

First Mortgage Managers Limited

and

New Zealand Permanent Trustees Limited

**AMENDED AND RESTATED**

**Master Trust Deed**

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This **Deed** is made on 14 September 2015

**between** (1) **First Mortgage Managers Limited (the Manager)**  
**and** (2) **New Zealand Permanent Trustees Limited (the Supervisor).**

## **Introduction**

- A The Manager and the Supervisor are parties to a Master Trust Deed dated 28 November 2007 ("**Original Deed**") and an establishment deed dated 28 November 2007 ("**Establishment Deed**").
- B The Manager has established a trust fund known as the "First Mortgage PIE Trust" under the Original Deed and the Establishment Deed.
- C The parties wish to vary the Original Deed to incorporate such provisions as may be necessary or desirable pursuant to the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014.
- D Clause 33.1 of the Original Deed provides that the Supervisor and the Manager may amend or vary the Original Deed, if:
- (a) in the opinion of the Supervisor, the change is of a formal or technical nature; or
  - (b) after a change in any law affecting unit trusts, a change to the Original Deed is necessary to make any provision of the Original Deed consistent with such law.
- E The Manager and the Supervisor are of the view that the variations in this Deed are permitted pursuant to clause 33.1 of the Original Deed.

## **Covenants**

The parties agree that the Original Deed is amended and restated by rescinding each of the existing clauses of the Original Deed and by substituting the clauses of this Deed so that the Original Deed is replaced by the clauses of this Deed.

## **It is agreed**

### **1 Interpretation**

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#### **1.1 Definitions**

In this Deed, unless the context otherwise requires:

**Accounts** means, in respect of each Fund, general purpose financial statements of such Fund prepared in accordance with NZ GAAP for each Financial Year.

**AML/CFT Act** means the Anti-Money Laundering Countering Financing of Terrorism Act 2009.

**Application** means an application for Units in a Fund made in the form from time to time prescribed by the Manager and includes a Standing Application.

**Auditor** means the Person for the time being holding the office of auditor of each Fund.

**Authorised Investments** means, in respect of each Fund, the investments which may be included in the relevant Fund as specified in the relevant Establishment Deed (as may be amended pursuant to clause 15.10).

**Business Day** means any day (other than a Saturday or Sunday) on which banks in Auckland are open for business.

**Date of Termination** means, in respect of each Fund, the date of its termination determined in accordance with clause 34.

**Disclosure Document** has the meaning set out in the FMC Act and includes any PDS, Register Entry or fund update.

**Distribution Period** means such period or periods (if any) that the Manager from time to time determines for a Distribution in terms of clause 17.1.

**Distribution** means, in relation to a Unit, the amount of income (if any) to be distributed to an Investor in respect of such Unit as more particularly specified in the relevant Establishment Deed.

**Electronic Communication** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videotape or other electronic medium, including pursuant to the Electronic Transactions Act 2002 and approved by the Manager subject to such conditions as the Manager considers appropriate as to identification of the person making the communication or verification of the content of the communication.

**Establishment Deed** means a Deed executed by the Manager and the Supervisor by which each Fund is established in or to the effect of the form set out in Schedule 2 or such other form as the Manager and Supervisor may agree.

**Exchange** means any recognised market in New Zealand or anywhere else in the world, which brings together buyers and sellers of Investments including without limitation, any stock exchange, sovereign debt market, corporate debt market, options market, futures market or foreign exchange market.

**Financial Markets Legislation** has the meaning set out in the FMC Act.

**Financial Year** means, in respect of each Fund, a period of 12 months ending on the date set out in the relevant Establishment Deed (or such other date as the Manager determines) in each year (or the Date of Termination of the relevant Fund, if earlier).

**FMA** means the Financial Markets Authority established under the Financial Markets Authority Act 2011.

**FMC Act** means the Financial Markets Conduct Act 2013.

**Fund** means each trust fund created by an Establishment Deed.

**Gross Asset Value** means, in respect of each Fund, and in respect of each Valuation Day, such sum as is ascertained and fixed by the Manager being the aggregate of:

- (a) the Market Value of the Investments of that Fund on that Valuation Day; and
- (b) any income accrued or payable in respect of that Fund on that Valuation Day but not included in such Market Value; and
- (c) if the Manager so determines, any deferred tax assets of that Fund,

but excluding:

- (a) PIE Rebates; and

- (b) any amount to be recovered from an Investor (and prior to such recovery) in respect of PIE Tax.

**Independent Expert** means an appropriately qualified person nominated by the Manager and agreed to by the Supervisor.

**Investment** means, in respect of each Fund, each asset held on trust by the Supervisor (or its nominee appointed under clause 2.6) in respect of such Fund and for the avoidance of doubt can include deferred tax assets.

**Investor** means each Person for the time being registered in the Unit Register under the provisions of this Deed as the holder of a Unit and includes Persons jointly registered.

**Issue Price** means, in respect of each Fund, the price at which the Manager sells or issues Units in such Fund determined in accordance with clause 5.12.

**Liability** means, in respect of each Fund, each liability which should be classified as such by NZ GAAP but does not include:

- (a) PIE Tax, except for any amount of PIE Tax in respect of which a deduction has been made from a Distribution or Withdrawal Price paid to an Investor or in respect of which any Units have been redeemed by the Manager; or
- (b) a contingent liability or, after the adoption of the International Financial Reporting Standards, any amount of unitholders' funds which was not classified as a liability prior to the adoption of the International Financial Reporting Standards.

**Licensed Manager** means a person who holds a market services licence under the FMC Act to act as a manager of a managed investment scheme.

**Licensed Supervisor** means a person who holds a licence to act as a supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011.

**Market Value** of an Investment on any Valuation Day means:

- (a) in respect of Investments which are listed on an Exchange, the last sale price quoted in the relevant currency for that Investment at the close of day trading on the relevant Exchange on that Valuation Day or if the Exchange is not open for day trading on that Valuation Day, on the immediately preceding day on which the Exchange was open for day trading, or if there is no last sale price then the bid price, or if the last sale price or bid price is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager, in consultation with the Supervisor, having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert;
- (b) in respect of Investments in a unit, sub-unit or other interest in a managed investment scheme (including an interest in another fund issued by the Manager), mutual fund, flexible capital company, group investment fund or similar undertaking or scheme, whether carrying on business within or outside New Zealand, which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, provided that the Manager and the Supervisor may agree upon some other form of appropriate determination as to value in respect of any specific Investment from time to time;
- (c) in respect of real property Investments, the value of that property fixed by an independent registered valuer as at a date not more than twelve months preceding that Valuation Day subject to the Manager being required to obtain a new valuation where in the Manager's opinion there has been a material change in the value of real property Investments;

- (d) in respect of Investments, not being Investments covered by sub- paragraphs (a), (b) or (c) of this definition, traded on any other market in which bargains are made on a trading floor or by direct contact between buyer and seller (or their respective agents or brokers) the last sale price quoted or recorded in the relevant currency on that Valuation Day or if the relevant market is not open for trading on that Valuation Day, on the immediately preceding day on which the relevant market was open for trading, or if there is no last sale price the bid price of that Investment or if the last sale price or bid price is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager, in consultation with the Supervisor, having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert;
- (e) in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or failing such agreement according to principles of valuation determined by an Independent Expert,

and where in respect of an Investment to which sub-paragraph (a), (b) or (d) applies the relevant information as to value is not received within 2 Business Days of the Valuation Day, means the value of that Investment which applied on the preceding day closest to the Valuation Day (**Adopted Value**). An Adopted Value shall not be applied on more than one successive Valuation Day, without the approval of the Supervisor. Where any Adopted Value is not considered by the Manager to be an accurate measure, the value determined by the Manager (having consulted with the Supervisor) having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert.

**Month** means calendar month.

**Monthly Report** means the report provided by the Manager to the Supervisor in the form provided in Schedule 3 or in such other form as the Manager and the Supervisor shall otherwise agree in writing.

**Net Asset Value** means, in respect of each Fund, the net asset value of the relevant Fund as defined in the relevant Establishment Deed or, if not so defined, as determined from time to time in accordance with clause 6.1.

**Net Asset Value per Unit** means, in respect of each Fund, the Net Asset Value of the relevant Fund on any day divided by the Number of Units on Issue in that Fund on that day.

**Nominated Person** means a company nominated by the Supervisor to hold the Investments of a Fund and includes any nominee appointed by the Nominated Person.

**Number of Units on Issue** means, in respect of each Fund, the total of all Units issued in such Fund and remaining on issue.

**NZ GAAP** means generally accepted accounting practice as defined in Section 8 of the Financial Reporting Act 2013

**Ordinary Resolution** has the meaning given to it in paragraph 11.2 of Schedule 1.

**Person** includes a natural person, a company, a corporation, a corporation sole, a firm, a unit trust, a government or a body of persons (whether corporate or unincorporate).

**PIE** or **Portfolio Investment Entity** has the same meaning as defined in Section YA1 of the Income Tax Act 2007.

**PIE Rebate** means tax rebates paid or payable to a Fund which are determined by the Supervisor or Manager to be attributable to tax credits, losses or other tax benefits



allocated to Investors under the PIE Rules and other amounts determined by the Supervisor or Manager to be equivalent to PIE Rebates.

**PIE Rules** means the provisions of the Income Tax Act 2007 dealing with PIEs.

**PIE Tax** means tax payable by a Fund, the Supervisor or the Manager (whether deferred or current) which is determined in accordance with the Income Tax Act 2007 or is otherwise determined by the Supervisor or the Manager to be attributable to income allocated to Investors under the PIE rules.

**Product Disclosure Statement** or **PDS** has the meaning set out in the FMC Act.

**Quarterly Certificate** means the certificate provided by the Manager to the Supervisor in the form provided in Schedule 4 or in such other form as the Manager and the Supervisor shall otherwise agree in writing.

**Related Body Corporate** means a body corporate who is related to another body corporate pursuant to section 12(2) of the FMC Act.

**Related Party**, in respect of a Fund and as the context requires, has the meaning given in section 172 of the FMC Act and also includes:

- (a) any managed investment scheme or other trust or scheme that is owned or controlled by the Manager or a Related Body Corporate of the Manager; and
- (b) any trust, estate, fund, managed investment scheme or other trust or scheme in respect of which the Supervisor or a Related Body Corporate of the Supervisor is manager or trustee

A **related party transaction** is a transfer of resources, services or obligations between related parties, regardless of whether a price is charged.

**Related Party Benefit** has the same meaning as in the FMC Act.

**Relevant Interest** has the same meaning as in the FMC Act.

**Relevant Law** means, as appropriate, all laws applicable to the Manager (including compliance with the terms of its market services licence from the FMA), the Supervisor, and/or a Fund at applicable points in time and which may include, without limitation, the Financial Markets Legislation and methodologies and frameworks issued by the FMA under such legislation.

**SIPO** means, in relation to a Fund, the statement of investment policy and objectives for that Fund prepared by the Manager under the FMC Act.

**Special Resolution** means a resolution approved by Investors holding Units with a combined value of not less than 75% of the value of Units held by those persons who are entitled to vote and who vote on any question.

**Standing application** means an application for the issue of Units on a regular and periodic basis.

**Unit** means, in respect of each Fund, an undivided part or share in the beneficial interest in the relevant Fund.

**Unit Register** means, in respect of each Fund, the register of Investors in such Fund maintained pursuant to clause 12/

**Unit Registrar** means the Manager or such other Person appointed under clause 12.1(b) who keeps the relevant Unit Register.

**Valuation Day** means, in respect of each Fund, each day on which the Net Asset Value is calculated being:

- (a) such days specified in the relevant Establishment Deed; and
- (b) each other day as the Manager decides (being additional to or in substitution for the days referred to in (a) above).

**Withdrawal Price** means, in respect of each Fund, the price at which Units in such Fund are redeemed, determined in accordance with clause 8.4.

**Withdrawal Request** means a request that the Manager redeem Units, delivered to the Manager in accordance with clause 8.

**Withdrawal Suspension Notice** means a notice given in accordance with clause 8.11.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires, references to:

- (a) **borrow** includes the raising of money or the incurring of financial indebtedness by any means including acceptances, deposits, financial leases, debt factoring with recourse, the deferral of the purchase price of assets or services, exposure under futures contracts, contracts for differences, call and put options or any financial product where a Fund has an actual or contingent liability to pay money at a future date;
- (b) **redeem or redemption** includes repurchase by the Manager in accordance with clause 8.2;
- (c) this Deed includes a reference to each Establishment Deed;
- (d) clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;
- (e) any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (f) the singular includes the plural and vice versa;
- (g) parties to this Deed includes their successors and permitted assigns and, in the case of the Supervisor, any nominee of the Supervisor appointed in accordance with clause 2.6; and
- (h) the Index to and headings in this Deed are used for convenience only and do not affect its interpretation in any way.

## 1.3 Currency

Where for the purposes of any provision of this Deed it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a basis fixed from time to time by the Manager and approved by the Auditor and any Liability which is payable in a non-New Zealand currency is for the purposes of this Deed to be treated as being a Liability of an amount equal to the New Zealand currency equivalent determined in the same way with the exception that in determining the New Zealand currency equivalent of a Liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the Liability.

## **2 Creation of the Funds**

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### **2.1 Appointment of Supervisor**

The Supervisor is appointed as the trustee and supervisor of each of the Funds and agrees to act as Supervisor for the Investors to hold each Fund in trust for the relevant Investors upon the terms and conditions contained in this Deed, the relevant Establishment Deed, and Relevant Law.

### **2.2 Appointment of Manager**

The Manager is appointed as the manager of each of the Funds and agrees to act as manager upon the terms and conditions contained in and to perform its obligations in this Deed, the relevant Establishment Deed, and Relevant Law.

### **2.3 Establishment Deeds**

Subject to clause 2.4, each Fund shall be established by an Establishment Deed which shall include, where otherwise not provided in this Deed, such of the following matters as shall be applicable to the relevant Fund:

- (a) a description of the Authorised Investments for the Fund;
- (b) the method of determining the Market Value of Investments;
- (c) the method of calculation of the Issue Price for each type of Unit;
- (d) the determination of the Valuation Days;
- (e) the date for delivery of Withdrawal Requests and the Valuation Day on which Withdrawal Requests are effective;
- (f) the rights attaching to different classes (if any) of Unit;
- (g) the provisions applicable to determination of the Distribution Period and the amount of Distributions;
- (h) the maximum amount of the Manager's fees (including the management fees);
- (i) the maximum amount of the Supervisor's fees;
- (j) the procedure for the distribution of Investments upon termination of the Fund;
- (k) any applicable borrowing restrictions or requirements; and
- (l) any other matters which the Manager and the Supervisor deem appropriate or which the Supervisor deems necessary.

### **2.4 Information in Disclosure Documents**

The Disclosure Documents for a Fund shall include such of the following matters as shall be applicable to the relevant Fund:

- (a) information prescribed for a Product Disclosure Statement;
- (b) the SIPO;
- (c) the Register Entries;
- (d) the minimum subscription amount for Units and any other restrictions relating to the amount of subscription moneys; and

- (e) the minimum number or value of Units which may be held and/or transferred by an Investor.

## **2.5 Regulated Offer**

The Manager must not make a regulated offer of Units unless:

- (a) the relevant Fund is registered;
- (b) a PDS has been prepared and registered with the Registrar of Financial Service Providers in respect of the relevant Fund; and
- (c) Register Entries containing all information required by the FMC Act have been uploaded on the Register in respect of the relevant Fund.

The PDS and Register Entries must be in a form and with content approved in all respects by the Supervisor.

