any direction.

- 10.11 **Valuation of Investments:** The Manager shall ensure that all Investments (other than those in respect of which the Manager and the Trustee have agreed on the then Market Value) are valued by a Qualified Adviser at intervals of not more than 12 months or such longer period as the Trustee may approve in any specific case. If at any time in respect of any Investment the Manager shall be of the opinion that the determination of the value of that Investment does not accurately reflect the current value of that Investment, the Manager may, with the approval of the Trustee, assess the current value of that Investment as at any day in such manner as the Manager sees fit having regard to the most recent determination of the value of that Investment, or the cost of that Investment, as the case may be, and to the time which has elapsed since that determination or the acquisition of that Investment. The value of any Investment determined by the Manager pursuant to this clause 10.11 shall be deemed to be the Market Value of that Investment for all purposes of this deed until such time as a new value is determined pursuant to the definition of "Market Value" or pursuant to this clause 10.11. Notwithstanding the foregoing, the Trustee may at any time require that any Investment be valued by a Qualified Adviser and the Manager shall send a copy of the valuation report to the Auditor.
- 10.12 **Registration of Investments:** Any Investments shall as soon as reasonably practicable after receipt of the necessary documents by the Trustee be registered (if registrable in nature) in the name of the Trustee or any person nominated by it pursuant to clause 3.3, and be held in safe custody by the Trustee or by some person selected by the Trustee in accordance with clause 32.6(g), and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this deed.
- 10.13 **Security over Trust Fund:** Subject to this section 10 and to section 25, the Manager shall be entitled to direct the Trustee on behalf of the Trust Fund to enter into any arrangement in such manner as the Manager sees fit which has the effect of granting security to a third party over all or any part or parts of the Trust Fund to secure any or all liabilities or obligations incurred or undertaken by the Manager for the purposes of the Trust and the Trustee shall give effect to any such direction, provided that the Trustee may before entering into any such agreement, obligation or security arrangement require that its liability thereunder is to its satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust Fund.
- 10.14 **Insurance:** Unless otherwise agreed by the Trustee, the Manager shall insure all buildings to their full reinstatement value against fire, earthquake, storm, flood and such other risks as buildings of a similar nature are normally insured against, and against loss of rent, in each case on customary terms and with reputable insurers.
- 10.15 **Guarantees:**
- (a) Subject to clause 10.15(b) and section 25, the Manager may from time to time by notice in writing to the Trustee, if it considers it necessary or desirable to do so, direct the Trustee on behalf of the Trust Fund to enter into any guarantee or similar arrangement with respect to the obligations of any Person (whether or not wholly-owned by the Trust) through whom any of the assets of the Trust Fund are held (and to secure such guarantee or other arrangement upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit) provided that the Trustee may, before entering into any such guarantee or other arrangement, or any related security arrangement, require that its liability under any of the same is to its satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust Fund.
- (b) Any guarantee given pursuant to clause 10.15(a) shall be taken into account for the purpose of the limit contained in clause 25.3(a) to the extent that:

- (i) the guarantee is given in respect of moneys Borrowed by any Person; and
- (ii) those moneys are not also taken into account for the purposes of that limit.

The amount to be taken into account shall be the guaranteed amount of the principal of the relevant moneys from time to time Borrowed.

11. DISTRIBUTIONS

- 11.1 **Distribution Policy:** The Manager shall specify its policy relating to distributions to Unit Holders in the Initial Offer Document for the Trust, but may vary that policy from time to time. The Manager may from time to time make distributions in accordance with its distribution policy. Subject to clause 11.9, the amount of distributions (whether of capital or income) shall be determined in accordance with the Manager's policy determined from time to time under this clause.
- 11.2 **Entitlement to distributions:** Unless otherwise agreed by the Manager and the Trustee, and subject to the rights, restrictions and obligations attaching to any particular Units or Class of Units:
- (a) Unit Holders registered in the Register at the relevant Record Date are entitled to the distribution;
 - (b) payments must be made as soon as practicable after the Record Date;
 - (c) distributions must be paid to Unit Holders pro rata according to the number of Units they hold as at the Record Date, provided that:
 - (i) for this purpose a Unit which is partly paid shall be treated as that proportion of a whole Unit as the amount paid-up bears to the issue price for that Unit or shall be treated in such other manner as the Manager determines and the Trustee agrees;
 - (ii) no amount paid or credited and paid on a Unit in advance of calls shall be treated for the purposes of this clause as paid on that Unit; and
 - (iii) the Trustee or the Manager may deduct from any distribution payable to any Unit Holder all sums of money, if any, presently payable by such Unit Holder on account of calls or instalments on the Units in respect of which the distribution is payable, but subject thereto, and save as expressly permitted by the terms of this deed, or as required by law, no deduction or retention shall be made from any distribution or from the income of the Trust.
- 11.3 **Form of distributions:** Subject to the rights, obligations and restrictions attaching to any Units or Class of Units, distributions may be in cash or in specie or by way of fully paid bonus Units.
- 11.4 **Distribution Reinvestment:** The Manager may introduce a scheme for the reinvestment of distributions in Securities on such terms as it thinks fit.
- 11.5 **Payment:** The Manager shall prepare or arrange for the preparation of distribution cheques or arrange for distributions to be paid.
- 11.6 **Participation in distributions:** The Manager may as a condition of issue of any Units provide that those Units shall not participate in full in any distribution or distributions, or shall participate in distributions on a basis calculated by reference to the period for which they have been held by a particular Unit Holder or the amount of the issue price paid or payable thereon.

- 11.7 **Distributions to holders of Convertible Securities:** Where the holders of any Convertible Security are entitled to participate in any distribution, such holders shall be entitled to participate in any such distribution to the extent, and in the manner, authorised by the terms of issue of the Convertible Securities held by them.
- 11.8 **Distributions to holders of Securities outside New Zealand:** Notwithstanding any other provision of this deed, the Manager may pay such supplementary distributions to holders of Securities resident outside New Zealand as may be provided for by Part LP of the Income Tax Act 2007 and as may be agreed by the Manager and the Trustee as being fair and equitable.
- 11.9 **Determination of distributable amounts:** In determining the amount of distributions (whether of capital or income), the Manager will have regard to the Trust's operating requirements, planned acquisitions and other relevant commercial considerations, and in particular will only make distributions if, and to the extent that, immediately following the distribution, the Trust would (if it were a company), satisfy the solvency test set out in section 4 of the Companies Act 1993. If any question arises as to whether any money or property is available for distribution by the Trust, such question shall be determined by the Manager in consultation with the Auditor.
- 11.10 **Unclaimed money:** Subject to the provisions of the Unclaimed Money Act 1971, any distribution or any other money payable to any holder or former holder of Securities remaining unclaimed for five years from the date upon which they became payable, shall, at the expiry of such period of five years, be forfeited to the Trust Fund. After forfeiture, the Person or Persons who would have been entitled to payment of such distribution or other moneys if they had not been forfeited shall be entitled to payment thereof upon producing to the satisfaction of the Manager sufficient evidence that such Person or Persons would have been entitled to such distribution or other moneys had they not been forfeited.
- 12. REGISTER**
- 12.1 **Register:** The Manager shall keep and maintain, or cause to be kept and maintained, an up-to date Register of holders of Securities of each Class and shall comply with all of the provisions of the Securities Act 1978 in respect of that Register.
- 12.2 **Register kept by Manager:** The Register shall be kept or caused to be kept by the Manager but shall be held by the Trustee at such place as the Trustee may from time to time stipulate.
- 12.3 **Contents of Register:** There shall be entered in the Register:
- (a) the names and addresses of the holders of Securities;
 - (b) the number of Securities held by each holder;
 - (c) the date on which the name of every Person was entered in the Register as a holder of Securities;
 - (d) the date on which any Person ceased to be a holder of Securities; and
 - (e) such other information as may be required by the Securities Act 1978.
- 12.4 **Registration of joint Security Holders:** The Manager shall not be bound to register more than two Persons as the holders of any Security. Joint holders of Securities shall be jointly and severally liable in respect of all payments required to be made in respect of the relevant Securities. Only the Person whose name stands first in the Register as one of the joint holders of any Security shall be entitled to delivery of any notice, cheque

or other communication from the Manager or the Trustee, and any notice, cheque or other communication given to any such Person shall be deemed to have been given to all the joint holders of Securities. With the consent of all joint holders of a relevant Security, the Manager may amend the name of the Person standing first in the Register.

- 12.5 **Audit of Register:** The Manager shall cause the Register to be audited by the Auditor at annual intervals.
- 12.6 **Notification of change of details:** Any change of name or address of a holder of Securities shall be notified by such holder of Securities in writing to the Manager, who shall alter the Register accordingly.
- 12.7 **Inspection of Register:** The Manager, the Auditor, and any representative of them, and any holder of Securities shall be entitled to inspect the Register free of charge at any time during normal business hours.
- 12.8 **Status of Register:** Each of the Manager and the Trustee shall be entitled:
- (a) to rely absolutely on the Register as being correct;
 - (b) for all purposes to treat a Person whom it believes to be the Person entered on the Register as the holder of any Securities as the legal and beneficial owner of those Securities; and
 - (c) to effect transfers or other dealings of any nature with Securities on the basis of the information recorded in the Register relating to those Securities.
- 12.9 **Evidence:** Notwithstanding clause 12.8, the Manager shall be entitled, in its absolute discretion, before giving effect to any transfer, Conversion or other dealing with any Securities, to require the production to the Manager of evidence satisfactory to it that the Person seeking to effect such dealing is the Person named in the Register as the holder of the Securities in question.
- 12.10 **Other interests in Securities:** Except as required by law or by this deed, neither the Manager nor the Trustee shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the Securities or any interest therein are or may be subject, or to recognise any Person as having any interest in any Security except for the Person recorded in the Register as the holder of that Security, and accordingly no notice of any trust, charge, pledge or equity shall be entered upon the Register.
- 12.11 **Registration of Securities in parcels:** The Manager:
- (a) may in its discretion, if so requested by a holder or a transferee of Securities; and
 - (b) shall, if so requested by a holder of Securities who produces satisfactory evidence that Securities held by that holder of Securities are held as a bare trustee or nominee and two or more other persons are separate beneficial owners of parcels of those Securities or have other separate Relevant Interests in parcels of those Securities,
- register the Securities held by that holder of Securities or transferee in two or more separately identifiable parcels. The Manager may thereafter, so long as it considers convenient or appropriate, communicate with that holder of Securities, make distributions and otherwise act, as if the separate registered parcels were each held by different holders of Securities.

13. CONSOLIDATION AND SUBDIVISION OF UNITS

13.1 **Consolidation or subdivision:** The Manager may at any time, by notice in writing to the Unit Holders and the Trustee, cause all of the Units in existence at the date of that notice to be consolidated or subdivided. Each such notice shall:

- (a) specify the date on which such consolidation or subdivision is to take place (“**Operative Date**”); and
- (b) specify the ratio (“**Ratio**”) which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.

13.2 **Calculation of number of Units held:** As from the Operative Date, each Unit Holder shall be deemed to hold a number of units equivalent to the number held by that Unit Holder before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose parts of a Unit beyond two decimal places shall be rounded down and ignored.

14. CALLS ON UNITS

14.1 **Manager may make calls:** The Manager may from time to time make such calls as it thinks fit upon Unit Holders in respect of any money unpaid on any Units held by them and not by the conditions of the allotment made payable at fixed times. Each Unit Holder shall pay to the Manager at the times and places appointed by the Manager the amount of every call so made on such Unit Holder. Fourteen days’ notice of any call shall be given specifying the time and place of payment. A call may be made payable by instalments. A call may be revoked or postponed as the Manager may determine.

