

MULTIPLEX CAPITAL NEW ZEALAND LIMITED

PERPETUAL TRUST LIMITED

**MULTIPLEX TASMAN PROPERTY FUND
UNIT TRUST DEED**

RUSSELL McVEAGH

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MULTIPLEX TASMAN PROPERTY FUND

DEED dated 6 September 2004

PARTIES

MULTIPLEX CAPITAL NEW ZEALAND LIMITED

PERPETUAL TRUST LIMITED

INTRODUCTION

- A. The Manager wishes to establish a unit trust to be known as "Multiplex Tasman Property Fund".
- B. The Trustee has agreed to act as trustee of the Trust for the benefit of the Unit Holders on the terms and conditions set out in this deed.
- C. The Manager and the Trustee wish to record the terms and conditions under which the Trust is constituted and is to be administered.

DEED**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this deed, unless the context otherwise requires:

"Act" means the Unit Trusts Act 1960.

"Auditor" means the auditor of the Trust Fund for the time being appointed pursuant to section 21.

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

- (a) real estate of every description (including any interest or estate therein) whether improved or unimproved, and all improvements standing on land including (without limitation) buildings, fixtures and fittings;
- (b) plant, equipment and furnishings used in association with the foregoing;
(the property described in sub-clauses (a) and (b) of this clause together "real estate");
- (c) Cash;
- (d) mortgages of, or other security interests in, any real estate (or any interest therein);
- (e) any share, security (as defined in the Securities Act 1978) or like interest in any Person;

- (f) without in any way limiting paragraphs (c), (d) or (e) above, deposits with or loans to (with or without security) a Registered Bank or, if not a Registered Bank, a Person approved by the Trustee;
- (g) without in any way limiting paragraphs (c), (d) or (e) above, debentures, bills of exchange, bonds, notes, debt securities (as defined in the Securities Act 1978) or similar obligations (with or without security) issued, made, drawn or accepted by a Registered Bank or, if not a Registered Bank, a Person approved by the Trustee;
- (h) any right or option to acquire any of the above; and
- (i) any other investment, right, interest or property of any nature whatsoever nominated by the Manager.

"Base Fee" means the fee calculated in accordance with clause 17.3.

"Borrow" means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments or otherwise howsoever in any currency, but does not include any borrowing or raising of money that is treated for accounting purposes as capital, equity or other Unit Holders' funds, and does not include any debt security which will be converted into a Unit, and "Borrowing" and "Borrowed" have a corresponding meaning.

"Business Day" means any day other than a Saturday, Sunday, or statutory public holiday in New Zealand.

"Cash" includes, where payment is referred to as being made in Cash, payment by cheque or electronic transfer.

"Certificate" means a certificate evidencing that the person named in the certificate is the holder of the Units referred to on the Certificate.

"Class" means a class of Units having identical rights, privileges, limitations and conditions.

"Extraordinary Resolution" has the meaning set out in paragraph 11.1 of schedule 1.

"Financial Year" in relation to the Trust means the period of twelve months ending on 30 June in each year, provided that the first financial year of the Trust shall be deemed to be the period commencing on the date of this deed and ending on 30 June 2005, and the last financial year of the Trust shall be deemed to be the period commencing on 1 July immediately preceding the date of termination of the Trust and ending on the date of termination of the Trust.

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

- (a) the Market Value of the Investments of the Trust, excluding any Investment which is an interest in another entity in the Group;
- (j) the amount of Cash forming part of the Trust Fund;
- (k) for each entity in the Group (other than the Trust), a proportion of the Market Value of the Investments held by that entity (excluding any Investment which is an interest in another entity in the Group) equal to the proportionate (direct or indirect) ownership of that entity by the Trust; and

- (l) for each entity in the Group (other than the Trust), a proportion of the Cash held by that entity equal to the proportionate (direct or indirect) ownership of that entity by the Trust.

"Group" means the Trustee as trustee of the Trust and all Subsidiaries of the Trustee in its capacity as trustee of the Trust.

"Initial Unit" means a Unit issued on the basis described in the Initial Offer Document.

"Initial Offer Document" means the offer document dated on or about the date of this deed pursuant to which Units are initially offered for subscription to the public.

"Investment" means any investment, asset, right, or property of any nature.

"Investment Policies" means the policies in relation to investment and other matters in respect of the Trust adopted from time to time in accordance with clause 7.2.

"Manager" means the manager for the time being of the Trust, initially being Multiplex Capital New Zealand Limited.

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

"Minimum Number" means 1,000 Units, or such other number of Units as is set by the Manager from time to time.

"Minister" has the meaning given in the Act.

"Month" means calendar month.

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

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

"NZX" means New Zealand Exchange Limited, and its successors and assigns.

"Office" means the registered office from time to time of the Manager.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Unit Holders entitled to vote and voting on the question.

"Other Fees" means the fees described in clause 17.4.

"Person" includes an individual, trust, partnership, firm, association, company, government or government agency or department, municipal or local authority and any

body of persons or entity (whether incorporated or unincorporated and whether or not having a separate legal personality).

"Personal Representative" means:

- (a) in relation to a deceased individual Unit Holder, the executor, administrator or trustee of the estate of that Unit Holder;
- (b) in relation to a bankrupt individual Unit Holder, the assignee in bankruptcy of that Unit Holder; and
- (c) in relation to any other individual Unit Holder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

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

"Record Date" means the time fixed by the Manager for the determination of the Unit Holders to whom an entitlement, right or obligation relating to the Units applies.

"Register" means the Register described in clause 9.1.

"Registered Bank" has the meaning given to that term in section 2(1) of the Reserve Bank of New Zealand Act 1989 and any equivalent entity in any jurisdiction outside New Zealand.

"Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993, provided that each reference in that section to a "company" shall be deemed to be a reference to any body corporate, wheresoever it is formed or incorporated.

"Representative" means:

- (a) a person appointed as a proxy under section 9 of schedule 1;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under section 10 of schedule 1.

"Section 18 Resolution" has the meaning given to that term in paragraph 11.2 of schedule 1.

"Subsidiary" has the meaning given in the Financial Reporting Act 1993.

"Trust" means the trust constituted by this deed.

"Trust Fund" means the trust fund described in clause 2.2.

"Trustee" means the Trustee for the time being of the Trust, initially being Perpetual Trust Limited.

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

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

"Unpaid Amount" means, in respect of a Unit, the amount of the issue price of the Unit which is unpaid at any time.

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

- (a) Words importing the singular number include the plural, and vice versa, and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) Reference to a statute or regulation includes all amendments to that statute or regulation, whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (c) Headings have been inserted in this deed for guidance only and shall not be deemed to form any part of the context.
- (d) Where under or pursuant to this deed or anything done under this deed the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing shall be done on the following Business Day.
- (e) If it shall be necessary for any of the purposes of this deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager with the prior approval of the Auditor may select.

2. CONSTITUTION OF THE TRUST FUND

2.1 **Trustee:** The Trustee has been appointed as the trustee of the Trust, and agrees to act as trustee for the Unit Holders to hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed. The Trust shall be constituted immediately upon the payment by a Related Company of the Manager of \$10 by way of subscription for 10 Units.

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

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

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

2.4 Name:

- (a) The initial name of the Trust shall be "Multiplex Tasman Property Fund". The Manager may, by notice to the Trustee, change the name of the Trust from time to time, subject to compliance with all legal and regulatory requirements relating to that change.
- (b) Without limiting clause 2.4(a), if Multiplex Capital New Zealand Limited ceases, for any reason, to be the Manager, then (unless Multiplex Capital New Zealand Limited agrees otherwise) from the date of cessation, the Manager shall ensure that the name of the Trust shall not include the word "Multiplex", and the Manager shall ensure that the word "Multiplex" does not appear in any correspondence, advertisements or documents relating to the Trust.
- (c) Clause 2.4(b) is enforceable by Multiplex Limited, and Multiplex Funds Management Limited, pursuant to the Contracts (Privity) Act 1982.

3. UNITS

- 3.1 **Beneficial interest in Trust Fund:** The beneficial interest in the Trust Fund shall be divided into Units. Subject to the rights attaching to unpaid or partly paid Units and other Units with special or restricted rights, and to clause 8.7, each Unit shall confer an equal interest in the Trust Fund.
- 3.2 **Rights of Unit Holders:** No Unit shall confer any interest in any particular part of the Trust Fund, and no Unit Holder shall be entitled to require the transfer to that Unit Holder of any of the Investments of the Trust nor (subject to the rights of Unit Holders created by this deed and by law) shall any Unit Holder be entitled to interfere with or question the exercise or non-exercise by the Manager or the Trustee of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this deed or in respect of the Trust Fund or any part or parts thereof. Except where expressly provided to the contrary in this deed, or where the context does not so permit, all the benefits and provisions (including but not limited to those expressed to enure for the benefit of and bind the Unit Holders of any Class or Classes) contained in this deed enure for the benefit of and bind each Unit Holder.
- 3.3 **Enforcement:** No Unit Holder is entitled to enforce any of its rights or remedies under this deed unless the Trustee has become bound to enforce such right or remedy in accordance with this deed and has failed to do so.
- 3.4 **Quotation:** The Manager may, at its discretion, at any time apply to NZX or any other stock exchange for quotation of the Units and take all steps necessary (and direct the Trustee to take all steps necessary, which directions the Trustee shall comply with) required to facilitate that quotation. In particular, but without limitation, the Trustee shall, if so required by the Manager, enter into a guarantee, indemnity, set-off or other security arrangement for the purposes of procuring a security obligation in favour of any such stock exchange if such is necessary to facilitate that quotation, provided always that the liability of the Trustee under any such guarantee, indemnity, set-off or other security arrangement is, to the reasonable satisfaction of the Trustee, limited to the assets for the time being in the Trust.
- 3.5 **Part Units:** If the Manager so determines, part of a Unit may be created and shall be denoted by figures up to two decimal places. In the absence of such a determination by the Manager, parts of a Unit, and following such a determination, smaller parts of a Unit, shall be ignored for all purposes of this deed. References in this deed to a Unit shall include references to part of a Unit, unless the context otherwise requires or unless

otherwise determined by (or subject to such conditions as are determined by) the Manager.