The Manager shall:

- (a) liaise and work with the Supervisor in drafting and finalising any PDS, replacement PDS or other offer document to be distributed in respect of a Fund; and
- (b) unless otherwise provided in this Deed, provide the Supervisor with a copy of any information or document that is:
  - (i) lodged with the Registrar of Financial Service Providers or the FMA;
  - (ii) to be made publicly available pursuant to the requirements of the FMC Act; or
  - (iii) to be provided to Investors,

at least two Business Days before such information or document is lodged, made publicly available, or provided, or, where not reasonably practicable, as soon as possible after such information or document is lodged, made publicly available, or provided.

## **2.6 Conflict Provisions**

An Establishment Deed may amend any provision of this Deed in relation to the Fund established by that Establishment Deed. To the extent that any provision of an Establishment Deed conflicts with any provision of this Deed, the provision of the Establishment Deed shall prevail.

## **2.7 Nominated Person**

The Supervisor may from time to time appoint in writing a Nominated Person in which may be vested all or any of the Investments of each Fund, but without prejudice to the liability of the Supervisor in terms of this Deed.

If the Supervisor contracts out the holding of the Investments of a Fund to a Nominated Person under this clause then the Supervisor:

- (a) must ensure that the contracting out of that function is pursuant to a written agreement between the Supervisor and the Nominated Person;
- (b) must take all reasonable steps to:
  - (i) ensure that the function is performed by the Nominated Person in the same manner and subject to the same duties and restrictions as if that person had performed them directly;

- (ii) monitor the performance of that function;
  - (iii) ensure that the Nominated Person does not sub-delegate the function without the prior written consent of the Supervisor; and
  - (iv) ensure that the Nominated Person remains liable for the performance of that function by any of its sub-delegates; and
- (c) is jointly and severally liable with the Nominated Person (and any other person who has contracted out the function) for the performance of that function.

### **3 The Funds**

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#### **3.1 Authorised Investments**

The Investments of each Fund must at all times be Authorised Investments for such Fund. Consequently the investment obligations of the Supervisor under this Deed constitute a contrary intention for the purpose of sections 2(5) and 2(5A) of the Trustee Act 1956.

#### **3.2 The Constitution of the Funds**

The Investments for a Fund shall consist of all of the cash, property, assets and rights for the time being held by the Supervisor in respect of that Fund including:

- (a) the proceeds of sale of any Investments;
- (b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained by the Supervisor; and
- (c) all income from the Fund held pending distribution or reinvestment.

### **4 Nature of Units**

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#### **4.1 Beneficial interests in Funds**

The beneficial interest in each Fund is divided into Units.

#### **4.2 Equal but not specific Fund interests**

- (a) Subject to the rights attaching to unpaid or partly paid Units and other Units with special rights, every Unit confers an equal interest in the Fund to which it relates and is of equal value.
- (b) A Unit does not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Investor is entitled to require the transfer to such Investor of any of the Investments nor (subject to the rights of Investors created by this Deed and by law) is any Investor entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the Funds, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of that Fund.

#### **4.3 Consolidation or division of Units**

The Manager may, by written notice to the Supervisor, determine that, in respect of any Fund, all holdings of Units in such Fund are to be consolidated or divided proportionately so as to alter the Number of Units on Issue with effect from the close of business on the relevant day. Where such consolidation or division involves a fraction of a Unit in relation to any particular Investor, the number of Units which that Investor is entitled to shall be rounded down to nearest whole number of Units.

#### **4.4 No interest in other Funds**

A Unit in one Fund shall not confer any right or interest in any other Fund.

### **5 Issue of Units**

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#### **5.1 Application Procedure**

Every Person wishing to apply for or acquire Units in any Fund must:

- (a) complete and lodge with the Manager an Application in writing or by Electronic Communication in the form from time to time prescribed by the Manager (which shall include such evidence as to identity of the applicant to enable the Manager to comply with its obligations under the AML/CFT Act) specifying the application moneys to be applied by the Supervisor to the purchase of Units in the particular Fund. An initial Application shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the Manager may prescribe from time to time or may be required by law; and
- (b) forward to the Manager for payment to the Supervisor the Issue Price and ensure that any cheque is made payable to the Supervisor or its nominee appointed pursuant to clause 2.6.

#### **5.2 Standing Applications**

Any Application may be designated as a Standing Application for an amount per month (or such other period as the Manager shall determine or permit) and may include an authorisation to the Manager to initiate direct debits from a bank account nominated by the applicant for relevant application amounts to be credited to the account described in clause 5.7(a). Standing Applications shall be deemed to have been received prior to the prescribed time on the Business Day on which they are directed to take effect. If any day specified pursuant to a Standing Application is not a Business Day, the Standing Application shall be deemed to have directed the next occurring Business Day as the day on which the Application in question is to take effect.

#### **5.3 Manager's Discretions**

The Manager may in its absolute discretion:

- (a) accept or refuse to accept in whole or in part any Application and the Manager is not required to give any reason or ground for such refusal; or
- (b) redeem Units or treat as void ab initio the issue of Units which would or could result in a Fund losing its status as a PIE if remedial action was not taken.

#### **5.4 Refund of Application Moneys**

- (a) Once the Manager has made a decision to reject an Application, the Manager must as soon as practicable refund or arrange for the Supervisor to refund the relevant Application moneys (without interest).
- (b) Where Units are redeemed under clause 5.3(b), the Manager must request the Supervisor to pay the Withdrawal Price for such Units to the relevant Investor.
- (c) Where Units are voided under clause 5.3(b) the Supervisor shall refund the Application moneys to the relevant Investor and pay such additional compensation to the relevant Investor as it determines appropriate after consultation with the Manager.

## **5.5 Entry Fee**

The Manager may charge the Investors an entry fee on the issue of Units (other than Units issued pursuant to clause 5.15) of the amount set out in the relevant Establishment Deed. This fee will be paid into the relevant Fund.

## **5.6 Number of Units**

If the Manager accepts an Application, the number of Units issued shall be that number of Units that have an aggregate Issue Price equal to the application moneys received less any applicable entry fee, with fractions rounded down to the nearest whole number of Units.

## **5.7 Payment to Supervisor; Registration and Issue of Units**

The Manager must:

- (a) pay all Application moneys to the "Bank Account" which is controlled by the Supervisor forthwith on receipt of such moneys;
- (b) on issue of a Unit, enter the name of the Investor on the appropriate Unit Register; and
- (c) comply with applicable laws relating to the notification, or certification to Investors, of their respective holdings of Units.

## **5.8 Minimum Application Amounts**

An Application for Units must be in respect of a minimum number of Units or dollar value as set out in the relevant Establishment Deed. The Manager may vary such minimum amount from time to time in its discretion.

## **5.9 Restrictions on Sale or Issue of Units**

- (a) The Manager may at any time or times by notice in writing to the Supervisor determine that no further Units shall be issued pursuant to this Deed or any Establishment Deed in respect of any Fund after a date specified in the notice to the Supervisor either for any specified period or until the Deed is terminated. In such event the Manager will not after the date specified in the notice issue any further Units under this Deed or any Establishment Deed in respect of any Fund for the specified period or until this Deed is terminated whichever situation applies.
- (b) No Unit may be sold or issued by the Manager after receipt by the Supervisor of a notice of termination given by the Manager pursuant to clause 34(d) except with the prior consent in writing of the Supervisor.

## **5.10 Issue or Purchase of Units**

Applications for Units accepted by the Manager may at the option of the Manager be treated as:

- (a) a subscription for Units to be issued from the relevant Fund;
- (b) a request for the purchase from the Manager of Units in the relevant Fund owned by the Manager; or
- (c) a request for the purchase from an existing Investor of Units in the relevant Fund owned by that Investor.

Regardless of the alternative adopted by the Manager the purchase or subscription price payable by Investors must always be the Issue Price.

### **5.11 Issue Date**

The dates on which Units are issued in the relevant Fund are the dates specified in the relevant Establishment Deed.

### **5.12 Determination of Issue Price of Units**

The Issue Price of each Unit sold or issued by the Manager shall be determined in accordance with the relevant Establishment Deed. The Issue Price shall be rounded down to the nearest two decimal places.

### **5.13 Different Classes of Units**

Where there are different classes of Units in any Fund the method of calculating the Issue Price in respect of each such different class shall be set out in the relevant Establishment Deed.

### **5.14 Issue of Units for PIE Rebates**

To the extent that a PIE Rebate is paid to a Fund or the Supervisor in respect of losses, tax credits or other tax benefits allocated to an Investor under the PIE Rules, the Manager must pass on the benefit of that PIE Rebate to the Investor (including by the issue of Units to the Investor on account of that PIE Rebate and calculated by reference to the Issue Price applicable on the date of issue of such Units) on such date as the Manager determines (subject to the requirements of the PIE Rules) .

### **5.15 Commission etc**

The Manager is free, at its own cost and not that of any of the Funds, to pay such commission or brokerage to any Person for subscribing for or underwriting the subscription for or obtaining purchases or subscriptions for any Units as the Manager may from time to time determine.

## **6 Valuations**

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### **6.1 Net Asset Valuation**

On each Valuation Day in respect of each Fund and at the time of day (if any) set out in the relevant Establishment Deed, the Manager shall calculate the Net Asset Value of the relevant Fund as at that time and day by taking the Gross Asset Value of the Fund on the relevant Valuation Day and deducting the aggregate of:

- (a) all Liabilities of the relevant Fund determined on an accruals basis up to the time of the day (if any) set out in the relevant Establishment Deed on the relevant Valuation Day; and
- (b) such other provisions as the Manager or the Supervisor thinks necessary or desirable for accrued or contingent liabilities or losses including a provision for the costs of realisation of any Investments and redemption of Units.

### **6.2 Period of Effectiveness of Valuations**

Each determination of the Net Asset Value shall remain in force until the next determination on a Valuation Day.

### **6.3 Determination of Market Value**

- (a) The Manager will determine the Market Value of each Investment and the Net Asset Value of each Fund in accordance with the provisions of this Deed and the provisions (if any) in the relevant Establishment Deed.



- (b) The Manager may with the approval of the Supervisor alter the basis of determination of the Market Value of an Investment and/or the Net Asset Value of a Fund.

## **7 Transfer, transmission and registration of Units**

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### **7.1 Units may be Transferred**

Subject to the consent of the Manager under clause 7.6, to any contrary provision in the relevant Establishment Deed and to the other provisions of this Deed, a Unit in a Fund may be transferred.

### **7.2 Form of Instrument of Transfer**

The instrument of transfer of any Unit must be:

- (a) in writing in any form which the Manager approves from time to time; and
- (b) for the minimum number of Units or dollar value (if any) specified in the relevant Establishment Deed or Offer Document; and
- (c) be accompanied by the transfer fee (if any) payable under clause 7.4.

### **7.3 Registration of Instrument of Transfer**

- (a) Every instrument of transfer of Units must be delivered for registration to the Manager at its registered office or to the Unit Registrar. If the Manager is not also the Unit Registrar, the Manager will forward the transfer to the Unit Registrar.
- (b) The transferor is deemed to remain the Investor until the transfer of such Unit is entered in the Unit Register.
- (c) Subject to clause 7.6, the Manager shall forthwith register or arrange the registration of each transfer delivered to it in accordance with this clause and to enter the relevant details in the appropriate Unit Register.

### **7.4 Transfer Fee**

The Unit Registrar may charge a fee determined by it and approved by the Manager in respect of any transfer or class of transfers. Such fee shall be paid by the transferee Investor at the time of delivery of the relevant transfer in accordance with clause 7.3(a).

### **7.5 Payment of Sums Owed as a Condition to Transfer**

No transfer of any Units can be registered unless the Investor has paid all duties, taxes (including goods and services tax) and other commissions, fees and charges (in cleared funds) in respect of the transfer of the relevant Units.

### **7.6 Power to Decline Transfer**

The Manager may decline to register any transfer:

- (a) for non-compliance with any law; or
- (b) if the transferee fails to pay the transfer fee; or
- (c) if the transfer would result in the transferee or transferor holding less than a minimum number of Units or Units having less than a minimum value, in either case specified by the Manager from time to time in relation to any Fund; or
- (d) if the transfer would or could result in a Fund losing its status as a PIE.

### **7.7 Retention of Instrument of Transfer**

Every instrument of transfer of a Unit which is registered must be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Deed to the contrary) the Manager may destroy it.

### **7.8 Closing of the Unit Register for Transfer**

- (a) Each Unit Register shall be closed for transfers during public holidays and on Saturdays and Sundays.
- (b) Each Unit Register may also be closed for transfers for as many days and at such time or times (not exceeding in the aggregate 28 days in each year) as the Manager thinks fit.
- (c) Notwithstanding clause 7.8(b), a Unit Register may be closed for transfers for longer periods with the consent of the Supervisor.
- (d) The Manager may decline to register any transfer during any period when the relevant Unit Register is closed.

### **7.9 Transmission Upon Death**

- (a) The executor or administrator of a deceased Investor (not being one of several joint Investors) and (in the case of the death of one or more joint Investors) the survivor or survivors of those Investors are the only Persons recognised by the Manager as having any title to the Units registered in the name of that Investor.
- (b) If an Investor has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of the Units so sold or otherwise disposed of and the transfer of the Units is not registered before the death of that Investor, the Manager may register that transfer notwithstanding that at the time of such registration the Manager has notice of that Investor's death.

### **7.10 Transmission by Operation of law**

- (a) Upon producing the evidence required by clause 7.10(b) the following persons may be registered as the Investor in respect of Units or may validly transfer Units (subject to the provisions of this Deed as to transfers):
  - (i) the committee, statutory representative or manager or attorney of an Investor of unsound mind or of an Investor whose person or estate is liable to be dealt with in any way under the laws relating to mental health; and
  - (ii) any Person becoming entitled to Units in consequence of insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of creditors or scheme of arrangement of any Investor or otherwise than by transfer.
- (b) Any committee, statutory representative, manager or attorney or Person seeking registration pursuant to clause 7.10(a) as an Investor in respect of Units or the transfer of Units (as the case may be) must produce such evidence of capacity or of title as is considered by the Manager to be sufficient.

### **7.11 Refusal of Registration of Transmissions of Units**

Registration of a transmission of Units to any Person may be refused by the Manager in the same circumstances that would apply if that Person was a transferee named in a transfer presented for registration under this Deed.

## **8 Redemption of Units**

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### **8.1 Withdrawal Request**

- (a) Any Investor wishing to redeem his or her Units, must deliver an irrevocable Withdrawal Request to the Manager at its registered office, at the time specified in the relevant Establishment Deed or Offer Document. Each Withdrawal Request shall be in writing or by Electronic Communication and be in such form as the Manager may for the time being require.
- (b) The Manager may from time to time, in respect of any Fund, fix a minimum number or value of Units that may be redeemed and the minimum number or value of Units which an Investor may hold
- (c) after part redemption. If an Investor requests redemption of part of the Investor's Units and the remaining Units would be less than the minimum number or value fixed by the Manager, the Manager may decline to redeem any of that Investor's Units unless the Investor redeems all of the Investor's Units.

### **8.2 Undertaking to Redeem**

- (a) The Manager undertakes to the Supervisor (for the benefit of the Investors as well as the Supervisor) that the Manager will, at its option, upon receiving a Withdrawal Request from an Investor and subject to, and upon compliance with, the terms of this clause 8 either:
  - (i) repurchase each Unit to which such Withdrawal Request relates; or
  - (ii) request the Supervisor to redeem each Unit to which such Withdrawal Request relates,

in each case for an amount equal to the Withdrawal Price as at the Valuation Day on which such Unit is redeemed.

- (b) The Manager is not obliged to offer to repurchase Units at any time.

### **8.3 Exit Date**

Subject to clauses 8.11, 8.12 and 8.14, when a Withdrawal Request is received at the registered office of the Manager, the Manager must redeem the Units with effect from the Valuation Day specified in the relevant Establishment Deed.