14.2 **Default interest:** If a sum called in respect of a Unit is not paid on the due date for payment, the Person from whom the sum is due shall pay interest on the sum from the due date for payment to the time of actual payment at such rate as the Manager may determine. The Manager shall be at liberty to waive payment of that interest wholly or in part.

14.3 **Fixed instalments deemed calls:** Any sum which by the terms of issue of a Unit becomes payable on allotment or at any fixed date, shall be deemed to be a call duly made and payable on the date on which, by the terms of issue, it becomes payable. In the case of non-payment, all the relevant provisions of this deed as to payment of interest and expenses, forfeiture and otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

14.4 **Proceedings for recovery of call:** On the hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that:

- (a) the name of the Unit Holder sued is entered in the Register as the holder, or one of the holders, of the Units in respect to which the call relates; and
- (b) except in relation to any amount which, by the terms of issue of a Unit, is payable on allotment or on a fixed date, the call and notice of such call was duly given to that Unit Holder in terms of this deed.

Proof of the matters referred to above shall be conclusive evidence of the debt, and it shall not be necessary to prove any other matter whatsoever.

- 14.5 **Payment by instalments:** If by the conditions of allotment of any Unit, the whole or part of the amount of the issue price shall be payable by instalments, every such instalment shall, when due, be paid to the Manager by the Unit Holder for the time being or the legal personal representatives of the Unit Holder.
- 14.6 **Cancellation of unpaid amounts:** No obligation to pay amounts unpaid of the issue price of any Unit shall be cancelled, reduced or deferred without the authority of a resolution of Unit Holders passed at a meeting of Unit Holders duly convened and held.
- 14.7 **Differential calls:** The Manager may, on the issue of Units, differentiate between the Unit Holders as to the amounts to be paid in respect of the Units and the times of payment of such amounts.
- 14.8 **Joint Unit Holders:** Joint Unit Holders are jointly and severally liable to pay all calls in respect of Units registered in their names.
- 14.9 **Payment in Advance of Calls:** The Trust may receive from any Unit Holder in advance any amount uncalled and unpaid upon any Units held by that Unit Holder. However, no amount paid or credited and paid on a Unit in advance of calls shall be treated, for the purposes of section 11, as paid on that Unit.
- 15. FORFEITURE AND LIEN**
- 15.1 **Notice requiring payment of unpaid call:** If a Unit Holder fails to pay any call or instalment of a call on the due date for payment, the Manager may, at any time during such time as any part of the call or instalment remains unpaid, serve a notice on the Unit Holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Manager or the Trustee by reason of such non-payment.
- 15.2 **Contents of notice:** The notice shall name a further day (not earlier than 14 Business Days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment, at or before the time appointed, the Units in respect of which the call was made will be liable to be forfeited.
- 15.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, any Unit in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Manager to that effect. Such forfeiture shall include all distributions declared in respect of the forfeited Units and not actually paid before the forfeiture.
- 15.4 **Notice of forfeiture:** When any Unit has been forfeited, the Manager shall give notice of the resolution to the Unit Holder in whose name the Unit stood immediately prior to the forfeiture or the legal personal representatives of that Unit Holder. The Manager shall enter in the Register details of the forfeiture.
- 15.5 **Effect of forfeiture:** A Person whose Units have been forfeited shall cease to be a Unit Holder in respect of the forfeited Units, but shall, notwithstanding such forfeiture, remain liable to pay all money which, at the date of forfeiture, was payable by such Person in respect of the Units. Such liability shall cease if and when the Manager or the Trust receives payment in full of all such money in respect of the Units. A forfeited Unit may be sold or otherwise disposed of on such terms and in such manner as the Manager thinks fit.
- 15.6 **Cancellation of forfeiture:** At any time before a sale or disposition the forfeiture may be cancelled on such terms as the Manager thinks fit.

- 15.7 **Lien on Units:** The Trustee has a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others) and upon the proceeds of sale of the Unit, and all distributions made or payable in respect of the Unit, for:
- (a) any unpaid calls or instalments owing in respect of such Unit, any interest payable on such amounts and any other amounts payable by the Unit Holders to the Trust, the Trustee or the Manager; and
 - (b) for such amounts (if any) as the Trustee or the Manager may be called upon to pay under any statute or legislative enactment in respect of Units of a deceased or other Unit Holder, whether the period for the payment, fulfilment or discharge shall have actually arrived or not.
- 15.8 **Waiver of lien:** Unless otherwise determined by the Manager, the registration of a transfer of Units shall operate as a waiver of the Trustee's lien, if any, on such Units.
- 15.9 **Trustee may sell Units subject to lien:** The Trustee may sell, in such manner as it thinks fit, any Units on which it has a lien. No sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 Business Days after notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the Unit Holder, or the persons entitled thereto by reason of the death or bankruptcy of the Unit Holder.
- 15.10 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of any forfeited Unit or of Units sold for the purpose of enforcing a lien, shall be applied in or towards satisfaction of any unpaid calls, instalments, interest expenses or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the former Unit Holder, or the legal personal representatives or assigns of the former Unit Holder.
- 15.11 **Evidence:** A certificate signed by the Manager that the power of sale has arisen and is exercisable by the Manager under this deed, or that a Unit has been duly forfeited, shall be conclusive evidence of those matters.
- 15.12 **Sale procedure:** For giving effect to any such sale after forfeiture, or for enforcing a lien, the Manager may authorise any Person to transfer any Unit sold to the purchaser. The purchaser shall be registered as the Unit Holder in respect of the Units comprised in any such transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Units be affected by any irregularity or invalidity in the sale. The remedy of any person having a cause of action in relation to the sale is in damages only.

16. TRANSFER AND TRANSMISSION OF UNITS

- 16.1 **Right to transfer:** Subject to any restrictions contained in this deed, any Unit Holder may transfer all or any of the Units held by such Unit Holder as follows:
- (a) Any Units disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act.
 - (b) Under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Trust.
 - (c) Every instrument of transfer not falling within the provisions of sub-clause (a) above shall be in such form as the Manager may approve from time to time and shall be signed by the transferor and, if the Manager so requires, the transferee.

- 16.2 **Method of transfer:** A unit which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clause 16.1(a) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed in New Zealand, it may nevertheless be registered by the Manager if it is executed in a manner acceptable to the Trustee or the Manager.
- 16.3 **When transfer effective:** The transferor of a Unit shall be deemed to remain the holder of the Unit until the name of the transferee is entered in the Register in respect thereof.
- 16.4 **Manager may refuse to register:** The Manager may decline to register any transfer of Units where:
- (a) the Trustee has a lien on the Units or any of them;
 - (b) the instrument of transfer is not accompanied by such evidence as the Manager may reasonably require to show the right of the transferor to make the transfer; or
 - (c) subject to Listing Rule 11.1, registration of the transfer (together with registration of any further transfer or transfers held by or on behalf of the Manager and awaiting registration) would result in less than the Minimum Number standing in the name of the transferee. This power shall not be exercised before due enquiry has been made by the Manager as to whether any further transfers to the same transferee are pending and whether such transfers would increase the holding to the Minimum Number,

provided that the Manager resolves to exercise its power under this clause within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being made.

- 16.5 **Compulsory disposal when holding less than Minimum Holding:** The Manager may at any time give notice to a Unit Holder holding less than a Minimum Holding of Units of any Class that, if at the expiration of three months after the date the notice is given the Unit Holder still holds less than a Minimum Holding of Units of that Class, the Manager may exercise the power of sale of those Units set out in this clause. If that power of sale becomes exercisable:
- (a) The Manager may arrange for the sale of the relevant Units on behalf of the Unit Holder, through NZX, or in some other manner approved by NZX.
 - (b) The Unit Holder shall be deemed to have authorised the Trustee to act on behalf of the Unit Holder in relation to the sale of the relevant Units, and to sign all necessary documents relating to such sale.
 - (c) The Trustee shall account to the Unit Holder for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Trustee for, and paid (together with interest at such rate (if any) as the Manager deems appropriate) to, the Unit Holder, on surrender of the certificate (if any) relating to the relevant Units.
 - (d) The title of the purchaser of any Units sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Trustee shall be a good discharge to the purchaser for the purchase price.

- 16.6 **Manager may retain instruments of transfer:** All instruments of transfer which have been registered may be retained by the Manager. If the Manager, pursuant to the powers contained in this deed, refuses to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return the transfer to the transferee together with such documents of title which may have been left with the transfer.
- 16.7 **Suspension of registration:** Subject to Listing Rule 11.1, registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding 30 Business Days in any calendar year without the approval of the Trustee.
- 16.8 **Deceased Unit Holders:** The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders), and in the case of the death of one or more of several joint Unit Holders the survivor or survivors, shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. Nothing contained in this clause 16.8 shall release the estate of a deceased joint Unit Holder from any liability in respect of any Unit which had been jointly held by that Unit Holder with other Persons.
- 16.9 **Mentally disordered, deceased or bankrupt Unit Holders:** Any manager of a mentally disordered person or any Person becoming entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder shall, upon such evidence being produced as may from time to time be properly required by the Manager, have the right either to be registered as a Unit Holder in respect of the Unit or, instead of being so registered, to make such transfer of the Unit as the mentally disordered, deceased or bankrupt Person could have made. The Manager shall in either case have the same right to decline or suspend registration as it would have had in the case of a transfer of the Unit by the mentally disordered, deceased or bankrupt Person before such Person became mentally disordered, or before the death or bankruptcy of such Person, as the case may be.
- 16.10 **Registration or transfer of Unit by manager, personal representatives or assignee:** If the Person becoming entitled to a Unit as under clause 16.9 elects to be registered personally, the Person shall deliver or send to the Manager a notice in writing signed by the Person stating that the Person so elects. If the Person elects to have another Person registered, the Person shall execute in favour of such other Person a transfer of the relevant Unit. All the limitations, restrictions and provisions of this deed relating to the right to transfer and the registration of transfers of Units shall be applicable to any such notice or transfer as if the mental disorder, death or bankruptcy of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.
- 16.11 **Entitlements of manager, personal representatives or assignee:** Where any Unit Holder becomes mentally disordered, dies or becomes bankrupt, the manager or personal representatives or the assignee of the Unit Holder's estate, as the case may be, shall upon the production of such evidence as may from time to time be properly required by the Manager, be entitled to the same distributions and other advantages, and to the same rights (whether in relation to meetings of the Unit Holders or to voting or otherwise), as the Unit Holder would have been entitled to if the Unit Holder had not become mentally disordered, died or become bankrupt. Where two or more Persons are jointly entitled to any Unit in consequence of the death of the Unit Holder they shall, for the purposes of this deed be deemed to be joint holders of the Unit.
- 16.12 **Application to Securities other than Units:** The provisions of this section 16 shall apply, with any necessary modifications, to Securities of the Trust other than Units except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules, or by law.

17. RESTRICTIONS ON ACQUISITIONS

17.1 **Rulings binding:** If NZX gives any Ruling in respect of the matters dealt with by sections 17, 18, 19 or 20, or any matter dealt with by section 4 of the Listing Rules, that Ruling is binding on the Manager, the Trustee and all holders of Securities, and shall take effect as if that Ruling were itself incorporated in this deed.

17.2 **Takeovers Code:** If a takeovers code is in force under the Takeovers Act 1993 that is applicable to the Trust then subject to:

- (a) any applicable provisions of that code; and
- (b) the Manager first obtaining the approval of NZX and complying with any condition of that approval; and
- (c) such conditions as NZX may from time to time impose;

the whole of sections 17, 18, 19 and 20, or such part or parts thereof as may be determined by NZX, shall cease to apply and shall be deemed to be cancelled with effect from the date upon which that code comes into force, except that they shall nevertheless continue to apply in respect of any non-compliance with the provisions of section 17 or 19 which has occurred prior to that date.