4. ISSUE OF UNITS

- 4.1 **Issue of new Units:** Subject to the terms of this deed, the Manager may invite offers, subscriptions or applications for Units of any Class, and may issue Units of any Class, upon and subject to the terms and conditions contained in this deed, and otherwise in such manner and upon such terms and conditions as the Manager shall determine.
- 4.2 **Statutory compliance:** The Manager shall in inviting offers, subscriptions or applications in terms of this section 4 comply with all of the relevant provisions of the Act and of the Securities Act 1978.
- 4.3 **Underwriting:** Any proposed issue of Units may (subject to clause 4.2) in the Manager's discretion be underwritten. The Manager shall have power to:
- (a) appoint underwriters, organising brokers and brokers in respect of any issue of Units and enter into agreements to give effect to such appointments on such terms and conditions as the Manager may determine; and
 - (b) pay out of the Trust Fund such management fees, underwriting fees, brokerage, or other similar fees as the Manager may agree with any such underwriters, organising brokers, brokers or others.
- 4.4 **No maximum number of Units:** There is no maximum number of Units which may be issued.

5. ISSUE PRICE

- 5.1 **Issue price:** The price at which issues of Units may be made shall be determined by the Manager, provided that (subject to clause 5.2) the issue price for each Unit shall not be less than 90% of the Net Value of the Trust Fund per Unit on the date immediately preceding the date of the first offer or invitation made by the Manager to subscribe for that Unit, unless otherwise approved by the Trustee or by an Extraordinary Resolution.
- 5.2 **Initial Units:** The provisions of clause 5.1 shall not apply in respect of the issue of the Initial Units which shall have the issue price set out in the Initial Offer Document, or of the Units referred to in clause 2.1 (which shall have the issue price set out in that clause).
- 5.3 **Calculation:** The Net Value of the Trust Fund per Unit shall be calculated by dividing the Net Value of the Trust Fund on the relevant date by the number of Units then on issue.
- 5.4 **Issue fee:** The Manager may require any applicant for Units to pay, in addition to the issue price of the Units, such fee as the Manager may fix as a condition of issue of those Units, provided that, in respect of any particular issue of Units, each applicant shall be required to pay the same fee as each other applicant. The Manager may deduct and retain such fee from the subscription moneys received by the Manager in respect of those Units. In this event, the number of Units issued shall be that number which has an aggregate issue price equal to the subscription moneys received or receivable by the Manager less the amount of such fees.
- 5.5 **Subscription moneys:** All subscription moneys received by the Manager upon an issue of Units (other than any amounts deducted in accordance with clause 5.4) shall become subject to the trusts created by this deed upon receipt by the Manager. The Manager

shall in accordance with section 14 of the Act pay all such moneys into a separate bank account and shall pay such moneys to the Trustee within seven days of receipt. If the Manager decides to reject any application for Units (in whole or in part) it shall forthwith return, or direct the Trustee to return, the subscription moneys (or the relevant portion thereof) to the applicant.

- 5.6 **Non-Cash applications:** The Manager may issue Units on the basis that some or all of the issue price for the Units is to be satisfied by the transfer of property, or provision of services, or provision of other non-Cash consideration, to the Manager, with such consideration to be valued at a value acceptable to the Manager.

6. PURCHASE OR REDEMPTION OF UNITS BY THE MANAGER

- 6.1 **Acquisition by Manager:** The Manager may, but shall not be obliged to, in its personal capacity, acquire Units from one or more holders of Units. Units so acquired by the Manager out of its own funds shall be the property of the Manager. The Manager shall be at liberty to deal with such Units, as a holder of Units, as it sees fit.

- 6.2 **Redemption or acquisition by Trust:** The Manager may, but shall not be obliged to, direct the Trustee to redeem or acquire Units on behalf of the Trust, and to pay for such Units from the Trust Fund. Units so redeemed or acquired shall cease to exist and shall be deemed to be cancelled forthwith upon redemption or acquisition. The Manager shall make an appropriate entry on the Register in respect of such cancellation.

- 6.3 **Conditions of acquisition by Trust:** The price at which, and other terms on which, Units may be acquired or redeemed on behalf of the Trust shall be determined by the Manager from time to time, provided that the acquisition or redemption price for each such Unit shall not be more than the Net Value of the Trust Fund per Unit (determined in accordance with clause 5.3) on the date immediately preceding the first offer or invitation made to acquire or redeem that Unit, unless otherwise approved by the Trustee or an Extraordinary Resolution. This clause does not apply to an acquisition in accordance with clause 6.1.

7. INVESTMENTS

- 7.1 **Investment procedure:** The Trust Fund shall from time to time be invested by the Manager in Authorised Investments, provided that the investments satisfy the Investment Policies. Any such investment shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956.

- 7.2 **Investment policies:** The Investment Policies shall initially be the investment policies described in the Initial Offer Document for the Trust. The Manager may vary those policies from time to time. If the variation is material to Unit Holders, the Manager shall give at least 20 Business Days' prior notice to Unit Holders. Any such notice shall be provided to the Trustee a minimum of five Business Days prior to the date it is first released to Unit Holders.

- 7.3 **Trustee's role:** Subject to section 12(1)(c) of the Act, the Trustee must give effect to the Manager's directions in relation to the investment of the Trust Fund. The Trustee must not acquire or dispose of any asset of the Trust except as directed by the Manager.

- 7.4 **Manager's power of investment:** Subject to section 12(1)(c) of the Act, the Manager shall have absolute discretion as to the investment of the Trust Fund and as to how the Trust Fund and liabilities of the Trust are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the assets of the Trust from time to time.

- 7.5 **Valuation of Investments:** The Manager shall ensure that all investments (other than those in respect of which the Manager and the Trustee have agreed on the then Market Value) are valued by a Qualified Adviser at intervals of not more than 36 months or such longer period as the Trustee may approve in any specific case. If at any time in respect of any investment the Manager shall be of the opinion that the determination of the value of that investment does not accurately reflect the current value of that investment, the Manager may, with the approval of the Trustee, assess the current value of that investment as at any day in such manner as the Manager sees fit having regard to the most recent determination of the value of that investment, or the cost of that investment, as the case may be, and to the time which has elapsed since that determination or the acquisition of that investment. The value of any investment determined by the Manager pursuant to this clause 7.5 shall be deemed to be the Market Value of that investment for all purposes of this deed until such time as a new value is determined pursuant to the definition of "Market Value" or pursuant to this clause 7.5. Notwithstanding the foregoing, the Trustee may at any reasonable time require that any investment be valued by a Qualified Adviser and the Manager shall send a copy of the valuation report to the Auditor.
- 7.6 **Registration of Investments:** Any investments shall as soon as reasonably practicable after receipt of the necessary documents by the Trustee be registered (if registrable in nature) in the name of the Trustee or any Person nominated by it pursuant to clause 2.3, and be held in safe custody by the Trustee or by some Person selected by the Trustee in accordance with clause 25.5(g), and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this deed.
- 7.7 **Security over Trust Fund:** Subject to this section 7 and to section 19, the Manager shall be entitled to direct the Trustee on behalf of the Trust to enter into any arrangement in such manner as the Manager sees fit which has the effect of granting security to a third party over all or any part or parts of the Trust Fund to secure any or all liabilities or obligations incurred or undertaken by the Manager for the purposes of the Trust and the Trustee shall give effect to any such direction, provided that the Trustee may before entering into any such agreement, obligation or security arrangement require that its liability thereunder is to its reasonable satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust.
- 7.8 **Insurance:** Unless otherwise agreed by the Trustee, the Manager shall insure all buildings owned by the Trust to their full reinstatement value against fire, earthquake, storm, flood and such other risks as buildings of a similar nature are normally insured against, and against loss of rent, in each case on customary terms and with reputable insurers.
- 7.9 **Guarantees:**
- (a) Subject to clause 7.9(b) and section 19, the Manager may from time to time by notice in writing to the Trustee, if it considers it necessary or desirable to do so, direct the Trustee on behalf of the Trust to enter into any guarantee or similar arrangement with respect to the obligations of any Person (whether or not wholly-owned by the Trust) through whom any of the assets (direct or indirect) of the Trust Fund are held (and to secure such guarantee or other arrangement upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit) provided that the Trustee may, before entering into any such guarantee or other arrangement, or any related security arrangement, require that its liability under any of the same is to its reasonable satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust.
 - (b) Any guarantee given pursuant to clause 7.9(a) shall be taken into account for the purpose of the limit contained in clause 19.3(a) to the extent that:

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

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

7.10 Related parties: Subject to clauses 7.1 and 7.3, the Manager may:

- (a) cause the Trust Fund to be invested in the share capital or other securities of, or lent to or deposited with, the Manager, the Trustee, or any Related Company of either, or invested in or with a trust, fund, scheme or other Person in which the Manager, the Trustee, or any Related Company of either has any interest (including an interest as responsible entity, manager or trustee); and
- (b) cause Investments of the Trust to be purchased from or sold to, or leased from or leased to, or other transactions of any nature (including, without limitation, partnerships, joint ventures, co-ownership of assets, transactions of agency or brokerage, or transactions involving the lending of money to, or the guaranteeing of liabilities of, the Trust) to be entered into on behalf of the Trust with, the Manager, the Trustee or any Related Company of either, or any trust, fund, scheme or other Person in which the Manager, the Trustee or any Related Company of either has any interest (including an interest as responsible entity, manager or trustee),

and any of the Manager, the Trustee, any Related Company of either, and any such trust, fund, scheme or other Person, shall be entitled to profit to any extent, and in any manner, from any transaction of the nature referred to in this clause, and shall not be liable to account to the Trust Fund or any Unit Holder for any such profit. The Manager shall, prior to entering into any such transaction (other than a transaction described in the Initial Offer Document), provide to the Trustee a certificate signed by two directors of the Manager, on behalf of the Manager, that, in its opinion, such transaction is on arms' length commercial terms.

7.11 Manager to keep records: The Manager must keep complete, accurate and separate records of all Investments. The records of Investments must be available for inspection by the Trustee or its agent without charge at all reasonable times on any Business Day. The Trustee is entitled to assume that the Manager's records of Investments are complete and accurate and may rely upon them accordingly.