### **8.4 Withdrawal Price**

The Withdrawal Price of each Unit redeemed from the relevant Fund is to be determined by the Manager as at the Valuation Day on which the Unit is redeemed as the Net Asset Value per Unit on that Valuation Day. The Withdrawal Price shall be rounded down to the nearest four decimal places.

### **8.5 Exit Fees**

The Manager may charge the Investors an exit fee on the redemption of Units of the amount set out in the relevant Establishment Deed. This fee will be paid into the relevant Fund.

## **8.6 Redemption on account of PIE Tax or PIE status**

The Manager may compulsorily redeem an Investor's Units:

- (a) on account of any PIE Tax attributable to income allocated to that Investor at any time the Manager determines appropriate and in all cases at the Withdrawal Price applicable on the date of redemption of such Units; and
- (b) if the number of Units held by that Investor and its associated persons (as defined in the Income Tax Act 2004) would cause the Fund to lose its status as a PIE.

## **8.7 Payment of the Withdrawal Price**

- (a) Subject to paragraph 8.7(e) below, the Withdrawal Price (less any applicable exit fee) must be paid within 7 Business Days of the Valuation Day on which a Unit is redeemed or such later date specified in the Offer Documents except where the relevant Units have been paid for by cheque, in which case the Withdrawal Price must be paid within 7 Business Days or such later date specified in the Offer Documents of the date on which the cheque has been cleared.
- (b) Where the Units referred to in a Withdrawal Request by an Investor are purchased by the Manager, the Manager must pay to the Investor the Withdrawal Price (less any applicable exit fee) out of the Manager's own funds.
- (c) Where the Units referred to in a Withdrawal Request by an Investor are to be redeemed, the Manager must direct the Supervisor to apply any cash held by the Trust, dispose of Investments or borrow, to release the aggregate Withdrawal Price from the relevant Fund. The Manager may pay the Investor the aggregate Withdrawal Price out of the Manager's own funds and, if it does so, is entitled to retain for its own benefit the moneys released by the Supervisor from the Fund in accordance with clause 8.10(b).
- (d) Where Units are redeemed pursuant to clause 8.6(a), the Redemption price will not be paid to the Investor, but will instead be applied by the Manager in discharge of the relevant PIE Tax.
- (e) Notwithstanding anything else in this Deed, the Manager may deduct from the Withdrawal Price and from any other amount payable to an Investor under this Deed an amount on account of any PIE Tax payable by the Fund or the Supervisor on income allocated to that Investor. Any provision of this Deed dealing with payments to Investors will take effect subject to this paragraph (e) and must be read accordingly.

## **8.8 Disposition of Repurchased Units by the Manager**

If Units are repurchased by the Manager for its own benefit, the Manager is entitled then or at any time thereafter to sell any or all of those Units in accordance with clauses 5 and 7 or to have them redeemed in accordance with clause 8.10.

## **8.9 Cancellation of Redeemed Units**

All Units redeemed are to be cancelled by the Manager and cannot thereafter be re-issued but this does not restrict the creation and issue of new Units.

Details of all cancelled Units are to be entered in the Unit Register.

### 8.10 Redemption of Manager's Units

- (a) The Manager is entitled to request the Supervisor to redeem Units held by the Manager in the procedure set out in the Establishment Deed for a Fund provided that the same procedures and valuation provisions apply to both the Manager and Investors.
- (b) If the Supervisor is satisfied that such a request by the Manager relates solely to the redemption of Units held by the Manager then the Supervisor must release from the relevant Fund and pay to the Manager the aggregate Withdrawal Price of the Units to be redeemed within 7 Business Days of the relevant Valuation Day.

### 8.11 Surpluses and Deficiencies on Redemption of Manager's Units

The Manager is entitled to the benefit of any surplus and is liable for any deficiency of the Withdrawal Price of a Unit owned by the Manager and redeemed under clause 8.10 over or below the price at which that Unit was acquired by the Manager (the **Manager's Acquisition Price**) and the Manager is not obliged to account to the Supervisor, the relevant Fund or any Investor for any excess over the Manager's Acquisition Price nor is the Supervisor, the relevant Fund or any Investor obliged to recompense the Manager, for any deficiency below the Manager's Acquisition Price.

### 8.12 Deferral of Redemption

Subject to any contrary provisions in an Establishment Deed, if by reason of:

- (a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- (b) (b) financial, political or economic conditions applying in respect of any financial market; or
- (c) the nature of any Investment; or
- (d) a Withdrawal Request is received or a series of Withdrawal Requests have been received within a period of 3 months that in aggregate relate to more than 5% (or such other percentage as the Manager specifies from time to time by not less than 30 days prior notice to Investors) of the Number of Units on Issue in the relevant Fund at the time of the Withdrawal Request or last Withdrawal Request in such series; or
- (e) the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally;

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of any Investors, for the Manager to give effect to Withdrawal Requests then the Manager may give notice (**Withdrawal Suspension Notice**) to that effect to any Investor who gives or has given a Withdrawal Request. A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Withdrawal Requests given in respect of that Fund until such time as the Manager gives to the Investors who gave those Withdrawal Requests notice to the effect that the Withdrawal Suspension Notice is cancelled. The Manager may determine that such Units may be progressively redeemed by instalments with effect from one or more Valuation Days falling in a period determined by the Manager or in total at the expiration of a period determined by the Manager and in any such case the Withdrawal Price is to be calculated at the Valuation Day or Days on which Units are redeemed.

### 8.13 Suspension of Redemption

Subject to any contrary provisions in an Establishment Deed, notwithstanding anything contained in this Deed, if a Withdrawal Request is received or a series of Withdrawal Requests have been received within a period of 3 months that in aggregate relate to more than 20% of the Number of Units on Issue at the date of receipt by the Manager of the Withdrawal Request or last Withdrawal Request in such series, then the Manager may suspend the right of the Investors in such Fund to make Withdrawal Requests on the following conditions:

- (a) the Manager must notify the Supervisor of its intention to suspend the right of Investors to make Withdrawal Requests; and
- (b) the Manager must immediately call a meeting of Investors in the manner set out in this Deed to consider the winding up of the relevant Fund or such other action as the Investors deem appropriate.

### 8.14 Redemption not applicable

If the relevant Establishment Deed so provides, Units or particular Units in the relevant Fund will not be redeemable and the provisions of this clause 8 will not apply to that Fund or the particular Units.

## 9 Joint holders of Units

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Where 2 or more Persons are registered as the Investors of any Unit (**joint Investors**), they are for the purposes of the administration of the relevant Fund and not otherwise deemed to hold the Unit as joint tenants subject to the following provisions:

- (a) The Manager is not bound to register more than 2 Persons as the Investors of any Unit;
- (b) The joint Investors of any Unit are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (c) On the death of any joint Investor, the survivor or survivors of them is or are the only Person or Persons recognised by the Manager as having any title to the Unit, but the Manager may require such evidence of death as it may deem fit;
- (d) Any one of the joint Investors may give effectual receipts for any Distribution payable to such joint Investors; and
- (e) Only the Person whose name stands first in the Unit Register as one of the joint Investors of any Unit is entitled to receive notices, cheques or other communications from the Manager or the Supervisor, and any notice, cheque or other communication given to such Person is deemed to have been given to all the joint Investors. With the consent of all registered joint holders of a relevant Unit, the Manager may amend the name of the Person standing first in the Unit Register. Where one joint Investor has a higher Prescribed Investor Rate than the other the one with the higher rate will be required to stand first in the Unit Register.
- (f) For the purposes of calculating the Fund's PIE Tax and attributing such liability to joint Investors and for all other purposes relating to the application of the Income Tax Act 2004 to the Fund as a PIE, the Manager may in its absolute discretion either treat the joint Investors as separate Investors (in equal shares), or treat the joint Investors as a single Investor with a Portfolio Investor Rate equal to the highest Portfolio Investor Rate of the joint Investors or such other rate as is permitted by law.

## **10 Registered holder absolute owner**

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Except as otherwise provided in this Deed, the Manager and the Supervisor are entitled to treat the registered Investor of a Unit as its absolute owner and accordingly, except as ordered by a court of competent jurisdiction or as required by statute, are not bound to recognise (even upon notice) any equitable or other claim to or interest in the Unit on the part of any other Person.

## **11 Holding Statements**

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The Manager must:

- (a) On issue of any Units, provide to the Investor a written statement detailing the number of Units issued within 28 days of the issue of the Units; and
- (b) provide to each Investor periodically, as required by applicable law, a statement of the number of Units held by that Investor and details of any redemptions or purchases of Units by that Investor within the period covered by the statement.

## **12 Unit registers**

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### **12.1 The Register**

- (a) A Unit Register of Investors in respect of each Fund must be kept by the Manager in a form and manner approved by the Supervisor.
- (b) The Manager may appoint a person to keep the Unit Registers on its behalf.
- (c) Such Unit Registers may take the form of a computer printout or any other computer based information storage and retrieval system compiled in a manner approved by the Supervisor and such approved printout or system is deemed to be the Unit Register.

### **12.2 Details to be entered into Register**

There must be entered in each Unit Register:

- (a) the names and addresses of the Investors, or in the case of joint Investors the address of the Investor first mentioned in the Unit Register;
- (b) the number and type of Units held by each Investor;
- (c) the prescribed investor rate and tax file number (as that term is defined in the Income Tax Act 2007) nominated by the Investor;
- (d) the date on which each parcel of Units was issued to the relevant Investor; and
- (e) such other matters as the Manager and Supervisor may agree.

### **12.3 Reliance upon the Register**

The Manager and the Supervisor are entitled to rely upon entries in the Unit Register as being correct.

### **12.4 Audit of the Register**

The Manager must ensure that each Unit Register is audited by the Auditor at intervals of not more than 12 months or as required by and in accordance with the provisions of the FMC Act and the Manager shall provide a copy of any such audit to the Supervisor in accordance with clause 28.5(f).

### **12.5 Inspection**

Each Unit Register must be open for inspection by any Investor, free of charge, during the business hours of the Unit Registrar.

### **12.6 Copies of Registers**

The Manager will deliver to the Supervisor as requested by the Supervisor a copy of each Unit Register in such form as the Supervisor may require.

### **12.7 No recognition of trusts**

Except as required by law, neither the Manager nor the Supervisor 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 Units or any interest therein are or may be subject, or to recognise any Person as having any interest in any Unit except for the Person recorded in the relevant Unit Register as the Investor, and accordingly no notice of any trust (whether express, implied or constructive), charge, pledge or equity shall be entered upon the Unit Register.

## **13 Management**

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### **13.1 Manager's Duties**

Subject to the powers reserved to the Supervisor and the provisions of this Deed, the Funds are to be managed and administered by the Manager and without limiting the generality of the foregoing the Manager is responsible for:

- (a) offering Units;
- (b) issuing Units;
- (c) managing and making all decisions relating to Investments including the investment, reinvestment or realisation of any Investment and the exercise of any voting rights associated with any Investment;
- (d) making all decisions relating to borrowing, the terms of such borrowing and any securities relating thereto;
- (e) determining the terms of all contracts, rights and other matters relating to Investments or Liabilities;
- (f) appointing and engaging solicitors and other consultants and advisers on such terms as the Manager determines;
- (g) using its best endeavours and skill to ensure that the affairs of each Fund are conducted in a proper and efficient manner;
- (h) using due diligence and vigilance in the exercise and performance of its functions, powers, and duties as manager;
- (i) accounting to the Investors for all money that the Manager receives on behalf of each Fund;
- (j) in respect of any Fund that is a PIE:
  - (i) doing everything necessary to administer the Fund as a PIE;
  - (ii) taking all reasonable steps to ensure that the Fund retains its PIE status (unless the Manager and the Supervisor agree in writing that the Fund should cease to be a PIE); and



- (iii) disclosing any information, including issuing any statements and providing any information to Investors as required by the Income Tax Act 2007 and the Tax Administration Act 1994 in respect of their tax position in relation to the Fund (including pursuant to section 31B of the Tax Administration Act 1994), and provide any information (including personal information) to the Inland Revenue Department (including pursuant to section 57B of the Tax Administration Act 1994) or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Fund's taxation obligations;
- (k) taking all steps and doing all things as are necessary to convert a Fund to and from being a PIE (if the Supervisor and the Manager agree in writing that the Fund should be so converted); and
- (l) not paying out, investing, or applying any money belonging to a Fund for any purpose that is not directed by, or authorised in, this Deed or the relevant Establishment Deed; and
- (m) supplying to the Investors, in general meeting, any oral or written information relating to the affairs of the relevant Fund that any Investors has given the manager reasonable notice to supply.

### 13.2 **Standard of the Manager's duties**

The Manager must:

- (a) act honestly in acting as manager;
- (b) in exercising any powers or performing any duties as manager:
  - (i) act in the best interests of Investors;
  - (ii) treat the Investors equitably;
  - (iii) exercise the care, skill and diligence that a prudent person engaged in that profession would exercise in the same circumstances; and
  - (iv) carry out its functions in accordance with this Deed, each SIPO and all other obligations of the manager; and
- (c) not make use of information acquired through being the manager in order to:
  - (i) gain an improper advantage for itself or any other person; or
  - (ii) cause detriment to the Investors
- (d) notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Investors or on the reputation of the Manager or its licence under the FMC Act.

### 13.3 **Manager's statutory duty**

Nothing in this deed shall limit the Manager's duty of care, skill and diligence under the FMC Act in carrying out its duties under this deed or shall prevent or restrict any determination as to whether there has been a breach of that duty of care, skill and diligence or shall affect the operation of the provisions of any statute prescribing the circumstances under which the Manager may obtain relief from a breach of that duty of care, skill and diligence.

### **13.4 Delegation by Manager**

All or any of the powers, authorities, functions and discretions exercisable by the Manager under this Deed may be delegated by the Manager to its officers and employees or to any other Person nominated by the Manager but the Manager remains liable for the acts and omissions of any such officer, employee or Person whether or not the delegate is acting within the terms of its delegated authority.

## **14 Borrowing powers of the Supervisor**

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### **14.1 Borrowing powers**

Subject to clauses 14.2 and 14.3 in respect of any Fund and unless prohibited by the relevant Establishment Deed, the Supervisor has power to, and must, if so directed by the Manager:

- (a) borrow money from any Person (including an Investor);
- (b) for the purpose of such borrowing, enter into loan documents or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such borrowing; and
- (c) mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of the relevant Fund as security for any moneys borrowed.

### **14.2 Limitation on borrowings**

- (a) The aggregate of the principal moneys borrowed and outstanding in respect of any Fund or secured against the Investments of that Fund together with the principal moneys proposed to be borrowed may not exceed the limitation on borrowings (if any) set out in the relevant Establishment Deed.
- (b) All borrowings, raising of money, charging of Investments, or other similar transactions entered into or undertaken pursuant to this clause 14 (Security Transactions) shall only be entered into or made where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Investors in the relevant Fund or for the purposes of conducting the investment or management or other operation of the relevant Fund pursuant to this deed including the repayment or redemption of any Units from time to time and the Supervisor or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.

### **14.3 Conditions of borrowing**

There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 14.1 or to complete any loan or security documents unless the Supervisor is satisfied that:

- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Fund;
- (b) any loan security or other obligation binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- (c) there has been compliance with any specific borrowing requirements set out in the relevant Establishment Deed.

### **14.4 Third Parties Need not Inquire**

No Person from whom the Supervisor has or intends to borrow in respect of any Fund needs to enquire as to whether or not the limitation set out in clauses 14.2 and 14.3 have been observed or complied with.

## **15 Manager's and Supervisor's powers to invest**

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### **15.1 Statement of investment policies and objectives**

The Manager in consultation with the Supervisor must ensure there is a SIPO for each Fund.

### **15.2 Investment purpose**

Each Fund shall be invested only in the Authorised Investments for that Fund and in accordance with the SIPO for that Fund. This requirement shall constitute a 'contrary intention' for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956.

