

First Mortgage Trust Wholesale Fund Trust Deed

PARTIES

First Mortgage Managers Limited

Manager

Trustees Executors Limited

Trustee

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DEED dated 4 September

2023

PARTIES

First Mortgage Managers Limited

("Manager")

Trustees Executors Limited

("Trustee")

INTRODUCTION

- A. The Manager wishes to establish a unit trust to be known as the "First Mortgage Trust Wholesale Fund" ("**Fund**") and to offer units in the Fund for subscription to "wholesale investors" (as that term is defined in clause 3(2) and (3) of Schedule 1 to the Financial Markets Conduct Act 2013).
- B. The Trustee has agreed, at the request of the Manager, to act as trustee in respect of the Fund on, and subject to, the terms and conditions set out in this Deed.

COVENANTS

1. INTERPRETATION

- 1.1 **Definitions:** In this Deed, unless the context otherwise requires:

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

"**Application**" means an application for Units in the 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 the Fund.

"**Authorised Investments**" means the following investments which may be included in the Fund:

- (a) cash and deposits with a registered bank (as defined in the Banking (Prudential Supervision) Act 1989);
- (b) debt securities (as defined in the FMC Act) issued or guaranteed by any of the following:
- (i) a registered bank;
 - (ii) the New Zealand government, or any political subdivision or agency of that government; or
 - (iii) a local authority within the meaning of the Local Government Act 2002;

- (c) loans secured by mortgages over land registered under the Land Transfer Act 2017 where the aggregate principal amount secured by the mortgage and any prior ranking mortgages on the land does not exceed 85% of the value of the land (including all fixtures on the land) at the time the Investment is made as assessed by a registered valuer;
- (d) units in the group investment fund established by Trustees Executors Limited and managed by the Manager known as the First Mortgage Trust Group Investment Fund or any other group investment fund or managed investment scheme (under the FMC Act) which invests in assets described in (a), (b) and (c) above; and
- (e) any other Investment agreed in writing between the Manager and the Trustee from time to time.

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

"Certificate" means a certificate or other written acknowledgement issued by the Manager recording that an Investor is entered in the Unit Register as the holder of the relevant Units detailed on that certificate.

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

"Disclosure Document" means, in relation to an Investor, a disclosure document for the Fund and includes any Application form signed by the Investor.

"Distribution" means, in relation to a Unit, the amount of income (if any) to be distributed to an Investor in respect of such Unit.

"Distribution Date" means the last day of March, June, September and December or such other dates which the Manager with the agreement of the Trustee may fix from time to time.

"Distribution Period" means a period 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 next Distribution Date.

"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 Contract and Commercial Law Act 2017 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.

"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 Year" means a period of 12 months ending on 31 March (or such other date as the Manager determines) in each year (or the Date of Termination of the Fund, if earlier) and includes the period commencing on the date on which the Fund is established and ending on the following 31 March.

"Fixed Term" means, in relation to an Investor and any Unit, the Investor's Initial Fixed Term together with each applicable Subsequent Fixed Term.

"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 the fund created by this Deed called the First Mortgage Trust Wholesale Fund.

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

but excluding:

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

"Income of the Fund" means the income of the Fund determined by taking into account all interest and other income received or receivable determined on an accruals basis, and all costs, charges and expenses due or accrued and charged, or intended to be charged, to the Fund including, without limiting the generality of the foregoing:

- (a) all costs and expenses incurred in respect of Investments;
- (b) all costs and disbursements incurred in connection with the Fund or the administration thereof and chargeable against income;
- (c) any taxes or duties paid or payable by or in respect of the Fund other than PIE Tax;
- (d) such other provisions as the Trustee deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Fund for that period; and
- (e) the fees and expenses of the Auditor in connection with the audit of the Fund.

If any question shall arise as to whether any money or property constitutes Income of the Fund or not, or whether any expense is chargeable against Income of the Fund or not, such question shall be determined by agreement between the Manager and the Auditor.

"Independent Expert" means an appropriately qualified person nominated by the Manager and agreed to by the Trustee.

"Initial Fixed Term" means, in relation to an Investor and any Unit, the initial investment term agreed between the Manager and the Investor as set out in the Disclosure Documents.

"Investment" means each asset held on trust by the Trustee (or its nominee appointed under clause 2.4) in respect of the 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 the price at which the Manager sells or issues Units in the Fund determined in accordance with clause 5.14.

"Liability" means, in respect of the 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.

"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 Trustee to be an accurate measure, the value determined by the Manager, in consultation with the Trustee, having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee 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 Trustee 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 Trustee to be an accurate measure, the value determined by the Manager, in consultation with the Trustee, having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee 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 Trustee 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 Trustee. 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 Trustee) having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee considers it necessary, the advice of an Independent Expert.

"**Month**" means calendar month.

"**Net Asset Value**" or "**Net Asset Value of the Fund**" means the net asset value of the Fund as determined from time to time in accordance with clause 6.1.

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

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

"**Number of Units on Issue**" means the total of all Units issued in the 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 11.1 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 refunds or other amounts paid or payable to the Fund which are determined by the Trustee 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 Trustee 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 the Fund, the Trustee or the Manager (whether deferred or current) which is determined in accordance with the Income Tax Act 2007 or is otherwise determined by the Trustee or the Manager to be attributable to income allocated to Investors under the PIE Rules.

"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 the 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 Trustee or a Related Body Corporate of the Trustee is manager or trustee.

"Relevant Interest" means, in respect of any Unit:

- (a) the beneficial ownership of that Unit;
- (b) the power (whether expressed or implied, direct or indirect, legally enforceable or not, actual or contingent) to exercise, control or influence the exercise of, any right to vote attached to that Unit, or to dispose, or to control the disposition of, that Unit; or
- (c) the power (whether expressed or implied, direct or indirect, legally enforceable or not, actual or contingent) to direct, control or influence the Investor relating to that Unit.

"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.

"Subsequent Fixed Term" means, in relation to an Investor and any Unit, a further term which is, unless otherwise agreed between the Investor and the Manager, the same length of time as the Investor's Initial Fixed Term, which commences on:

- (a) the expiry of the Initial Fixed Term; or
- (b) if a Subsequent Fixed Term commences at the expiry of any previous Subsequent Fixed Term, the expiry of that previous Subsequent Fixed Term.

"**Trusts Act**" means the Trusts Act 2019.

"**Unit**" means an undivided part or share in the beneficial interest in the Fund.

"**Unit Register**" means the register of Investors in the Fund maintained pursuant to clause 13.

"**Unit Registrar**" means the Manager or such other Person appointed under clause 13.1(b) who keeps the Unit Register.

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

- (a) each Business Day of each month; and
- (b) each other day as the Manager decides (being additional to or in substitution for the days referred to in (a) above),

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

"**Withdrawal Price**" means the price at which Units in the Fund are redeemed, determined in accordance with clause 8.6.

"**Withdrawal Request**" means a request that the Manager redeem Units, delivered to the Manager in accordance with clause 8.2(a).

"**Withdrawal Suspension Notice**" means a notice given in accordance with clause 8.14.

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 the 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 8.4;
- (c) clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;
- (d) 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;
- (e) the singular includes the plural and vice versa;
- (f) parties to this Deed includes their successors and permitted assigns and, in the case of the Trustee, any nominee of the Trustee appointed in accordance with clause 2.4;

- (g) the index to and headings in this Deed are used for convenience only and do not affect its interpretation in any way;
- (h) a reference to a "**month**" is to a calendar month;
- (i) a reference to "**including**" does not imply limitation; and
- (j) references to any deed, agreement, document or other instrument shall be read as referring to such deed, agreement, document or other instrument as from time to time modified, supplemented or novated.

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.

1.4 **Trusts Act 2019:**

- (a) The following provisions of the Trusts Act that may be excluded from applying to the terms of the Fund are so excluded:
 - (i) section 31 (Duty not to exercise power for own benefit);
 - (ii) section 34 (Duty to avoid conflict of interest);
 - (iii) section 35 (Duty of impartiality);
 - (iv) section 36 (Duty not to profit);
 - (v) section 37 (Duty to act for no reward);
 - (vi) section 38 (Duty to act unanimously); and
 - (vii) sections 142 – 146 (Alternative dispute resolution).
- (b) Section 58 (Trustee has power to invest) of the Trusts Act, which may be modified in its application to the terms of the Fund, is so modified to the extent set out in the investment procedure set out in clauses 3.1 and 14.1 of this Deed.
- (c) Each other provision of the Trusts Act that may be modified (to the extent it is not otherwise excluded above) is so modified to the extent any term of this Deed is inconsistent with that provision of the Trusts Act.