8. DISTRIBUTIONS

8.1 Distribution Policy: The Manager shall specify its policy relating to distributions to Unit Holders in the Initial Offer Document for the Trust, but may vary that policy from time to time. The Manager may from time to time make distributions in accordance with its distribution policy. Subject to clause 8.8, the amount of distributions (whether of capital or income) shall be determined in accordance with the Manager's policy determined from time to time under this clause.

8.2 Entitlement to distributions: Unless otherwise agreed by the Manager and the Trustee, and subject to the rights, restrictions and obligations attaching to any particular Units or Class of Units:

- (a) Unit Holders registered in the Register at the relevant Record Date are entitled to the distribution;

- (b) payments must be made as soon as practicable after the Record Date;
- (c) distributions must be paid to Unit Holders pro rata according to the number of Units they hold as at the Record Date, provided that:
 - (i) for this purpose a Unit which is partly paid shall be treated as that proportion of a whole Unit as the amount paid-up bears to the issue price for that Unit;
 - (ii) no amount paid or credited and paid on a Unit in advance of calls shall be treated for the purposes of this clause as paid on that Unit;
 - (iii) the Trustee or the Manager may deduct from any distribution payable to any Unit Holder all sums of money, if any, presently payable by such Unit Holder on account of calls or instalments on the Units in respect of which the distribution is payable, but subject thereto, and save as expressly permitted by the terms of this deed, or as required by law, no deduction or retention shall be made from any distribution or from the income of the Trust; and
 - (iv) the Manager may as a condition of issue of any Units provide that those Units shall not participate in full in any distribution or distributions, or shall participate in distributions on a basis calculated by reference to the period for which they have been allotted or held by a particular Unit Holder or the amount of the issue price paid or payable thereon. The Trustee and Manager shall take all necessary steps to give effect to any such condition.

8.3 **Form of distributions:** Subject to the rights, obligations and restrictions attaching to any Units or Class of Units, distributions may be in Cash, or in specie, or by way of fully paid bonus Units in accordance with clause 8.10.

8.4 **Distribution Reinvestment:** The Manager may introduce a scheme for the reinvestment of distributions in Units on such terms as it thinks fit, and may, with the approval of the Trustee, make such amendments to this deed as may be necessary to facilitate any such scheme.

8.5 **Payment:** Unless the Manager otherwise determines, any moneys payable to a Unit Holder pursuant to this section 8, or to any other provision of this deed, shall be made by payment to an account with a bank nominated by the Unit Holder.

Payment shall be effected when the Trustee or the Manager deposits the payment:

- (a) with the Manager's bank; or
- (b) with a branch of the nominated bank (the choice being the Manager's),

for transmission to the nominated account.

Alternatively, if the Manager so elects, the Manager shall effect payment by posting a cheque to the address of the Unit Holder shown in the Register.

8.6 **Participation in distributions:** The Manager may as a condition of issue of any Units provide that those Units shall not participate in full in any distribution or distributions, or shall participate in distributions on a basis calculated by reference to the period for which they have been allotted or held by a particular Unit Holder or the amount of the issue price paid or payable thereon.

- 8.7 **Distributions to holders of Units outside New Zealand:** Notwithstanding any other provision of this deed, the Manager may pay such supplementary distributions to holders of Units resident outside New Zealand as may be provided for by Part LE of the Income Tax Act 1994 and as may be agreed by the Manager and the Trustee as being fair and equitable.
- 8.8 **Determination of distributable amounts:** In determining the amount of distributions (whether of capital or income), the Manager will have regard to the Trust's operating requirements, planned acquisitions and other relevant commercial considerations, and in particular will only make distributions if, and to the extent that, immediately following the distribution, the Trust would (if it were a company), satisfy the solvency test set out in section 4 of the Companies Act 1993. If any question arises as to whether any money or property is available for distribution by the Trust, such question shall be determined by the Manager in consultation with the Auditor.
- 8.9 **Unclaimed money:** Subject to the provisions of the Unclaimed Money Act 1971, any distribution or any other money payable to any holder or former holder of Units remaining unclaimed for five years from the date upon which they became payable, shall, at the expiry of such period of five years, be forfeited to the Trust Fund. After forfeiture, the Person or Persons who would have been entitled to payment of such distribution or other moneys if they had not been forfeited shall be entitled to payment thereof upon producing to the satisfaction of the Manager sufficient evidence that such Person or Persons would have been entitled to such distribution or other moneys had they not been forfeited.
- 8.10 **Bonus issues:** The Manager may resolve to apply any amount available for distribution to Unit Holders either:
- (a) in paying up any Unpaid Amounts on Units held by Unit Holders entitled to the distribution; or
 - (b) paying up in full Units to be allotted and distributed, credited as fully paid up, to and amongst the Unit Holders entitled to the distribution and in the same proportions,

or partly in one way and partly in the other. Such Units shall, when issued, rank *pari passu* in all respects with all other fully paid Units with full participation rights when on issue, and all amounts so capitalised shall be treated as funds subscribed by Unit Holders.

9. REGISTER

- 9.1 **Register:** The Manager shall keep and maintain, or cause to be kept and maintained, an up-to date register of Unit Holders and shall comply with all of the provisions of the Securities Act 1978 in respect of that register.
- 9.2 **Contents of Register:** There shall be entered in the Register:
- (a) the names and addresses of the holders of Units;
 - (b) the number of Units held by each holder;
 - (c) the date on which the name of every Person was entered in the Register as a Unit Holder;
 - (d) the date on which any Person ceased to be a Unit Holder; and
 - (e) such other information as may be required by the Securities Act 1978.

- 9.3 **Registration of joint holders:** The Manager shall not be bound to register more than three Persons as the holders of any Unit. Joint holders of Units shall be jointly and severally liable in respect of all payments required to be made in respect of the relevant Units. Only the Person whose name stands first in the Register as one of the joint holders of any Unit shall be entitled to delivery of any notice, cheque or other communication from the Manager or the Trustee, and any notice, cheque or other communication given to any such Person shall be deemed to have been given to all the joint holders of Units. With the consent of all joint holders of a relevant Units, the Manager may amend the name of the Person standing first in the Register.
- 9.4 **Audit of Register:** The Manager shall cause the Register to be audited by the Auditor (or another auditor approved by the Trustee) at annual intervals.
- 9.5 **Notification of change of details:** Any change of name or address of a Unit Holder shall be notified by such holder in writing to the Manager, who shall alter the Register accordingly.
- 9.6 **Inspection of Register:** Subject to clause 9.10, the Manager, the Auditor, and any representative of them, and any Unit Holder, shall be entitled to inspect the Register free of charge at any time during normal business hours.
- 9.7 **Status of Register:** Each of the Manager and the Trustee shall be entitled:
- (a) to rely absolutely on the Register as being correct;
 - (b) for all purposes to treat a Person whom it believes to be the Person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units; and
 - (c) to effect transfers or other dealings of any nature with Units on the basis of the information recorded in the Register relating to those Units.
- 9.8 **Evidence:** Notwithstanding clause 9.7, the Manager shall be entitled, in its absolute discretion, before giving effect to any transfer, or other dealing with any Units, to require the production to the Manager of evidence satisfactory to it that the Person seeking to effect such dealing is the Person named in the Register as the holder of the Units in question.
- 9.9 **Other interests in Units:** Except as required by law or by this deed, neither the Manager nor the Trustee shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the 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 Register as the holder of that Unit, and accordingly no notice of any trust, charge, pledge or equity shall be entered upon the Register.
- 9.10 **Closure:** The Manager may from time to time close the Register for such period or periods as the Manager may determine (not to exceed 30 days in aggregate in any year).
- 10. CERTIFICATES**
- 10.1 **Issue:** The Manager shall within one month after the issue of any Units, and (subject to clause 14.3) within one month after lodgement of a transfer, cause to be issued to each person to whom the Units have been issued or transferred such number of Certificates in respect of those Units as the Manager may determine.

- 10.2 **Form:** All Certificates shall be in the form, or to the effect of the form, prescribed by the Manager from time to time after consultation with the Trustee.
- 10.3 **Status:** A Certificate shall not constitute evidence of the title of the Person named to the Units referred to therein. The Manager and the Trustee shall (in accordance with clause 9.7) be free to effect any dealing with Units on the basis of information contained in the Register without requiring production of the Certificate in respect of those Units, and shall be entitled to issue a new Certificate for Units without requiring the production or surrender of any previous Certificate in respect of the same Units. Upon a new Certificate being issued in respect of any Units, all previous Certificates in respect of those Units shall be deemed to be cancelled and of no effect.
- 10.4 **Lost Certificates:** Upon the Manager being satisfied that any Certificate has been lost, destroyed, worn out or defaced, and upon such indemnity (if any) being given as it deems adequate, and in the case of a worn out or defaced Certificate upon production thereof to the Manager, the Manager shall cancel the Certificate and record such cancellation in the Register, and shall issue a new Certificate in lieu thereof.

11. CONSOLIDATION AND SUBDIVISION OF UNITS

- 11.1 **Consolidation or subdivision:** The Manager may at any time, by notice in writing to the Unit Holders and the Trustee, cause all of the Units in existence at the date of that notice to be consolidated or subdivided. Each such notice shall:
- (a) specify the date on which such consolidation or subdivision is to take place ("**Operative Date**"); and
 - (b) specify the ratio ("**Ratio**") which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.
- 11.2 **Calculation of number of Units held:** As from the Operative Date, each Unit Holder shall be deemed to hold a number of Units equivalent to the number held by that Unit Holder before the Operative Date multiplied or divided (as the case may be) by the Ratio. The treatment of any resulting part of a Unit shall be determined in accordance with clause 3.5.
- 11.3 **Certificates:** The Manager may make such arrangements as it deems appropriate following a consolidation or subdivision for the cancellation of existing Certificates and the issue of new Certificates.

12. CALLS ON UNITS

- 12.1 **Manager may make calls:** The Manager may from time to time make such calls as it thinks fit upon Unit Holders in respect of any Unpaid Amount on any Units held by them and not by the conditions of the allotment made payable at fixed times. Each Unit Holder shall pay to the Manager at the times and places appointed by the Manager the amount of every call so made on such Unit Holder. Fourteen days' notice of any call shall be given specifying the time and place of payment. A call may be made payable by instalments. A call may be revoked or postponed as the Manager may determine.
- 12.2 **Default interest:** If a sum called in respect of a Unit is not paid on the due date for payment, the Person from whom the sum is due shall pay interest on the sum from the due date for payment to the time of actual payment at such rate as the Manager may determine. The Manager shall be at liberty to waive payment of that interest wholly or in part.