### **15.3 Additional guidelines**

The Manager and the Supervisor may from time to time agree on additional guidelines and procedures in writing for the Manager to follow in connection with the investment of each of the Funds. The Manager shall comply with the SIPO of each of the Funds and with any such additional agreed guidelines and procedures.

### **15.4 Supervisor's Discretion as to Investments**

The Supervisor shall not, and shall direct any other custodian to not, act on any direction of the Manager to invest, acquire or dispose of any Investment if in the opinion of the Supervisor, given in writing to the Manager, the proposed investment, acquisition or disposition or transfer of assets into that Fund:

- (a) is manifestly not in the interests of the Investors;
- (b) is contrary to the provisions of this Deed, the relevant Establishment Deed or the SIPO for that Fund; or
- (c) would result in a breach by the Supervisor of any obligations or duties imposed on the Supervisor by the Trustee Act 1956, Financial Markets Supervisor Act and the FMC Act.

The Supervisor is not liable to the Investors or the Manager for so refusing to act on any direction or for acting on any such direction or for its opinion.

### **15.5 Investment Directions by the Manager**

Subject to clauses 3.1, 15.1 and 15.2, the Manager will manage each Fund and as necessary may direct the Supervisor to:

- (a) purchase, acquire, sell, transfer or dispose of Investments;
- (b) enter into any commitments or liabilities in respect of Investments;
- (c) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing; and
- (d) take any other action which may be required in respect of Investments,

and the Supervisor will from time to time, to the extent of the respective Funds in its hands or control, act as directed in writing by the Manager.

### **15.6 Advisers**

In relation to the purchase, sale and other dealings with any Authorised Investments by the Supervisor, the Manager may determine the time and mode and the consultants, agents, brokers and professional advisors (if any) for the purchase, sale and other dealing.

## 15.7 Dealing with Related Parties

- (a) The Manager (and any investment manager, administration manager, or other person to whom the Manager has contracted out or delegated to some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- (b) However, clause 15.7(a) does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:
  - (i) the Manager obtains the Supervisor's consent for the transaction or transactions; or
  - (ii) clause 15.7(d) applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.
- (c) The Supervisor must not consent to a transaction or transactions under clause 15.7(b)(i) unless one of the following applies and the Supervisor certifies to that effect:
  - (i) The Supervisor considers that the transaction or transactions are in the best interests of the Investors; or
  - (ii) The transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Investors of the relevant Fund that are affected or potentially affected by the transaction or transactions.
- (d) Before entering into a transaction or series of transactions under clause 15.7(b), the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager, stating that in the Manager's opinion (which specifies the basis of that opinion) the transaction or transactions:
  - A. confers a benefit that is given on terms that either would be reasonable in the circumstances, if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interest, or are less favourable to the related party; or
  - B. is an acquisition or a disposal of a managed investment product in another registered scheme; or
  - C. is on reasonable commercial terms; andis in accordance with the SIPO of the relevant Fund.
- (e) Neither the Manager nor any such Related Party is liable to account to the Supervisor or any Investor for any profit arising from any transaction entered into in accordance with clauses 15.7(b) and 15.7(d).
- (f) The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clauses 15.7(b) and 15.7(d). The acquisition of Units in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 15.7(b) or this clause 15.7(f) .

### **15.8 Investments in Supervisor's Name**

The Manager shall cause Investments to be vested in the Supervisor or its nominee appointed in accordance with clause 2.6 and to be registered in the name of the Supervisor or such nominee as soon as reasonably practicable after receipt of the necessary documents and must deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

### **15.9 Bank Accounts**

A bank account or accounts in the name of the Supervisor or its nominee appointed in accordance with clause 2.6 must be opened and maintained for each Fund. All moneys belonging to the relevant Fund and coming into the hands of the Manager or the Supervisor must be paid to the credit of such bank account. The Supervisor shall determine the Persons authorised to operate such bank accounts.

### **15.10 Notice of Investments to Supervisor**

The Manager must give notice to the Supervisor of any transaction required to be entered into by the Supervisor in relation to borrowing, the giving of securities or the purchase, acquisition, sale or disposition of, or dealing with, the Investments. The Supervisor may request any additional information which it may reasonably require regarding any transaction including the obtaining of such valuations or other expert advice as the Supervisor deems necessary or desirable.

### **15.11 Supervisor's Right to Limit Liability**

The Supervisor may, before entering into any transaction, security or liability of a Fund require that its liability is restricted or limited to its satisfaction to the Investments for the time being of such Fund.

### **15.12 Amendment to Authorised Investments**

Where the Manager determines that it is in the interests of the Investors in a particular Fund to vary any part of the definition of Authorised Investments relating to that Fund so as to exclude or include any type of Investment the Manager shall give notice to the Investors of the relevant Fund in such form as the Supervisor approves setting out details of the proposed variation and stating that if Investors of the relevant Fund holding 5% or more of the Number of Units on Issue at the date of the notice give notice to the Manager within 28 days of the date of the notice that they disapprove of the proposed variation then the Manager will call a meeting of Investors to consider the variation.

- (a) Unless Investors of the relevant Fund holding 5% or more of the Number of Units on Issue give notice disapproving the variation, the variation shall be deemed to be approved and the Supervisor and the Manager shall execute a deed amending the definition of Authorised Investments for that Fund to give effect to the variation proposed.
- (b) If Investors holding 5% or more of the Number of Units on Issue give notice disapproving the variation, the proposed variation shall not be implemented and the Manager shall forthwith convene a meeting of Investors to consider the variation. If at a meeting duly convened and held, the Investors by Extraordinary Resolution approve the proposed variation the Supervisor and the Manager shall execute a deed amending the definition of Authorised Investments for that Fund to give the effect to the variation proposed.
- (c) If the definition of Authorised Investments is amended pursuant to this clause 15.10, the Manager will notify the Investors and register the amending deed as provided in clause 33.2.

## **16 Investment records**

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### **16.1 Manager to Keep Records**

The Manager must keep complete, accurate and separate records of all Investments constituting each of the Funds.

### **16.2 Inspection by Supervisor**

The records of Investments must be available for inspection by the Supervisor or its agents without charge at any time on any Business Day.

### **16.3 Reliance on Records**

The Supervisor is entitled to assume that the Manager's records of Investments are complete and accurate and may rely upon them accordingly.

## **17 Distributions**

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### **17.1 Determination of Distribution Period and Distributions**

The length of a Distribution Period and the method of calculation of Distributions shall be those specified in the relevant Establishment Deed or as subsequently varied by the Manager.

### **17.2 Allocation and Distribution**

- (a) Subject to the terms of this Deed and the applicable Establishment Deed, the Manager will determine the amount of each Distribution (if any).
- (b) Unless otherwise specified in the relevant Establishment Deed, a Unit on issue on the last day of the relevant Distribution Period entitles its Holder to participate in the distribution for the period in full irrespective of the number of days it has been on issue.
- (c) Distributions may be made in cash or by the issue of Units as provided in the applicable Establishment Deed.
- (d) Payment of cash Distributions must be made within 30 days after the last day of the Distribution Period to which they relate. Issues of new Units must be made on a Valuation Day.
- (e) The Manager may make a deduction from any Distribution to an Investor on account of PIE Tax attributable to the income allocated to that Investor.
- (f) The provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.

### **17.3 Reinvestment of Distributions**

If the relevant Establishment Deed or Offer Document so provides, Investors may elect to reinvest their Distributions (less any deductions on account of PIE Tax which the Manager is obliged or permitted to deduct) by subscribing for further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial Application or in such other form as may from time to time be determined by the Manager. Any request in such other form must be submitted to the Manager prior to the expiration of the Distribution Period. Any request (whether in an initial Application or at a later date) may be varied or terminated by notice in writing to the Manager at any time.

- (a) The Manager will treat such a request as though it were an application to subscribe for further Units in the relevant Fund with the relevant Distribution (less any tax) and

accordingly the provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.

- (b) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of a Distribution without giving any reason.

#### **17.4 Disclosure of Information to Tax Authorities**

The Manager and the Supervisor are authorised to make such disclosure as may be required by the Inland Revenue Department of the details of Investors, any Distributions of Investors or any other details or information arising out of any of the Funds.

### **18 Supervisor's powers and covenants**

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#### **18.1 Supervisor's Powers**

- (a) The Supervisor shall have the power to settle and complete all transactions in respect of each Fund. Subject to the provisions in this Deed and the powers, rights and discretions given to the Manager this Deed, the Supervisor shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of each Fund and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of each Fund or otherwise to perform and comply with the obligations and duties under this Deed.

#### **18.2 Waivers**

The Supervisor may, whenever it thinks expedient in the interests of the Investors, waive at any time and on any terms or conditions any breach of the covenants or obligations binding on the Manager under this Deed where such waiver will not, in the opinion of the Supervisor, be materially prejudicial to the interests of the Investors.

#### **18.3 Custodians**

The Supervisor may employ custodians to hold any Investment on such terms as the Supervisor may determine (subject to all provisions of the FMC Act) provided that no such appointment will absolve the Supervisor from any of its obligations relating to the Investments under this Deed or at law. The Supervisor shall cause any such company to comply with all the covenants and obligations on the part of the Supervisor expressed or implied in this Deed. Any fees payable to the custodian will be determined on an arm's length basis.

#### **18.4 The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall enure not only to the Manager but to the Investors jointly and to each of them severally) that:**

- (a) the Supervisor will keep each Fund separate from all other assets, investments and other property vested in or held by the Supervisor;
- (b) except as herein provided or as authorised by law the Supervisor will not sell, mortgage, charge or otherwise part with the possession or ownership of any of the Investments; and
- (c) the Supervisor without delay will forward to the Manager all notices and other information relevant to the Manager and received by or on behalf of the Supervisor in connection with each Fund.

## 18.5 **Supervisor's functions**

The Supervisor has the following functions in respect of each Trust:

- (a) acting on behalf of Investors in relation to:
  - (i) the Manager;
  - (ii) any matter connected to this Deed or the terms of any offer of Units;
  - (iii) any contravention or alleged contravention of the Manager's obligations;
  - (iv) any contravention or alleged contravention of any Relevant Law by any other person in connection with each Trust;
- (b) supervising:
  - (i) the performance by the Manager of its functions and its obligations;
  - (ii) the financial position of the Manager and each Trust, to ascertain that they are adequate;
- (c) holding each Trust Fund, or ensuring that each Trust Fund is held, in accordance with Relevant Law; and
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by Relevant Law or this Deed.

## 18.6 **Supervisor's duties**

The Supervisor must:

- (a) act honestly in acting as the Supervisor of each Fund;
- (b) in exercising any powers or performing duties as Supervisor:
  - (i) act in the best interests of the Investors; and
  - (ii) exercise reasonable diligence in carrying out its functions as a licensed supervisor;
- (c) do all things it has the power to do to cause any contravention referred to in clause 18.5(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Investors); and
- (d) act in accordance with any direction given by a Special Resolution of Investors that is not inconsistent with any Relevant Law or this deed in relation to:
  - (i) seeking a remedy to a contravention referred to in clause 18.5(a); and
  - (ii) any other matter connected with the Supervisor's functions under clause 18.5.
- (e) The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Investors.
- (f) The Supervisor has the same duties and liability in the performance of its functions as Licensed Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act)
- (g) The duty in clause 18.6(d) is subject to any order of the court made under section 210 of the Act.



### **18.7 Standard of care**

The Supervisor must, in exercising its powers and performing its duties as Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances.

### **18.8 Supervisor's Delegates**

- (a) The Supervisor may, subject to clause 18.8(b), authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Investment, perform any act, or exercise any discretion within the Supervisor's power. The authorisation must be written. The Supervisor remains liable for the acts or omissions of a delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the authorisation as the Supervisor thinks fit. The delegate may be the Manager or a Related Person of the Manager or the Supervisor.
- (b) The Supervisor must not delegate its functions under clause 18.8(a) (except its function of holding the Investments of a Fund under clause 2.7) unless otherwise permitted by the Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.

### **18.9 Right of Supervisor to engage expert**

- (a) The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
  - (i) determine the financial position of the Manager; or
  - (ii) review the business, operation, management systems or governance of the Manager or the Fund.
- (b) If the Supervisor engages an expert under clause 18.9(a):
  - (i) the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 18.9(a); and
  - (ii) the Manager must pay the expert's reasonable fees and expenses.
- (c) The Manager shall be indemnified for those fees and expenses out of the relevant Fund, subject to any limits under this deed or the Act

## **19 Manager's powers, duties and covenants**

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### **19.1 Manager's functions**

The Manager is responsible for performing the following functions in respect of each Fund:

- (a) offering Units;
- (b) issuing Units;
- (c) managing and investing each Fund's Investments; and
- (d) administering each Fund.

## **19.2 Manager's powers of management**

Each Fund 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 each Fund. Subject to Relevant Law, the Manager shall have all powers, authorities, and discretions necessary to enable it to carry out the purposes of each Fund or otherwise to perform and comply with the obligations and duties under this Deed. Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or Supervisor for trusts whether of a nature similar to or different from the Funds.

## **19.3 Manager's duties**

The Manager must:

- (a) act honestly in acting as Manager; and
- (b) in exercising any powers or performing any duties as Manager:
  - (i) act in the best interests of Investors;
  - (ii) treat the Investors equitably;
  - (iii) exercise the care, skill, and diligence that a prudent person engaged in that profession would exercise in the same circumstances; and
  - (iv) carry out its functions in accordance with this Deed, each SIPO, and all other obligations of the Manager; and
- (c) not make use of information acquired through being the Manager in order to:
  - (i) gain an improper advantage for itself or any other person; or
  - (ii) cause detriment to the Investors

## **19.4 Appointment of agents**

- (a) Without in any way affecting the generality of the foregoing, or without in any way releasing the Manager from its obligations under this Deed, the Manager may, in carrying out and performing its duties and obligations:
  - (i) 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; or
  - (ii) appoint by writing or otherwise any Person to be an agent or sub-manager in respect of any Fund 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 each Fund (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 terms of any such appointment.

- (b) In delegating any functions under clause 19.4(a)(ii):
  - (i) the Manager must take reasonable steps to:
    - (A) ensure that those functions are performed in the same manner and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
    - (B) monitor the performance of those functions; and
  - (ii) such delegation does not affect the liability of the Manager for the performance of those functions.
- (c) The Manager may include provisions to protect and assist those dealing with its agents or other delegates in the appointment as the Manager thinks fit. Subject to clause 15.7, the delegate or agent may be a Related Party of the Manager or Supervisor.

### **19.5 Voting Rights on Investments**

- (a) Except as otherwise expressly provided in this Deed and subject to the provisions of the Supervisor Act 1956, all rights of voting conferred by the Investments or any of them are to be exercised in such manner as the Manager may determine. The Supervisor must from time to time execute and deliver or cause to be executed and delivered to the Manager or
  - (b) its nominees in a form or forms approved by the Supervisor such proxies or powers of attorney as the Manager may request.
  - (c) Neither the Manager nor the Supervisor is under any liability or responsibility in respect of the management of the corporations or bodies in which the Fund or any part thereof is for the time being invested nor in respect of any vote or action taken or consent given by the Manager in person by proxy or attorney.
  - (d) Neither the Supervisor nor the Manager nor the holder of any such proxy or power of attorney will 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 voted or given or withheld by the Supervisor or Manager or by the holder of such proxy or power of attorney under this Deed and neither the Supervisor nor the Manager are under any 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 except to the extent that such obligation may be attributable to the Supervisor's or the Manager's (as the case may be) own negligent or wilful act or default.