1.5 **Manager's discretion in relation to PIE Rules:** Whenever there is a reference in this Deed to the Manager exercising any discretion in decision-making in relation to applying the

requirements of the PIE Rules to the Fund and its Investors, this discretion shall be interpreted to include the requirement that the Manager exercise such discretion:

- (a) with a view to ensuring that the Fund is in compliance to the fullest extent possible with the requirements of the PIE Rules as they apply at the time of exercising the discretion; and
- (b) having regard to the best interests of Investors generally, to the extent to which the context allows.

2. CREATION OF THE FUND

2.1 **Establishment:** Upon execution of this Deed, the Fund, known as the First Mortgage Trust Wholesale Fund, will be deemed to have been established.

2.2 **Appointment of Trustee:** The Trustee is appointed as the trustee of the Fund and agrees to act as trustee for the Investors to hold the Fund in trust for the relevant Investors upon the terms and conditions contained in this Deed and applicable law.

2.3 **Appointment of Manager:** The Manager is appointed as the manager of the Fund and agrees to act as manager upon the terms and conditions contained in and to perform its obligations in this Deed and applicable law.

2.4 **Nominated Person:** The Trustee may from time to time appoint in writing a Nominated Person in which may be vested all or any of the Investments of the Fund, but without prejudice to the liability of the Trustee in terms of this Deed. If the Trustee contracts out the holding of the Investments of the Fund to a Nominated Person under this clause then the Trustee:

- (a) must ensure that the contracting out of that function is pursuant to a written agreement between the Trustee and the Nominated Person and that written agreement requires the Nominated Person to comply with all the relevant covenants and obligations on the part of the Trustee expressed or implied in this Deed;
- (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 Trustee; 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 FUND

3.1 **Authorised Investments:** The Investments of the Fund must at all times be Authorised Investments.

3.2 **Constitution of the Fund:** The Investments shall consist of all of the cash, property, assets and rights for the time being held by the Trustee in respect of the 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 Trustee; and
- (c) all income from the Fund held pending distribution or reinvestment.

4. NATURE OF UNITS

4.1 **Beneficial interests in the Fund:** The beneficial interest in the 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 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 compel any partition, division or distribution of the Fund or interfere with or question the exercise or non-exercise by the Manager or the Trustee of the Fund, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of the Fund.

4.3 **Consolidation or division of Units:** The Manager may, by written notice to the Trustee, determine that all holdings of Units in the 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.

5. ISSUE OF UNITS

5.1 **Offer of Units:**

- (a) The Manager may from time to time offer or invite applications for Units in the Fund in accordance with all applicable laws on the terms and conditions contained in this Deed and such other terms and conditions (not being inconsistent with this Deed) as are determined by the Manager from time to time.
- (b) The Manager will be responsible for the preparation of the Disclosure Documents in respect of offers for Units in the Fund.

5.2 **Application procedure:** Every Person wishing to apply for or acquire Units in the 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 Trustee to the purchase of Units in the 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) transfer the Issue Price to the Trustee or a Nominated Person, to be held in respect of the Fund,

in accordance with this Deed and the Disclosure Documents.

5.3 **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 5.8(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.

5.4 **Manager's discretions:** The Manager may in its absolute discretion:

- (a) accept or refuse to accept in whole or in part any Application (including one made by virtue of a Standing 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 the Fund losing its status as a PIE if remedial action was not taken.

5.5 **Refund of Application moneys:**

- (a) If the Manager makes a decision to reject an Application, the Manager must as soon as practicable refund or arrange for the Trustee to refund the relevant Application moneys (without interest).
- (b) Where Units are redeemed under clause 5.4(b), the Manager must request the Trustee to pay the Withdrawal Price for such Units to the relevant Investor.
- (c) Where Units are voided under clause 5.4(b) the Trustee 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.

5.6 **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 Disclosure Documents. This fee will be paid into the Fund.

- 5.7 **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 on the Valuation Day on which the Units are issued equal to the Investor's application moneys received less any applicable entry fee, with fractions rounded down to the nearest whole number of Units.
- 5.8 **Payment to Trustee; registration and issue of Units:** The Manager must:
- (a) pay all Application moneys to the "Bank Account" which is controlled by the Trustee or a Nominated Person forthwith on receipt of such moneys;
 - (b) on issue of a Unit, enter the name of the Investor on the Unit Register or, where the Investor is already on the Unit Register, cause that Unit Register to be altered accordingly; and
 - (c) comply with applicable laws relating to the notification, or certification to Investors, of their respective holdings of Units.
- 5.9 **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 Disclosure Documents. The Manager may vary such minimum amount from time to time in its discretion.
- 5.10 **Initial Issue Price:** For the purposes of calculating the number of Units to be issued in respect of the first issue of Units in the Fund, the Issue Price per Unit of the Fund shall be deemed to be \$1.00.
- 5.11 **Restrictions on sale or issue of Units:**
- (a) The Manager may at any time or times by notice in writing to the Trustee determine that no further Units shall be issued pursuant to this Deed in respect of the Fund after a date specified in the notice to the Trustee 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 in respect of the 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 Trustee of a notice of termination given by the Manager pursuant to clause 34.1(c) except with the prior consent in writing of the Trustee.
- 5.12 **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 Fund;
 - (b) a request for the purchase from the Manager of Units in the Fund owned by the Manager; or
 - (c) a request for the purchase from an existing Investor of Units in the 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.

- 5.13 **Issue date:** Units in the Fund 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 noon (or such other time as the Manager may determine by notice in writing to the Trustee) (the "**Prescribed Time**") on a Valuation Day, Units will be issued on that Valuation Day. If an Application is received after the Prescribed Time on a Valuation Day, or if an Application is received by the Manager at a time when the applicant is not already an Investor, the Application will be processed on the next Valuation Day.
- 5.14 **Determination of Issue Price of Units:** The Issue Price of each Unit sold or issued by the Manager calculated on each Valuation Day shall equal the Net Asset Value per Unit on the immediately preceding Valuation Day. The Issue Price shall be rounded down to the nearest two decimal places.
- 5.15 **Issue of Units for PIE Rebates:** To the extent that a PIE Rebate is paid to the Fund or the Trustee 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).
- 5.16 **Commission etc:** The Manager is free, at its own cost and not that of the Fund, 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

- 6.1 **Net Asset Valuation:** On each Valuation Day, the Manager shall calculate the Net Asset Value of the Fund as at that 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 Fund determined on an accruals basis on the relevant Valuation Day;
 - (b) Income of the Fund which has not been distributed to Investors (including income allocated, but not distributed to Investors); and
 - (c) such other provisions as the Manager or the Trustee 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 the Fund in accordance with the provisions of this Deed.
 - (b) The Manager may with the approval of the Trustee alter the basis of determination of the Market Value of an Investment and/or the Net Asset Value of the Fund.

7. TRANSFER, TRANSMISSION AND REGISTRATION OF UNITS

7.1 **Units may be transferred:** Subject to the approval of the Manager under clause 7.6 and to the other provisions of this Deed, a Unit in the 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 Disclosure Document; and
- (c) be accompanied by the transfer fee (if any) payable under clause 7.4; and
- (d) comply with any applicable law and other requirements as the Manager may from time to time specify.

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 **Approval of Manager:** A Unit in the Fund may only be transferred with the prior written approval of the Manager, such approval to be on such terms and conditions as the Manager thinks fit. The Manager may decline to give its approval at its absolute discretion.

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) The Unit Register shall be closed for transfers during public holidays and on Saturdays and Sundays.

- (b) The 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), the Unit Register may be closed for transfers for longer periods with the consent of the Trustee.
- (d) The Manager may decline to register any transfer during any period when the 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 to register transfers and transmissions of Units:** The Unit Registrar shall refuse to register any transfer or transmission of Units:

- (a) unless the Investor (or, in the case of a transmission, the person described in clauses 7.9(a) and 7.10(a)) has paid all taxes (including goods and services tax) and other commissions, fees and charges in respect of the transfer of the relevant Units;

- (b) if the transfer or transmission does not comply with any law or the provisions of this Deed (including, in the case of a transfer, if the transfer would result in the transferee or transferor holding less than the minimum holding for the Fund); or
- (c) if the transfer or transmission would result in the Fund ceasing to comply with the PIE Rules, the Fund becomes ineligible to be a PIE, or would operate to threaten such eligibility.