17.3 **Restricted Transfer:** No Restricted Transfer of Quoted Equity Securities may take place unless:

- (a) a notice has been given to the Manager and to NZX in a manner complying with Listing Rule 10.2.3 for release to the market, not later than the time specified in clause 17.4, containing the particulars specified in Listing Rule 4.5.2;
- (b) a notice of any change in, or addition to, the particulars notified under sub-clause (a) is given not later than the time specified in clause 17.5;
- (c) any Restricted Transfer status report, if required by clause 17.9, has been given in accordance with that clause.

17.4 **Notice of Restricted Transfer:** A notice under clause 17.3(a) shall be given:

- (a) if any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transfer;
- (b) if no Transferee is an Insider, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the Transfer.

17.5 **Notice of change in notice of Restricted Transfer:** A notice under clause 17.3(b) shall be given:

- (a) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect, in the case of a change to price or other consideration, and at least 15 Business Days before the change takes effect, in the case of a change to any other particulars specified in Listing Rule 4.5.2; or
- (b) if no Transferee is an Insider:
 - (i) in the case of a change to price or other consideration, at least two hours during which NZX is open for business if the Restricted Transfer complies

with Listing Rule 4.5.5, and at least one Business Day in any other case, before the change takes effect; and

- (ii) in the case of a change to any other particulars specified in Listing Rule 4.5.2, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the change takes effect.

17.6 **Contents of notice:** If a notice is given under clause 17.3(a) or the Manager becomes aware that a Restricted Transfer proposal is more likely than not in the immediate future, the Manager shall:

- (a) give notice, as soon as can be achieved, and before the expiry of the relevant notice period referred to in clause 17.4, containing the particulars required by Listing Rule 4.5.6; and
- (b) comply (so far as is applicable) with Listing Rule 4.5.7.

17.7 **Appraisal Report:** If any Transferee under a Restricted Transfer is an Insider, the Manager shall (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a notice being given under clause 17.3(a) in respect of that Restricted Transfer, commission an Appraisal Report which complies with Listing Rule 4.5.8, and deal with that Appraisal Report in accordance with the requirements of that Listing Rule.

17.8 **Compliance with Listing Rules:** The Manager shall comply with the provisions of Listing Rules 4.4.5 and 4.4.6. Meetings for the purposes of Listing Rules 4.4.2 and/or 4.4.3 may be called under, and in accordance with, section 28.

17.9 **Restricted Transfer status report:** If a Restricted Transfer is not completed within three months of the notice required to be given under clause 17.3(a), or of any status report previously given under this clause 17.9, then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer shall be provided to the Manager and NZX in a manner complying with Listing Rule 10.2.3 for release to the market, including:

- (a) advice as to when the Restricted Transfer is intended to be completed; and
- (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.

17.10 **Manager's obligations:** On receipt of the information provided under clause 17.9, the Manager shall promptly advise NZX:

- (a) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or of the response initially provided under clause 17.6; and
- (b) that the Manager is complying with Listing Rule 10.1.

18. ENFORCEMENT OF ACQUISITION RESTRICTIONS

18.1 **Acquisition in breach of restrictions:** If a person breaches section 17 (not being a breach committed only by the Manager acting in its capacity as such):

- (a) no Vote may be cast in respect of the Defaulter's Equity Securities on a poll (and any Vote cast shall be disregarded) while the Default is unremedied;

- (b) the Defaulter's Equity Securities may be sold by the Manager in accordance with clause 18.2 but this power may not be exercised:
 - (i) until one month after the Manager has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Equity Securities, to the registered holder) of its intention to exercise this power; and
 - (ii) if, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Equity Securities to a person who is not a Defaulter.

18.2 **Exercise of power of sale:** If the power of sale specified in cause 18.1(b) becomes exercisable and is exercised:

- (a) the Manager shall arrange for the sale of the Defaulter's Equity Securities through NZX or in some other manner approved by NZX;
- (b) each holder of Defaulter's Equity Securities is deemed to have authorised the Manager to act on behalf of that holder in relation to the sale of the relevant Equity Securities, and to sign all documents relating to such sale which may be required to give effect thereto;
- (c) the net proceeds of sale shall be accounted for to the holder of the relevant Defaulter's Equity Securities and shall be held on trust by the Manager for, and paid (after deduction of amounts referred to in sub-clause (d)) to, holders of the relevant Equity Securities upon entry of the transfer relating to the relevant Equity Securities in the Register; and
- (d) the Manager may deduct from the proceeds of sale any costs of sale and any costs to the Manager of determining whether a person is a Defaulter and exercising powers permitted by this section 18, and any amounts which the Manager may choose to pay to members of any Affected Group acting pursuant to clause 18.4, in reimbursement of expenses incurred by those members.

18.3 **Power of sale and transfer of title not to be questioned:** No purchaser or other person dealing with the Manager shall be concerned to enquire whether the power of sale specified in clause 18.1(b) has become properly exercisable, or as to the propriety or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Manager. The receipt of the Manager is a good discharge to the purchaser for the purchase price, and no question may be raised as to the title of the purchaser to Equity Securities sold in purported exercise of the power of sale specified in clause 18.1(b).

18.4 **Resolution of Affected Group directing sale:** The Manager shall, if so directed by a resolution of an Affected Group (passed by a simple majority of Votes), exercise the power referred to in clause 18.1(b), if that power has become exercisable. The holders of 5% or more of the Securities of an Affected Group may, by notice to the Manager, require the Manager to convene a meeting of the Affected Group for the purpose of considering such a resolution.

18.5 **Manager not to be held liable:** Neither the Manager nor any Director of the Manager shall be under any liability whatsoever to any Defaulter, any holder of Defaulter's Equity Securities, or any person whom the board of the Manager believes to be a Defaulter or holder of Defaulter's Equity Securities, for or in connection with the exercise or purported exercise of the powers specified in this section 18.

- 18.6 **Remedy for breach of restrictions on acquisitions:** The sole remedy of the Manager, a Director of the Manager, a holder of Equity Securities or any other person, in respect of a breach or alleged breach of section 17 shall be to exercise, or require the Manager or its Directors to exercise, the powers referred to in clause 18.1. Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of section 17. Nothing in this clause affects the remedies of a holder of Equity Securities against the Manager in respect of a breach of sections 17, 18 or 19 by the Manager.
- 18.7 **Determination as Defaulter's Equity Securities:** The Manager shall use reasonable endeavours to ascertain for the purposes of clause 18.1(a) whether any Securities are Defaulter's Equity Securities and accordingly whether a holder of those Securities is entitled to vote. If any holder of Securities, or NZX, alleges that any Securities are Defaulter's Securities, the Manager shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any person is or is not entitled to Vote at that meeting pursuant to clause 18.1(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 18.1(a), but this provision shall not prejudice any action which any person may have against any holder of Securities by reason of that holder having cast a Vote at any meeting in breach of clause 18.1(a).
- 18.8 **Rulings:** NZX (an "Arbiter") may, for the purposes of making a Ruling as to whether any person is a Defaulter, give notice to any person who the Arbiter believes may be a Defaulter. The notice shall:
- (a) set out in general terms the grounds on which the Arbiter believes that person to be a Defaulter; and
 - (b) require that person, within a reasonable time specified in the notice, to produce evidence to rebut the Arbiter's belief that that person is a Defaulter.

If the person to whom the notice is given fails within the time specified in the notice to provide to the Arbiter evidence reassembly satisfactory to the Arbiter that that person is not a Defaulter, then the Arbiter shall be entitled to assume without further evidence that that person is a Defaulter, and to make a Ruling to that effect.

19. COMPULSORY ACQUISITION PROVISIONS

- 19.1 **Acquisition Notice:** If a person or a group of Associated Persons acquires beneficial ownership of 90% or more of a Class of Quoted Equity Securities, that person or group of persons (the "Majority Holder") shall, within 20 Business Days after that circumstance arises, give notice (an "Acquisition Notice") to all other holders (the "Remaining Holders") of Equity Securities of that Class ("Affected Securities") and at the same time to the Manager and NZX.
- 19.2 **Contents of Acquisition Notice:** The Acquisition Notice shall specify:
- (a) that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
 - (b) either:
 - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or

- (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
 - (c) the consideration which the Majority Holder is prepared to provide for Affected Securities.
- 19.3 **Entitlements and obligations of Majority Holder:** Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (a) if the Acquisition Notice contains the statement in clause 19.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
 - (b) if the Acquisition Notice contains the statement in clause 19.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- 19.4 **Consideration for Affected Securities:** The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:
- (a) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Manager and NZX a report from an independent, appropriately qualified person who has been previously approved by NZX (“**Expert**”) confirming that, for the purposes of this section 19, that consideration is fair to the Remaining Holders, using the same criteria set out in clause 19.4(c)(v) .
 - (b) If, within 10 Business Days after the date of the Acquisition Notice, the Manager receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the Manager shall forthwith notify the Majority Holder and NZX of that fact and the consideration shall then be determined in accordance with sub-clauses (c) and (d). If such objections are not received, the consideration shall be as specified in the Acquisition Notice.
 - (c) If objections of the nature referred to in sub-clause (b) are received by the Manager, the consideration shall be fixed by a person who shall:
 - (i) be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9), if any, and otherwise by all the Directors of the Manager after consultation with the Trustee and after approval by NZX;
 - (ii) be a different Expert from the person referred to in sub-clause (a);
 - (iii) be directed to provide a decision within 20 Business Days after being appointed;
 - (iv) act as an expert and not as an arbitrator; and
 - (v) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Trust as a whole and the rights and obligations attached to those Affected Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors

relating to the Remaining Holders, the Majority Holder, their respective holdings of Equity Securities or the relative extent of those holdings.

- (d) If the consideration determined by the Expert appointed in accordance with sub-clause (c):
- (i) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that Expert shall be borne by the Remaining Holders who made the objections referred to in sub-clause (b) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash);
 - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that Expert shall be borne by the Majority Holder.

19.5 **Payment of consideration:** The Majority Holder shall pay or provide the consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if the consideration requires to be determined in terms of clause 19.4(c), within two Business Days after it has been so determined.

19.6 **Payment of consideration where holder cannot be located:** If any holder of Affected Securities which are to be acquired cannot be located by the Majority Holder, the Majority Holder shall pay or provide the consideration due to that holder to the Manager. The Manager shall hold that consideration upon trust for that holder for a period of five years from the date of its receipt by the Manager. If that consideration is not claimed by that holder within that period, it may be forfeited by the Manager for the benefit of the Trust. The Manager shall nevertheless, at any time after such forfeiture, annul the forfeiture and pay or provide the consideration to a claimant who produces satisfactory evidence of entitlement.

19.7 **Transfer and registration of Affected Securities:** Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 19.5 and 19.6, the Manager shall forthwith execute on behalf of all the holders of those Securities transfers of those Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the relevant register in respect of those Affected Securities. If the Manager fails to execute any such transfer, the Majority Holder may do so.

19.8 **Failure to issue notice or acquire Securities:** If a Majority Holder fails to give an Acquisition Notice when required to do so by this section 19, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this section 19, fails to do so, then the provisions of clauses 18.1 to 18.5 and 18.7 shall apply with the following modifications:

- (a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;
- (b) the failure to comply with this section 19 shall be deemed to be a Default; and
- (c) the Remaining Holders shall be deemed to be an Affected Group.