### **19.6 Manager's covenants**

Without limiting any duty or obligation of the Manager elsewhere in this Deed, the Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall ensure not only to the Supervisor but to the Investors jointly and to each of them severally) that:

- (a) the Manager will use its best endeavours to ensure that each Fund is carried on in a proper and efficient manner;
- (b) the Manager will not issue a Unit otherwise than at a price calculated in accordance with the provisions of this Deed;
- (c) the Manager will prepare or cause to be prepared all distributions, cheques and notices which are to be issued pursuant to this Deed and stamp them as required by law and produce them to the Supervisor or a person authorised by the Supervisor for this purpose so as to afford the Supervisor or such authorised person reasonable time to examine and check the same and to sign those cheques for despatch on the day on which they ought to be despatched, and the Supervisor may rely on the report of the

Auditor or the Manager given in respect of the accuracy of the particulars of such cheques if such reliance is based upon a reasonable belief that the report is genuine;

- (d) the Manager will pay to the Supervisor all moneys belonging to each Fund coming to the hands of the Manager;
- (e) the Manager will retain in safe keeping all Applications and instruments of transfer and transmission, or copies or reproductions thereof, and will make those documents available for inspection by or on behalf of the Supervisor at any time during normal business hours, but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any law to the contrary and first obtaining the Supervisor's approval) destroy such documents; and
- (f) the Manager will ensure that at all times the liability of the Supervisor in relation to any contract or agreement or any borrowing entered into by the Supervisor at the direction of the Manager, is limited to the Investments.
- (g) the Manager will use its best endeavours to ensure that the Assets of the Fund are properly managed and supervised;
- (h) the Manager will make all books relating to each Fund held by the Manager available to the Supervisor on request;
- (i) the Manager will not pay brokerage or commission to the Manager or to any related Party of the Manager except on a basis expressly approved by the Supervisor;
- (j) the Manager shall forward without delay to the Supervisor:
  - (i) all notices, reports, circulars and other documents received by it relating to the Supervisor; and
  - (ii) copies of any reports, notices or circulars issued to Investors by or on behalf of the Manager in relation to a Fund the Manager shall ensure that the Supervisor receives at quarterly intervals the particulars of all material fees, commissions, brokerages, discounts, charges and other pecuniary benefits and detriments derived by the Manager, or a Related Party of the Manager from dealings to which clause 15.5 applies;
- (k) provide the Supervisor with a draft of all Disclosure Documents in advance so as to provide the Supervisor with a reasonable opportunity to comment on those draft documents;
- (l) be a Licensed Manager;
- (m) provide to the Supervisor on request such information or access to such employees and board members of, and service providers to, the Manager as the Supervisor reasonably requires;
- (n) notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Investors or on the reputation of the Manager or its licence under the Act and permit the Supervisor upon the Supervisor's request to appoint a monitor to attend specified meetings of the Manager, including board meetings, investment committee meetings and other administrative meetings, to the extent that such meetings relate to any such issue or circumstance and as the Supervisor, acting reasonably, determines are necessary to better enable it to perform its obligations under this Deed; and
- (o) permit the Supervisor to inspect the Manager's business premises upon 24 hours' written notice.

## **20 Removal and retirement of Manager**

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### **20.1 Removal**

- (a) The Manager will cease to hold office as Manager of the relevant Fund if:
- (i) the Manager is substituted from office by the High Court by court order on the application of the Supervisor or the FMA under sections 207 and 208 of the FMC Act; or
  - (ii) the Manager is removed by written direction of the Supervisor after the Supervisor certifies, in respect of the relevant Fund and pursuant to section 185(1)(a) of the FMC Act, that it is in the best interests of Investors that the Manager should cease to hold office. Without in any way limiting the generality of the foregoing it will be sufficient and valid grounds for such a certificate to be given if the Manager has a receiver or manager or statutory manager appointed or if an order is made or a resolution is passed for the liquidation or winding-up of the Manager; or
  - (iii) the Manager is removed from office by a Special Resolution of the Investors of the relevant Fund.
- (b) If the Manager ceases to hold office pursuant to clause 20.1(a), the Manager must immediately desist from all management activities.

### **20.2 Retirement**

The Manager may retire as manager of a Fund at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement will take effect until a new manager has been appointed pursuant to clauses 20.3, 20.4 or 20.5 and has executed the Deed referred to in clause 20.6.

### **20.3 Temporary Manager**

Subject to the powers of the FMA under the FMC Act, the power of appointing a temporary manager of a Fund where a vacancy in the office of the manager arises is vested in the Supervisor. No person can be appointed as a temporary manager unless that person meets the requirements of section 186(3) of the FMC Act.

### **20.4 New Appointment by Supervisor**

Upon any vacancy occurring in the office of manager in respect of any Fund, the Supervisor must summon a meeting of the relevant Investors and must take such steps as that meeting or any subsequent meeting of Investors may require to secure the appointment of any temporary manager appointed by the Supervisor or the FMA or some other Licensed Manager of the relevant Fund. Any meeting of Investors may ratify the appointment of any manager appointed by the Supervisor or the FMA or may appoint a new manager. Any directions given to the Supervisor by any such meeting of Investors must be given by way of a Special Resolution.

### **20.5 Appointment by Investors**

If the Supervisor fails or refuses to appoint a temporary manager or if the Investors require a new manager to be appointed, then the power of appointing a new manager is vested in the relevant Investors who must exercise such power by a Special Resolution.

### **20.6 New Manager to Execute a Deed**

Any new manager must forthwith upon such appointment execute a Deed in such form as the Supervisor may require whereby the new manager undertakes to the Supervisor and the relevant Investors to be bound by all the covenants on the part of the manager under this Deed from the date of such appointment.

## **20.7 Retiring Manager Released**

From the date of execution by the new manager of a deed in accordance with clause 20.6, the retiring Manager is absolved and released from all such covenants under this Deed in relation to the relevant Fund (except in respect of any prior breach) and the new manager must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Manager under this Deed in all respects as if such Manager had been originally named as a party to this Deed as manager of the relevant Fund.

## **20.8 Name of the Fund**

If First Mortgage Managers Limited ceases for any reason to be manager of the Funds, unless First Mortgage Managers Limited agrees otherwise:

- (a) If the name of a Fund or any nominee of the Supervisor or any custodian of a Fund includes the words "first mortgage", the new Manager and the Supervisor will immediately change the name of the Fund, the nominee and the custodian to exclude the words "first mortgage"; and
- (b) the new Manager and the Supervisor will ensure that the words "first mortgage" does not appear in any documents, publications, or advertisements relating to any Fund and that all registers and records are amended to record the change of name of a Fund, custodian or nominee.

## **21 Removal and retirement of Supervisor**

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### **21.1 Removal**

The Supervisor will cease to hold office as supervisor of each Fund if:

- (a) it is removed by the FMA if the FMA is satisfied that the Supervisor no longer meets the requirements of section 127(1)(e) of the FMC Act (not an Associated Person);
- (b) it is removed by the FMA under Part 2 of the Financial Markets Supervisors Act 2011; or
- (c) the Investors of the relevant Fund remove the Supervisor from office by Special Resolution.

### **21.2 Retirement**

- (a) The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do. No such retirement will take effect until a new Licensed Supervisor has been appointed pursuant to clause 21.3 and has executed the Deed referred to in clause 21.4 and all of the Investments of the relevant Fund have been transferred to the new Licensed Supervisor.
- (b) The Supervisor may only retire in respect of all Funds.

### **21.3 New Appointment**

The power of appointing a new Supervisor of the Funds (in place of a Supervisor which has retired or been removed from office) is vested in the Manager. No Person can be appointed as a new supervisor unless it is a Licensed Supervisor whose licence covers supervision of the Fund. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution of the Investors.

#### **21.4 New Supervisor to Execute a Deed**

Any new supervisor must forthwith upon such appointment execute a Deed in such form as the Manager may require whereby the new supervisor undertakes to the Manager and the Investors to be bound by all the covenants on the part of the former Supervisor under this Deed from the date of such appointment.

#### **21.5 Retiring Supervisor Released**

From the date of execution by the new Supervisor of a Deed in accordance with clause 21.4, the retiring Supervisor is absolved and released from all such covenants under this Deed (except in respect of any prior breach) and the new Supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under this Deed in all respects as if such Supervisor had been originally named as a party to this Deed.

### **22 Remuneration of Supervisor**

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#### **22.1 Fees Applicable to Specific Funds**

- (a) The Supervisor is entitled to charge in respect of each Fund the annual or other fees calculated and payable as set out in the relevant Establishment Deed.
- (b) The Supervisor may, in respect of any Fund, after agreement with the Manager and by giving at least 3 months' notice to that effect to all Investors in the relevant Fund increase (subject to the maximum amounts set out in the relevant Establishment Deed) or decrease the fees payable in respect of any Fund.
- (c) If the Supervisor wishes to increase its fees and the Manager and the Supervisor are unable to agree on the amount of the Supervisor's fees, the matter shall be referred to the arbitration of a single arbitrator if one can be agreed on, otherwise to two arbitrators and their umpire, such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.

#### **22.2 Special Fees**

In addition to any fees payable to the Supervisor under clause 22.1, the Supervisor is entitled to charge, in respect of each Fund, such special fees for services of an unusual or onerous nature outside the Supervisor's regular services (including by way of example, convening meetings of Investors, breaches of trust and exercising discretions), calculated and payable as set out in the relevant Establishment Deed.

#### **22.3 Goods and Services Tax etc**

The Supervisor is entitled to receive, in addition to the fees referred to in clause 22.1 and clause 22.2, an amount equal to any Goods and Services Tax or duty or similar tax or duty payable in respect of such fee.

### **23 Remuneration of Manager**

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#### **23.1 Management Fee**

The Manager may charge for its services as manager of the relevant Fund such management fees as are specified in the relevant Establishment Deed. The fee shall be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund.

## **23.2 Performance Fee**

In addition to the management fee payable under clause 23.1, the Manager may charge a performance fee as specified in the relevant Establishment Deed. The fee may be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund or by Investors directly to the Manager.

## **23.3 Other Fees**

The Manager may charge the Investors or the relevant Fund such other fees as are set out in the relevant Establishment Deed provided that those fees are limited to a fair and reasonable reward for the services performed by the Manager or expenses properly incurred by the Manager in connection with the Fund.

## **23.4 Alteration or Waiver of Fees**

The Manager may, in respect of any Fund and either generally or in respect of any particular Investor or Investors, waive part or all of any management fee and may, by giving at least 3 months' notice to that effect to all Investors in the relevant Fund:

- (a) increase (subject to the maximum amounts set out in the relevant Establishment Deed) or decrease the fees payable in respect of any Fund or by the relevant Investors; or
- (b) provided that any such fee is permitted under the relevant Establishment Deed, commence charging any such fee which is not currently being charged.

## **23.5 Goods and Services Tax etc**

The Manager is entitled to receive, in addition to the fees referred to in clauses 23.1 to 23.3 (as altered from time to time in accordance with clause 23.4) an amount equal to any Goods and Services Tax or duty or similar tax or duty payable in respect of such fees.

## **24 Reimbursement of expenses**

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### **24.1 Expenses of Each Fund**

In respect of each Fund, the Manager and the Supervisor are entitled to be reimbursed out of the relevant Fund (whether from income or capital or both) for and in respect of:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of the Fund, the preparation and registration of any Offer Document, the acquisition, registration, custody, disposal of or other dealing with Investments of the Fund, including bank charges and stamp duty, and the expenses of any agents or nominated company of the Supervisor or the Manager both within and outside New Zealand but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager or the Supervisor;
- (b) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the investigation and negotiation for the acquisition for the Fund of any asset which comes within the definition of Authorised Investments, whether or not it is in fact acquired;
- (c) the fees and expenses of the Auditor relating to the audit of the Fund;
- (d) all taxes, duties and imposts charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other Person) in connection with the Fund or the relevant Investments on any account whatsoever;
- (e) interest and other expenses relating to borrowing and discounts and acceptance and other fees in respect of bill facilities;



- (f) the costs of convening and holding any meeting of Investors;
- (g) the costs of postage in respect of all cheques, accounts, distribution statements, notices, quarterly and other reports and other documents posted to all or any Investors in accordance with the provisions of this Deed;
- (h) the fees and expenses of any solicitor, barrister, valuer, accountant or other Person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under this Deed;
- (i) all costs of preparing, printing and distributing certificates, accounts, distribution statements, cheques, any Offer Document and any Investor communications;
- (j) expenses in connection with the keeping of the Unit Register; and
- (k) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Deed.

## **24.2 Collective Costs**

Where any costs, charges, fees or expenses referred to in clause 24.1 relate to the Funds collectively rather than any one individual Fund then such costs, charges, fees or expenses are to be apportioned between each of the Funds on such fair and equitable basis as may be determined by the Manager.

## **25 Supervisor's and Manager's responsibilities and indemnities**

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### **25.1 No Personal Liability**

The Supervisor and (except as otherwise expressly provided in this Deed) 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 any Fund, are, and are deemed to be, each acting for and on behalf of the Fund and not in their own respective capacities. Subject to the FMC Act, neither the Supervisor nor (except as otherwise expressly provided in this Deed) the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation of the Funds, but the relevant Fund only is liable or subject to levy or execution.

### **25.2 Indemnity**

If contrary to the provisions of clause 25.1 either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of any Fund or any action taken or omitted in connection with any Fund, (other than in respect of the Supervisor or Manager's negligence) then, subject to the FMC Act, the Supervisor or the Manager (as the case may be) is entitled to indemnity and reimbursement out of the relevant Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined including without limitation legal fees and disbursements.

### **25.3 Limit on Indemnity**

The indemnity in clause 25.2 will not apply to any loss, costs, expenses or liabilities arising out of:

- (a) fraud, wilful neglect, wilful breach of trust or dishonesty on the part of the person claiming the indemnity or any of its officers, employees or agents (whether or not the officer is claiming to be indemnified);
- (b) in the case of the Supervisor, a failure by the Supervisor to show the degree of care, skill and diligence required by the FMC Act of the Supervisor having regard to the duties, powers, authorities and discretions conferred on the Supervisor by this Deed and relevant law; and

- (c) in the case of the Manager, a failure by the Manager to show the degree of care, skill and diligence required by the FMC Act of the Manager having regard to the duties, powers, authorities and discretions conferred on the Manager by this Deed and relevant law.

#### **25.4 Reimbursement of expenses**

The Supervisor and (except as otherwise expressly provided in this Deed) the Manager are each entitled to be reimbursed out of each Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Deed for the relevant Fund, and without prejudice to the generality of the foregoing are entitled to be indemnified against any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Deed.

#### **25.5 Manager's Liability**

The Manager shall have the same liability for its acts and omissions in the exercise and performance of its functions, powers and duties as manager of each Fund as it would have if it exercised those functions, powers and duties as a Supervisor of the Fund and shall be entitled to the same relief from liability as it would be if it were a Supervisor.

#### **25.6 Reliance on Manager by Supervisor**

Subject to the provisions of the Trustee Act 1956 and the FMC Act, the Supervisor is not and will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager (including, for the avoidance of doubt and not by way of limitation, any decision of the Manager to invest any Fund or any part thereof in any futures contracts, foreign exchange contracts and options, interest rate and currency swap contracts or options entered into for the purpose of hedging) or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it) except to the extent that the loss is attributable to the Supervisor's own negligent or wilful act or default.

#### **25.7 Reliance Upon Advice**

The Supervisor and the Manager may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Supervisor and the Manager or instructed by the Supervisor or the Manager and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Supervisor nor the Manager is liable for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information.

#### **25.8 Reliance Upon Documents**

Whenever pursuant to any provision of this Deed any certificate, notice, instruction, direction or other communication shall be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any one of its directors or by any other person or persons duly authorised by the Manager.

### **25.9 Manager's Discretion and Authority**

Except insofar as is otherwise expressly provided in this Deed the Manager as regards all the powers, authorities and discretions vested in it by this Deed has absolute and uncontrolled discretion as to their exercise, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to the Supervisor and the approval of or supervision by the Supervisor wherever required.