- 12.3 **Fixed instalments deemed calls:** Any sum which by the terms of issue of a Unit becomes payable on allotment or at any fixed date, shall be deemed to be a call duly made and payable on the date on which, by the terms of issue, it becomes payable. In the case of non-payment, all the relevant provisions of this deed as to payment of interest and expenses, forfeiture and otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 12.4 **Proceedings for recovery of call:** On the hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that:
- (a) the name of the Unit Holder sued is entered in the Register as the holder, or one of the holders, of the Units with respect to which the call relates; and
 - (b) except in relation to any amount which, by the terms of issue of a Unit, is payable on allotment or on a fixed date, the call and notice of such call was duly given to that Unit Holder in terms of this deed.

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

- 12.5 **Payment by instalments:** If by the conditions of allotment of any Unit, the whole or part of the amount of the issue price shall be payable by instalments, every such instalment shall, when due, be paid to the Manager by the Unit Holder for the time being or the legal personal representatives of the Unit Holder.
- 12.6 **Differential calls:** The Manager may, on the issue of Units, differentiate between the Unit Holders as to the amounts to be paid in respect of the Units and the times of payment of such amounts.
- 12.7 **Joint Unit Holders:** Joint Unit Holders are jointly and severally liable to pay all calls in respect of Units registered in their names.
- 12.8 **Payment in Advance of Calls:** The Trust may receive from any Unit Holder in advance any amount uncalled and unpaid upon any Units held by that Unit Holder. However, no amount paid or credited and paid on a Unit in advance of calls shall be treated as paid on that Unit.

13. FORFEITURE AND LIEN

- 13.1 **Notice requiring payment of unpaid call:** If a Unit Holder fails to pay any call or instalment on the due date for payment, the Manager may, at any time during such time as any part of the call or instalment remains unpaid, serve a notice on the Unit Holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Manager or the Trustee by reason of such non-payment.
- 13.2 **Contents of notice:** The notice shall name a further day (not earlier than 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment, at or before the time appointed, the Units in respect of which the call was made will be liable to be forfeited.
- 13.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then any Unit in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Manager to that effect. Such forfeiture shall include all distributions declared in respect of the forfeited Units and not actually paid before the forfeiture.

- 13.4 **Notice of forfeiture:** When any Unit has been forfeited, the Manager shall give notice of the resolution to the Unit Holder in whose name the Unit stood immediately prior to the forfeiture or the legal personal representatives of that Unit Holder. The Manager shall enter in the Register details of the forfeiture.
- 13.5 **Effect of forfeiture:** A Person whose Units have been forfeited shall cease to be a Unit Holder in respect of the forfeited Units, but shall, notwithstanding such forfeiture, remain liable to pay all amounts referred to in clause 13.13. A forfeited Unit may be sold or otherwise disposed of on such terms and in such manner as the Manager thinks fit.
- 13.6 **Cancellation of forfeiture:** At any time before a sale or disposition the forfeiture may be cancelled on such terms as the Manager thinks fit.
- 13.7 **Lien on Units:** The Manager has a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others) and upon the proceeds of sale of the Unit, and all distributions made or payable in respect of the Unit, for:
- (a) any unpaid calls or instalments owing in respect of such Unit, any interest payable on such amounts and any other amounts payable by the Unit Holder to the Trust, the Trustee or the Manager and relating to the Trust; and
 - (b) for such amounts (if any) as the Trustee or the Manager may be called upon to pay under any statute or legislative enactment in respect of Units of a deceased or other Unit Holder, whether the period for the payment, fulfilment or discharge shall have actually arrived or not.
- 13.8 **Waiver of lien:** Unless otherwise determined by the Manager, the registration of a transfer of Units shall not operate as a waiver of the Manager's lien, if any, on such Units.
- 13.9 **Manager may sell Units subject to lien:** The Manager may sell, in such manner as it thinks fit, any Units on which it has a lien. No sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the Unit Holder, or the persons entitled thereto by reason of the death or bankruptcy of the Unit Holder.
- 13.10 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of any forfeited Unit or of Units sold for the purpose of enforcing a lien, shall be applied in or towards satisfaction of any unpaid calls, instalments, interest expenses or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the former Unit Holder, or the legal personal representatives or assigns of the former Unit Holder.
- 13.11 **Evidence:** A certificate signed by the Manager that the power of sale has arisen and is exercisable by the Manager under this deed, or that a Unit has been duly forfeited, shall be conclusive evidence of those matters.
- 13.12 **Sale procedure:** The Manager may sell any forfeited Unit, or any Unit on which the Manager has a lien, in such manner, at such price, and to such person, as the Manager in its absolute discretion thinks fit. All Unit Holders and former Unit Holders shall be bound absolutely by the Manager's decision as to the sale of any such Unit, and no Unit Holder or former Unit Holder shall be entitled to claim or commence any action against the Manager, the Trustee, or any other Person, or to resist or contest payment of any amount, on the grounds that the best price was not obtained for any such Unit, or on the grounds that the sale or manner of sale of any such Unit was for any other reason detrimental to the interests of that Unit Holder or former Unit Holder. Without limiting the preceding

sentences in this clause, the Manager may at any time, whether before or after any call or part payment becomes due, and the powers of the Manager under this section 13 become exercisable, enter into an agreement with any Person or Persons to the effect that that Person or those Persons will purchase Units which the Manager sells under this section 13, on such terms and at such price as may be recorded in that agreement, or otherwise agreed between the Manager and that Person or those Persons, and none of the Manager, the Trustee or any other Person shall in any circumstances be liable for any loss caused to any Unit Holder or former Unit Holder by reason of the performance of any such agreement. For giving effect to any such sale after forfeiture, or for enforcing a lien, the Manager may authorise any Person to transfer any Unit sold to the purchaser. The purchaser shall be registered as the Unit Holder in respect of the Units comprised in any such transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Units be affected by any irregularity or invalidity in the sale. The remedy of any person having a cause of action in relation to the sale is in damages only.

- 13.13 **Liability:** The forfeiture or sale of a Unit shall not relieve the former holder of that Unit, or any other Person, from the obligation to pay all calls, part payments or interest payable in respect of that Unit, so that, after credit has been given for the actual net proceeds of sale in accordance with clause 13.10, the former holder of that Unit and every other Person who may be liable to make payment in respect of that Unit shall remain liable to pay the balance of the calls, part payments and interest (whether falling due before or after the date of forfeiture or sale) in respect of that Unit.

14. TRANSFER AND TRANSMISSION OF UNITS

- 14.1 **Right to transfer:** Subject to any restrictions contained in this deed, any Unit Holder may transfer all or any of the Units held by such Unit Holder by an instrument of transfer in writing. Every instrument of transfer shall be in such form as the Manager may approve from time to time and shall be signed by the transferor and, if the Manager so requires, the transferee.
- 14.2 **When transfer effective:** The transferor of a Unit shall be deemed to remain the holder of the Unit until the name of the transferee is entered in the Register in respect thereof.
- 14.3 **Manager may refuse to register:** The Manager may decline to register any transfer of Units where:
- (a) the Manager has a lien on the Units or any of them;
 - (b) the instrument of transfer is not accompanied by such evidence as the Manager may reasonably require to show the right of the transferor to make the transfer;
 - (c) registration of the transfer (together with registration of any further transfer or transfers held by or on behalf of the Manager and awaiting registration) would result in less than a Minimum Number of Units standing in the name of the transferee or the transferor; or
 - (d) the transferor has not paid to the Manager any fee applicable to the transfer under clause 14.11,

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

- 14.4 **Compulsory disposal when holding less than Minimum Number:** The Manager may at any time give notice to a Unit Holder holding less than a Minimum Number of Units that, if at the expiration of three months after the date the notice is given the Unit Holder still holds less than a Minimum Number of Units, the Manager may exercise the power of sale of those Units set out in this clause. If that power of sale becomes exercisable:
- (a) The Manager may arrange for the sale of the relevant Units on behalf of the Unit Holder in accordance with clause 13.12 as if the Manager held a lien over the Units.
 - (b) The Manager shall account to the Unit Holder for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Manager for, and paid (together with interest at such rate (if any) as the Manager deems appropriate) to, the Unit Holder, on surrender of the Certificate (if any) relating to the relevant Units.
 - (c) The title of the purchaser of any Units sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Manager shall be a good discharge to the purchaser for the purchase price.
- 14.5 **Manager may retain instruments of transfer:** All instruments of transfer which have been registered may be retained by the Manager. If the Manager, pursuant to the powers contained in this deed, refuses to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return the transfer to the transferee together with such documents of title which may have been left with the transfer.
- 14.6 **Suspension of registration:** Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine, provided that the Manager may not suspend registration of transfers for a period exceeding 30 Business Days in any calendar year without the approval of the Trustee.
- 14.7 **Transmission on death of Unit Holder:** If a Unit Holder dies, the survivor, if the deceased was a joint Unit Holder, or the Personal Representative, shall be the only persons recognised by the Manager as having any title to or interest in the Units of the deceased Unit Holder, but nothing in this clause 14.7 shall release the estate of a deceased joint Unit Holder from any liability in respect of any Unit or constitute a release of any lien which the Manager may have in respect of any Unit.
- 14.8 **Rights of Personal Representatives:** A Personal Representative of a Unit Holder:
- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Units held by that Unit Holder; and
 - (b) is entitled to be registered as holder of those Units, but such registration shall not operate as a release of any rights (including any lien) to which the Manager was entitled prior to registration of the Personal Representative pursuant to this sub-clause (b).
- 14.9 **Joint Personal Representatives:** Where a Unit is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of clause 14.7 and 14.8, be deemed to be joint holders of the Unit.

14.10 **Liability:** Following the transfer or transfers of a Unit, the new Unit Holder, and any former Unit Holders, shall be and remain jointly and severally liable for the payment of the issue price of the Unit.

14.11 **Transfer fee:** The Manager may require a transferor of Units to pay such fee as the Manager may fix from time to time as a condition of registering the transfer of those Units. Any such fee shall not exceed 1% of the price of the Units for the purposes of that transfer, and there shall be a minimum fee of \$100. The Manager may retain that fee.