8. REDEMPTION OF UNITS

8.1 Investment term:

- (a) An Investor must hold the Investor's Units for the Initial Fixed Term.
- (b) The Investor's Units will become subject to a Subsequent Fixed Term at the end of the Initial Fixed Term or the relevant Subsequent Fixed Term (as applicable), unless the Investor gives the Manager a Withdrawal Request at least 10 Business Days before the end of the Initial Fixed Term or the relevant Subsequent Fixed Term (as applicable).

8.2 Withdrawal Request:

- (a) Any Investor wishing to redeem the Investor's Units, must deliver an irrevocable Withdrawal Request to the Manager in such form and manner, and at such time, as the Manager may for the time being require.
- (b) An Investor cannot redeem the Investor's Units before the expiry of the Fixed Term, unless the Manager agrees otherwise (in which case, the redemption shall be on such terms and conditions as the Manager specifies, which may include charging the Investor an exit fee on the redemption of Units of such amount as the Manager specifies). The Manager may decline to redeem any of the Investor's Units if the Withdrawal Request is made before expiry of the Fixed Term.
- (c) The Manager may from time to time, in respect of the 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 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.
- (d) The Manager may, at any time, if the amount or value of Units held by an Investor falls below the minimum holding, make a Withdrawal Request in respect of that holding on behalf of the Investor, after giving that Investor at least one month's written notice of its intention to do so.

8.3 Authority for sale or redemption: In the event of the Manager exercising a discretion under clause 8.2(d) to make a Withdrawal Request on behalf of that Investor:

- (a) that Investor shall be deemed to have authorised the Manager to act on the Investor's behalf in respect of that sale or redemption and to execute all necessary documents for the purpose of that sale or redemption; and

- (b) the Manager shall account to that Investor for the net proceeds of sale or redemption of the Units (after deduction of reasonable expenses), which shall be held on trust for the Investor by the Manager and paid to the Investor on the surrender of any Certificates for the Units sold; and
- (c) the title of a purchaser of any Units sold pursuant to this clause 8 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

8.4 Undertaking to redeem:

- (a) 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:
 - (i) repurchase each Unit to which such Withdrawal Request relates;
 - (ii) request the Trustee to redeem each Unit to which such Withdrawal Request relates; or
 - (iii) refuse such Withdrawal Request, including if the Withdrawal Request would result in the Fund ceasing to comply with the PIE Rules, the Fund becomes ineligible to continue to be a PIE or would operate to threaten such eligibility,

and, in the case of clauses 8.4(a)(i) and (ii), in each case for an amount equal to the Withdrawal Price as at the Valuation Day on which such Unit is redeemed, as determined by the Manager.

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

8.5 **Exit date:** Subject to clauses 8.2(b), 8.14, 8.15 and 8.16, when a Withdrawal Request is received at the registered office of the Manager, the Manager must redeem the Units within 90 Business Days after the date on which the Withdrawal Request is received by the Manager or, if a Withdrawal Request is provided pursuant to clause 8.1(b), within 90 Business Days after the end of the Initial Fixed Term or the relevant Subsequent Fixed Term (as applicable), or otherwise within such other period set out in the Disclosure Documents. The Manager may in its sole discretion redeem Units with effect from an earlier Valuation Day. If a Withdrawal Request:

- (a) except where clause 8.5(c) applies, is received by noon (or such other time as may be prescribed by the Manager from time to time by notice in writing to the Trustee) (the "**Prescribed Time**") on a Valuation Day, it will be effective on that Valuation Day;
- (b) except where clause 8.5(c) applies, is received after the Prescribed Time on a Valuation Day, it will be effective on the next Valuation Day; or
- (c) is provided pursuant to clause 8.1(b), it will be effective on the day that is the end of the Initial Fixed Term or the relevant Subsequent Fixed Term (as applicable) if that day is a Valuation Day or, if that day is not a Valuation Day, it will be effective on the next Valuation Day.

- 8.6 **Withdrawal Price:** The Withdrawal Price of each Unit redeemed from the 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.
- 8.7 **Exit fees:** The Manager may charge the Investors an exit fee on the redemption of Units of the amount set out in the Disclosure Documents.
- 8.8 **Redemption on account of PIE Tax or PIE status or other reasons:** The Manager may 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;
 - (b) if the number of Units held by that Investor and its associated persons (as defined in the Income Tax Act 2007) would cause the Fund to lose its status as a PIE or would threaten its continuing status as a PIE; or
 - (c) at any time, be written notice to an Investor, where the Manager considers it necessary or desirable to do so.
- 8.9 **Payment of the Withdrawal Price:**
- (a) Subject to clause 8.9(e) below, the Withdrawal Price (less any applicable exit fee) must be paid within seven Business Days of the Valuation Day on which a Unit is redeemed or such later date specified in the Disclosure Documents.
 - (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 Trustee to apply any cash held by the Fund, dispose of Investments or borrow, to release the aggregate Withdrawal Price from the 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 Trustee from the Fund in accordance with clause 8.12(b).
 - (d) Where Units are redeemed pursuant to clause 8.8(a), the Withdrawal 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 Trustee on income allocated to that Investor. Any provision of this Deed dealing with payments to Investors will take effect subject to this sub-clause (e) and must be read accordingly.
- 8.10 **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 8.12.

8.11 Cancellation of redeemed Units:

- (a) 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.
- (b) Details of all cancelled Units are to be entered in the Unit Register.

8.12 Redemption of Manager's Units:

- (a) The Manager is entitled to request the Trustee to redeem Units held by the Manager.
- (b) If the Trustee is satisfied that such a request by the Manager relates solely to the redemption of Units held by the Manager then the Trustee must release from the Fund and pay to the Manager the aggregate Withdrawal Price of the Units to be redeemed within seven Business Days of the relevant Valuation Day.

8.13 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 8.12 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 Trustee, the Fund or any Investor for any excess over the Manager's Acquisition Price nor is the Trustee, the Fund or any Investor obliged to recompense the Manager, for any deficiency below the Manager's Acquisition Price.

8.14 Deferral of redemption: If by reason of:

- (a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- (b) financial, political or economic conditions applying in respect of any financial market; or
- (c) the nature of any Investment;
- (d) the occurrence or existence of any other circumstance or event relating to the Fund or generally; or
- (e) withdrawals being suspended in respect of any group investment fund or managed investment scheme in which the Fund invests,

the Units specified in a Redemption Request cannot be redeemed or, in the Manager's opinion, it is not desirable to redeem those Units, then the Manager may give notice ("**Withdrawal Suspension Notice**") to that effect to the Trustee and any Investor who gives or has given a Withdrawal Request. A Withdrawal Suspension Notice in respect of the Fund shall have the effect of suspending the operation of all Withdrawal Requests given in respect of the 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.

8.15 **Cancellation of Withdrawal Suspension Notice:** The Manager shall give notice of cancellation of a Withdrawal Suspension Notice not later than 90 days after the date upon which that Withdrawal Suspension Notice is given, or may by further notice to the Investors extend the operation of a Withdrawal Suspension Notice beyond that period of 90 days. Unless extended in accordance with the provisions hereof, a Withdrawal Suspension Notice shall be deemed to be automatically cancelled upon the expiration of that initial 90 day period. All Withdrawal Requests suspended under a Withdrawal Suspension Notice shall be deemed to have been received on the next Business Day following cancellation of the Withdrawal Suspension Notice.

8.16 **Redemption by instalments:** Notwithstanding anything contained in this Deed, if:

- (a) a Withdrawal Request shall be received or a series of Withdrawal Requests received in respect of the same holding of Units within a period of 3 months that relate to more in total than 5% of the Number of Units on Issue in the Fund at the time of the Withdrawal Request or last Withdrawal Request; and
- (b) the Trustee and the Manager shall both agree it is in the general interest of all Investors to defer immediately redemption of the total units requested,

then such Units may be redeemed by instalments over a period approved by the Trustee or in total at the expiration of a period approved by the Trustee and in any such case the Withdrawal Price shall be calculated at the Valuation Day or Days on which such Units are redeemed.

9. JOINT HOLDERS OF UNITS

9.1 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 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 two 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 Trustee or 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.
- (e) Only the Person whose name stands first in the Unit Register as one of the joint Investors of any Unit may:
 - (i) require delivery of any Certificate or any statement relating to the Unit;
 - (ii) be entitled to receive notices, payments or other communications from the Manager or the Trustee,

and any notice, payment or other communication given to such Person is deemed to have been given to all the joint Investors.

- (f) 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.
- (g) 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 2007 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 Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Investors or such other rate as is permitted by law.