20. HOLDING BY BARE TRUSTEE

20.1 **Interest held for Beneficial Owners:** For all purposes of sections 17, 18 and 19 and notwithstanding anything in those sections:

- (a) the Transfer of Quoted Equity Securities, or of any interest in Quoted Equity Securities, to a bare trustee shall be deemed to be a Transfer to the person or persons for whom that bare trustee holds those Equity Securities or that interest as trustee ("**the Beneficial Owners**");
- (b) Quoted Equity Securities, or any interest in Quoted Equity Securities, held by a bare trustee shall be deemed to be held by the Beneficial Owners; and
- (c) A trustee may be a bare trustee notwithstanding that the trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.

20.2 Effect of holding as bare trustee: Without limiting clause 20.1:

- (a) a bare trustee and a Beneficial Owner shall not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;
- (b) a bare trustee of Quoted Equity Securities shall not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Quoted Equity Securities; and
- (c) a Beneficial Owner of Quoted Equity Securities shall not have a Relevant Interest in the Quoted Equity Securities of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.

20.3 Defaulter's Securities held by bare trustee: In the event of a Default, if any Quoted Equity Securities held by a person as a bare trustee on behalf of different Beneficial Owners include any Defaulter's Equity Securities:

- (a) the bare trustee shall, on request by the Manager or NZX, provide to the Manager and NZX details of the Beneficial Owners of those Defaulter's Equity Securities; and
- (b) the Manager may at any time, and shall upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Equity Securities are separately designated in the Register recording those Quoted Equity Securities.

21. REMUNERATION OF TRUSTEE

21.1 Remuneration of Trustee: The Trustee shall be paid out of the Trust Fund in respect of its services a fee, agreed from time to time between the Trustee and the Manager, but not exceeding 0.075% per annum of the Gross Value of the Trust Fund provided that in any Financial Year the minimum fee paid to the Trustee in respect of the Trust shall be \$20,000, unless such Financial Year consists of a period of less than twelve months, in which event the minimum fee shall be that proportion of \$20,000 which equates to the proportion which the actual number of months in that Financial Year bears to twelve. The Trustee shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee. For the purposes of this clause 21.1, "value added tax" shall include, but not be limited to, goods and services tax as that term is defined in the Goods and Services Tax Act 1985.

21.2 Calculation of fee: The fee referred to in clause 21.1 shall be calculated daily on the basis of the Gross Value of the Trust Fund from day to day (or on such other basis as the Manager and the Trustee may agree), and shall be paid in arrears on the last day of each month and on the date of termination of the period of the Trust provided that, if any further payment is required to ensure that the Trustee receives the minimum fee specified in clause 21.1, such further payment shall be made as of the last day of the relevant Financial Year in respect of the Trust.

21.3 **Increase in remuneration of Trustee:** The remuneration of the Trustee may not be increased without the approval of a meeting of Unit Holders duly convened and held.

21.4 **Other Attendances by Trustee:** Notwithstanding the foregoing and subject to any applicable restriction in the Listing Rules (particularly Listing Rule 9.2), the Trustee shall be paid out of the Trust Fund an acceptance fee of \$2,500 and such remuneration or reimbursement as agreed by the Manager and the Trustee to be reasonable in the circumstances in respect of the following special attendances:

- (a) the legal fees incurred by the Trustee for the preparation and on-going advice in respect of this deed; and
- (b) work of an unusual or onerous nature outside the attendances of the Trustee as contemplated by this deed including, but not limited to, the convening of meetings of Unit Holders (other than any annual meeting of Unit Holders), the exercise of any significant discretion granted to the Trustee by this deed or discussions regarding leasing matters involved with any Investment.

22. REMOVAL AND RETIREMENT OF TRUSTEE

22.1 **Removal of Trustee from office:** The Trustee may be removed from office as trustee by the High Court on the application of the Manager or the Minister of Commerce pursuant to section 10 of the Act or by an Extraordinary Resolution.

22.2 **Retirement of Trustee:** The Trustee may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention to do so, subject to the due appointment of a new Trustee and the transfer to such new Trustee of all of the Investments and all other property or assets of any nature of the Trust Fund.

22.3 **Appointment of new Trustee:** The Manager shall, upon the Trustee being removed from office pursuant to clause 22.1, or retiring pursuant to clause 22.2:

- (a) have power to appoint a Trustee (qualified in terms of the Act) to act, which Trustee shall have all powers conferred on the Trustee by this deed or by law and be treated for all purposes as the Trustee (subject to paragraph (b) of this clause); and
- (b) as soon as practicable summon a meeting of Unit Holders, and shall take such steps as that meeting or any subsequent meeting of Unit Holders may require to affirm, by Extraordinary Resolution, the appointment as Trustee of the Trustee appointed pursuant to paragraph (a) of this clause or of some other entity qualified in terms of the Act (other than the Trustee which has been removed or which has retired from office).

If at the meeting held under paragraph (b) of this clause 22.3 the Unit Holders do not by Extraordinary Resolution appoint another entity qualified in terms of the Act to be the Trustee, the Trustee appointed by the Manager pursuant to paragraph (a) of this clause shall continue in office as Trustee. No person shall be appointed as a new Trustee unless qualified to act as such pursuant to section 5 of the Act.

23. REMUNERATION OF MANAGER

23.1 **Remuneration of Manager:** The Manager shall not be entitled, in respect of its services, to any fee in the nature of remuneration, but shall be entitled to reimbursement and indemnification in accordance with clause 32 and the other applicable provisions of this deed.

24. REMOVAL AND RETIREMENT OF MANAGER

- 24.1 **Removal of Manager from office:** The Manager shall cease to hold office as Manager of the Trust if:
- (a) the Manager is removed from office by the High Court pursuant to section 19(1) of the Act on the application of the Trustee, any Unit Holder, or the Minister of Commerce; or
 - (b) the Trustee certifies pursuant to section 19(2) of the Act that it is in the interests of Unit Holders that the Manager should cease to hold office; or
 - (c) the Unit Holders by Section 18 Resolution direct that the Manager should cease to hold office; or
 - (d) the Manager is removed from office by the Trustee on any of the grounds specified in clause 24.2.
- 24.2 **Removal of Manager from office by Trustee:** The Trustee shall be entitled to remove the Manager if:
- (a) the Manager is in breach of its obligations under this deed;
 - (b) the Manager fails to carry out its duties to the satisfaction of the Trustee;
 - (c) the Manager is wound up (except for the purposes of an amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager; or
 - (d) the Manager or the Shareholder are in breach of their obligations under the Shareholding Deed, or agree to amend the Shareholding Deed, or waive any breach of the Shareholding Deed, without the approval of the Trustee.
- 24.3 **Effect of Manager ceasing to hold office:** If the Manager ceases to hold office pursuant to clauses 24.1, 24.2 or 24.4, the Manager shall immediately desist from all activities related to the Trust.
- 24.4 **Retirement of Manager:** The Manager may retire at any time without assigning any reason upon giving 90 days', or such shorter period as the Trustee approves, notice in writing to the Trustee of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 24.7.
- 24.5 **Appointment of temporary Manager:** The Trustee shall have power in accordance with section 23(1) of the Act to appoint a company qualified pursuant to section 4 of the Act as a temporary Manager of the Trust in place of a Manager which has retired or been removed from office.
- 24.6 **Appointment of new Manager:** The Trustee shall upon a vacancy in the office of Manager occurring summon a meeting of Unit Holders in accordance with section 23(2) of the Act, and shall take such steps as that meeting or any subsequent meeting of Unit Holders may require to secure the appointment as Manager of the Trust of the temporary Manager appointed pursuant to clause 24.5 or some other company qualified pursuant to section 4 of the Act, and approved by the Trustee.
- 24.7 **Execution of deed by new Manager:** A new Manager appointed pursuant to clause 24.6 shall forthwith upon such appointment execute a deed in such form as the Trustee may require whereby the new Manager undertakes to the Trustee and the Unit Holders to be bound by all the covenants on the part of the Manager under this deed from the date of such appointment. On and from such date the retiring Manager shall be

absolved and released from all such covenants (save in respect of any prior breach of this deed) and the new Manager shall exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager in all respects as if such new Manager had been originally named as a party to this deed.

- 24.8 **Incentive Fee to Previous Manager:** If before 30 September 2011 Argosy Property Management Limited (“APML”) ceases to be manager of the Trust, the Trustee may pay to APML out of the Trust Fund, notwithstanding that APML has ceased to be manager, a portion of the incentive fee payable in respect of the quarter ending 30 September 2011 calculated in accordance with a Transaction Implementation Deed dated 14 July 2011 between APML, the Trustee and other parties.

25. BORROWING POWERS

- 25.1 **Trustee may Borrow:** The Trustee shall have power, if so directed by the Manager pursuant to clause 25.2, to Borrow, and to give security in respect of any Borrowing over all or any part or parts of the Trust Fund.

- 25.2 **Manager may require Trustee to Borrow:** The Manager may at any time and from time to time if the Manager considers it necessary or desirable to do so, by notice in writing to the Trustee require the Trustee to Borrow on behalf of the Trust Fund, and if the Manager so directs, to secure such Borrowing upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit. Any such notice shall specify the party from whom the Borrowing is to be made, and the terms of the Borrowing. The Manager shall not give any such notice unless it has arranged the Borrowing with such party.

- 25.3 **Restrictions on Borrowing:** The Trustee shall, on receipt of a direction by the Manager pursuant to clause 25.2, take all necessary steps to give effect to that direction provided however:

- (a) No such Borrowing shall be made if the effect of that Borrowing would be that immediately after but on the date of that Borrowing the total of money Borrowed by the Group (excluding moneys Borrowed by a member of the Group from another member of the Group) and outstanding would exceed 50% of the Gross Value of the Trust Fund at that date (calculated taking account of the proceeds of the Borrowing).
- (b) The Trustee shall not be required to execute any agreement, security or other document in respect of any Borrowing which (in the opinion of the Trustee) would render the Trustee personally liable in respect of such Borrowing and unless the liability of the Trustee thereunder is to the satisfaction of the Trustee limited to the assets for the time being in the Trust.

- 25.4 **Protection of third parties:** No person lending money to or otherwise dealing with the Trustee shall be bound to inquire as to whether the limit in clause 25.3(a) has been exceeded, and no breach of that limit shall affect the validity or enforceability of any loan or any other transaction.

- 25.5 **Breach of borrowing covenant:** In the event that, due to events other than a breach of clause 25.3(a), the total of money Borrowed by the Trust at any time exceeds 50% of the Gross Value of the Trust Fund (the “**Borrowing Covenant**”) at that date, the following provisions shall apply:

- (a) subject to clause 25.5(b), the Manager will with all due expedition take all reasonable steps as it deems necessary (which may include realising Investments) to reduce the Borrowing of the Trust in order that the Borrowing Covenant is not breached;

- (b) if the Manager reasonably believes that the Gross Value of the Trust Fund has declined, the Manager, following notice to such effect to the Trustee, shall be entitled to refrain from taking any remedial action of the kind referred to in clause 25.5(a) for a period of six months following the issue of the notice to the Trustee (or such longer time period as the Trustee may agree); thereafter, if the Trust remains in breach of the Borrowing Covenant, the Manager shall, subject to clause 25.5(d), be required to take the remedial action referred to in clause 25.5(a);
- (c) the Trustee shall be obliged to accept the notice referred to in clause 25.5(b) unless it believes that the contents thereof are wrong, in which case it shall be entitled to require the Manager to take the action referred to in clause 25.5(a);
- (d) notwithstanding the provisions of clause 25.5(b), the Manager shall be entitled to seek a further period beyond that referred to in clause 25.5(b) if the specific terms of the same are approved by an Ordinary Resolution; and
- (e) for the purposes of clause 10.5, the Trustee shall be deemed to have consented to the sale of any Investments pursuant to this clause 25.5.