15. REMUNERATION OF TRUSTEE

15.1 **Remuneration of Trustee:** The Trustee shall be paid out of the Trust Fund in respect of its services a fee, agreed from time to time between the Trustee and the Manager, being initially a fee of .03% per annum of the average Gross Value of the Trust Fund, subject to a minimum annual fee of \$15,000. The Trustee shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee. For the purposes of this clause 15.1 and clause 17.6, "value added tax" shall include, but not be limited to, goods and services tax as that term is defined in the Goods and Services Tax Act 1985.

15.2 **Calculation of fee:** The fee referred to in clause 15.1 shall be paid quarterly in arrears, by the 10th of the month following the quarter for which the fees are due. The fee payable shall be calculated by reference to the average Gross Value of the Trust Fund during the preceding quarter.

15.3 **Change in fees of Trustee:** The fee payable to the Trustee can be amended by agreement between the Manager and the Trustee, without any amendment being required to this deed.

15.4 **Other Attendances by Trustee:** The Trustee shall be paid out of the Trust Fund an acceptance fee approved by the Manager, and such remuneration or reimbursement as is reasonable in the circumstances in respect of the following special attendances:

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

16. REMOVAL AND RETIREMENT OF TRUSTEE

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

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

16.3 **Appointment of new Trustee:** The Manager shall, upon the Trustee being removed from office pursuant to clause 16.1, or retiring pursuant to clause 16.2, have power to appoint a Trustee (qualified in terms of the Act) to act, which Trustee shall have all

powers conferred on the Trustee by this deed or by law and be treated for all purposes as the Trustee.

17. REMUNERATION OF MANAGER

17.1 **Remuneration of Manager:** The Manager shall be entitled to a fee comprising the aggregate of:

- (a) the Base Fee; and
- (b) the Other Fees.

17.2 **Payment:** The Base Fee and Other Fees shall be paid in Cash out of the Trust Fund monthly in arrears, by the 10th day of the month following the month for which the fees are due. The Base Fee payable shall be calculated by reference to the average Gross Value of the Trust Fund during the preceding month.

17.3 **Fee:** The Base Fee shall be .7% per annum of the average Gross Value of the Trust Fund.

17.4 **Other Fees:** Instead of contracting other parties to do so, the Manager may itself provide services to the Trust in relation to construction, engineering, repairs, maintenance, leasing (including as to renewal and rent reviews), sales and acquisitions, property development, property management, project management, building design and registry management. The Manager is entitled to fees for any such services it provides itself, in addition to the Base Fee, at prevailing market rates.

17.5 **Apportionment:** Where the Manager is entitled to part only of the remuneration set out in this section 17 in respect of any relevant period (whether by virtue of the Manager being a manager of the Trust for part only of the relevant period or otherwise), an appropriate apportionment shall be made.

17.6 **Tax or duty:** The Manager shall be entitled to receive, in addition to any fees payable pursuant to this section 17, any value added tax or duty or similar tax or duty payable in respect of such fee.

17.7 **Increase in remuneration of Manager:** The terms of appointment of the Manager may not be varied without the approval of the Trustee, and the Base Fee may not be increased without the approval of an Ordinary Resolution.

17.8 **Rebate of entitlement to Base Fee:** The Manager may at any time elect not to be paid all or any part of the Base Fee for such period as the Manager elects. Any such election shall not prejudice the right of the Manager to receive the full Base Fee in all other respects.

18. REMOVAL AND RETIREMENT OF MANAGER

18.1 **Removal of Manager from office:** The Manager shall cease to hold office as Manager of the Trust if:

- (a) the Manager is removed from office by the High Court pursuant to section 19(1) of the Act on the application of the Trustee, any Unit Holder, or the Minister; or
- (b) the Trustee certifies pursuant to section 19(2)(a) of the Act that it is in the interests of Unit Holders that the Manager should cease to hold office; or

- (c) pursuant to section 19(2)(b) of the Act, Unit Holders who hold not less than three quarters of the Units by number direct that the Manager should cease to hold office; or
- (d) the Manager is removed from office by the Trustee on any of the grounds specified in clause 18.2.

If the Trustee or any Unit Holder proposes to make an application of the nature referred to in clause 18.1(a), or the Trustee is proposing to act in accordance with clause 18.1(b), the Trustee or Unit Holder shall give 10 Business Days' notice to the Manager of the proposal (setting out, in reasonable detail, the rationale for the proposal), and shall reasonably consult in that period with the Manager as to the Trustee's or Unit Holder's concerns, before making any such application or so acting.

18.2 Removal of Manager from office by Trustee: The Trustee shall be entitled to remove the Manager if:

- (a) the Manager is in material breach of its obligations under this deed;
- (a) the Manager is wound up (except for the purposes of an amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager,

provided that the Trustee shall not be so entitled to remove the Manager pursuant to clause 18.2(a) unless the Trustee has given 20 Business Days' prior notice to the Manager of the relevant breach, and the Manager has failed in that period to remedy that breach.

18.3 Effect of Manager ceasing to hold office: If the Manager ceases to hold office pursuant to clauses 18.1, 18.2 or 18.5, the Manager shall immediately desist from all activities related to the Trust. The Manager shall be entitled to all fees accrued to the date upon which it ceases to hold office.

18.4 Fee payable to Manager removed from office: If the Manager ceases to hold office pursuant to any of clauses 18.1(a), 18.1(b) or 18.1(c) (other than as a result of the Manager being in material breach of its obligations under the Trust Deed) the Manager shall be entitled to an additional fee equal to 2% of the Gross Value of the Trust Fund on the date on which the Manager ceases to hold office. The fee shall be paid in Cash out of the Trust Fund in one lump sum within 14 days of the date the Manager ceases to hold office.

18.5 Retirement of Manager: The Manager may retire at any time without assigning any reason upon giving 60 days' notice in writing to the Trustee of its intention to do so. No such retirement shall take effect until a new Manager (which shall include a temporary Manager) has been appointed and has executed the deed referred to in clause 18.8.

18.6 Appointment of temporary Manager: The Trustee shall have power in accordance with section 23(1) of the Act to appoint a company qualified pursuant to section 4 of the Act as a temporary Manager of the Trust in place of a Manager which has retired or been removed from office. Upon receipt of a notice pursuant to clause 18.5, the Trustee shall use commercially reasonable endeavours to appoint a temporary Manager with effect from the appointed time for retirement, or as soon thereafter as is reasonably practicable, unless a new Manager has been appointed under clause 18.7 with effect from that time.

18.7 Appointment of new Manager: The Trustee shall upon a vacancy in the office of Manager occurring, or upon receiving a notice pursuant to clause 18.5, summon, as soon as reasonably practicable, a meeting of Unit Holders in accordance with section 23(2) of the Act, and shall take such steps as that meeting or any subsequent meeting of Unit

Holders may require to secure the appointment as Manager of the Trust of the temporary Manager appointed pursuant to clause 18.6 or some other company qualified pursuant to section 4 of the Act, and approved by the Trustee.

- 18.8 **Execution of deed by new Manager:** A new Manager (including a temporary Manager) appointed pursuant to clause 18.6 or clause 18.7, or taking an assignment pursuant to clause 18.9, shall forthwith upon such appointment or assignment execute a deed in such form as the Trustee may require whereby the new Manager undertakes to the Trustee and the Unit Holders to be bound by all the covenants on the part of the Manager under this deed from the date of such appointment. On and from such date the retiring or assigning Manager shall be absolved and released from all such covenants (save in respect of any prior breach of this deed) and the new Manager shall exercise all the powers, and enjoy and exercise all the rights, and shall be subject to all the duties and obligations, of the Manager in all respects as if such new Manager had been originally named as a party to this deed, provided that the new Manager shall have no liability for any breach of this deed by the former Manager.
- 18.9 **Assignment:** No part of the Manager's interest as manager of the Trust may be assigned without the prior written consent of the Trustee. The Trustee shall not unreasonably withhold its consent to an assignment of the whole of the Manager's interest as manager of the Trust to a solvent and suitable assignee (and any consideration received by the Manager with respect to such assignment shall be for the benefit of the Manager alone, and the Unit Holders shall have no claim with respect thereto) but before giving the consent the Trustee shall be entitled to have the Manager demonstrate to the reasonable satisfaction of the Trustee that the proposed assignee complies with the requirements of sections 4(1) and 4(2) of the Act, is capable of performing the Manager's obligations under this deed, and is of sound financial standing.
- 18.10 **Voting:** Notwithstanding any provision of this deed, the Manager, and any Person related to or associated with the Manager in any way, may vote as a Unit Holder as it sees fit on any resolution concerning the removal or appointment of a Manager of the Trust (including any resolution giving any direction to the Trustee concerning such matters).
19. **BORROWING POWERS**
- 19.1 **Trustee may Borrow:** The Trustee shall have power, if so directed by the Manager pursuant to clause 19.2, to Borrow, and to give security in respect of any Borrowing over all or any part or parts of the Trust Fund.
- 19.2 **Manager may require Trustee to Borrow:** The Manager may at any time and from time to time if the Manager considers it necessary or desirable to do so, by notice in writing to the Trustee, require the Trustee to Borrow on behalf of the Trust Fund, and if the Manager so directs, to secure such Borrowing upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit. Any such notice shall specify the party from whom the Borrowing is to be made, and the terms of the Borrowing. The Manager shall not give any such notice unless it has arranged the Borrowing with such party.
- 19.3 **Restrictions on Borrowing:** The Trustee shall, on receipt of a direction by the Manager pursuant to clause 19.2, take all necessary steps to give effect to that direction provided however:
- (a) No such Borrowing shall be made if the effect of that Borrowing would be that immediately after, but on the date of, that Borrowing the total amount of money Borrowed by the Group (excluding moneys Borrowed by a member of the Group from another member of the Group) and outstanding would exceed 65% of the Gross Value of the Trust Fund at that date (calculated taking account of

the proceeds of the Borrowing, and in the case of any Borrowing to acquire an Investment, the Market Value of the Investment), provided that:

- (i) for the purposes of this clause, the aggregate of all Unpaid Amounts shall be deemed to be an asset of the Trust; and
 - (ii) if an entity in the Group has been established to proceed with a self-liquidating property development, and any Borrowings of that entity are without recourse to any other entity in the Group, that entity (and the Assets and Borrowings of that entity) shall be disregarded for the purposes of this clause.
- (b) The Trustee shall not be required to execute any agreement, security or other document in respect of any Borrowing which (in the opinion of the Trustee) would render the Trustee personally liable in respect of such Borrowing and unless the liability of the Trustee thereunder is to the reasonable satisfaction of the Trustee limited to the assets for the time being in the Trust.