10. REGISTERED HOLDER ABSOLUTE OWNER

Except as otherwise provided in this Deed, the Manager and the Trustee 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. CERTIFICATES

- 11.1 **Certificate:** Subject to this Deed and any other terms and conditions of the relevant Units, the Manager may (and shall, if required by law) send to each Investor a Certificate in respect of the Units held by that Investor.
- 11.2 **Form of Certificate:** Each Certificate shall be in such form (including electronic form) as the Manager may determine and may be executed on behalf of the Manager by the manual or electronic signature of the person(s) (which may include the Unit Registrar) appointed by the board of directors of the Manager for the purpose.
- 11.3 **Certificate not document of title:** Certificates shall not constitute documents of title. Entitlement to any Units shall, except as required by law, be determined solely by entry in the relevant Unit Register.
- 11.4 **New or replacement Certificates:** Subject to this Deed and any other terms and conditions of the relevant Units, the Manager may at any time issue (on such terms and conditions as the Manager may reasonably require) to an Investor:
 - (a) a new Certificate in substitution for one issued in an incorrect form, or for an incorrect number of Units, or otherwise containing incorrect conditions;
 - (b) several Certificates in substitution for one Certificate, or vice versa;
 - (c) a Certificate in replacement of a lost, stolen, defaced, destroyed, damaged or worn-out Certificate (upon the request of the Investor concerned and subject to the Manager receiving such indemnity as it may reasonably require as to loss, theft or destruction).

12. INFORMATION AS TO BENEFICIAL OWNERSHIP OF UNITS

Without limiting any other provision of this Deed (including clauses 13.3 and 13.7 of this Deed):

- (a) the Manager may, by written notice to an Investor or to a person whom the Manager considers may be an associated person of an Investor or otherwise have a Relevant Interest in a Unit, require the recipient, within 30 days after receiving the notice, to give to the Manager in writing:
 - (i) full particulars of that recipient's Relevant Interest in specified Units and of the circumstances by reason of which that recipient has that interest; and
 - (ii) so far as it lies within the recipient's knowledge:
 - (aa) full particulars of the name and address of each other person (if any) who has a Relevant Interest in the Unit, or who is an associated person of the relevant Investor; and
 - (bb) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
- (b) if an Investor or a person described in clause 12(a) fails to comply with any request made by the Manager under clause 12(a), the Manager may:
 - (i) require, by written notice to the relevant Investor, the disposal in accordance with this Deed of the relevant Units within such time as is specified in the notice; and
 - (ii) if the Investor does not comply with the requirements of a notice given by the Manager under this sub-clause (b) by the time specified in the notice, may either itself purchase the relevant Units or cause the relevant Units to be sold in such manner as the Manager may determine, and, in this regard:
 - (aa) the Manager shall be entitled to act as the relevant Investor's agent in respect of such sale, and to receive and give a good discharge in respect of any purchase moneys, and shall pay such purchase moneys (less any expenses of the sale) to the relevant Investor); and
 - (bb) any such Investor shall have no right, remedy or claim on the Manager or Trustee in respect of the disposal of the relevant Units.

13. UNIT REGISTER

13.1 The Register:

- (a) A Unit Register must be kept by the Manager in a form and manner approved by the Trustee.
- (b) The Manager may appoint a person to keep the Unit Register on its behalf.

- (c) Such Unit Register 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 Trustee and such approved printout or system is deemed to be the Unit Register.

13.2 **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 may consider necessary or desirable to include.

13.3 **Register conclusive:** Each of the Trustee and the Manager:

- (a) is entitled to rely upon entries in the Unit Register as constituting the sole and conclusive record of each Unit and the person entitled to that Unit (and any Distributions relating to that Unit), notwithstanding any discrepancy between the Unit Register and a Certificate;
- (b) is not obliged to make any further enquiry as to the status in relation to this Deed, or ownership, of any Units, or of any claim, entitlement or interest, not so entered in the Unit Register;
- (c) has the power, in its absolute discretion, to authorise the correction of the Unit Register upon being satisfied that that Unit Register is incorrect; and
- (d) is not liable to each other or any Investor or former Investor or any other person for relying on the Unit Register or for accepting in good faith as valid any detail recorded on the Unit Register subsequently found to be irregular or not authentic.

13.4 **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 and the Manager shall provide a copy of any such audit to the Trustee.

13.5 **Inspection:** The Unit Register must be open for inspection by any Investor, free of charge, during the business hours of the Unit Registrar.

13.6 **Copies of Registers:** The Manager will deliver to the Trustee as requested by the Trustee a copy of the Unit Register in such form as the Trustee may require.

13.7 **No recognition of trusts:** Except as required by law, neither the Manager nor the Trustee shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the 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.

14. MANAGER'S AND TRUSTEE'S POWERS TO INVEST

14.1 **Authorised Investments:** The Fund shall be invested only in the Authorised Investments.

14.2 **Investment guidelines and procedures:** The Manager and the Trustee may from time to time agree upon guidelines and procedures for the Manager to follow in connection with implementing the investment of the Fund in accordance with the provisions relating to investment contained in this Deed, and the Manager will comply with any such agreed guidelines.

14.3 **Trustee's discretion as to Investments:**

- (a) The Trustee shall not, and shall direct any Nominated Person to not, act on any direction of the Manager to invest, acquire or dispose of any Investment if in the opinion of the Trustee, given in writing to the Manager, the proposed investment, acquisition or disposition or transfer of assets into the Fund:
 - (i) is manifestly not in the interests of the Investors;
 - (ii) is contrary to the provisions of this Deed or any investment guidelines for the Fund;
 - (iii) would result in a breach by the Trustee of any obligations or duties imposed on the Trustee by the Trusts Act; or
 - (iv) would result in the Fund failing to satisfy the requirements of the Income Tax Act 2007 to constitute or remain a PIE.
- (b) The Trustee 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.
- (c) If the Trustee refuses to act on a direction of the Manager or directs any Nominated Person to refuse to act on a direction of the Manager, the Trustee must notify the Manager and (if required by law) the FMA in writing of the Trustee's reasons for refusing to do so.

14.4 **Investment directions by the Manager:** Subject to clauses 3.1, 14.1 and 14.2, the Manager will manage the Fund and as necessary may direct the Trustee 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 Trustee will from time to time, to the extent of the Fund in its hands or control, act as directed in writing by the Manager.

- 14.5 **Advisers:** In relation to the purchase, sale and other dealings with any Authorised Investments by the Trustee, 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.
- 14.6 **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 14.6(a) does not apply to a transaction or series of transactions if the Manager notifies the Trustee 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 Trustee's consent for the transaction or transactions; or
 - (ii) one of the following applies to the transaction or transactions or Related Party benefits to be given and the Manager certifies to that effect:
 - (aa) the transaction 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
 - (bb) the transaction is an acquisition or a disposal of a managed investment product in a scheme registered on the register of managed investment schemes.
 - (c) The Trustee must not consent to a transaction or transactions under clause 14.6(b)(i) unless one of the following applies and the Trustee certifies to that effect:
 - (i) the Trustee 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 Fund that are affected or potentially affected by the transaction or transactions.
 - (d) Neither the Manager nor any such Related Party is liable to account to the Fund or any Investor for any profit arising from any transaction entered into in accordance with this clause 14.6.
- 14.7 **Investments in Trustee's Name:** The Manager shall cause Investments to be vested in the Trustee or a Nominated Person appointed in accordance with clause 2.4 and to be registered in the name of the Trustee or such Nominated Person 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 Trustee.

- 14.8 **Bank accounts:** A bank account or accounts in the name of the Trustee or a Nominated Person appointed in accordance with clause 2.4 must be opened and maintained for the Fund. All moneys belonging to the Fund and coming into the hands of the Manager or the Trustee must be paid to the credit of such bank account. The Trustee shall determine the Persons authorised to operate such bank accounts.
- 14.9 **Notice of Investments to Trustee:** The Manager must give notice to the Trustee of any transaction required to be entered into by the Trustee in relation to borrowing, the giving of securities or the purchase, acquisition, sale or disposition of, or dealing with, the Investments. The Trustee 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 Trustee deems necessary or desirable.
- 14.10 **Trustee's right to limit liability:** The Trustee may, before entering into any transaction, security or liability of the Fund require that its liability is restricted or limited to its satisfaction to the Investments for the time being of the Fund.
- 14.11 **Amendment to Authorised Investments:** Where the Manager determines that it is in the interests of the Investors in the Fund to vary any part of the definition of Authorised Investments relating to the Fund so as to exclude or include any type of Investment the Manager shall give notice to the Investors of the Fund in such form as the Trustee approves setting out details of the proposed variation and stating that if Investors of the 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 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 Trustee and the Manager shall execute a deed amending the definition of Authorised Investments 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 Trustee and the Manager shall execute a deed amending the definition of Authorised Investments to give the effect to the variation proposed.
- (c) If the definition of Authorised Investments is amended pursuant to this clause 14.11, the Manager will notify the Investors.