26. ACCOUNTS

- 26.1 **Records:** The Manager and the Trustee shall, having regard to their separate functions and obligations, keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place and of the issue of Units and of all other matters for which accounts should properly be kept. The Manager shall, in particular, keep or cause to be kept such accounts as may be necessary to enable it to comply with its obligations pursuant to section 11 of the Act and such accounts as may be necessary to ensure that moneys received, expended or distributed by the Trust are credited or, as the case may be, debited to the appropriate funds available for distribution to the different classes of Unit Holders and so as to ensure that the entitlement of any Unit Holder to participate in the Trust Fund at any particular time may readily be ascertained. The Manager and the Trustee shall provide to each other from time to time any information necessary for this purpose.
- 26.2 **Accounts:** The Manager shall cause to be prepared semi annual and annual accounts in respect of the Trust Fund for each Financial Year.
- 26.3 **Audit of Annual Accounts:** The annual accounts prepared in accordance with clause 26.2 shall be audited by the Auditor who shall report to the Manager and the Trustee in accordance with the Financial Reporting Act 1993.
- 26.4 **Information required for audit:** In carrying out the Auditor's duties, the Auditor shall be entitled to require from the Manager and the Trustee such information, explanations, documents, certificates and accounts as the Auditor may consider necessary, and the Manager or the Trustee (as the case may be) shall forthwith provide the same to the Auditor.
- 26.5 **Accounts and auditor's report to be provided to Trustee and Unit Holders:**
- (a) The Manager shall send a copy of the annual accounts of the Trust Fund together with the Auditor's report thereon to the Trustee and each Person who is a Unit Holder at the date upon which they are despatched, and also to each Person who was a Unit Holder on the date as at which such accounts are made up.
 - (b) The Manager shall make available, in accordance with the Listing Rules, a copy of the semi-annual accounts of the Trust Fund, to each Person who is a Unit Holder

at the date upon which they are despatched, and also to each Person who was a Unit Holder on the date as at which such accounts are made up, and send to the Trustee a copy of the semi-annual accounts of the Trust Fund.

26.6 **Filing:** The Manager shall in accordance with section 20 of the Act cause to be filed with the District Registrar (as defined in the Act) the statements and documents required to be filed pursuant to that section.

26.7 **Auditor's reports:** The Manager shall furnish to the Trustee at the same time as the Manager furnishes to the Trustee the annual accounts prepared in accordance with clause 26.2 a separate report by the Auditor stating:

- (a) whether or not in the performance of its duties as Auditor it has become aware of any matter which in its opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Manager or the Trustee by the Act or by this deed or in any guidelines, policy statements or similar agreements entered into by the Manager and the Trustee in relation to this deed or any prospectus (copies of which have been provided to the Auditor) or by law and, if so, giving particulars thereof;
- (b) whether or not its audit has disclosed any matter (and if so particulars thereof) calling in its opinion for further investigation by the Trustee in the interests of the Unit Holders;
- (c) that it has perused the most recent certificate given pursuant to clause 26.8 since the last report by the Auditor and that nothing has come to the attention of the Auditor during its review that would cause it (acting reasonably) to consider that:
 - (i) the statements made in sub-clauses 26.8(b) and 26.8(j) of the certificate referred to in clause 26.8 are incorrect; and
 - (ii) so far as matters which it has observed in the performance of its duties are concerned the remaining statements made in such certificate are incorrect;
- (d) as at the date to which the certificate relates:
 - (i) whether or not from the normal audit tests it has conducted it is satisfied that all amounts due to the Unit Holders whether by way of income entitlement or otherwise have been paid; and
 - (ii) the amount of any income entitlements distributed since the previous report given pursuant to this clause 26.7; and
- (e) whether or not the method of valuation of the assets or liabilities of the Trust Fund has been in accordance with this deed,

or stating such other matters, or in such form, as the Manager and Trustee may agree from time to time.

26.8 **Manager's report:** Within two calendar months of the end of each financial quarter of the Trust and if so required by the Trustee on or before the last day of the month following a month during which the Trustee shall request the same, the Manager shall furnish to the Trustee a certificate signed by not less than two Directors on behalf of the Manager stating to the best of their knowledge and belief after having made all due enquiry whether or not in relation to the Trust since the date of the last such certificate:

- (a) all amounts due and payable to the Unit Holders have been paid;

- (b) the Register has been duly maintained in accordance with this deed;
- (c) the Manager has duly observed and performed all covenants, conditions and agreements and provisions binding upon it under this deed and any guidelines, policy statements or other agreement between the Manager and the Trustee entered into in relation to this deed and any prospectus;
- (d) any circumstances which affect the Trust have occurred which materially and adversely affect the interests of the Unit Holders;
- (e) any material trading or capital loss has been sustained by the Trust and if so particulars thereof;
- (f) any material contingent liabilities have been incurred by the Trust and if so the amount thereof and whether or not any contingent liability has or is likely to mature within the next succeeding twelve months which will materially affect the Trust;
- (g) [This clause is intentionally left blank.]
- (h) full and adequate provision for taxation liabilities to be paid or reclaimed (including deferred taxation) has been made;
- (i) the Directors consider that:
 - (i) any person to whom the Manager has delegated any of its powers, authorities, functions or discretions has adhered to the instructions given by the Manager; and
 - (ii) the Investments at all times have been dealt with or invested in accordance with the Investment Policies;
- (j) as at the quarterly or other date to which the certificate relates:
 - (i) the total Investments of the Trust;
 - (ii) if the Trust has Borrowed the total Borrowings of the Trust and the ratio of total Borrowings of the Trust to the Gross Value of the Trust Fund; and
 - (iii) the number of Units on issue;
- (k) all moneys intended for the Trust have been paid into the relevant bank account and no such moneys have been applied in any other way;
- (l) all monies paid out of the relevant bank account have been paid for Authorised Investments or for fees or expenses authorised by this deed and in no other way;
- (m) all monies paid out of the relevant bank account for Authorised Investments are held in accordance with the provisions of this deed or, if not, their absence is accounted for; and
- (n) all Investments are vested in the name of the Trustee or a nominee of the Trustee;
- (o) all fees have been calculated in accordance with the provisions of this deed;
- (p) all calculations of the income entitlements of the Unit Holders have been carried out in accordance with the provisions of this deed;

- (q) the Investments are insured in accordance with clause 10.14, copies of certificates of insurance have been provided to the Trustee and all premiums are paid up to the date of the certificate;
- (r) the Manager has complied with its obligations under the Act; and
- (s) appropriate control procedures are in place for the operation of each Trust bank account held in the name of the Trustee or its nominee, such accounts have been reviewed and reconciled monthly, there are no material unreconciled items, reconciling items are being following up regularly and there are no material reconciling items over one month old.

26.9 **Report to Trustee on investments below thresholds:** The Manager shall report to the Trustee on a quarterly basis the details of any investment, purchase, sale, transfer, exchange, lease or alteration (including details of such transaction by any company owned by the Trust) which is below the thresholds referred to in clause 10.5. The report will contain such details as the Manager and Trustee may agree from time to time.

26.10 **Report to Unit Holders on changes to thresholds:** In the event that the Trustee and the Manager agree upon any change to the various thresholds relating to investment, purchase, sale, transfer, exchange, lease or alteration as referred to in clause 10.5, the Manager shall ensure that a written communication is made to Unit Holders advising them of any such change at the time that semi annual or annual accounts are sent to Unit Holders as required by clause 26.5.

26.11 **Payments to Shareholder:** The Manager shall keep or cause to be kept records of all sums of money paid in accordance with clause 32.4 of this deed. The records kept by the Manager pursuant to this clause shall contain such details as the Manager considers appropriate, having regard to its obligations under this deed. The Trustee may require the records to be audited by the Auditor and reported on to the Trustee on such terms as the Trustee reasonably requests.

27. AUDITOR

27.1 **Auditor:** The Auditor shall be a firm of chartered accountants, and may at any time be removed from office by the Trustee. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Trustee.

27.2 **Appointment of Auditor:** Any vacancy in the office of Auditor occurring under clause 27.1 shall be filled by the Manager (after consultation with the Trustee) appointing an Auditor qualified for appointment in terms of clause 27.1.

27.3 **Auditor may act for others:** The Auditor may also be the auditor of the Manager and may be the auditor of any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or servant (or the partner of an officer or servant) of the Manager or of the Trustee.

27.4 **Auditor's remuneration:** The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Fund.

28. MEETINGS OF UNIT HOLDERS

28.1 **Request for meeting:** The Manager shall summon a meeting of Unit Holders upon the request in writing of the Trustee, or of one tenth in number of the Unit Holders, or of a Unit Holder or Unit Holders holding (at the date of the receipt by the Manager of the request) not less than one tenth of the value of the interests of the Unit Holders in the Trust Fund. The Manager shall in accordance with section 12(d)(ii) of the Act lay before

any such meeting copies of the last statements and summaries filed with the District Registrar of Companies in accordance with section 20(1)(b) and section 20(2) of the Act.

28.2 Other meetings: The Manager:

- (a) shall convene an annual meeting of Unit Holders to be held no later than 6 months after the end of each Financial Year and no later than 15 months after the last annual meeting;
- (b) shall convene a meeting of Unit Holders, or of any Class of Unit Holders, on the written request of the Trustee, or of 5% in number of Unit Holders, or of Unit Holders of the relevant Class (as applicable), or of a Unit Holder or Unit Holders holding not less than 5% of the Units, or Units of the relevant Class (as applicable), provided that:
 - (i) the request for the meeting is accompanied by the text of any resolution to be put to the meeting and an explanation of the reasons for the resolution, in each case (subject to paragraphs 14.1(d) and (e) of the Schedule, which shall apply to such resolution) for provision to Unit Holders with the notice of meeting; and
 - (ii) if there is an annual meeting of Unit Holders to be held within 90 Business Days of the request, the Manager may elect to have the matter dealt with at that annual meeting and shall include the matter in the notice of that annual meeting; and
- (c) may at any time of its own volition convene a meeting of Unit Holders or of any Class of Unit Holders.

28.3 Unit Holder participation, etc:

- (a) The chairperson of a meeting of Unit Holders must allow a reasonable opportunity for Unit Holders at the meeting to question, discuss or comment on the management of the Trust.
- (b) A resolution relating to the management of the Trust proposed by the Trustee or the Unit Holders at any meeting may be passed, but no such resolution shall be binding on the Trustee or the Manager.

28.4 Notice of and attendance at meetings: Holders of Equity Securities of all Classes are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes but are not entitled to vote at any such meeting unless the terms of the relevant Equity Securities so provide. The Shareholder is entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued to Unit Holders. For the avoidance of doubt, the Shareholder may not vote at a meeting of Unit Holders except as proxy for a Unit Holder or Unit Holders or when acting in a capacity other than as the Shareholder.

28.5 Meeting procedure: All meetings of Unit Holders shall be convened and held in accordance with the provisions set out in the Schedule.

28.6 Resolution directing Trustee: The Unit Holders shall, by means of a Section 18 Resolution passed at a meeting of Unit Holders, have the power to give such directions to the Trustee as they think proper concerning the Trust, being directions that are consistent with the provisions of this deed and the Act.