### **25.10 Supervisor's Discretion and Authority**

Except insofar as is otherwise expressly provided in this Deed the Supervisor as regards all the Funds, powers, authorities and discretions vested in it by this Deed has absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of and time for their exercise.

### **25.11 Dealing in Units: The Manager**

Nothing in this Deed prevents any members of the Manager, or in their own right, any officers of the Manager from subscribing for, purchasing, holding, dealing in or disposing of Units or from otherwise at any time contracting or acting in any capacity as representative or agent or entering into any contract or transaction whatsoever with any other of them or with any Investor or from being interested in any such contract or transaction or otherwise and none of them are in any way liable to account either to any other of them or to the Investors or any of them for any profits or benefits howsoever made or derived.

### **25.12 Dealing in Units: The Supervisor**

Subject to the provisions of this Deed and to the Trustee Act 1956, nothing in this Deed is deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of either (in this clause included in the expression the **Supervisor**) from being an Investor or from acting in any representative capacity for an Investor and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, Supervisor, receiver, attorney or agent or in any other fiduciary, vicarious or other professional capacity. Nor shall the acting in any such capacity as aforesaid be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Investors on the other by this Deed established or otherwise imposed or implied by law.

### **25.13 Supervisor's Limited Liability to Investors**

Notwithstanding anything contained in this Deed, save and except in the case of fraud or of dishonesty or unless the Supervisor has failed to show the degree of care and diligence required of a Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this Deed by the Trustee Act 1956 and by the FMC Act, in no event is the Supervisor bound to make any payment to Investors except out of the relevant Fund or be liable to the Investors to any greater extent than the Investments, vested in or received by the Supervisor in accordance with this Deed.

### **25.14 No Respective Liabilities of Supervisor and Manager**

Subject to the Trustee Act 1956 and the FMC Act, the Manager is not liable for any act or omission of the Supervisor and the Supervisor is not liable for any act or omission of the Manager.

### **25.15 Reliance Upon Apparently Genuine Documents**

Neither the Manager nor the Supervisor is liable for any action taken or thing suffered by the Manager or Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

## **26 Investors bound by this Deed**

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The terms and conditions of this Deed and each Establishment Deed are for the benefit of and binding on the Supervisor, the Manager and each Investor and all Persons claiming through them respectively and as if each Investor had been party to and had executed this Deed and each Establishment Deed.

## **27 Liability of Investors**

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- (a) Except as expressly provided by this Deed
  - (i) no Investor is, by reason alone of being an Investor or by reason alone of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency of assets of the Funds as compared with the Liabilities to be met therefrom;
  - (ii) the rights (if any) of the Supervisor or Manager or of any creditor to seek indemnity are limited to having recourse to the Funds and do not extend to an Investor personally in such Person's capacity as an Investor; and
  - (iii) on a winding-up of the Fund, no Investor has any liability to contribute to any shortfall in the Fund if the Liabilities of the Fund exceed the Gross Asset Value of the Fund except for any liability for any unpaid calls or instalments owing in respect of any Unit.
- (b) Every Investor indemnifies the Supervisor, the Manager and the relevant Fund for any PIE Tax attributable to the income allocated to that Investor which has not been satisfied by redeeming Units held by that Investor or by deduction from monies paid to that Investor.

## **28 Accounts and Reports**

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### **28.1 Accounting Records**

- (a) The Manager must, in respect of each Fund:
  - (i) keep or cause to be kept proper records and Accounts of or relating to the Fund including records of all sales, purchases and other transactions relating to the Investments and the Liabilities of the Fund and issue or transfer of Units; and
  - (ii) keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Fund.
- (b) In keeping or causing to be kept the Manager's proper records or accounts under clause 28.1(a):
  - (i) the Manager must have appropriate systems of control and oversight;
  - (ii) the Manager must keep such records or accounts at a suitable secured location accessible by the Supervisor and the auditor; and
  - (iii) the provisions of Part 7 of the FMC Act must be complied with.

### **28.2 Inspection by the Auditor**

The accounting and other records of the Manager and of the Supervisor in respect of each Fund are open to the inspection of each other and the Auditor. The Auditor is entitled to require from the Manager and the Supervisor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

### **28.3 Annual Report to be Sent to Investors and Supervisor**

At the end of each Financial Year, the Manager must:

- (a) prepare financial statements for each Fund and arrange for them to be audited;
- (b) provide a final draft of the audited financial statements to the Supervisor for its review a reasonable time prior to their proposed execution; and
- (c) provide for the financial statements to be prepared, filed and sent or made available to the Supervisor and, to the extent and in the manner required by Relevant Law, the Investors in the relevant Fund in the time and manner required by the FMC Act together with any documents and reports required by Relevant Law to be annexed to or to accompany the financial statements.

### **28.4 Information to Supervisor**

The Manager shall from time to time:

- (a) give or cause to be given to the Supervisor copies of any financial statements, report, notice or circular issued to the Investors at the time of such issue;
- (b) within one Month of each month end (or such other period as shall be agreed with the Supervisor) give or cause to be given to the Supervisor the Manager's Monthly Report;
- (c) give to the Supervisor such other information as the Supervisor requires with respect to all matters relating to each Fund;
- (d) at the request of the Supervisor by not less than 14 days' notice in writing (which request shall only be made when the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Manager specifying such special circumstances), give to the Supervisor:
  - (i) copies of its financial statements, each duly audited and signed and made up as at the end of the next month occurring after the expiry of the said notice ("relevant accounting date"), or as at such other date as the Supervisor and the Manager agree, together with all documents and reports required by the Financial Reporting Act 2013 to be annexed to or to accompany such statements; and
  - (ii) a report by the Auditors setting out the information referred to in clause 28.5 in respect of the financial statements so requested with such adaptations as may be necessary or such of that information as may be required by the Supervisor,

such financial statements and Auditors report to be provided within 150 days after the relevant accounting date, or within such longer period as the Supervisor may in its discretion agree.

### **28.5 Auditor's Reports to Supervisor**

The Manager shall, from time to time during the currency of each Fund, give to the Supervisor at the same time as the Manager gives the audited Accounts to the Supervisor a separate report by the Auditor addressed to the Supervisor stating:

- (a) whether or not in the performance of their duties as auditors they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Manager or the Supervisor by Relevant Law or by this Deed and, if so, giving particulars thereof;

- (b) whether or not their audit has disclosed any matter (and if so particulars thereof) calling in their opinion for further investigation by the Supervisor in the interests of the Investors;
- (c) that they have perused the certificate given pursuant to clause 28.6 since the last report by the Auditor and:
  - (i) whether or not in the Auditor's opinion the financial statements are properly drawn up so as to give a true and fair view of the profit and loss so far as matters which they have observed in the performance of their duties as auditors are concerned:
    - (A) they have no reason to believe that the statements made in the Manager's Quarterly Certificate referred to in clause 28.6 are incorrect; and
    - (B) the statements made in the Manager's Quarterly Certificate are not unreasonable;
- (d) whether or not from the normal audit tests they have conducted to issue an opinion on the financial statements as a whole, they are satisfied that all amounts due to the Investors whether by way of Distribution, redemption or otherwise have been paid; and
- (e) whether or not the method of valuation of the Investments and Liabilities of the Fund has been in accordance with this Deed; and
- (f) that for the relevant financial year, they have audited each Unit Register which has been maintained in accordance with the requirements of the FMC Act.

Subject to Relevant Law, the content of the Auditor's report can be varied by written agreement between the Supervisor and the Auditor.

#### 28.6 **Manager's Report**

- (a) Within 30 days of the end of each financial quarter of each Fund (or such other period as shall be agreed with the Supervisor) the Manager shall give to the Supervisor a Manager's Quarterly Certificate.
- (b) The Manager shall, within the time and in the manner specified by the Supervisor (which must be reasonable in the circumstances) specified by the Supervisor:
  - (i) make available to the Supervisor (or other authorised person) all documents and records relating to the Manager and any Fund (including those held by an investment manager or administration manager);
  - (ii) give to the Supervisor (or other authorised person) such other reports or information as the Supervisor (or other authorised person) requires:
    - (A) with respect to all matters relating to any Fund; or
    - (B) 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 affairs of the Manager or the performance of the Supervisor's functions; and
  - (iii) provide the Supervisor with any other reports or information required by the FMC Act.

## **29 Auditor**

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### **29.1 Appointment and Remuneration**

A Person or firm of chartered accountants selected by the Manager and approved by the Supervisor and as otherwise licenced under the Auditor Regulation Act 2011, must be appointed Auditor of the Funds. The Manager and the Supervisor must agree upon the services to be performed by the Auditor and their scope. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

### **29.2 Removal/Retirement**

The Auditor may at any time and from time to time be removed by the Manager on approval of the Supervisor or if the Supervisor believes it to be in the interests of the Funds and/or Investors it may instruct the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.

### **29.3 New Appointment**

Any vacancy in the office of Auditor must be filled by the Manager with the approval of the Supervisor appointing a Person or firm of chartered accountants to be Auditor licenced under the Auditor Regulation Act 2011.

### **29.4 Restrictions on Auditor**

The Auditor may be the auditor of the Manager, or of the Supervisor, or of any other trust whether of a similar nature to the Funds of this Deed or otherwise.

## **30 Meetings of Investors and directions to Supervisor**

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### **30.1 Meetings**

Meetings of the Investors shall be convened and conducted in accordance with the provisions in Schedule 1 or as otherwise prescribed by law.

### **30.2 Investors' Directions to the Supervisor**

By means of a Special Resolution passed at a meeting of Investors, the Investors have the power to give to the Supervisor their opinions or directions in relation to the exercise of the Supervisor's powers.

### **30.3 Compliance with Directions**

Where any direction is given to the Supervisor pursuant to clause 30.2 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction.

### **30.4 Postal Ballots**

- (a) The Supervisor may instead of convening a meeting under clause 30.1 (except where such a meeting is requisitioned by Investors), conduct a postal ballot of Investors in accordance with this clause 30.4.
- (b) Every Investor shall have the same right to cast a vote on a postal ballot as on a poll at a meeting of Investors.
- (c) At least 14 days' notice of a postal ballot shall be given to all Investors of the relevant Fund at the address in the register and to the manager in accordance with this deed.

- (d) Notice of a postal ballot shall:
  - (i) detail the business to be transacted by postal ballot;
  - (ii) include such information and materials as may be necessary to enable an Investor to form a reasoned judgment in relation to the business to be transacted;
  - (iii) specify the terms of any proposed resolution(s);
  - (iv) include a ballot paper on which the Investor is required to indicate whether it votes in favour of or against the proposed resolution(s) and how many votes it wishes to exercise in favour of or against the proposed resolution(s);
  - (v) state the date by which the ballot paper is required to be received; and
  - (vi) state the name and address of the person to whom ballot papers should be returned.
- (e) The accidental omission to give notice of a postal ballot to an Investor shall not invalidate the postal ballot.
- (f) Ballot papers shall not be valid unless received by the Supervisor by the date specified in the notice of postal ballot.
- (g) Ballot papers shall be signed by the Investor or its duly appointed attorney. A notarially certified copy of the instrument appointing an attorney shall accompany the ballot paper of an attorney.
- (h) The Supervisor, or any other person authorised by the Supervisor and stated in the notice of postal ballot, shall receive, check and count votes made by postal ballot.
- (i) It is the duty of the person authorised to receive and count postal ballot votes:
  - (i) to collect together all ballot papers received by him or her or the Supervisor;
  - (ii) in relation to each resolution to be voted on, to count the number of Investors voting in favour of the resolution and the number of votes cast by each Investor in favour of the resolution and count the number of Investors voting against the resolution, and the number of votes cast by each Investor against the resolution;
  - (iii) to sign a certificate that he or she has carried out the duties set out in clauses 30.4(i)(i) and 30.4(i)(ii) and which sets out the results of the counts required by clause 30.4(i)(ii);
  - (iv) to send a copy of the certificate to the Manager and to all Investors entitled to participate in the postal ballot; and
  - (v) to ensure that a copy of the certificate is entered into the minute book for the relevant Fund.

## **31 Notices to Investors**

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### **31.1 Notice of Meetings**

- (a) Notice of every meeting shall be given in the manner and to the persons provided in the Financial Markets Conduct Regulations 2014;



- (b) At least 15 business days' written notice shall be given of:
  - (i) the time, date and place of the meeting;
  - (ii) the general nature of the business to be transacted in sufficient detail to allow an Investor to form a reasoned judgement in relation to it;
  - (iii) the text of any Special Resolution to be submitted to the meeting; and
  - (iv) the right of an investor to appoint a proxy.
- (c) If a Special Resolution is to be submitted to a meeting to approve a transaction or series of transactions that provides for a related party benefit to be given then the notice of meeting must contain an explanatory memorandum that sets out: the nature and monetary value or, if such value cannot be quantified, the extent of that benefit; the related party or parties to whom the benefit is proposed to be given; and all other information that is known to the Manager that Investors would reasonably require to decide whether it is in the Investors' best interests to pass the proposed resolution.

### **31.2 Other Notices**

In any other case a notice may be given under this Deed to any Investor personally by leaving it at the Investor's registered address or by sending it addressed to the Investor at the Investor's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post, by Electronic Communication, or by advertisement with the prior written approval of the Supervisor. An Investor must notify the Manager of any change of the Investor's registered address and the relevant Unit Register shall be altered accordingly. Any notice given to Investors by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Investors in substantially the same form but with personalised details in respect of each Investor, it shall be sufficient to provide the Supervisor with a sample of such a notice.

### **31.3 Manner of Notice**

- (a) Any notice sent by post will be deemed to have been given at the expiration of 48 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted;
- (b) in the case of a facsimile, on the Business Day on which it was despatched or, if despatched after 5.00pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case that there is produced a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;
- (c) in the case of a communication sent by email, on the Business Day on which it was despatched or, if despatched after 5.00pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case the computer system used to transmit the communication has not generated a record that the communication has failed to be transmitted.

### **31.4 Signature of Notice**

The signature to any notice to be given by the Manager or the Supervisor may be written or printed.

### **31.5 Calculation of Notice Periods**

Where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.

### **31.6 Binding Nature of Notice**

Every Person who by operation of law, transfer or other means whatsoever becomes entitled to any Units is bound by every notice which, prior to such Person's name and address being entered in the Unit Register in respect of the Units, has been given to the Person from whom such Person derives the title to the Units.

### **31.7 Receipt of Notice**

Any notice or document delivered or sent by post to or left at the registered address for service of any Investor in pursuance of the provisions of this Deed will (notwithstanding that the Investor is then deceased and whether or not the Manager has notice of such deceased Investor's death) be deemed to have been duly given in respect of such Investor's Units, whether held by such Investor solely or jointly with another Person or Persons, until some other Person is registered in the place of the Investor as the new Investor or joint Investor.

## **32 Notices between Manager and Supervisor**

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Any certificate, notice, communication or information required by this Deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager must be given in writing and addressed to the secretary, director or principal officer of the party to whom it is intended to be given at its registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this Deed) and must be signed by a duly authorised officer on behalf of the party giving it provided that the Manager and the Supervisor may agree that certain notices or communications may be given by Electronic Communication.