15. INVESTMENT RECORDS

- 15.1 **Manager to keep records:** The Manager must keep complete, accurate and separate records of all Investments constituting the Fund.
- 15.2 **Inspection by Trustee:** The records of Investments must be available for inspection by the Trustee or its agents without charge at any time on reasonable notice during business hours on any Business Day.

15.3 **Reliance on records:** The Trustee is entitled to assume that the Manager's records of Investments are complete and accurate and may rely upon them accordingly.

16. DISTRIBUTIONS

16.1 **Distributable income:** The Manager shall determine the Income of the Fund for each Distribution Period.

16.2 **Determination of Distribution Period:** The Manager shall distribute the Income of the Fund for each Distribution Period. The Manager may vary the length of each Distribution Period from time to time, provided that notice of each variation shall be given to Investors not less than one month before the date on which the variation is to take effect.

16.3 Allocation and distribution:

- (a) Subject to the terms of this Deed, the Manager will determine the amount of each Distribution (if any).
- (b) Subject to clause 16.3(e), distributions shall be made to each Investor who held Units during the relevant Distribution Period in proportion to the number of Units held and the number of days during such Distribution Period on which each such Unit was on issue, provided that if the Manager has allocated Investor income entitlements during the Distribution Period in accordance with clause 16.4, Distributions to Investors on each Distribution Date shall be determined in accordance with such allocations.
- (c) Distributions may be made in cash or by the issue of Units.
- (d) Payment of cash Distributions must be made within 30 days after the last day of the Distribution Date 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.

16.4 **Daily determination of income:** Notwithstanding, and without prejudice to, clause 16.3(b), the Manager, on behalf of and with the approval of the Trustee, may on a periodic basis (which may be daily) agree with the Trustee to determine the Income of the Fund and, in respect of each Investor, the number of days during that period on which an Investor holds Units in order to:

- (a) determine the income entitlement of each Investor; and
- (b) allocate that income entitlement to each Investor.

However the Manager has no obligation to distribute that income entitlement except if the allocation date is a Distribution Date, in which case the provisions of clause 16.3(b) shall apply. For the sake of clarity, the income entitlements of an Investor for such allocations may be rounded down but any balance of the allocation amount for that income allocation

period arising as a consequence of any calculation of the income entitlement attributable to a Unit or the rounding down of the income entitlements of an Investor shall be retained and carried forward to the next periodic allocation day (which for clarity, may be the next day).

16.5 **Reinvestment of Distributions:**

- (a) 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 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 not less than 30 days 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. The Manager may revoke an Investor's election to reinvest their Distributions at any time on giving the Investor written notice.
- (b) The Manager will treat such a request in clause 16.4(a) as though it were an application to subscribe for further Units in the 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.
- (c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of a Distribution without giving any reason.

16.6 **Disclosure of information to tax authorities:** The Manager and the Trustee 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 the Fund.

17. **SIDE-POCKETING**

17.1 **Trustee and Manager may side-pocket:** Where the Manager considers that it is in the interests of Investors generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Investment that might lead to the issue of a Withdrawal Suspension Notice under clause 8.14), the Manager may with the approval of the Trustee, with effect from a particular date ("**Side-Pocket Record Date**"), without the agreement of or consultation with Investors:

- (a) determine that particular assets and Liabilities of the Fund should be quarantined in accordance with this clause 17 (the "**Side-Pocketed Assets and Liabilities**"); and
- (b) reclassify, divide or otherwise reconstruct the Unit holdings of Investors as at the Side-Pocket Record Date so that those holdings consist of:
 - (i) Units that relate to the assets and Liabilities that have not been side-pocketed (the "**Non-Side-Pocketed Assets and Liabilities**"); and
 - (ii) Units that relate to the Side-Pocketed Assets and Liabilities.

- 17.2 **Notice to Investors:** The Manager shall give written notice to Investors in relation to which side-pocketing has occurred under clause 17.1 as soon as reasonably practicable after the Side-Pocket Record Date stating that side-pocketing has occurred in relation to the Fund and including such other information as the Manager and the Trustee may consider necessary (including details of any arrangements in respect of the items set out in clause 17.3).
- 17.3 **Side-Pocketed Assets and Liabilities:** The provisions of this Deed will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the Units relating to the Side-Pocketed Assets and Liabilities as if the Fund consisted solely of the Side-Pocketed Assets and Liabilities and the related Units provided that the Manager and the Trustee may agree special arrangements relating to the Side-Pocketed Assets and Liabilities and the related Units. Without limitation, those special arrangements may include:
- (a) arrangements for how Withdrawal Requests should be treated (including, without limitation, preventing Investors from making Withdrawal Requests or cancelling any Withdrawal Requests as necessary);
 - (b) arrangements preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;
 - (c) arrangements for the realisation/discharge of the Side-Pocketed Assets and Liabilities;
 - (d) arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets to or for the benefit of Investors holding Units relating to the Side-Pocketed Assets and Liabilities;
 - (e) arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of Units relating to the Side-Pocketed Assets and Liabilities);
 - (f) arrangements relating to the fees and expenses associated with, and any further liabilities that may be incurred in respect of, the Side-Pocketed Assets and Liabilities and the related Units;
 - (g) arrangements relating to the recovery of PIE Tax liabilities from Investors holding Units relating to the Side-Pocketed Assets and Liabilities (including where applicable the recovery of a PIE Tax liability relating to Side-Pocketed Assets and Liabilities from such Investors by way of arrangements relating to Units (if any) held by such Investors that relate to the Non-Side-Pocketed Assets and Liabilities) and the payment of tax liabilities in respect of the Fund;
 - (h) arrangements that the Manager and the Trustee consider appropriate in relation to the Fund's status as a PIE; and
 - (i) such other arrangements as the Manager and the Trustee consider to be appropriate and in the interests of Investors generally in relation to the side-pocketing arrangements contemplated by this clause 17.
- 17.4 **No new Fund:** For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause 17 operate within the Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate financial statements relating

to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities provided that the Manager must prepare accounts in such form as the Trustee considers necessary to provide adequate disclosure to Investors.

18. TRUSTEE'S POWERS AND COVENANTS

18.1 **Trustee's powers:** The Trustee shall have the power to settle and complete all transactions in respect of the Fund. Subject to the provisions in this Deed and the powers, rights and discretions given to the Manager pursuant to this Deed, the Trustee shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of the Fund and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of the Fund or otherwise to perform and comply with the obligations and duties under this Deed.

18.2 **Waivers:** The Trustee 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 Trustee, be materially prejudicial to the interests of the Investors.

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

18.4 **Trustee's functions:** The Trustee has the following functions in respect of the Fund:

- (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;
- (b) supervising:
 - (i) the performance by the Manager of its functions and its obligations;
 - (ii) the financial position of the Manager and the Fund, to ascertain that they are adequate;
- (c) holding the assets of the Fund, or ensuring that the assets of the Fund are held, in accordance with this Deed and applicable law; and

- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Trustee by this Deed or any applicable law.

18.5 Trustee's duties:

- (a) The Trustee must:
 - (i) act honestly and in good faith in acting as the Trustee of the Fund;
 - (ii) in exercising any powers or performing duties as Trustee:
 - (aa) act in the best interests of the Investors; and
 - (bb) exercise reasonable diligence in carrying out its functions as a trustee; and
 - (iii) act in accordance with any direction given by a Special Resolution of Investors that is not inconsistent with any applicable law or this deed in relation to any matter connected with the Trustee's functions under clause 18.4.
- (b) The Trustee is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Investors.

18.6 Standard of care: The Trustee must, in exercising its powers and performing its duties as Trustee, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

18.7 Trustee's delegates: The Trustee may 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 Trustee's power, but only to the extent such delegation is not prohibited by applicable law. The authorisation must be written. The Trustee remains liable for the acts or omissions of a delegate. However, the Trustee may include provisions to protect and assist those dealing with the delegate in the authorisation as the Trustee thinks fit. The delegate may be the Manager or a Related Person of the Manager or the Trustee.

18.8 Right of Trustee to engage expert:

- (a) The Trustee may in the performance of its functions engage an expert if the Trustee 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 Trustee engages an expert under clause 18.8:
 - (i) the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 18.8; 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 Fund, subject to any limits under this Deed or any applicable law.