- 28.7 **Trustee acting under direction:** Where any direction is given to the Trustee pursuant to clause 28.6 in respect of any matter, the Trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Trustee may also at its discretion in accordance with section 18(4) of the Act apply to the High Court for directions in respect of the matter.
- 28.8 **Group meetings:** A meeting of the Unit Holders in an Interest Group, or an Affected Group or a Relevant Group may be called by the Manager at any time, and shall be called on the written request of holders of Quoted Equity Securities carrying together not less than 5% of the Votes. All the provisions of this deed relating to meetings of Unit Holders apply, with all necessary modifications, to a meeting of an Interest Group, an Affected Group or a Relevant Group, except that:
- (a) the necessary quorum is two or more Unit Holders in the group present in person or by Representative, or, if there is only one Unit Holder in the group, that Unit Holder present in person or by Representative;
 - (b) if the Manager so elects, one meeting may be held of Unit Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
 - (c) any Unit Holder in the group, present in person or by Representative, may demand a poll.
- 29. DIRECTORS OF THE MANAGER**
- 29.1 **Appointment and Removal:** Unit Holders shall be entitled to control the appointment and removal of Directors in accordance with the provisions of this clause 29 and paragraph 11.5 of the Schedule.
- 29.2 **Provisions of Constitution:** The parties record that the constitution of the Manager requires that:
- (a) at the time of each Annual Meeting certain of the Directors are required to retire from office, but are eligible to be reappointed as Directors in accordance with directions given at that Annual Meeting;
 - (b) any person who is appointed as a Director by the Directors is required to retire from office at the time of the next Annual Meeting, but is eligible to be reappointed in accordance with directions given at that Annual Meeting.
- 29.3 **Shareholding Deed:** The parties record that the Shareholding Deed provides that the Shareholder shall exercise its rights to appoint and remove Directors in accordance with the directions of Unit Holders by Ordinary Resolution.
- 29.4 **Resolutions:** The Manager shall cause resolutions to be put to Unit Holders, to be considered as Ordinary Resolutions, at each Annual Meeting:
- (a) to direct the Shareholder to reappoint as a Director any person who is required to retire at the time of that Annual Meeting in accordance with the provisions referred to in clause 29.2; and
 - (b) to direct the Shareholder to appoint as a Director any person who is nominated as a Director in accordance with clause 29.5.
- 29.5 **Nominations:** No person (other than the person retiring as a Director at the time of the Annual Meeting in accordance with the provisions referred to in clause 29.2) may be

considered for election as a Director at an Annual Meeting unless that person has been nominated by a Unit Holder entitled to attend and vote at that Annual Meeting. The Manager shall make an announcement to NZX, in respect of each Annual Meeting, of the closing date for Director nominations and contact details for making nominations, not less than 10 Business Days before the closing date for nominations. The closing date for nominations shall be fixed by the Manager, but shall be not more than two months before the date of the Annual Meeting. If the aggregate of the number of nominations received, and the number of Directors retiring in accordance with the provisions referred to in clause 29.2 and seeking reappointment, exceeds the number of Director vacancies available, the persons to be appointed as Directors in accordance with clause 29.4(b) shall be those persons approved by Unit Holders at the relevant Annual Meeting corresponding to the number of vacancies available, and who receive the greatest number of votes of Unit Holders at the relevant Annual Meeting, as determined by the chairman of the Annual Meeting.

- 29.6 **Director's Remuneration:** The Manager may propose to any meeting of Unit Holders an Ordinary Resolution to approve an increase in remuneration payable to the directors of the Manager. That resolution shall specify the amount of the proposed increase.

30. NOTICES

- 30.1 **Requirements for notices:** Any notice, communication or other information (a "notice") required by this deed to be given to any Unit Holder shall be in writing and may be given personally, by sending it by post to the address of the Unit Holder on the Register, or by email if a Unit Holder has elected to receive the relevant notice by email. Where a notice is sent:

- (a) by post, service of the notice by properly addressing, pre-paying and posting a letter containing the notice, shall be deemed to have been effected on the day following the day of posting; and
- (b) by email, service of the notice by sending it to the email address nominated by the Unit Holder shall be deemed to have been effected on the Business Day on which it was despatched or, if despatched after 5.00pm on a Business Day, on the next Business Day after the date of despatch, provided that the computer system used to transmit the notice has not generated a record that the notice has failed to be transmitted.

- 30.2 **Notice outside New Zealand:** If any Unit Holder has no registered address within New Zealand and has not supplied to the Manager an address within New Zealand for the giving of notices or elected to receive the relevant notice by email, but has supplied an address outside New Zealand, then any notice to be given to such Unit Holder shall be posted to such Unit Holder at such address and shall be deemed to have been received by such Unit Holder 24 hours after the time of posting.

- 30.3 **Notice to manager, legal representative or assignee:** A notice may be given by the Manager to the manager of a mentally disordered person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the Persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

- 30.4 **Where no address for service supplied:** If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two notices posted to a Unit Holder are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this deed shall be deemed to be the Office.
- 30.5 **Notice to holders of Convertible Securities:** Where under the terms of issue of any Convertible Securities, the holders are entitled to receive notices from the Manager, such notices may be given to them in the manner provided for in this section 30 as if such persons were Unit Holders.
- 30.6 **Requirements for notices to Manager or Trustee:** Any notice required by this deed to be given to the Trustee by the Manager, or to the Manager by the Trustee, shall be in writing and be signed by a duly authorised officer of the party giving the notice.

31. AMENDMENTS

- 31.1 **Amendments to deed:** The Trustee and the Manager may at any time make any alteration, modification variation or addition to this deed (by means of a deed executed by the Trustee and the Manager) in any of the following cases:
- (a) if in the opinion of the Trustee it is made to correct a manifest error or is of a formal or technical nature; or
 - (b) if in the opinion of the Trustee it is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Trust or for safeguarding or enhancing the interests of the Trust or Unit Holders or any class thereof; or
 - (c) if (subject to paragraph 11.6 of the Schedule) it is authorised by an Extraordinary Resolution; or
 - (d) if in the opinion of the Trustee it is not, or is not likely to become, prejudicial to the interests of the Unit Holders or any class thereof; or
 - (e) to provide for the issue of unpaid or partly paid Units; or
 - (f) if, in the opinion of the Trustee, it is required by or in consequence of or is consistent with an amendment to the Act or the Listing Rules and does not adversely affect the interests of Unit Holders; or
 - (g) if in the opinion of the Trustee, it is necessary or desirable to obtain or maintain listing of the Securities of any Class on any stock exchange.
- 31.2 **Summary of amendments:** The Manager shall, together with the accounts of the Trust Fund for each Financial Year, send to the Persons entitled to receive the accounts a summary of the amendments (if any) to the Trust Deed which have been made since the date of the last such summary.

32. TRUSTEE'S AND MANAGER'S POWERS AND INDEMNITIES

- 32.1 **Trustee and Manager acting on behalf of Trust:** The Trustee and the Manager, in incurring any debts, liabilities or obligations, or in taking or omitting any other action for or in connection with the affairs of the Trust, are each, and shall each be deemed to be, acting for and on behalf of the Trust and not in their own respective capacities. Neither the Trustee nor the Manager shall be under any personal liability, nor shall resort be had to their private property, for the satisfaction of any obligation or claim arising out of or in

connection with any contract or other obligation of the Trust, but the Trust Fund only shall be liable or subject to levy or execution.

32.2 **Indemnity:** If, contrary to clause 32.1, the Trustee or the Manager shall be held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Trust or any action taken or omitted in connection with the Trust, then the Trustee and the Manager shall each be indemnified out of the Trust Fund from and against any and all losses, costs, and expenses incurred by the Trustee or Manager in performing any of their respective duties or exercising any of their respective powers pursuant to this deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing relating to the Trust, including all actions in relation to the offer and issue of Units, with the exception of any loss, costs and expenses arising from a breach of trust where the Trustee or Manager, as the case may be, fails to show the degree of care and diligence required of a trustee or manager having regard to the provisions of this deed and the powers, authorities and discretions conferred on the Trustee or Manager thereby, provided that the Unit Holders may by Extraordinary Resolution release the Trustee or Manager or both, from any such liability either with respect to specific acts or omissions or on the Trustee or Manager ceasing to act.

32.3 **Reimbursement and indemnification of Trustee and Manager:** The Trustee and the Manager shall each be entitled to be reimbursed out of the Trust Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Trustee or Manager (as the case may be) under this deed. Without prejudice to the generality of the foregoing, the Trustee and the Manager shall be entitled to be indemnified against:

- (a) all costs, charges, disbursements and expenses incurred in connection with the investigation, negotiation, acquisition, registration, custody, disposal of or other dealing with an Authorised Investment, including, without limitation, commission, bank charges and stamp duty;
- (b) all income tax, capital gains tax, stamp duties, and all other duty, tax or impost properly charged to or payable by the Trustee or Manager (whether by any taxing authority or any other person) in connection with and for the account of the Trust;
- (c) interest on Borrowings, discounts, acceptance underwriting and commitment fees in respect of finance and underwriting facilities;
- (d) costs of postage in respect of all cheques, accounts, certificates, distribution statements, notices, reports and other documents sent to all or any Unit Holders;
- (e) costs of convening and holding any meeting of Unit Holders;
- (f) costs of preparing and printing cheques, accounts, certificates, distribution statements, notices, reports and other documents required to be prepared in connection with the Trust, pursuant to this deed, the rules or requirements of any stock exchange on which the Units are listed or any relevant law;
- (g) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this deed and any supplemental deeds;
- (h) fees and expenses of any valuer, auditor, solicitor, barrister, property manager, agent or consultant, computer expert or other expert from time to time engaged by the Manager or by the Trustee in the discharge of their respective duties and exercise of powers under this deed;
- (i) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Register;

- (j) all costs, charges and expenses incurred in the advertising and promotion of the Trust;
- (k) all costs, charges and expenses incurred in connection with or which are incidental to the application for the listing of any Units on any stock exchange and the costs of the maintenance of such listing;
- (l) any expense or liability which may be incurred by the Trustee or the Manager (as the case may be) in bringing or defending any action or suit in respect of the Trust or the provisions of this deed;
- (m) in the case of the Manager, the fees payable to Directors of the Manager in their capacities as such, up to a maximum aggregate of \$100,000 per Financial Year (or such higher amount as may be approved by a meeting of Unit Holders duly convened and held); and
- (n) all costs, charges, disbursements and expenses incurred by the Manager in performing its functions of and incidental to the management of the Trust, including (without limitation) in relation to the employment and remuneration of any employee (including without limitation any amounts relating to redundancy), travel and transport, communications and administration.

32.4 **Further right to reimbursement:** In addition to the entitlements to reimbursement and indemnity under clause 32.3, the Manager is entitled to:

- (a) seek and obtain, in accordance with a process from time to time agreed with the Trustee, including (without limitation), as to accounting, verification, receipting and invoicing and in lieu of reimbursement from the Trustee, funds from the Trust Fund to enable the Manager to meet its costs, charges, disbursements, expenses and liabilities as they fall due and to ensure the Manager is able to carry on business in a solvent manner; and
- (b) pay and obtain reimbursement of, and shall take all responsibility for approving, such amounts (whether in the nature of remuneration, reimbursement of expenses, payments due on any indemnification or otherwise) as are from time to time payable by the Manager to the Shareholder under the Shareholding Deed,

and the Trustee shall not be required to enquire as to or verify or approve, the payment of any such amounts.

All such items shall, unless the Manager in consultation with the Auditor determines otherwise, be chargeable against the gross income of the Trust.

The Trustee or the Manager may at any time elect not to seek reimbursement from the Trust Fund for any expense, cost or liability without prejudicing the right of the Trustee or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

32.5 **Non Payment by Manager:** If the Manager does not pay to the Shareholder any amount (whether in the nature of remuneration, reimbursement of expenses, payments due on any indemnification or otherwise) payable by the Manager to the Shareholder under the Shareholding Deed (whether by reason of the Manager having ceased to hold office as manager of the Trust or otherwise) the Trustee shall, on being satisfied that any such amount is properly payable to the Shareholder under the Shareholding Deed, pay that amount to the Shareholder from the Trust Fund.