## **33 Amendment to Deed**

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### **33.1 Power to Change the Deed**

The Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed or any Establishment Deed (by means of a deed executed by the Supervisor and the Manager) in any of the following cases:

- (a) if in the opinion of the Supervisor the change is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Supervisor the change is necessary or desirable for the more convenient, economical or advantageous working, management or administration of any of the Funds or for safeguarding or enhancing the interests of any of the Funds or Investors and is not or not likely to become materially prejudicial to the general interests of all Investors of the relevant Funds;
- (c) if, in the case of a change affecting all Investors, the change is authorised by an Extraordinary Resolution of all Investors as if they were beneficiaries of a single Fund, the provisions of the Schedule relating to meetings of Investors to be read accordingly;
- (d) if, after a change in any law affecting unit trusts, a change to this Deed is necessary to make any provision of this Deed consistent with such law;
- (e) if, in the case of a change affecting Investors in a particular Fund, the change is authorised by an Extraordinary Resolution of those Investors; or
- (f) if the change is authorised pursuant to clause 15.10; or
- (g) Investors affected by the proposed variation or addition to the provisions of this deed or any Establishment Deed (which relate to Authorised Investments, the general investment policy or fees and expenses) are given 90 days' prior written notice of the implementation of the proposed variation or addition and are given an opportunity to withdraw from the relevant Fund; or

- (h) if any additional provision set out in the relevant Establishment Deed applies.

### **33.2 Notice of Amendment**

If any amendment is made to this Deed or a particular Establishment Deed, the Manager must:

- (a) send a summary of the amendment to the relevant Investors at the same time as the Accounts of the relevant Fund are forwarded to those Investors; and
- (b) register a copy of the relevant amending deed in accordance with the FMC Act.

### **34 Period of trusts**

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Each Fund commences on the date of its creation and will continue until whichever of the following dates occurs first (the **Date of Termination**):

- (a) the date of termination (if any) specified in the relevant Establishment Deed;
- (b) the date falling eighty years less two days from the date of this Deed (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964);
- (c) the date determined by the Investors by Ordinary Resolution to terminate the Fund; or
- (d) the date determined by the Manager to terminate the Fund as notified to the Supervisor and the relevant Investors by not less than 30 days' notice.

### **35 Procedure on winding up**

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#### **35.1 Realisation of Investments**

From and after the Date of Termination in relation to a Fund, the Supervisor must realise the Investments of the Fund as soon as practicable, provided however that the Supervisor may postpone realisation of all of the Investments if it reasonably considers it is in the interests of Investors to do so. In this circumstance, until such realisation of the Investments, the terms of the Fund will continue to apply with such changes as the context may require.

#### **35.2 Retentions by Supervisor**

The Supervisor is entitled to retain out of the relevant Fund such amount that the Supervisor considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) in connection with the relevant Fund or arising out of the liquidation of the Fund including the Supervisor's fees due under clause 22 and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Supervisor may employ in connection with the winding up of the Fund. The Supervisor is entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Supervisor.

#### **35.3 Application of Realisation**

Subject to the retention of any moneys as provided in clause 35.2, the net proceeds of realisation of Investments shall be applied by the Supervisor as follows:

- (a) first, in payment or retention of all costs charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the relevant Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Deed; and

- (b) secondly, in the case of the relevant Fund, in payment to the Investors pro rata to the number of Units held by them in the relevant Fund.

#### **35.4 Interim Distributions**

If in the opinion of the Supervisor it is expedient to do so the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 35.3.

#### **35.5 Receipts**

Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

#### **35.6 Winding up Obligations**

The Supervisor must, on a winding up of a Fund, comply with the requirements of the FMC Act, including:

- (a) giving a copy of any order or resolution for the winding up to the Financial Markets Authority within the required timeframes; and
- (b) ensuring that the final financial statements of the Fund are prepared and audited within the required timeframes; and
- (c) ensuring that copies of the final audited financial statements are sent to the Financial Markets Authority within the required timeframes; and
- (d) informing the Financial Markets Authority of the date on which the final distribution of the assets is completed.

### **36 Payments to Investors**

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- (a) Any moneys payable by the Supervisor or by the Manager to an Investor under the provisions of this Deed may be paid by cheque
- (b) that is crossed "non transferable" and made payable to the Investor or their respective agents or other authorised Persons.
- (c) The moneys may be given or sent through the post to the Investor or their respective agents or other authorised Persons or may be credited to any bank account nominated by the Investor.
- (d) Payment of every cheque, if duly presented and paid, and in respect of direct credits, the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.
- (e) If any amount has been deducted on behalf of taxes from a payment to an Investor, details of such deduction shall be provided to the Investor when the relevant payment is made.

**37 Deductions and adjustments for taxes**

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If the Manager or the Supervisor is obliged or permitted by law to make any deduction or withholding on account of taxes from any payment to be made to an Investor; the Manager or Supervisor (as the case may be) may (and where required by law, shall) make such deduction or withholding or redeem such Units and shall pay the relevant amount of tax to the Commissioner of Inland Revenue or other taxing authority when due. On payment of the net amount to the relevant Investor and the amount deducted or withheld to the tax authorities, the full amount payable to the relevant Investor shall be deemed to have been duly paid and satisfied.

**38 Law applicable**

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This Deed is governed by the law of New Zealand.


**Execution**

**First Mortgage Managers Limited**

by

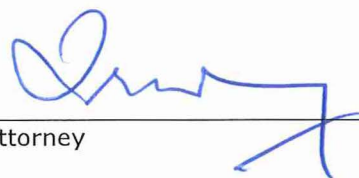
  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Print Name

Signed for and on behalf of **New Zealand Permanent Trustees Limited** by its Attorney:

  
\_\_\_\_\_  
Attorney

**Lloyd Bernard Wong**  
\_\_\_\_\_  
Print Name

**New Zealand Permanent Trustees Limited  
Certificate of Non-Revocation  
of Power of Attorney**

I, Lloyd Bernard Wong of Auckland, New Zealand, holding the office of Senior Manager Client Services with Public Trust:

**HEREBY CERTIFY:**

1. THAT by Deed dated 31 October 2011, New Zealand Permanent Trustees Limited appointed me as its attorney on the terms and subject to the conditions set out in the said Deed and the attached document is executed by me under the powers thereby conferred.
2. THAT at the date hereof I hold the office of Senior Manager Client Services with Public Trust.
3. THAT at the date hereof the transaction or obligation evidenced by the attached document is of a kind I am authorised to enter into by virtue of a delegation from the Board.
4. THAT at the date hereof I have not received notice of any event revoking the power of attorney.

SIGNED at Auckland this <sup>th</sup> 25 day of August 2015

By:

  
\_\_\_\_\_

Lloyd Bernard Wong

## **Schedule 1 : Meeting Procedures (clause 30.1)**

### **1 Convening of Meetings**

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- 1.1 The Manager must summon a meeting of Investors of the relevant Fund on:
- (a) the request in writing of the Supervisor
  - (b) the request in writing of Investors holding Units that have a combined value of no less than 5% of the value of the Units on issue in the relevant Fund at the date of such request.
- 1.2 If the Manager fails to call a meeting in accordance with this clause the Supervisor shall be entitled to call such a meeting on behalf of the Manager.
- 1.3 The Manager may at any time of its own volition convene a meeting of Investors to be held at such place as is acceptable to the Supervisor.

### **2 Notice of meetings**

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- 2.1 Notice of every meeting shall be given in the manner and to the persons provided in the Regulations.
- 2.2 At least 15 business days' written notice shall be given of:
- (a) the time, date and place of the meeting;
  - (b) the general nature of the business to be transacted in sufficient detail to allow an Investor to form a reasoned judgment in relation to it;
  - (c) the text of any Special Resolution to be submitted to the meeting; and
  - (d) the right of an Investor to appoint a proxy.
- 2.3 If a Special Resolution is to be submitted to a meeting to approve a transaction or series of transactions that provides for a Related Party Benefit to be given then the notice of meeting must contain an explanatory memorandum that sets out: the nature and monetary value or, if such value cannot be quantified, the extent of that benefit; the Related Party or Parties to whom the benefit is proposed to be given; and all other information that is known to the Manager that Investors would reasonably require to decide whether it is in the Investors' best interests to pass the proposed resolution.
- 2.4 The accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate proceedings at any meeting.

### **3 Quorum**

---

- 3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum for meetings shall be at least 2 Investors present in person or by proxy or as otherwise prescribed by the Regulations. The quorum for a meeting at which a Special Resolution is to be submitted shall be at least 2 Investors present in person or by proxy and holding between them Units with a combined value of no less than 25% of the value of Units held by those persons who are entitled to vote or as otherwise prescribed by the Regulations.

- 3.3 If within 30 minutes from the time appointed for the meeting a quorum is not present the meeting, if convened upon the request of Investors, shall be dissolved. In any other case it shall stand adjourned to the day that is 10 business days after date appointed for the meeting at the same time and place or to such other date, time, and place as the Manager may appoint and at such adjourned meeting the Investors present in person or by proxy or by attorney or by authorised representative appointed pursuant to clause 8 of this schedule and entitled to vote whatever the number of Units held by them shall be a quorum.
- 3.4 Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the investors present at the adjourned meeting whatever their number and whatever the number of units held by them shall form a quorum.
- 3.5 An Investor participating by video link or telephone conference call or other electronic or telephonic means of communication in a meeting shall be treated as forming part of the quorum of that meeting provided that the Investors present at the meeting can hear and speak to the participating Investor.
- 3.6 A video link or telephone conference call or other electronic or telephonic means of communication in which a quorum of Investors participates and all participants can hear and speak to each other shall be a valid meeting which shall be deemed to take place where the chairman is present unless the Investors resolve otherwise.

#### **4 Supervisor and Manager may attend and speak**

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- 4.1 Any director, officer or solicitor of the Supervisor and any other Person authorised in that behalf by the Supervisor and any director, officer or solicitor of the Manager or any other Person authorised in that behalf by the Manager:
- (a) is permitted to attend any meeting of Investors;
  - (b) shall receive the notices and communications that any Investor is entitled to receive in relation to a meeting of those Investors; and
  - (c) may be heard at any meeting of Investors on any part of the business of the meeting that concerns the respective functions of the Supervisor, the Manager, or the Investors for whom the Supervisor is acting.

#### **5 Chairperson**

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A Person nominated in writing by the Supervisor or any other person appointed in that behalf by the Investors present at the meeting, must preside at every meeting.

#### **6 Adjournment of meetings**

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- 6.1 The chairperson may with the consent of any meeting at which a quorum is present and must if so directed by the meeting adjourn the meeting from time to time and from place to place.
- 6.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

#### **7 Voting rights**

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- 7.1 The only persons entitled to vote in person or by proxy or by attorney or by authorised representative at a meeting of the Investors are the Investors registered in the Unit Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Votes may be given either personally or by proxy or by attorney.



## **8 Proxies**

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- 8.1 An instrument of proxy shall be in such form as the Manager may stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairperson of the meeting or an officer of the Supervisor is appointed a proxy for an Investor and the Investor has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which such Person's proxy shall vote upon any resolution coming before the meeting such Person's vote must be used in favour of the resolution.
- 8.3 The instrument appointing a proxy shall be in any common form or in such other form as the Manager may approve and (i) if in writing, but not sent in electronic form, made under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, under its common seal or under the hand of an officer or attorney duly authorised in that behalf, or, (ii) if in writing sent in electronic form, submitted by or on behalf of the appointer and authenticated.
- 8.4 A Person appointed to act as a proxy need not be an Investor.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy of that power or authority certified notarially or in some other way approved by the Manager, shall:
- (a) in the case of an instrument in writing (including, whether or not the appointment of proxy is sent in electronic form, any such power of attorney or other authority) be deposited at the office not less than 48 hours before the time of the holding of the meeting or adjourned meeting at which the person named in the appointment proposes to vote; or
  - (b) in the case of an appointment sent in electronic form, where an address has been specified for the purpose of receiving documents or information sent in electronic form:
    - (i) in the notice convening the meeting; or
    - (ii) in any instrument of proxy sent out by the Manager in relation to the meeting; or
    - (iii) in any invitation sent in electronic form to appoint a proxy issued by the Manager in relation to the meeting,  
  
be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote; or
  - (c) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
  - (d) in the case of a poll not taken forthwith but taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman of the meeting or some other person authorised for the purpose by the Manager.
- 8.6 Unless it states to the contrary a proxy is valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy is valid after the expiration of 12 months from the date of its execution but this provision is not construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.

- 8.7 An instrument of proxy in favour of the chairperson of the meeting or the chairperson, (howsoever expressed) is valid and effective as though it were in favour of a named Person and constitutes the Person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.
- 8.8 A Person appointed proxy has the right to speak at a meeting and to demand or join in demanding a poll and (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) has power generally to act at the meeting for the Investor concerned.
- 8.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or, in the case of a meeting of the Investors, the transfer of the Units in respect of which the vote is given with the exception that no intimation in writing of such death, insanity, revocation or transfer must have been received by the Manager at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **9 Power of attorney**

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- 9.1 (a) Any Investor may by power of attorney appoint an attorney (who need not be an Investor) to vote and act on his or her behalf at any meeting.
- (b) Such power of attorney or proof thereof to the satisfaction of the Manager (unless such power of attorney or such proof has previously been produced to the Manager before the time of holding the meeting at which the attorney proposes to vote) be produced for inspection at such place as the Manager may in the notice convening the meeting direct or (if no such place is appointed) then at the Manager's registered office. Such attorney if so empowered may appoint a proxy for the Investor granting the power of attorney.

## **10 Procedure**

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- 10.1 (a) A resolution put to the vote of a meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or any representative of the Supervisor or in the case of a meeting of the Investors by one or more Investors holding or representing not less than 5% of the Number of Units on Issue.
- (b) Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.2 If a poll is duly demanded it shall be taken in such manner as the chairperson may direct and the result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
- 10.3 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled for any reason whatsoever.
- 10.4 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.5 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

- 10.6 On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all such Person's votes or cast all the votes such Person uses in the same way.
- 10.7 In the case of a meeting of the Investors, on a show of hands every Person present at the meeting and entitled to vote (whether as an Investor or as a proxy or attorney or authorised representative) has one vote only. On a poll every Investor who is present in person or by proxy or by attorney or by an authorised representative is entitled to one vote for every Unit of which such Investor is the holder.
- 10.8 In the case of joint Investors the vote of the senior who tenders a vote whether in person or by proxy or by attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Investors. For this purpose seniority is determined by the order in which the names stand in the Unit Register in respect of the joint holding.

## **11 Resolutions**

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- 11.1 The expression **Ordinary Resolution** means a resolution passed at a meeting duly convened and held in accordance with the provisions contained in this Schedule and carried by a majority of not less than 50% of the Persons voting at such meeting upon a show of hands or if a poll is duly demanded by a majority consisting of not less than 50% of the votes given on such poll.
- 11.2 The expression **Special Resolution** has the meaning set out in the definition section of this Deed.
- 11.3 A meeting of Investors has the following powers exercisable by Special Resolution:
- (a) To sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed or into units or other interests in any other unit trust or similar entity;
  - (b) To sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Investors howsoever such rights arise;
  - (c) To assent to any alteration, modification of, variation, or addition to the provisions contained in this Deed or any deed supplemental thereto or the conditions attaching to the Units and to authorise the Manager and Supervisor to concur in and execute any supplemental Deed or other document embodying any such alteration or addition;
  - (d) To give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
  - (e) Subject to the FMC Act, to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
  - (f) To appoint a new Supervisor if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new Supervisor pursuant to this Deed;
  - (g) To sanction any variation to the Authorised Investments of a Fund.
  - (h) To give such directions to the Supervisor as they think proper concerning the Trust being directions that are consistent with this Deed and the Act; and
  - (i) To direct the removal of the Manager of the Trust.

## **12 Resolutions bind all Investors**

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- (a) An Ordinary Resolution, and a Special Resolution passed at a meeting of the Investors duly convened and held in accordance with this Schedule is binding upon all Investors present or not present at the meeting. Each of the Investors, the Supervisor and the Manager is bound to give effect to such resolution accordingly.
- (b) The passing of any such resolution shall as between the Manager, the Supervisor, and the Investors be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution or Special Resolution as the case may be, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

## **13 Minutes to be kept**

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- (a) The Supervisor will cause to be kept the minutes of all resolutions and proceedings at every meeting or if the Supervisor is not present at any meeting the chairperson of such meeting will cause the minutes to be kept.
- (b) Any such minutes as if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings had or by the chairperson of the next succeeding meeting are prima facie evidence of the matters in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings of the meeting had duly passed and conducted.