19. MANAGER'S POWERS, DUTIES AND COVENANTS

19.1 **Manager's functions:** The Manager is responsible for performing the following functions in respect of the Fund:

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

19.2 **Manager's powers of management:** Subject to applicable law, the Manager shall have all powers, authorities, and discretions necessary to enable it to carry out the purposes of the 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 Trustee in conjunction or the Manager or the Trustee separately from establishing or acting as manager or Trustee for trusts whether of a nature similar to or different from the Fund.

19.3 **Manager's powers:** Subject to the powers reserved to the Trustee and the provisions of this Deed and all applicable legislation, the Fund is to be managed and administered by the Manager and without limiting the generality of the foregoing the Manager has full and absolute power to do the following:

- (a) manage and make 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;
- (b) make all decisions relating to borrowing, the terms of such borrowing and any securities relating thereto;
- (c) determine the terms of all contracts, rights, sales, purchases and other matters relating to Investments or Liabilities;
- (d) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;
- (e) account to the Investors for all money that the Manager receives on behalf of the Fund;
- (f) if the Fund is a PIE:
 - (i) do everything necessary to administer the Fund as a PIE;
 - (ii) take all reasonable steps to ensure that the Fund retains its PIE status, including compliance with all the matters required to be done under the Income Tax Act 2007 to ensure the Fund retains its PIE status (unless the Manager and the Trustee agree in writing that the Fund should cease to be a PIE); and

- (iii) disclose any information, including issue any statements and provide 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;
- (g) take all steps and do all things as are necessary to convert the Fund to and from being a PIE (if the Trustee and the Manager agree in writing that the Fund should be so converted);
- (h) pay out, invest, or apply any money belonging to the Fund for any purpose that is directed by, or authorised in, this Deed;
- (i) subject to compliance with the investment guidelines for the Fund and the role of the Trustee, enter into, perform and enforce agreements; and
- (j) pay all outgoings connected with the Fund or this Deed which are not otherwise payable by the Manager.

19.4 Manager's duties: The Manager must:

- (a) act honestly and in good faith 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 and any applicable law; 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

19.5 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 the 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 the 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 19.5(a)(ii):

- (i) the Manager must take reasonable steps to:
 - (aa) 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
 - (bb) 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 14.6, the delegate or agent may be a Related Party of the Manager or Trustee.

19.6 **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.

19.7 **Voting rights on Investments:**

- (a) Except as otherwise expressly provided in this Deed and subject to the provisions of the Trusts Act, 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 Trustee must from time to time execute and deliver or cause to be executed and delivered to the Manager or its nominees in a form or forms approved by the Trustee such proxies or powers of attorney as the Manager may request.
- (b) Neither the Manager nor the Trustee 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.
- (c) Neither the Trustee 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 Trustee or Manager or by the holder of such proxy or power of attorney under this Deed and neither the Trustee 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 Trustee's or the Manager's (as the case may be) own negligent or wilful act or default.

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

- (a) the Manager will use its best endeavours to ensure that the 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 pay to the Trustee all moneys belonging to the Fund coming to the hands of the Manager;
- (d) 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 Trustee at any time during normal business hours, but on the expiration of seven 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 Trustee's approval) destroy such documents;
- (e) the Manager will ensure that at all times the liability of the Trustee in relation to any contract or agreement or any borrowing entered into by the Trustee at the direction of the Manager, is limited to the Investments;
- (f) the Manager will make all books relating to the Fund held by the Manager available to the Trustee on request;
- (g) the Manager will not pay brokerage or commission out of the Fund to the Manager or to any related Party of the Manager except on a basis expressly approved by the Trustee;
- (h) the Manager shall forward without delay to the Trustee:
 - (i) all notices, reports, circulars and other documents received by it relating to the Trustee; and
 - (ii) copies of any reports, notices or circulars issued to Investors by or on behalf of the Manager in relation to the Fund;
- (i) provide the Trustee with a draft of all Disclosure Documents in advance so as to provide the Trustee with a reasonable opportunity to comment on those draft documents;

- (j) provide to the Trustee on request such information or access to such employees and board members of, and service providers to, the Manager as the Trustee reasonably requires; and
- (k) permit the Trustee to inspect the Manager's business premises upon 24 hours' written notice.

20. REMOVAL AND RETIREMENT OF MANAGER

20.1 Removal:

- (a) The Manager will cease to hold office as Manager of the Fund if:
 - (i) the Manager is removed by written direction of the Trustee after the Trustee certifies 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
 - (ii) the Manager is removed from office by a Special Resolution of the Investors of the Fund.
- (b) If the Manager ceases to hold office pursuant to clause 20.1(a), the Manager must immediately desist from all management activities, unless the Trustee agrees to the contrary.

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

20.3 **Temporary manager:** The power of appointing a temporary manager of the Fund where a vacancy in the office of the manager arises is vested in the Trustee. The temporary manager shall have all the powers and duties conferred on the Manager by this Deed or by applicable law until a permanent manager is appointed.

20.4 **New appointment by Trustee:** Upon any vacancy occurring in the office of manager in respect of the Fund, the Trustee must take all reasonable steps to appoint a replacement manager. If no such appointment is made within 60 days after the vacancy occurs, the Trustee must summon a meeting of Investors and must take such steps as that meeting or any subsequent meeting of Investors may require to secure the appointment of a new permanent manager of the Fund. Any meeting of Investors may ratify the appointment of any temporary manager appointed by the Trustee or may appoint a new qualified manager. Any directions given to the Trustee by any such meeting of Investors must be given by way of a Special Resolution.

20.5 **New Manager to execute a deed:** Any new manager must forthwith upon such appointment execute a deed in such form as the Trustee may require whereby the new

manager undertakes to the Trustee and the relevant Investors to be bound by all the covenants on the part of the manager under this Deed from the date of such appointment.

20.6 **Retiring Manager released:** From the date of execution by the new manager of a deed in accordance with clause 20.5, the retiring Manager is absolved and released from all such covenants under this Deed in relation to the 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 Fund.

20.7 **Name of the Fund:** If First Mortgage Managers Limited ceases for any reason to be manager of the Fund, unless First Mortgage Managers Limited agrees otherwise:

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

21. REMOVAL AND RETIREMENT OF TRUSTEE

21.1 **Removal:** The Trustee will cease to hold office as Trustee of the Fund if:

- (a) the Manager, by deed, removes the Trustee, provided that the Manager must give the Trustee at least 90 days' notice in writing (or such lesser period of notice as the Trustee may agree) before removal under this clause 21.1(a) (although the Manager is not required to give any reason for that removal);
- (b) the Trustee is removed from office by a Special Resolution of the Investors of the Fund; or
- (c) the Trustee is removed in accordance with applicable law by any person entitled to do so by such applicable law.

21.2 **Retirement:** The Trustee may retire at any time without assigning any reason upon giving 90 days' notice in writing (or such lesser period of notice as the Manager may agree) to the Manager of its intention so to do.

21.3 **Deemed retirement:** The Trustee shall be deemed to retire pursuant to clause 21.2 without needing to give notice if an order is made or an effective resolution is passed for the winding up of the Trustee or it is placed in liquidation, receivership or statutory management.

21.4 **Restrictions on removal or retirement:** No such removal or retirement under clauses 21.1, 21.2 or 21.3 will take effect until a new Trustee has been appointed pursuant to clause 21.5 and has executed the deed referred to in clause 21.6 and all of the Investments of the Fund have been transferred to the new Trustee.

- 21.5 **New appointment:** The power of appointing a new Trustee of the Fund (in place of a Trustee which has retired or been removed from office) is vested in the Manager. If the Manager fails or refuses to appoint a new Trustee, such new Trustee may be appointed by a Special Resolution of the Investors.
- 21.6 **New Trustee to execute a deed:** Any new Trustee must forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Trustee undertakes to the Manager and the Investors to be bound by all the covenants on the part of the former Trustee under this Deed from the date of such appointment.
- 21.7 **Retiring Trustee released:** From the date of execution by the new Trustee of a deed in accordance with clause 21.6, the retiring Trustee is absolved and released from all such covenants under this Deed (except in respect of any prior breach) and the new Trustee must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Trustee under this Deed in all respects as if such Trustee had been originally named as a party to this Deed.