32.6 **Specific powers and indemnities:** Without prejudice to the generality of clauses 32.1 to 32.3:

- (a) the Trustee shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Manager or any agent of the Manager nor shall the Trustee be responsible to check any information, document, form or list supplied to it by the Manager;
- (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Trustee or any agent of the Trustee nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Trustee;
- (c) the Trustee and the Manager may each act upon the opinion or advice of, or upon statements of or information in relation to the Trust obtained from any solicitor, barrister, banker, accountant, broker or other Person believed by the Trustee or the Manager to be expert in relation to the matters on which advice was obtained, and neither the Trustee nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision of this deed any certificate, notice, direction or other communication is to be given by the Manager to the Trustee, the Trustee may accept as sufficient evidence thereof a document signed on behalf of the Manager by any Director, secretary, officer or responsible employee of the Manager or by any other Person or Persons appearing to be authorised by the Manager;
- (e) except insofar as otherwise expressly provided, the Manager and the Trustee shall as regards all the trusts, powers, authorities and discretions vested in each of them by this deed have absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of or time for their exercise;
- (f) nothing contained in this deed shall be deemed to prohibit the Trustee, the Manager or any or their Related Companies, shareholders, officers or associates (all in this sub-clause (f) called “**Relevant Persons**”) from holding Securities or from acting in any representative capacity for a holder of Securities. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a holder of Securities. The acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this deed or imposed or implied by law;
- (g) the Trustee shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments, with any Person considered by the Trustee to be of good repute, and the Trustee shall not be responsible for any loss incurred by the Trust Fund as a result of any such documents being held by any such Person.

32.7 **Operation of Trust:** The Manager shall use its best endeavours to ensure that the Trust is carried on in a proper and efficient manner.

32.8 **Business of Manager:** The Manager shall operate its own business efficiently, with a view to maintaining its costs at a minimum level consistent with the effective conduct of its business, with no intention for the Manager to operate at a profit over the course of any Financial Year. If the Manager at any time holds money surplus to its requirements to operate its business (including its estimated future requirements over the next six

months) the Manager shall pay that money to the Trustee on account of the Trust Fund, by way of refund of amounts received by the Manager under clause 32.4.

32.9 **Provision of information to Trustee:** The Manager shall:

- (a) make available upon demand to the Trustee for inspection the whole of the Manager's books and papers and all books and papers relating to the Trust; and
- (b) give to the Trustee such information as the Trustee requires with respect to all matters relating to the Trust or to any business of the Manager, or to any property of the Manager (whether acquired before or after the date of this deed) or otherwise relating to the those of the Manager.

32.10 **Provision of services by a Related Company:** The Manager may on behalf of the Trust engage any Person who is a Related Company of the Manager, or who is otherwise associated with the Manager, to provide services to the Trust (including, without limitation, as a property manager, agent or consultant) provided that the fees to be charged do not exceed then prevailing market rates.

32.11 **Maintenance of listing of Units:** Subject to any resolution to the contrary passed at a meeting of Unit Holders duly convened and held, each of the Manager and the Trustee shall use their best endeavours to maintain the listing of the Units on NZX.

33. WINDING UP

33.1 **Term:** The Trust shall determine and be wound up upon the occurrence of the earliest of the following events:

- (a) if the Manager certifies in writing that it is in the opinion of the Manager in the interests of Unit Holders that the Trust should be wound up;
- (b) if an Extraordinary Resolution is passed resolving to wind up the Trust;
- (c) if the office of Trustee becomes vacant, and a new Trustee is not appointed in accordance with clause 22.3, within two months of the vacancy occurring;
- (d) the date on which the Trust is wound up by operation of law.

33.2 **Perpetuity period:** The perpetuity period for the purposes of the Perpetuities Act 1964 is the period commencing on 30 October 2002 and ending on 29 October 2082. Notwithstanding any other provision of this deed, no Units may be issued or redeemed after 29 October 2082, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity. The specification of a perpetuity period in this clause 33.2 does not require the termination of the Trust on 29 October 2082 or limit its life to 80 years.

33.3 **Notice of winding up:** The Trustee shall within 14 days after the occurrence of any event referred to in clause 33.1, give to each Unit Holder notice of the occurrence of that event and of the intention of the Trustee to distribute the Trust Fund.

33.4 **Procedure:** The Trustee shall as soon as practicable after the occurrence of an event referred to in clause 33.1:

- (a) sell, call in and convert into Cash the whole of the Trust Fund;
- (b) pay out, discharge, or otherwise make proper provision for all liabilities of the Trust Fund (including any contingent liabilities);

- (c) subject to clause 11.7, distribute all undistributed Income then existing to the Unit Holders in accordance with their rights to such Income; and
- (d) subject to clause 11.7, distribute the remainder of the Trust Fund (less all costs and expenses incurred by the Trustee or the Manager in respect of the winding up of the Trust) amongst the Unit Holders in proportion to the numbers of Units held by them, subject to the particular rights of any Unit Holders to participate in any such distribution including in particular the rights attaching to unpaid or partly paid Units and other Units with special rights.

33.5 **Calls by the Trustee:** If there is a deficiency in the assets compared to the liabilities, then (subject to the rights, obligations and restrictions attaching to Units or classes of Units), the Trustee may call on a Unit Holder to pay all or any part of the Unpaid Amount of the issue price of their Units as the Trustee calculates represents the amount of the deficiency divided amongst the Units which are partly paid and such amounts are to be applied by the Trustee under clause 33.4.

34. MANAGEMENT OF THE TRUST

34.1 **Manager to manage Trust:** The Trust shall be managed by the Manager (with full power to delegate to its officers and employees all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion) which hereby agrees to carry out and perform the duties and obligations on its part contained in this deed during the period of the Trust. Without limiting the generality of the foregoing, the Manager shall have the power to:

- (a) appoint a replacement shareholder of the Manager (who must be the holder of a licence under the Securities Trustees and Statutory Supervisors Act 2011);
- (b) direct the transfer of the shares in the Manager to that party on the retirement of the Shareholder, subject to confirmation of that appointment and transfer at the next following meeting of Unit Holders; and
- (c) execute, on behalf of the retiring Shareholder, a share transfer form transferring the shares in the Manager from the retiring Shareholder to the replacement shareholder of the Manager.

34.2 **Sole function:** The Manager's sole function shall be the management of the Trust, its assets and the Trust Fund in accordance with the provisions of this deed and all activities incidental thereto (which, for the avoidance of doubt, may include owning shares in any subsidiary or other entity which performs management or trustee services necessary or desirable in connection with the management of the Trust).

34.3 **Trustee's right:** Nothing contained in this deed shall be construed to prevent the Trustee from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this deed.

34.4 **Appointment of attorney or agent:** Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing its duties and obligations, and after consultation with the Trustee:

- (a) by power of attorney appoint any Person to be the attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions;
- (b) appoint any Person to be an agent or sub-manager in respect of the Trust or the Investments or any part thereof, and confer upon and delegate to such Person all

or any of the powers, authorities or discretions of the Manager under this deed or in respect of the Trust (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

- 34.5 **Voting and consent of Manager:** Except as the Trustee may otherwise require from time to time, all rights of voting conferred by all of the Investments shall be exercised in such manner as the Manager may determine. No Unit Holder shall have any right to interfere therein and the Trustee shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. The Manager shall not be under any liability or responsibility in respect of the management of any company or body nor in respect of any vote or action taken or consent given by the Manager. Neither the Manager nor the holder of any proxy or power of attorney given by the Manager shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

35. GOVERNING LAW

- 35.1 **New Zealand law:** This deed shall be governed by and construed in accordance with the law of New Zealand.

36. LIMITATION OF LIABILITY

- 36.1 **Limitation of liability of Unit Holders:** Notwithstanding anything contained in this deed (but subject to clause 37.4) or any rule of law no Unit Holder shall be or become personally liable in respect of any debt or liability of the Trust, and;
- (a) no Unit Holder shall in any circumstances be liable to indemnify the Trustee or the Manager in respect of any debt or liability incurred in respect of the Trust Fund;
 - (b) nothing in this deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders;
 - (c) neither the Trustee nor the Manager shall be or act as agent for the Unit Holders, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder.

37. TAXATION LIABILITY

- 37.1 **Interpretation:** In this section:

“**Relevant Person**” means a Unit Holder and the personal representatives or successors of a Unit Holder;

“**Tax**” includes all taxes, duties, levies and other charges including penalties and interest;

“**Taxation Amount**” means, in relation to a Relevant Person:

- (a) any tax payable by or on account of that Person or in respect of that Person’s Units;

- (b) any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Trustee in respect of a Unit Holder.
- 37.2 **Deduction of tax:** The Trustee or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person, an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Trustee or the Manager or from the Trust Fund.
- 37.3 **Application of amounts deducted:** Amounts deducted under clause 37.2 shall be applied in:
 - (a) payment of the Taxation Amount to the Person or authority entitled thereto; or
 - (b) reimbursement of the Trustee, the Manager or the Trust Fund for any corresponding amount paid from their own funds or from the Trust Fund (as the case may be); and
 - (c) any balance shall be refunded to the Relevant Person.
- 37.4 **Indemnification for Taxation Amounts:** Each Relevant Person shall indemnify the Trustee and the Manager and the Trust in respect of any Taxation Amount paid or payable by the Manager, or the Trustee or the Trust Fund in respect of that Person.
- 37.5 **Interest on Taxation Amounts:** Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Person to the Trustee or the Manager as the case requires.

SCHEDULE

Meetings of Unit Holders

1. EXERCISE OF POWERS OF UNIT HOLDERS

1.1 **Alternative forms of meeting:** A meeting of Unit Holders may be held either:

- (a) by a number of Unit Holders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Manager, by means of audio, or audio and visual, communication by which all Unit Holders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting.

2. MEETINGS OF UNIT HOLDERS

2.1 **Time and place of meetings:** Each meeting of Unit Holders shall be held at such time and place as the Manager appoints.

2.2 **Trustee and Manager may attend and speak:** Any Director, officer or solicitor of the Trustee and any other person authorised in that behalf by the Trustee and any Director, officer or solicitor of the Manager and any other person authorised in that behalf by the Manager may attend any meeting and all such persons shall have the right to speak at the meeting.

2.3 **Shareholder may attend:** The Shareholder may attend any meeting of Unit Holders. For the avoidance of doubt, the Shareholder may not vote at a meeting of Unit Holders except as proxy for a Unit Holder or Unit Holders, or when acting in a capacity other than as the Shareholder.

3. NOTICE OF MEETINGS OF UNIT HOLDERS

3.1 **Written notice:** Written notice of the time and place of a meeting of Unit Holders shall be sent to every Unit Holder entitled to receive notice of the meeting, to the Trustee, the Manager, the Shareholder and the Auditor, not less than 10 Business Days before the meeting, but with the consent of all Unit Holders entitled to attend and vote at a meeting, it may be convened by such shorter notice, and in such manner, as those Unit Holders agree.

3.2 **Contents of notice:** A notice of meeting shall state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Unit Holder to form a reasoned judgment in relation to it;
- (b) the text of any Extraordinary Resolution or Section 18 Resolution to be submitted to the meeting; and
- (c) that a Unit Holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Unit Holder and that a proxy need not be a Unit Holder.