## Schedule 2: Form of Establishment Deed (clause 1.1)

This is an indicative draft only. Certain provisions may need to be deleted or amended and new provisions may need to be added, or a new form adopted as the Manager and the Supervisor may agree.

This Deed is made on [ ]

between (1) First Mortgage Managers Limited (the Manager)

and (2) New Zealand Permanent Trustees Limited (the Supervisor).

### Introduction

- A The Manager and the Trustee are parties to an Amended and Re-Statement Trust Deed dated 14 September 2015 (the Trust Deed) which sets out the terms and conditions on which units in trusts managed by the Manager will be offered for subscription to the public.
- B The Trust Deed provides that each trust shall be established by the Manager and the Trustee entering into an Establishment Deed setting out the specific terms and conditions relating to that Fund.
- C The Manager has resolved to establish a Fund to be known as the "[ ]" (the Fund) and the Trustee and the Manager have entered into this Deed for the purpose of establishing the Fund and the terms and conditions applicable to it.

### It is agreed

#### 1 Interpretation

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##### 1.1 Trust Deed Definitions

In this Deed all terms defined in the Trust Deed which are not separately defined in this Deed have the same meanings where used in this Deed.

##### 1.2 Additional Definitions

In this Deed, unless the context otherwise requires:

**Distribution Period** means a period of 6 months commencing on the day following a Distribution Date or, in the case of the first Distribution Period, on the date of this Deed and ending on the first Distribution Date;

**Distribution Date** means the last day of September and March, or such other day which the Manager may determine by 1 month's written notice to the Investors; and

**Fund** means the unit trust fund established by this Deed.

- 1.3 References to the Trust Deed means the Trust Deed as from time to time amended or supplemented.

## **2 Creation of Fund**

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### **2.1 Establishment of Unit Trust**

Upon execution for this Deed, the trusts created by this Deed and the Trust Deed in respect of the Fund will be deemed to have been established.

### **2.2 Name of the Fund**

The Fund established under this Deed is named the [ ] Fund.

## **3 Authorised Investments**

---

For the purposes of the Fund, **Authorised Investments** means [any interest of any nature in any real or personal property of any nature whatsoever and includes derivatives or other treasury products and any right or option to acquire or take up any such interest].

## **4 Issue and Valuation Dates and Issue Price**

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### **4.1 Issue dates**

Units may only be issued on, or with effect from, a Valuation Day. Units will be issued on the Valuation Day following receipt of application moneys or, if application moneys are received by 2pm on a Valuation Day, Units will be issued on that Valuation Day. If an application is received after 2pm on a Valuation Day, the application will be processed on the next Valuation Day. All application moneys will be held on trust for subscribers in the " " bank account until the Units are issued. Any interest earned on application moneys pending issue of Units will be credited to the Manager to cover the costs of administering this bank account.

### **4.2 Valuation Days**

The Valuation Days for the Fund are and each other day as the Manager decides (being additional to or in substitution for the existing Valuation Days).

### **4.3 Alternative Valuation Days**

The Manager may value the Fund less frequently if, for reasons beyond the Manager's control, valuation is impossible on the day in question.

### **4.4 Issue Price**

The Issue Price of Units calculated on each Valuation Day shall equal the Net Asset Value per Unit on that day.

## **5 Minimum investment and minimum transfers**

---

### **5.1 Minimum Amount**

The minimum initial amount that can be invested in the Fund (if any) will be determined by the Manager and disclosed in the Offer Documents. The Manager may accept applications for amounts less than the minimum initial amount so disclosed.

## **5.2 Minimum Transfer**

The minimum number of Units which can be transferred (if any) will be determined by the Manager and disclosed in the Offer Documents. The Manager may waive any such minimum requirement at its discretion.

## **6 Distributions**

---

### **6.1 Distributable Income**

On or before each Distribution Date, the Manager shall decide whether to make a Distribution on that date and if so how much that Distribution should be. No prior notice to Investors is required of the Manager's decision.

### **6.2 Capital or income**

Distributions may be of capital and/or income as determined by the Manager.

### **6.3 Distributions**

- (a) On each Distribution Date, the Manager shall calculate the Distribution (if any) per Unit by dividing the gross amount to be distributed on such Distribution Date by the number of Units on Issue.
- (b) Subject to clause [ ] of the Trust Deed, each Investor on the relevant Distribution Date shall receive the same Distribution per Unit irrespective of the period during which the Investor has held the relevant Units.

### **6.4 Period for Distribution**

Following calculation of the Distribution per Unit pursuant to clause 6.3, the Distributions shall be distributed by the Manager as soon as practicable (but no later than 30 Business Days) after the Distribution Date together with a distribution statement.

## **7 Borrowing**

---

The aggregate of the principal money borrowed and outstanding in respect of the Fund or secured against the investments of the Fund may not exceed [ ]% of the Gross Asset Value of the Fund.

## **8 Financial Year**

---

The financial year for the Fund will end on [ ].

## **9 Redemption of Units**

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### **9.1 Redemption dates**

Subject to clauses 8.12 and 8.13 of the Trust Deed, Units will be redeemed with effect from [ ]. If a Withdrawal Request is received after 5pm on any day, it will be deemed to have been received on the following Business Day. [The Manager may in its sole discretion redeem Units with effect from an earlier Valuation Day.]

### **9.2 Withdrawal Price**

The Withdrawal Price of Units calculated on each Valuation Day shall equal the [Net Asset Value per Unit] on that day.

**9.3 Payment of Withdrawal Price**

Subject to clauses 8.7(d) and 8.7(e) of the Trust Deed, the Withdrawal Price shall be paid within [7] Business Days of the relevant Valuation Day.

**10 Fees**

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**10.1 Management Fee**

The Manager shall be entitled to charge the Fund and retain for its own use a monthly management fee of [ ] % of the Gross Asset Value of the Fund on the last Business Day of each month. The monthly management fee is payable by the Supervisor out of the Fund within 14 days of the end of each calendar month.

**10.2 [Manager's Performance Fee]**

**10.3 Supervisor's Fees**

- (a) The Supervisor shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the Supervisor but not exceeding [ ]% per annum of the Gross Asset Value of the Fund, subject to a minimum of \$[ ] per annum.
- (b) The Supervisor may also charge special fees in accordance with clause 22.3 of the Trust Deed for the services and in the amounts agreed in writing by the Manager and the Supervisor.

**11 Trust Deed**

---

Except as modified by the terms of this Deed, all the terms and conditions set out in the Trust Deed shall apply to the Fund.

**Execution**

**Executed** as a Deed

**First Mortgage Managers Limited**

by:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name



Signed for and on behalf of **New Zealand Permanent Trustees Limited** by its Attorney:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

**Schedule 3: Form of Manager's Monthly Report (clause 28.4(b))**

**A - INVESTMENT POSITION vs. SIPO**

	<i>Asset Class (this form can be customised to suit funds)</i>				
<i>Fund A</i>	<i>Asset A</i>	<i>Asset B</i>	<i>Asset C</i>	<i>Asset D</i>	<i>Asset E</i>
Actual (\$)					
Actual (%)					
SIPO Range					

<i>Fund B</i>	<i>Asset A</i>	<i>Asset B</i>	<i>Asset C</i>	<i>Asset D</i>	<i>Asset E</i>
Actual (\$)					
Actual (%)					
SIPO Range					

**B - RELATED PARTY TRANSACTIONS DETAILS**

**Related Party Benefit Transaction**

(list transactions)

**Other Related Party Transactions**

(list transactions)

**C - SUMMARY OF PERFORMANCE AS AT [DATE]**

***INVESTMENT RETURNS***

<i>Fund A</i>	<i>current month</i>	<i>3 month</i>	<i>6month</i>	<i>1 year</i>	<i>3 year</i>
<i>Actual (%)</i>					
<i>Benchmark</i>					

<i>Fund B</i>	<i>current month</i>	<i>3 month</i>	<i>6month</i>	<i>1 year</i>	<i>3 year</i>
<i>Actual (%)</i>					
<i>Benchmark</i>					

**D - NET ASSET VALUE AND UNITS**

<i>Fund Name</i>	<i>Total NAV</i>	<i>No. units on issue</i>	<i>NAV per unit</i>
Fund A			
Fund B			
Fund C			

**E - UNITHOLDERS DETAILS FOR THE QUARTER ENDED**

Investors at the beginning of the period	[number]
New Investors	[number]
Closed Investors accounts	[number]
Investors at the end of the period	[number]

**F - PORTFOLIO VALUATION (LIST OF INVESTMENTS) AND SCHEDULE OF INVESTMENTS TO BE RECEIVED IN THE NEXT 20 DAYS**

**G - MANAGEMENT ACCOUNTS FOR THE FUND(S)**

**H - CUSTODIAN REPORTS DISCLOSING ALL INVESTMENTS HELD BY THE CUSTODIAN ON BEHALF OF THE FUND(S)**

**I - COMPLAINTS REGISTER**

#### **Schedule 4: Form of Manager's Quarterly Certificate (clause 28.6)**

[date]

New Zealand Permanent Trustees Ltd  
PO Box 1598  
Shortland Street  
**AUCKLAND 1140**

Attention: Manager Client Services

#### **Re: First Mortgage PIE Trust Manager's Quarterly Certificate**

For the quarter ended [insert date] the Directors of First Mortgage Managers Limited (being the Issuer and Manager of the First Mortgage PIE Trust (the "Manager")) certify that to the best of our knowledge, no matters have arisen since our previous Manager's certificate that have resulted or may or are likely to result in the Manager being in breach of:

- any relevant legislation;
- the Trust Deed;
- any relevant Establishment Deed;
- [Management agreement, delegation agreement, and investment guideline and or SIPOs (*list as appropriate*)].

("Governing documents").

In particular as the Manager of First Mortgage PIE Trust (the "Fund"), we certify the following, to the best of our knowledge and belief, subject to such qualifications noted below, that:

#### **Manager**

1. there has been no change of the directorship, senior management or ownership of shares of the Manager [*or advise otherwise*];
2. the Manager has duly observed, performed and complied with all covenants, conditions, agreements and provisions binding upon it under the:
  - a. Trust Deed;
  - b. the [Investment management agreement/Administration Agreement/Service Level Agreement] between the Manager and the Supervisor dated [date] (*delete as appropriate*);
  - c. any guidelines, policy statements, or other agreements between the Manager and the Supervisor entered into in relation to the Trust Deed;
  - d. the current Offer Documents; and
  - e. any relevant legislation of which specific aspects are noted below;
3. the Manager is able to pay their debts as they become due in the normal course of business;
4. the value of the Manager's liabilities, including contingent liabilities, is less than the value of the Manager's assets;

5. there is no significant risk that the interests of Investors have been or are likely to be materially prejudiced;
6. the Manager has complied with all the Manager's obligations;
7. the Manager has complied with all its licence provisions.

#### **Investments**

8. no material trading or capital loss have been sustained by the Fund.
9. no material contingent liabilities have been incurred by the Fund.
10. no matter has arisen relating to an investment which has materially and adversely affected or would be reasonably likely to materially and adversely affect the ability of the Manager to perform any of its obligations under the Trust Deed;
11. no matter has arisen relating to an investment which has materially and adversely affected or would be reasonably likely to materially and adversely affect an Investment or the Fund;
12. except as previously advised in writing by the Manager, there are no other matters relevant to the Investments or the Fund, reasonably required by the Supervisor to be disclosed;
13. other than where provided for in the Monthly Reports provided during this quarter, there are no Related Party transactions or reimbursements to the Manager, other than the Manager's remuneration. Any transaction or reimbursement is entered into on normal commercial terms and conditions. For the avoidance of doubt, transactions between Funds are not Related Party transfers;
14. relevant certificates and notification have been provided to the Supervisor in respect of the following related party transactions under the Trust Deed (For the avoidance of doubt, transactions between Funds are not related party transactions). Details of such transactions are set out in the Monthly Reports provided during this quarter;
15. no Fund has any borrowings/any borrowings have been undertaken in accordance with the Trust Deed and within guidelines agreed to by the directors and with other representations contained in the current Offer Documents;

#### **SIPO and Limit Breaks**

16. the Investments of the Fund at all times have been dealt with or invested within investment parameters in accordance with any policies, strategy and or guidelines and with other representations contained in the current Offer Documents;
17. the SIPO is currently appropriate and has been adhered to at all times.

#### **Product compliance**

18. there is on issue a current PDS.
19. all Register Entries have been uploaded, are current and are not misleading;
20. there are no material contractual commitments (other than in respect of investment trading activities) or contingent liabilities or guarantees that are not disclosed in the attached reports and there are no other matters, which should be brought to the attention of the Supervisor;
21. the Fund complies with the eligibility criteria and requirements of a Portfolio Investment Entity as set out in the Income Tax Act 2007;

### **Anti-Money Laundering and Countering Financing of Terrorism Act 2009**

22. the Manager has, where required, conducted customer due diligence, account monitoring, record keeping and suspicious transaction reporting in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and met its reporting obligations;

### **Foreign Account Tax Compliance Act**

23. the Manager has, where required, registered itself and the Fund[s] with the US Internal Revenue Service, a programme in place to identify US persons, conducted due diligence and obtained self-certifications, and met its reporting obligations in accordance with the Intergovernmental Agreement entered into by New Zealand and the United States of America in respect of the Foreign Account Tax Compliance Act;

### **Accounting and Tax**

24. the Fund is able to pay their debts as they become due in the normal course of business;
25. the value of the Fund's liabilities, including contingent liabilities, is less than the value of the Fund's assets;
26. all money paid out of the bank account[s] has [have] been used to pay for Authorised Investments, fees or expenses authorised by the Trust Deed and for the credit of Investors and in no other way;
27. all fees have been calculated in accordance with the provisions of the Governing documents;
28. there has been no departure from the agreed accounting standards and valuation methods including but not limited to the following:
  - a. no departure in the accounting standards or method of valuation of Investments or Liabilities of the Fund;
  - b. no circumstances have arisen which render adherence to the existing method of valuation of any part of the Investments or Liabilities of the Fund misleading or inappropriate [and if so include particulars of those circumstances];
  - c. no significant departures from internal control procedures that should be brought to either the attention of the Auditor or the Supervisor. Proper internal control procedures have been maintained.
29. The Fund's liability for taxation, not limited to full and adequate provision for taxation liabilities to be paid or reclaimed (including deferred taxation) has been assessed and has been properly recorded, tax payments have been made by the due date and there are no outstanding tax issues;
30. The Manager has attended to all tax matters related to the Fund to ensure compliance with the Income Tax Act 2007 and there are [no matters] (or) [the following matters] to be brought to the Supervisor's attention.

### **Administration**

31. the Unit Register has been properly maintained and is up to date including but not limited to the following:
  - a. all amounts due and payable to the Investors whether by way of entitlement, redemption, repurchase or otherwise have been paid;
  - b. the Unit Register has been duly maintained in accordance with the Trust Deed;

- c. all calculations of the entitlements of the Investors and the valuation of the Units have been carried out in accordance with the provisions of the Trust Deed and the relevant Establishment Deed.
- 32. all notices, certificates, reports and other documents required by the Trust Deed have been issued;
- 33. all valuations of units have been carried out in accordance with the provisions of the Trust Deed and the relevant Establishment Deed. All instances to the contrary (if any) have been reported to the Supervisor as soon as reasonably practical in accordance with Relevant Law;
- 34. issues of interest in the Fund have been administered in accordance with the Financial Markets Conduct Act 2013.

Signed for and on behalf of the Board of Directors of [*Name of Manager*]

**FINANCIAL CONTROLLER**

**CHAIRMAN**