22. REMUNERATION OF TRUSTEE

22.1 Fees applicable to Fund:

- (a) Except where the Manager agrees with the Trustee to pay the Trustee's fees out of its own funds, the Trustee shall be entitled to receive and retain for its own use and benefit out of the Fund, by way of remuneration for its services as Trustee, a fee at the times and in the manner agreed from time to time between the Trustee and the Manager and disclosed in the Disclosure Documents.
- (b) The Trustee may after agreement with the Manager and by giving at least 3 months' notice to that effect to all Investors in the Fund increase the fees payable in respect of the Fund and the Trustee may decrease its fees at any time. No notice is required where the Manager pays the Trustee fee out of its own funds.
- (c) If the Trustee wishes to increase its fees and the Manager and the Trustee are unable to agree on the amount of the Trustee'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 Trustee under clause 22.1, the Trustee is entitled to charge, in respect of the Fund, such special fees for services of an unusual or onerous nature outside the Trustee's regular services (including by way of example, convening meetings of Investors, breaches of trust and exercising discretions), as agreed between the Manager and the Trustee.

22.3 **Goods and services tax etc:** The Trustee 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

- 23.1 **Management fee:** The Manager may charge for its services as manager of the Fund such management fees as are agreed from time to time between the Investor and the Manager and disclosed in the Disclosure Documents.
- 23.2 **Other fees:** The Manager may charge the Investors or the Fund such other fees as are set out in the Disclosure Documents 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.
- 23.3 **Alteration or waiver of fees:** The Manager may, either generally or in respect of any particular Investor or Investors, waive part or all of any management fee or decrease any management fee at any time and may, by giving at least 3 months' notice to that effect to all affected Investors in the Fund:
- (a) increase the fees payable in respect of the Fund or by the relevant Investors; or
 - (b) commence charging any such fee which is not currently being charged.
- 23.4 **Goods and services tax etc:** The Manager is entitled to receive, in addition to the fees referred to in clauses 23.1 to 23.2 (as altered from time to time in accordance with clause 23.3) 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

- 24.1 **Expenses of the Fund:** The Manager and the Trustee are entitled to be reimbursed out of the 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 of any Disclosure Document, the acquisition, registration, custody, disposal of or other dealing with Investments of the Fund, including bank charges, and the expenses of any agents or nominated company of the Trustee 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 Trustee;
 - (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 Trustee or Manager (whether by any taxing authority or any other Person) in connection with the Fund or the relevant Investments on any account whatsoever except for any PIE Tax, if the Fund is a PIE, if the Manager, in its discretion, has determined that such PIE Tax has been borne by or is recoverable from one or more Investors;

- (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 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 Trustee in the discharge of their respective duties under this Deed;
- (i) all costs of preparing, printing and distributing certificates, accounts, distribution statements, any Disclosure Document and any Investor communications;
- (j) expenses in connection with the keeping of the Unit Register;
- (k) all administrative costs and compliance costs in connection with the Fund, including any costs related to compliance with "know your customer" procedures and requirements; and
- (l) any other expenses properly and reasonably incurred by the Trustee or the Manager in connection with carrying out their respective duties under this Deed.

25. TRUSTEE'S AND MANAGER'S RESPONSIBILITIES AND INDEMNITIES

- 25.1 **No personal liability:** The Trustee 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 the Fund, are, and are deemed to be, each acting for and on behalf of the Fund and not in their own respective capacities. Neither the Trustee 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 Fund, but the Fund only is liable or subject to levy or execution.
- 25.2 **Indemnity:** If contrary to the provisions of clause 25.1 either the Trustee 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 the Fund or any action taken or omitted in connection with the Fund, (other than in respect of the Trustee or Manager's gross negligence, fraud or material breach of this Deed) then the Trustee or the Manager (as the case may be) is entitled to indemnity and reimbursement out of the 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 Trustee, a failure by the Trustee to show the degree of care, skill and diligence required of the Trustee having regard to the duties, powers, authorities and discretions conferred on the Trustee 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 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 Trustee and (except as otherwise expressly provided in this Deed) the Manager are each entitled to be reimbursed out of the Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Trustee or Manager (as the case may be) under this Deed, 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 Trustee or the Manager (as the case may be) in bringing or defending any action or suit in respect of the 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 the Fund as it would have if it exercised those functions, powers and duties as a Trustee of the Fund and shall be entitled to the same relief from liability as it would be if it were a Trustee.
- 25.6 **Reliance on Manager by Trustee:** Subject to the provisions of this Deed and the Trusts Act, the Trustee 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 the 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 Trustee to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Trustee in any step taken by it) except to the extent that the loss is attributable to the Trustee's own negligent or wilful act or default.
- 25.7 **Reliance upon advice:** The Trustee 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 Trustee and the Manager or instructed by the Trustee 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 Trustee or the Manager and believed by the Trustee or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Trustee 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 Trustee, the Trustee 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 Trustee and the approval of or supervision by the Trustee wherever required.

- 25.10 **Trustee's discretion and authority:** Except insofar as is otherwise expressly provided in this Deed, the Trustee as regards all the Fund, 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 Related Party 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 Trustee:** Subject to the provisions of this Deed and to the Trusts Act, nothing in this Deed is deemed to prohibit the Trustee or any Related Party of the Trustee or any officer of either (in this clause included in the expression the "**Trustee**") 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, Trustee, 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 Trustee and the Manager on the one hand or the Trustee and the Investors on the other by this Deed established or otherwise imposed or implied by law.
- 25.13 **Trustee'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 Trustee has failed to show the degree of care and diligence required of a Trustee having regard to the powers, authorities and discretions conferred on the Trustee by this Deed and by the Trusts Act, in no event is the Trustee bound to make any payment to Investors except out of the Fund or be liable to the Investors to any greater extent than the Investments, vested in or received by the Trustee in accordance with this Deed.
- 25.14 **No respective liabilities of Trustee and Manager:** Subject to this Deed and the Trusts Act, the Manager is not liable for any act or omission of the Trustee and the Trustee is not liable for any act or omission of the Manager.
- 25.15 **Reliance upon apparently genuine documents:** Neither the Manager nor the Trustee is liable for any action taken or thing suffered by the Manager or Trustee in reliance upon any document or writing of any type reasonably believed by the Manager or the Trustee to be genuine.

26. INVESTORS BOUND BY THIS DEED

- 26.1 The terms and conditions of this Deed are for the benefit of and binding on the Trustee, 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.

27. LIABILITY OF INVESTORS

27.1 Except as expressly provided by this Deed:

- (a) no Investor is, by reason alone of being an Investor or by reason alone of the relationship hereby created with the Trustee or with the Manager, under any personal obligation to indemnify the Trustee 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 Fund as compared with the Liabilities to be met therefrom;
- (b) the rights (if any) of the Trustee or Manager or of any creditor to seek indemnity are limited to having recourse to the Fund and do not extend to an Investor personally in such Person's capacity as an Investor; and
- (c) 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.

27.2 Every Investor indemnifies the Trustee, the Manager and the 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

28.1 **Accounting records:**

- (a) The Manager must, in respect of the 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:
 - (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 Trustee and the Auditor.

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

28.3 **Nominated Person reports:** Unless already provided by the Nominated Person, the Trustee shall provide the Manager with copies of all reports received from a Nominated

Person confirming all property held by that Nominated Person as soon as reasonably practicable following receipt.

28.4 **Financial statements:** At the end of each Financial Year, the Manager must:

- (a) prepare financial statements for the Fund and arrange for them to be audited; and
- (b) provide for the financial statements to be prepared and made available to the Trustee.

29. AUDITOR

29.1 **Appointment and remuneration:** A Person or firm of chartered accountants selected by the Manager and approved by the Trustee and as otherwise licensed under the Auditor Regulation Act 2011, must be appointed Auditor of the Fund. The terms of the audit, including the services to be performed by the Auditor and their scope if to be determined by the Manager. 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 or if the Trustee believes it to be in the interests of the Fund 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 Trustee appointing a Person or firm of chartered accountants to be Auditor licensed under the Auditor Regulation Act 2011.

29.4 **Restrictions on Auditor:** The Auditor may be the auditor of the Manager, or of the Trustee, or of any other trust whether of a similar nature to the Fund or otherwise.

30. MEETINGS OF INVESTORS AND DIRECTIONS TO TRUSTEE

30.1 **Meetings:** Meetings of the Investors shall be convened and conducted in accordance with the provisions in Schedule 1.

30.2 **Investors' directions to the Trustee:** By means of a Special Resolution passed at a meeting of Investors, the Investors have the power to give such directions to the Trustee as they think proper concerning the Fund, being directions that are consistent with this Deed.

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

31. NOTICES TO INVESTORS

31.1 **Notice of meetings:** A minimum 14 days' notice of every meeting of Investors must be given to every Investor 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), or by sending it electronically to the Investor.

31.2 Other notices:

- (a) 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 sending it electronically to the Investor, or by advertisement with the prior written approval of the Trustee.
- (b) An Investor must notify the Manager of any change of the Investor's registered address and the Unit Register shall be altered accordingly. Any notice given to Investors by the Manager must be copied to the Trustee 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 Trustee with a sample of such a notice.