To the extent that it is legally able, the Manager shall procure that no entity in the Group shall Borrow if to do so would cause the limit in clause 19.3(a) to be exceeded.

- 19.4 **Protection of third parties:** No person lending money to, or otherwise dealing with, the Trustee shall be bound to inquire as to whether the limit in clause 19.3(a) has been exceeded, and no breach of that limit shall affect the validity or enforceability of any loan or any other transaction.

20. ACCOUNTS

- 20.1 **Records:** The Manager and the Trustee shall, having regard to their separate functions and obligations, keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Trust, and the matters in respect of which such receipt and expenditure take place, and of the issue of Units and of all other matters for which accounts should properly be kept. The Manager shall, in particular, keep or cause to be kept such accounts as may be necessary to enable it to comply with its obligations pursuant to section 11 of the Act, and such accounts as may be necessary to ensure that moneys received, expended or distributed by the Trust are credited or, as the case may be, debited to the appropriate funds available for distribution to Unit Holders, and so as to ensure that the entitlement of any Unit Holder to participate in the Trust Fund at any particular time may readily be ascertained. The Manager and the Trustee shall provide to each other from time to time any information necessary for this purpose.
- 20.2 **Accounts:** The Manager shall cause to be prepared annual accounts in respect of the Trust Fund for each Financial Year.
- 20.3 **Audit of Annual Accounts:** The annual accounts prepared in accordance with clause 20.2 shall be audited by the Auditor, who shall report to the Manager and the Trustee in accordance with the Financial Reporting Act 1993.
- 20.4 **Information required for audit:** In carrying out the Auditor's duties, the Auditor shall be entitled to require from the Manager and the Trustee such information, explanations, documents, certificates and accounts as the Auditor may consider necessary, and the Manager or the Trustee (as the case may be) shall forthwith provide the same to the Auditor.
- 20.5 **Accounts and Auditor's report to be provided to Trustee and Unit Holders:** The Manager shall, within five months of each Financial Year, forward to each Person referred to in the next sentence a copy of the annual accounts of the Trust Fund together with the

Auditor's report thereon. Such accounts and report shall be sent to the Trustee and to each Person who was a Unit Holder on the date as at which such accounts are made up.

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

20.7 **Auditor's reports:** The Manager shall furnish to the Trustee at the same time as the Manager furnishes to the Trustee the accounts prepared in accordance with clause 20.2 a separate report by the Auditor stating:

- (a) whether or not in the performance of its duties as Auditor it has become aware of any matter which in its opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Manager or the Trustee by the Act or by this deed or by law and, if so, giving particulars thereof;
- (b) whether or not its audit has disclosed any matter (and if so particulars thereof) calling in its opinion for further investigation by the Trustee in the interests of the Unit Holders;
- (c) that it has perused the certificates given pursuant to clause 20.8 since the last report by the Auditor, and that nothing has come to the attention of the Auditor during its review that would cause it (acting reasonably) to consider that:
 - (i) the statements made in subclauses 20.8(b) and 20.8(e) of the certificates are incorrect; and
 - (ii) so far as matters which it has observed in the performance of its duties are concerned, the remaining statements made in such certificates are incorrect;
- (d) as at the date to which the certificate relates:
 - (i) whether or not from the normal audit tests it has conducted it is satisfied that all amounts due to the Unit Holders whether by way of income entitlement or otherwise have been paid; and
 - (ii) the amount of any income entitlements distributed since the previous report given pursuant to this clause 20.7; and
- (e) whether or not the method of valuation of the Investments or liabilities of the Trust Fund has been in accordance with this deed,

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

20.8 **Manager's report:** Within two calendar months of the end of each financial quarter of the Trust, the Manager shall furnish to the Trustee a certificate signed by not less than two directors on behalf of the Manager stating to the best of their knowledge and belief after having made all due enquiry whether or not in relation to the Trust since the date of the last such certificate (or, in the case of the first certificate, since the date of this deed):

- (a) all amounts due and payable to the Unit Holders have been paid;
- (b) the Register has been duly maintained in accordance with this deed;
- (c) the Manager has duly observed and performed all covenants, conditions and agreements and provisions binding upon it under this deed;

- (d) any circumstances which affect the Trust have occurred which materially and adversely affect the interests of the Unit Holders;
- (e) if an entity in the Group has Borrowed as at the quarterly date to which the certificate relates, the limit in clause 19.3(a) is being complied with. The certificate shall, in addition, set out the total amount of Borrowings of the Group, and the Gross Value of the Trust Fund, at the date of the certificate;
- (f) all moneys intended for the Trust have been paid into the relevant bank account, and no such moneys have been applied in any other way;
- (g) all monies paid out of the relevant bank account have been paid for Authorised Investments, or for liabilities, losses or costs authorised by this deed and in no other way;
- (h) all Investments are vested in the name of the Trustee or a nominee of the Trustee;
- (i) there has been any change in the method of valuation of Investments or liabilities of the Trust;
- (j) any material contingent liabilities have been incurred by the Trust and, if so, the amount thereof, and whether or not any contingent liability has or is likely to mature within the succeeding twelve months which will materially affect the Trust;
- (k) the Manager:
 - (i) considers that the Investments of the Trust at all times have been dealt with or invested in accordance with the Investment Policies; and
 - (ii) considers that any person to whom the Manager has delegated any of its powers, authorities, functions or discretions has adhered to the instructions given by the Manager.

Each such certificate shall be accompanied by management accounts showing, as at the date of the certificate, the financial position of the Trust, and, for the period from the date of this deed or the date of the immediately preceding certificate (whichever is later) to the date of the certificate, the financial performance, movements in equity and cashflows of the Trust.

21. AUDITOR

- 21.1 **Auditor:** The Auditor shall be a firm of chartered accountants, and may at any time be removed from office by the Manager. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Trustee.
- 21.2 **Appointment of Auditor:** Any vacancy in the office of Auditor occurring under clause 21.1 shall be filled by the Manager (after consultation with the Trustee) appointing an Auditor qualified for appointment in terms of clause 21.1.
- 21.3 **Auditor may act for others:** The Auditor may also be the auditor of the Manager and may be the auditor of any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or servant (or the partner of an officer or servant) of the Manager or of the Trustee.

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

22. MEETINGS OF UNIT HOLDERS

22.1 **Request for meeting:** The Manager shall summon a meeting of Unit Holders upon the request in writing of the Trustee, or of one-tenth in number of the Unit Holders, or of a Unit Holder or Unit Holders holding (at the date of the receipt by the Manager of the request) not less than one-tenth in value of the interests held by Unit Holders in the Trust Fund.

22.2 **Manager may convene meeting:** The Manager may at any time of its own volition convene a meeting of Unit Holders.

22.3 **Notice of and attendance at meetings:** All Unit Holders are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to Unit Holders.

22.4 **Meeting procedure:** All meetings of Unit Holders shall be convened and held in accordance with the provisions set out in schedule 1.

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

22.6 **Trustee acting under direction:** Where any direction is given to the Trustee pursuant to clause 22.5 in respect of any matter, the Trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Trustee may also at its discretion in accordance with section 18(4) of the Act apply to the High Court for directions in respect of the matter.

22.7 **Meeting of Class of Unit Holders:** The Manager may, and shall on the request in writing of the Trustee or of one-tenth in number of the Unit Holders of any Class of Units, summon a meeting of the holders of any Class of Units. Unless otherwise provided, or the context otherwise requires, all the provisions of this deed relating to meetings shall apply with all necessary modifications.

23. NOTICES

23.1 **Requirements for notices:** Any notice to be given to any Unit Holder shall be in writing and may be given either personally or by sending it by post to the registered address of the Unit Holder. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected on the day following the day of posting.

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

23.3 **Notice to Personal Representative:** A notice may be given by the Manager to a Personal Representative of a Unit Holder by sending it through the post in a prepaid letter addressed to the Personal Representative by name or by title at the address, if any, supplied for the purpose by the Personal Representative, or (until such an address has

been supplied) by giving the notice in any manner in which it might have been given to the Unit Holder if the Personal Representative had not been appointed.

23.4 **Where no address for service supplied:** If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two notices posted to a Unit Holder are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this deed shall be deemed to be the Office.

23.5 **Requirements for notices to Manager or Trustee:** Any notice, communication or information required by this deed to be given to the Trustee by the Manager, or to the Manager by the Trustee, shall be in writing and be signed by a duly authorised officer of the party giving the notice.

24. AMENDMENTS TO DEED

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

- (a) if in the opinion of the Trustee it is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Trustee it is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Trust, or for safeguarding or enhancing the interests of the Trust or Unit Holders;
- (c) if (subject to paragraph 11.6 of schedule 1) it is authorised by an Extraordinary Resolution;
- (d) if in the opinion of the Trustee it is not, or is not likely to become, materially prejudicial to the interests of the Unit Holders; or
- (e) if, in the opinion of the Trustee, it is required by, or in consequence of, or is consistent with, an amendment to the Act, or the rules of any stock exchange upon which any Units are quoted, and does not materially adversely affect the interests of Unit Holders; or
- (f) if, in the opinion of the Manager, it is necessary or desirable to obtain or maintain quotation of any Units on any stock exchange, and the Manager directs the Trustee to enter into a deed of amendment for the purposes of clause 3.4 (in which case the Trustee shall be bound to do so).

24.2 **Summary of amendments:** The Manager shall, together with the accounts of the Trust for each Financial Year, send to the Persons referred to in clause 20.5 a summary of the amendments (if any) to the Trust Deed which have been made since the date of the last annual accounts.

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

25.1 **Trustee and Manager acting on behalf of Trust:** The Trustee and the Manager, in incurring any debts, liabilities or obligations, or in taking or omitting any other action for or in connection with the affairs of the Trust, are each, and shall each be deemed to be, acting for and on behalf of the Trust and not in their own respective personal capacities.