3.3 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

- 3.4 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Unit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Unit Holders agree to the waiver.
- 3.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.
- 3.6 **Notice of adjourned meeting:** If a meeting of Unit Holders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with paragraph 3.1.
- 4. PROCEEDINGS AT MEETINGS OF UNIT HOLDERS**
- 4.1 **Requirement for quorum:** Subject to paragraph 4.3, no business may be transacted at a meeting of Unit Holders if a quorum is not present.
- 4.2 **Quorum:** Subject to paragraph 4.3 and the terms of the deed, a quorum for a meeting of Unit Holders is five Unit Holders having the right to vote at the meeting, present in person or by representative.
- 4.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Manager on the written request of Unit Holders entitled to exercise that right, the meeting is dissolved;
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Manager may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Unit Holders or their Representatives present are a quorum.
- 4.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this deed, the Manager may regulate the procedure at meetings of Unit Holders.
- 4.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 4.6 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this deed and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefore, either adjourn or dissolve the meeting.
- 4.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to paragraph 4.6, the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with paragraph 8.4.

5. CHAIRPERSON OF MEETINGS OF UNIT HOLDERS

5.1 **Chairperson:** A person nominated in writing by the Trustee shall preside as chairperson at every meeting.

6. VOTING AT MEETINGS OF UNIT HOLDERS

6.1 **Voting at meeting in one place:** In the case of a meeting of Unit Holders held under paragraph 1.1(a), unless a poll is demanded in accordance with paragraph 8.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

6.2 **Voting at audio/visual meeting:** In the case of a meeting of Unit Holders held under paragraph 1.1(b), unless a poll is demanded in accordance with paragraph 8.1, voting at the meeting shall be by the Unit Holders signifying individually their assent or dissent by voice.

6.3 **Postal votes:** Unless the Manager determines otherwise, Unit Holders may not exercise the right to vote at a meeting by casting postal votes.

6.4 **Entitlement to vote:** A Unit Holder may exercise the right to vote either in person or by Representative. The only Persons entitled to vote in person or by Representative shall be the Unit Holders registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).

6.5 **Number of votes:** Subject to paragraphs 7.1 and 7.2 and to any rights or restrictions for the time being attached to any Unit:

- (a) where voting is by show of hands or by voice every Unit Holder present in person or by Representative has one vote;
- (b) on a poll every Unit Holder present in person or by Representative has:
 - (i) in respect of each fully paid Unit held by that Unit Holder, one vote;
 - (ii) in respect of each Unit held by that Unit Holder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Unit were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Unit bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).

6.6 **Vote of overseas protected persons:** A Unit Holder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Units held by that Unit Holder, by his or her committee, manager, or other person of a similar nature appointed by that court, voting in person or by proxy.

6.7 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with paragraph 8.1.

6.8 **Chairperson's casting vote:** The chairperson of a meeting of Unit Holders is not entitled to a casting vote.

6.9 **Joint Unit Holders:** Where two or more persons are registered as joint Unit Holders, the vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

7. RESTRICTIONS ON VOTING

- 7.1 **No vote when amount owing on Unit:** A Unit Holder is not entitled to vote at any meeting of Unit Holders in respect of any Unit if any amount is due and payable on that Unit by the Unit Holder to the Trust.
- 7.2 **Voting restrictions:** Notwithstanding anything to the contrary in this deed or the Listing Rules, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Listing Rules.

8. POLLS

- 8.1 **Right to demand poll:** At a meeting of Unit Holders a poll may be demanded by:
- (a) the chairperson; or
 - (b) not less than five Unit Holders having the right to vote at the meeting; or
 - (c) a Unit Holder or Unit Holders representing not less than 10% of the total voting rights of all Unit Holders having the right to vote at the meeting; or
 - (d) a Unit Holder or Unit Holders holding Units that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Units that confer that right.
- 8.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 8.3 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 8.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 8.5 **Votes:** On a poll:
- (a) votes may be given either personally or by Representative;
 - (b) votes shall be counted according to the votes attached to the Units of each Unit Holder present in person or by Representative and voting in respect of those Units; and
 - (c) a Unit Holder need not cast all the votes to which the Unit Holder is entitled and need not exercise in the same way all of the votes which the Unit Holder casts.
- 8.6 **Scrutineer:** The Auditor shall be scrutineer unless it is unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineer shall be appointed by the chairperson.
- 8.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineer stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

9. PROXIES

- 9.1 **Right to appoint:** A Unit Holder may appoint a proxy to vote on behalf of the Unit Holder at a meeting of Unit Holders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Unit Holder.
- 9.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Unit Holder and the notice shall state whether the appointment is for a particular meeting or for a specified term.
- 9.3 **Proxy form to be sent with notice of meeting:** The Manager shall send a form of notice of appointment of proxy to every Unit Holder entitled to attend and vote at a meeting, with the notice convening the meeting. While the Trust is Listed, the form of notice of appointment of proxy shall comply with the Listing Rules.
- 9.4 **Receipt of proxy form:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Manager at its registered office, or at such address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 9.5 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Unit in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Manager at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
- 9.6 **Manager may waive requirements:** The Manager may, with the consent of the Trustee (which consent may not be unreasonably withheld), waive any of the requirements of paragraphs 9.2 and 9.5. For the avoidance of doubt, nothing in this paragraph 9.7 shall limit Listing Rule 6.2.6 as reflected in this paragraph 9.

10. CORPORATE REPRESENTATIVE

- 10.1 **Appointment of representative:** A corporation which is a Unit Holder may appoint a person to attend a meeting of Unit Holders on its behalf in the same manner as that in which it could appoint a proxy.

11. RESOLUTIONS

- 11.1 **Extraordinary Resolution:** The expression "Extraordinary Resolution" means a resolution passed at a meeting duly convened and held in accordance with the provisions of the Schedule and carried by a majority of not less than 75% of the Persons entitled to vote and voting thereat (either personally or by Representative) on a show of hands, or if a poll is duly demanded, by a majority consisting of not less than 75% of the votes given on such poll.
- 11.2 **Section 18 Resolution:** The expression "Section 18 Resolution" means a resolution which meets the requirements of section 18 of the Act.
- 11.3 **Simple majority:** Where a particular majority is not required by this deed or by law, any matter arising at any meeting of Unit Holders shall be determined by Ordinary Resolution.
- 11.4 **Powers exercisable by Extraordinary Resolution:** Subject to section 9 of this deed, a meeting of Unit Holders shall have the following powers exercisable by Extraordinary Resolution:

- (a) power to sanction the exchange of Units for, or the conversion of Units into shares, stock, debentures, debenture stock, units or other obligations or securities of any company, trust, or other entity formed or to be formed;
- (b) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders howsoever such rights arise;
- (c) subject to paragraph 11.6 of the Schedule, power to assent to any alteration, modification of, variation of, or addition to the provisions contained in this deed, or the conditions attaching to the Units and to authorise the Manager and Trustee to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
- (d) power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Trustee under any of the provisions of this deed;
- (e) subject to the Act, power to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this deed;
- (f) power to give directions to the Trustee as to the appointment of a new Manager in accordance with clause 24.6;
- (g) power to approve the making of any payment, or the entering into any transaction, by the Trustee on behalf of the Trust; and
- (h) power to confirm any replacement Shareholder appointed by the Manager under clause 34.1 of this deed, or to appoint another party as Shareholder (who must be the holder of a licence under the Securities Trustees and Statutory Supervisors Act 2011), on the voluntary retirement of the Shareholder.

11.5 **Powers exercisable at meeting of Unit Holders:** Without limiting any other provision of this deed, a meeting of Unit Holders shall have the following powers:

- (a) the Unit Holders shall, by means of an Ordinary Resolution passed at a meeting of Unit Holders, have the power:
 - (i) to direct the Shareholder as to the individuals in respect of whom the Shareholder shall exercise its rights to appoint and remove as directors of the Manager under the constitution of the Manager; and/or
 - (ii) to approve an increase in the remuneration payable to the directors of the Manager; and
- (b) subject to sub-paragraph (a) above, the Unit Holders shall, by means of an Extraordinary Resolution passed at a meeting of Unit Holders, have the power to direct the Shareholder:
 - (i) to dispose of all or any of the shares in the Manager (whether by sale, transfer or otherwise), and effect the appointment of a replacement shareholder of the Manager (who must be the holder of a licence under the Securities Trustees and Statutory Supervisors Act 2011);
 - (ii) to enter into any reconstruction, reorganisation, amalgamation or liquidation of the Manager;

- (iii) to authorise any amendment to, direct the termination of, and/or the entry into by the Manager of a replacement or supplemental Shareholding Deed;
- (iv) to vote its shares in the Manager; and/or
- (v) to give effect to any other matter on which direction from Unit Holders is sought by the Shareholder or directors of the Manager,

in each case, on such terms as are stated in the direction, provided that Unit Holders shall not give any direction, and no direction shall be effective, which purports to transfer the shares in the Manager to or for the benefit of Unit Holders in their capacity as such. For the avoidance of doubt, nothing in this paragraph 11.5(b) shall prevent the Shareholder voting its rights in respect of the shares in the Manager on procedural or administrative matters other than at a meeting of Unit Holders.

11.6 A meeting of the Unit Holders of any Class of Units shall have power by Extraordinary Resolution to vary the rights attaching to Units of that Class provided that such variation does not adversely affect the rights attaching to any other Class of Units, and provided further that any such meeting shall be convened and variation effected in accordance with the applicable provisions of the Listing Rules and this deed.

11.7 Unless the Manager is in material breach of its obligations under the Trust Deed, or has failed to carry out its duties to the satisfaction of the Trustee, the provisions of section 23, clause 24.3 and sections 32 and 34 of this deed and this paragraph 11.7 may not be altered without the prior written consent of the Manager and the Trustee.

12. EXTRAORDINARY RESOLUTION BINDS ALL UNIT HOLDERS

12.1 **Extraordinary Resolution binding:** Subject to section 9 of this deed, an Extraordinary Resolution passed at a meeting of the Unit Holders duly convened and held in accordance with the Schedule shall be binding upon all Unit Holders whether present or not at the meeting and each of the Unit Holders, the Trustee and the Manager shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the Manager, the Trustee and the Unit Holders be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

13. MINUTES TO BE KEPT

13.1 **Minutes of resolutions and proceedings:** Minutes of all resolutions and proceedings at every meeting shall be made by the Manager and duly entered in books from time to time provided for that purpose by the Manager. Any such minutes, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next meeting of Unit Holders, shall be prima facie evidence of the matters therein stated. Until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings to have been duly passed and held.

14. UNIT HOLDER PROPOSALS

14.1 **Unit Holder Proposals:** A Unit Holder may give written notice to the Manager of a matter the Unit Holder proposes to raise for discussion or resolution at the next meeting of Unit Holders, at which the Unit Holder is entitled to vote, on the following basis:

- (a) if the notice is received by the Manager not less than 20 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Trust, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
- (b) if the notice is received by the Manager not less than 5 Business Days and not more than 20 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
- (c) if the notice is received by the Manager less than 5 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, if practicable, and at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
- (d) if the directors of the Manager intend that Unit Holders may vote on the proposal by proxy or by postal vote, they must give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement of not more than 1,000 words prepared by the proposing Unit Holder in support of the proposal, together with the name and address of the proposing Unit Holder;
- (e) the Manager is not required to include in or with the notice given by the Manager:
 - (i) any part of a statement prepared by a Unit Holder that a majority of the directors of the Manager consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (ii) any part of a proposal or resolution prepared by a Unit Holder that a majority of the directors of the Manager consider to be defamatory (within the meaning of the Defamation Act 1992); and
- (f) where the costs of giving notice of the Unit Holder proposal and the text of any proposed resolution are required to be met by the proposing Unit Holder, the proposing Unit Holder must, on giving notice to the Manager, deposit with the Trust or tender to the Trust a sum sufficient to meet those costs.