31.3 Manner of notice: Any notice sent by post will be deemed to have been given:

- (a) at the expiration of 72 hours after posting or five Business Days where sent outside New Zealand (in which case the notice must be sent by airmail), 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 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 Trustee may be written, printed or inserted electronically.

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 TRUSTEE

32.1 Any certificate, notice, communication or information required by this Deed to be given by the Manager to the Trustee or by the Trustee to the Manager must be given in writing and addressed to the company 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 Trustee may agree that certain notices or communications may be given by Electronic Communication.

33. AMENDMENT TO DEED

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

- (a) if in the opinion of the Trustee the change is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Trustee the change is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Fund or for safeguarding or enhancing the interests of the Fund or Investors and is not or not likely to become materially prejudicial to the general interests of all Investors of the Fund;
- (c) the change is not, or is not likely to become, prejudicial to the general interests of Investors;
- (d) if, in the case of a change affecting all Investors, the change is authorised by a Special Resolution;
- (e) 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;
- (f) if the change is authorised pursuant to clause 14.11;
- (g) in the opinion of the Manager, the variation is necessary or desirable to ensure that the Fund is, continues to be, ceases to be, or may elect at any time to be (or cease to be), a PIE, for the Fund to comply with the PIE Rules, or to enable the Fund to take any actions and make all or any determinations, decisions or elections relevant to the tax treatment or tax status of the Fund as a PIE; or
- (h) Investors affected by the proposed variation or addition to the provisions of this Deed (which relate to Authorised Investments, the general investment guidelines 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 Fund.

33.2 **Notice of amendment:** If any amendment is made to this Deed, the Manager must notify Investors of the amendment in the next communication sent to Investors (which may be after the amendment takes effect).

34. PERIOD OF TRUSTS

34.1 The 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 falling 125 years less two days from the date of this Deed;
- (b) the date determined by the Investors by Special Resolution to terminate the Fund;
or
- (c) the date determined by the Manager to terminate the Fund as notified to the Trustee and the relevant Investors by not less than 30 days' notice.

35. PROCEDURE ON WINDING UP

35.1 **Realisation of Investments:** From and after the Date of Termination, the Trustee must realise the Investments of the Fund as soon as practicable, provided however that the Trustee 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 Trustee:** The Trustee is entitled to retain out of the Fund such amount that the Trustee considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) in connection with the Fund or arising out of the liquidation of the Fund including the Trustee's fees due under clause 22 and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Trustee may employ in connection with the winding up of the Fund. The Trustee is entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Trustee.

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 Trustee 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 Trustee or the Manager and payable from the Fund and of all remuneration payable to the Trustee and the Manager as provided in this Deed; and
- (b) secondly, in payment to the Investors pro rata to the number of Units held by them in the Fund.

35.4 **Interim distributions:** If in the opinion of the Trustee it is expedient to do so the Trustee 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 Trustee of such form of receipt and discharge as may be required by the Trustee.
- 35.6 **Investors who cannot be located:** In the event that any Investor cannot be located on winding up, the net proceeds of realisation of Investments relating to that Investor shall be paid in accordance with relevant law.

36. PAYMENTS TO INVESTORS

- 36.1 Any moneys payable by the Trustee or by the Manager to an Investor under the provisions of this Deed may be credited to any bank account nominated by the Investor.
- 36.2 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

- 37.1 If the Manager or the Trustee 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 Trustee (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.

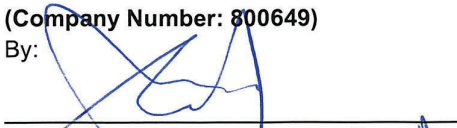
38. GENERAL


- 38.1 **Governing law:** This Deed is governed by the law of New Zealand. Each of the parties and the Investors submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 38.2 **Partial invalidity:** An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.
- 38.3 **Survival:** The indemnities given in this Deed will survive the termination of this Deed.
- 38.4 **Counterparts:** This Deed may be signed in several counterparts (including email or other similar means of communication), each signed or assented to by one or more signatories, all of which when taken together shall constitute one and the same instrument and a binding and enforceable deed between the parties.

EXECUTED AND DELIVERED AS A DEED


FIRST MORTGAGE MANAGERS LIMITED
(Company Number: 800649)


By:



Signature of Authorised Signatory


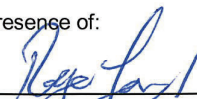
Name of Authorised Signatory




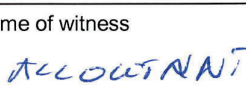
Signature of Authorised Signatory


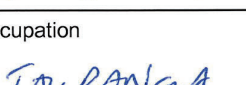
Name of Authorised Signatory

In the presence of:



Signature of witness


Name of witness


Occupation


City/town of residence

**SIGNED for and on behalf of TRUSTEES
EXECUTORS LIMITED
(Company Number: 142877)**

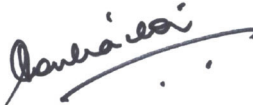
By:



Signature of Authorised Signatory

Karan Ahuja (Client Manager)

Name of Authorised Signatory



Signature of Authorised Signatory

Shahazad Contractor

Name of Authorised Signatory

In the presence of:



Signature of witness

Cindy Chan

Name of witness

Operational Risk Analyst

Occupation

Auckland

City/town of residence

SCHEDULE 1**Meeting Procedures (clause 30.1)****1 CONVENING OF MEETINGS**

- 1.1 The Manager must summon a meeting of Investors of the Fund on:
- (a) the request in writing of the Trustee; or
 - (b) the request in writing of Investors holding Units that have a combined value of no less than 10% of the value of the Units on issue in the Fund at the date of such request.
- 1.2 If the Manager fails to call a meeting in accordance with this clause the Trustee 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 Trustee.

2 NOTICE OF MEETINGS

- 2.1 Notice of every meeting shall be given to Investors in the manner provided in clause 31.1 and to the Trustee.
- 2.2 At least 14 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 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. 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.
- 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 the 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 TRUSTEE AND MANAGER MAY ATTEND AND SPEAK

- 4.1 Any director, officer or solicitor of the Trustee and any other Person authorised in that behalf by the Trustee and any director, officer or solicitor of the Manager or any other Person authorised in that behalf by the Manager is permitted to attend any meeting of Investors and all such persons have the right to speak at the meeting.

5 CHAIRPERSON

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

6 ADJOURNMENT OF MEETINGS

- 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

- 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 or by authorised representative.

8 PROXIES

- 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 Trustee 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 in such manner 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

- 9.1 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.
- 9.2 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

- 10.1 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 Trustee or any representative of the Trustee 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.
- 10.2 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.

- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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

- 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 Trustee 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 Trustee under any of the provisions of this Deed;
- (e) to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this Deed;
- (f) to appoint a new Trustee if a vacancy arises in the office of Trustee and the Manager fails to appoint a new Trustee pursuant to this Deed;
- (g) to appoint a new Manager if a vacancy arises in the office of Manager and the Trustee fails to appoint a new Manager pursuant to this Deed;
- (h) to sanction any variation to the Authorised Investments of the Fund.
- (i) to give such directions to the Trustee as they think proper concerning the Fund being directions that are consistent with this Deed; and
- (j) to direct the removal of the Manager of the Fund.

12 RESOLUTIONS BIND ALL INVESTORS

- 12.1 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 Trustee and the Manager is bound to give effect to such resolution accordingly.
- 12.2 The passing of any such resolution shall as between the Manager, the Trustee, 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

- 13.1 The Trustee will cause to be kept the minutes of all resolutions and proceedings at every meeting or if the Trustee is not present at any meeting the chairperson of such meeting will cause the minutes to be kept.
- 13.2 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.

14 RESOLUTION IN WRITING

- 14.1 Anything that may be done by Investors by Ordinary Resolution passed at a meeting of the Investors may be done by a resolution in writing signed by not less than 50% of the Investors having the right to vote on that resolution, holding in aggregate at least 50% of the Number of Units on Issue.
- 14.2 Anything that may be done by Investors by Special Resolution passed at a meeting of the Investors may be done by a resolution in writing signed by not less than 75% of the Investors having the right to vote on that resolution, holding in aggregate at least 75% of the Number of Units on Issue.
- 14.3 Any such resolution may consist of several documents in similar form, each signed by one or more Investors.
- 14.4 Any such resolution may be signed by an Investor, or an agent or attorney of the Investor duly authorised in writing, or if the Investor is a company, by a director, or by an attorney so authorised by the company.