Neither the Trustee nor the Manager shall be under any personal liability, nor shall resort be had to its private property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust, but the Trust Fund only shall be liable or subject to levy or execution.

25.2 Indemnity: Subject to clauses 25.3 and 25.4, each of the Trustee and the Manager shall be indemnified out of the Trust Fund:

- (a) from and against any and all liabilities, losses and costs incurred by the Trustee or the Manager in performing any of their respective duties, or exercising any of their respective powers, pursuant to this deed; and
- (b) from and against all actions, proceedings, claims and demands in respect of any matter or thing relating to the Trust, including all actions in relation to the offer and issue of Units.

25.3 Exception: Clause 25.2 shall not apply to any liabilities, loss, costs, actions, proceedings, claims or demands arising from a breach of trust where the Trustee or Manager, as the case may be, fails to show the degree of care and diligence required of a trustee or manager, having regard to the provisions of this deed and the powers, authorities and discretions conferred on the Trustee or Manager thereby, and each of the Trustee and Manager, as the case may be, shall be liable to the Trust Fund for any loss arising from any such breach of trust by it. Except as provided in the preceding sentence, neither the Trustee nor the Manager shall be liable to the Trust Fund or to any Unit Holder for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Trust or as a result of acting as Trustee or Manager (as the case may be).

25.4 Reimbursement and indemnification of Trustee and Manager: The Trustee and the Manager shall each be entitled to be reimbursed out of the Trust Fund for all liabilities, losses and costs incurred by them respectively in or about acting as Trustee or Manager (as the case may be) under this deed, except as provided in clause 25.3 and this clause. Without prejudice to the generality of the foregoing, the Trustee and the Manager shall be entitled to be indemnified against:

- (a) all costs, charges, disbursements and expenses incurred in connection with the investigation, negotiation, acquisition, development, refurbishment or redevelopment, registration, custody, disposal or leasing of, or other dealing with, an Authorised Investment, including, without limitation, commission, bank charges and stamp duty;
- (b) all income tax, capital gains tax, stamp duties, and all other duty, tax or impost properly charged to or payable by the Trustee or Manager (whether by any taxing authority or any other person) in connection with and for the account of the Trust;
- (c) interest on Borrowings, discounts, acceptance underwriting and commitment fees in respect of finance and underwriting facilities;
- (d) costs of postage in respect of all cheques, accounts, certificates, distribution statements, notices, reports and other documents sent to all or any Unit Holders;
- (e) costs of convening and holding any meeting of Unit Holders;
- (f) costs of preparing and printing cheques, accounts, certificates, distribution statements, notices, reports and other documents required to be prepared in connection with the Trust, pursuant to this deed, the rules or requirements of any stock exchange on which the Units are listed or any relevant law;

- (g) all costs, charges and expenses of and incidental to the preparation and execution of this deed and any supplemental deeds;
- (h) fees and expenses of any valuer, auditor, solicitor, barrister, property manager, agent or consultant, computer expert or other expert from time to time engaged by the Manager or by the Trustee in the discharge of their respective duties and exercise of powers under this deed;
- (i) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Register;
- (j) all costs, charges and expenses incurred in the advertising and promotion of the Trust;
- (k) all costs, charges and expenses incurred in connection with or which are incidental to the application for the listing of any Units on any stock exchange and the costs of the maintenance of such listing;
- (l) any expense or liability which may be incurred by the Trustee or the Manager (as the case may be) in bringing or defending any action or suit in respect of the Trust or the provisions of this deed; and
- (m) the costs for services identified in clause 25.8.

All such items shall, unless the Manager in consultation with the Auditor determines otherwise, be chargeable against the gross income of the Trust. The Trustee or the Manager may at any time elect not to seek reimbursement from the Trust Fund for any expense, cost or liability without prejudicing the right of the Trustee or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

25.5 Specific powers and indemnities: Without prejudice to the generality of clauses 25.1 to 25.4:

- (a) the Trustee shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Manager or any agent of the Manager, nor shall the Trustee be responsible to check any information, document, form or list supplied to it by the Manager;
- (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Trustee or any agent of the Trustee, nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Trustee;
- (c) the Trustee and the Manager may each act upon the opinion or advice of, or upon statements of or information in relation to the Trust obtained from, any solicitor, barrister, banker, accountant, broker or other Person believed by the Trustee or the Manager to be expert in relation to the matters on which advice was obtained, and neither the Trustee nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision of this deed any certificate, notice, direction or other communication is to be given by the Manager to the Trustee, the Trustee may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary, officer or responsible employee of the Manager or by any other Person or Persons appearing to be authorised by the Manager;

- (e) except insofar as otherwise expressly provided, the Manager and the Trustee shall as regards all the trusts, powers, authorities and discretions vested in each of them by this deed have absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of or time for their exercise;
 - (f) nothing contained in this deed shall be deemed to prohibit the Trustee, the Manager or any of their Related Companies, shareholders, officers or associates (all in this sub-clause (f) called "**Relevant Persons**") from holding any Units or from acting in any representative capacity for a Unit Holder. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Unit Holder. The acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this deed or imposed or implied by law; and
 - (g) the Trustee shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments, with any Person considered by the Trustee to be of good repute, and the Trustee shall not be responsible for any loss incurred by the Trust Fund as a result of any such documents being held by any such Person.
- 25.6 **Operation of Trust:** The Manager shall use its best endeavours to ensure that the Trust is carried on in a proper and efficient manner.
- 25.7 **Provision of information to Trustee:** The Manager shall:
- (a) make available upon demand to the Trustee for inspection the whole of the Manager's books and papers and all books and papers relating to the Trust; and
 - (b) give to the Trustee such information as the Trustee requires with respect to all matters relating to the Trust or to any business of the Manager, or to any property of the Manager (whether acquired before or after the date of this deed) or otherwise relating to the affairs of the Manager.
- 25.8 **Provision of services:** The Manager may, on behalf of the Trust, engage any Person (including any Person related to, or associated with, the Manager) to provide services to the Trust (including, without limitation, construction, engineering, repair, maintenance, leasing (including as to renewals and rent reviews), sales and acquisitions, property development, property management, project management, building design and registry management services) at prevailing market rates.
- 25.9 **No exemption:** No provision of this deed shall have the effect of exempting the Trustee or Manager, or any director or officer of the Trustee or Manager, from, or indemnifying any such Person against, any liability for breach of trust where the requisite degree of care and diligence has not been shown, having regard to the provisions of this deed and the powers, authorities and discretions conferred hereby.
- 25.10 **Waivers and applications to Court:** The Trustee may whenever it thinks expedient in the interests of Unit Holders exercise any of the following powers:
- (a) to waive at any time, and on any terms or conditions, any breach or anticipated 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 Unit Holders; and

- (b) to apply to the court for directions in relation to any questions, or assent to and approve of, or oppose, any application to the court made by or at the instance of the Manager or any Unit Holder.

26. WINDING UP

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

- (a) if the Manager certifies in writing that it is in the opinion of the Manager in the interests of Unit Holders that the Trust should be wound up;
- (b) if an Extraordinary Resolution is passed resolving to wind up the Trust;
- (c) if the period of 80 years less one day expires from the date of the Trust Deed;
- (d) if the office of Trustee becomes vacant, and a new Trustee is not appointed in accordance with clause 16.3, within two months of the vacancy occurring; and
- (e) the date on which the Trust is wound up by operation of law.

26.2 **Notice of winding up:** The Trustee shall within 14 days after the occurrence of any event referred to in clause 26.1, give to each Unit Holder notice of the occurrence of that event and of the intention of the Trustee to distribute the Trust Fund.

26.3 **Procedure:** The Trustee shall as soon as practicable after the occurrence of an event referred to in clause 26.1:

- (a) sell, call in and convert into Cash the whole of the Trust Fund;
- (b) pay out, discharge, or otherwise make proper provision for, all liabilities of the Trust Fund (including any contingent liabilities); and
- (c) distribute the remainder of the Trust Fund (less all costs and expenses incurred by the Trustee or the Manager in respect of the winding up of the Trust) amongst the Unit Holders in proportion to the numbers of Units held by them, subject to the particular rights of any Unit Holders to participate in any such distribution including in particular the rights attaching to unpaid or partly paid Units and other Units with special rights.

26.4 **Calls by the Trustee:** If there is a deficiency in the assets compared to the liabilities, then (subject to the rights, obligations and restrictions attaching to Units), the Trustee may call on a Unit Holder to pay all or any part of the Unpaid Amount of their Units as the Trustee calculates represents the amount of the deficiency divided amongst the Units which are partly paid (or, if lesser, the Unpaid Amount) and such amounts are to be applied by the Trustee under clause 26.3. Except as provided in the foregoing sentence, no Unit Holder shall have any liability or responsibility for any such deficiency.

27. MANAGEMENT OF THE TRUST

27.1 **Manager to manage Trust:** The Trust shall be managed by the Manager (with full power to delegate to its officers and employees all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion). The Manager agrees to carry out and perform the duties and obligations on its part contained in this deed during the period of the Trust. 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 trusts of this deed.

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

- (a) by power of attorney appoint any Person to be the attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions;
- (b) appoint any Person to be an agent or sub-manager in respect of the Trust or the Investments or any part thereof, and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this deed or in respect of the Trust (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

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

28. GOVERNING LAW

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

29. LIMITATION OF LIABILITY

29.1 **Limitation of liability of Unit Holders:** Notwithstanding anything contained in this deed (but subject to clause 30.4) or any rule of law no Unit Holder shall be or become personally liable in respect of any debt or liability of the Trust, and:

- (a) no Unit Holder shall in any circumstances be liable to indemnify the Trustee or the Manager in respect of any debt or liability incurred in respect of the Trust Fund;
- (b) nothing in this deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders; and
- (c) neither the Trustee nor the Manager shall be or act as agent for the Unit Holders, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder.

30. TAXATION LIABILITY

30.1 Interpretation: In this section:

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

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

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

- (a) any tax payable by or on account of that Person or in respect of that Person’s Units; and
- (b) any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Trustee in respect of a Unit Holder.

30.2 **Deduction of tax:** The Trustee or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person, an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Trustee or the Manager or from the Trust Fund.

30.3 **Application of amounts deducted:** Amounts deducted under clause 30.2 shall be applied in:

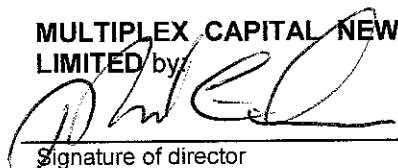
- (a) payment of the Taxation Amount to the Person or authority entitled thereto; or
- (b) reimbursement of the Trustee, the Manager or the Trust Fund for any corresponding amount paid from their own funds or from the Trust Fund (as the case may be); and
- (c) any balance shall be refunded to the Relevant Person.

30.4 **Indemnification for Taxation Amounts:** Each Relevant Person shall indemnify the Trustee and the Manager and the Trust in respect of any Taxation Amount paid or payable by the Manager, or the Trustee or the Trust Fund in respect of that Person.

30.5 **Interest on Taxation Amounts:** Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Person to the Trustee or the Manager as the case requires.

EXECUTION

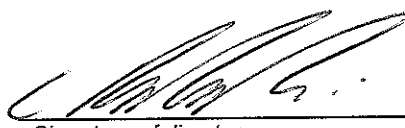
MULTIPLEX CAPITAL NEW ZEALAND
LIMITED by:



Signature of director

Phillip Raymond Carter

Name of director



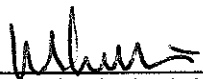
Signature of director

CHRISTOPHER JOHN PALMER

Name of director

PERPETUAL TRUST LIMITED

by:



Signature of authorised signatory

PETER SHELTON

Name of authorised signatory



Signature of authorised signatory

Anthony David Masas

Name of authorised signatory 19/4/04

in the presence of:



Name

Melissa Jane Mabey

Secretary / Support Officer

Signature

CHRISTCHURCH

Address

SCHEDULE 1 - MEETINGS OF UNIT HOLDERS

1. EXERCISE OF POWERS OF UNIT HOLDERS

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

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

2. MEETINGS OF UNIT HOLDERS

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

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

3. NOTICE OF MEETINGS OF UNIT HOLDERS

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

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

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

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

- 3.4 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Unit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Unit Holders agree to the waiver.
- 3.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.
- 3.6 **Notice of adjourned meeting:** If a meeting of Unit Holders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with paragraph 3.1.

4. PROCEEDINGS AT MEETINGS OF UNIT HOLDERS

- 4.1 **Requirement for quorum:** Subject to paragraph 4.3, no business may be transacted at a meeting of Unit Holders if a quorum is not present.
- 4.2 **Quorum:** Subject to paragraph 4.3 and the terms of the deed, a quorum for a meeting of Unit Holders is five Unit Holders having the right to vote at the meeting, present in person or by representative.
- 4.3 **Lack of quorum:** If a quorum is not present within 30 minutes (or such longer period as is considered appropriate by the chairperson of the meeting) after the time appointed for the meeting:
- (a) in the case of a meeting called by the Manager or the Trustee on the written request of Unit Holders entitled to exercise that right, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Manager may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting (or such longer period as is considered appropriate by the chairperson of the meeting), the Unit Holders or their Representatives present are a quorum.
- 4.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this deed, the Manager may regulate the procedure at meetings of Unit Holders.
- 4.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 4.6 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this deed and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefore, either adjourn or dissolve the meeting.
- 4.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to paragraph 4.6, the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with paragraph 8.4.

5. CHAIRPERSON OF MEETINGS OF UNIT HOLDERS

- 5.1 **Chairperson:** A person nominated in writing by the Manager shall preside as chairperson at every meeting called in accordance with clause 22.2, and a person nominated in writing by the Trustee shall preside as chairperson at every meeting called in accordance with clause 22.1.

6. VOTING AT MEETINGS OF UNIT HOLDERS

- 6.1 **Voting at meeting in one place:** In the case of a meeting of Unit Holders held under paragraph 1.1(a), unless a poll is demanded in accordance with paragraph 8.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 6.2 **Voting at audio/visual meeting:** In the case of a meeting of Unit Holders held under paragraph 1.1(b), unless a poll is demanded in accordance with paragraph 8.1, voting at the meeting shall be by the Unit Holders signifying individually their assent or dissent by voice.
- 6.3 **Postal votes:** Unless the Manager determines otherwise, Unit Holders may not exercise the right to vote at a meeting by casting postal votes.
- 6.4 **Entitlement to vote:** A Unit Holder may exercise the right to vote either in person or by Representative. The only Persons entitled to vote in person or by Representative shall be the Unit Holders registered in the Register at the date of the meeting (or, if an adjourned meeting, at the date the first meeting was first due to be held).
- 6.5 **Number of votes:** Subject to paragraph 7.1 and to any rights or restrictions for the time being attached to any Unit:
- (a) where voting is by show of hands or by voice every Unit Holder present in person or by Representative has one vote;
 - (b) on a poll every Unit Holder present in person or by Representative has:
 - (i) in respect of each fully paid Unit held by that Unit Holder, one vote;
 - (ii) in respect of each Unit held by that Unit Holder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Unit were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Unit bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).
- 6.6 **Vote of overseas protected persons:** A Unit Holder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Units held by that Unit Holder, by his or her committee, manager, or other person of a similar nature appointed by that court, voting in person or by proxy.
- 6.7 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with paragraph 8.1.
- 6.8 **Chairperson's casting vote:** The chairperson of a meeting of Unit Holders is not entitled to a casting vote.

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

7. RESTRICTIONS ON VOTING

7.1 **No vote when amount owing on Unit:** A Unit Holder is not entitled to vote at any meeting of Unit Holders in respect of any Unit if any amount is due and payable on that Unit by the Unit Holder to the Trust.

7.2 **Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Trust) which any Unit Holder may have against any disqualified person who casts a vote at a meeting in breach of paragraph 7.1, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that paragraph.

8. POLLS

8.1 **Right to demand poll:** At a meeting of Unit Holders a poll may be demanded by:

- (a) the chairperson; or
- (b) not less than five Unit Holders having the right to vote at the meeting; or
- (c) a Unit Holder or Unit Holders representing not less than 10% of the total voting rights of all Unit Holders having the right to vote at the meeting; or
- (d) a Unit Holder or Unit Holders holding Units that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Units that confer that right.

8.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

8.3 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

8.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

8.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Units of each Unit Holder present in person or by Representative and voting in respect of those Units; and
- (c) a Unit Holder need not cast all the votes to which the Unit Holder is entitled and need not exercise in the same way all of the votes which the Unit Holder casts.

8.6 **Scrutineer:** The Auditor shall be the scrutineer unless it is unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineer shall be appointed by the chairperson.

- 8.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineer stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

9. PROXIES

- 9.1 **Right to appoint:** A Unit Holder may appoint a proxy to vote on behalf of the Unit Holder at a meeting of Unit Holders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Unit Holder.
- 9.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Unit Holder, and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.
- 9.3 **Proxy form to be sent with notice of meeting:** The Manager shall send a form of notice of appointment of proxy to every Unit Holder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 9.4 **Proxy form must not name proxy:** The Manager shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Manager may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Unit Holder desires to appoint them or any of them.
- 9.5 **Receipt of proxy form:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Manager at its registered office, or at such address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 9.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Unit in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Manager at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
- 9.7 **Manager may waive requirements:** The Manager may, with the consent of the Trustee, waive any of the requirements of paragraphs 9.2 and 9.5.

10. CORPORATE REPRESENTATIVE

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

11. RESOLUTIONS

- 11.1 **Extraordinary Resolution:** The expression "**Extraordinary Resolution**" means a resolution passed at a meeting duly convened and held in accordance with the provisions of this schedule and carried by a majority of not less than 75% of the Persons entitled to vote and voting thereat (either personally or by Representative) on a show of

hands, or if a poll is duly demanded, by a majority consisting of not less than 75% of the votes given on such poll.

- 11.2 **Section 18 Resolution:** The expression "**Section 18 Resolution**" means a resolution which meets the requirements of section 18 of the Act.
- 11.3 **Simple majority:** Where a particular majority is not required by this deed or by law, any matter arising at any meeting of Unit Holders shall be determined by Ordinary Resolution.
- 11.4 **Powers exercisable by Extraordinary Resolution:** A meeting of Unit Holders shall have the following powers exercisable by Extraordinary Resolution:
- (a) power to sanction the exchange of Units for, or the conversion of Units into shares, stock, debentures, debenture stock, Units or other obligations or securities of any company, trust, or other entity formed or to be formed;
 - (b) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders howsoever such rights arise;
 - (c) subject to paragraph 11.6 of this schedule, power to assent to any alteration, modification of, variation of, or addition to the provisions contained in this deed, or the conditions attaching to the Units and to authorise the Manager and Trustee to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
 - (d) power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Trustee under any of the provisions of this deed;
 - (e) subject to the Act, power to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this deed; and
 - (f) power to give directions to the Trustee as to the appointment of a new Manager in accordance with clause 18.7.
- 11.5 **Class meetings:** A meeting of the Unit Holders of any Class of Units shall have power by Extraordinary Resolution to vary the rights attaching to Units of that Class, provided that such variation does not adversely affect the rights attaching to any other Class of Units (in which case an Extraordinary Resolution of that Class would also be required), and provided further that any such meeting shall be convened and variation effected in accordance with the applicable provisions of this deed.
- 11.6 **Conduct of Trustee and Manager:** No provision of this deed may be altered without the prior written consent of the Manager and the Trustee.

12. EXTRAORDINARY RESOLUTION BINDS ALL UNIT HOLDERS

- 12.1 **Extraordinary Resolution binding:** An Extraordinary Resolution passed at a meeting of the Unit Holders duly convened and held in accordance with this schedule shall be binding upon all Unit Holders whether present or not at the meeting and each of the Unit Holders shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the Manager, the Trustee and the Unit Holders shall be conclusive evidence that the circumstances justify the passing thereof, the intention

being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

- 12.2 **Particular Unit Holders:** A resolution which affects a particular Unit Holder or a Class of Unit Holders only, as opposed to the rights of the Unit Holders generally, shall not be binding on such Unit Holder or Class of Unit Holders unless such Unit Holder or Unit Holders agree, or such Class Unit Holders by Extraordinary Resolution agree, to be bound by the terms of such Resolution.

13. MINUTES TO BE KEPT

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