

CLAYTON UTZ

## Supplemental Deed Poll

**360 Capital Industrial Fund**  
ARSN 099 680 252

**360 Capital RE Limited**  
ACN 090 939 192

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Lawyers  
Level 15, 1 Bligh Street

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## Supplemental Deed Poll made on 14 September 2012

**Parties**                    **360 Capital RE Limited ABN 62 090 939 192** of Level 8, 56 Pitt Street, Sydney NSW 2000 ("**Responsible Entity**")

### Background

- A.        360 Capital Industrial Fund ARSN 099 680 252 ("**Scheme**") was established by trust deed. The constitution for the Scheme, as amended from time to time, is referred to in this Deed as the "**Constitution**".
- B.        The Scheme is registered by the Australian Securities and Investments Commission ("**ASIC**") as a managed investment scheme and the Responsible Entity is appointed as the responsible entity of the Scheme.
- C.        Pursuant to section 601GC(1)(a) of the *Corporations Act 2001* (Cth) the Constitution may be modified by a special resolution of members of the scheme.
- D.        On 14 September 2012, the members of the Scheme approved a special resolution to modify the Constitution as set out in this Supplemental Deed.
- E.        The Responsible Entity modifies the Constitution as set out in this deed.

### Operative provisions

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#### 1        Interpretation

Unless defined in this deed, words defined in the Constitution or in the *Corporations Act 2001* (Cth) have the same meaning in this deed.

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#### 2        Operation of this deed

This deed takes effect as a supplemental deed to the Constitution on the day it is lodged with ASIC pursuant to section 601GC(2) of the *Corporations Act 2001* (Cth).

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#### 3        Amendments to the Constitution

Subject to clause 2, the Constitution is modified by replacing each provision of the Constitution with the provisions set out in Schedule 1 to this deed other than the clauses having the words set out in clauses 2.1(a) and 2.3(a) as they appear in Schedule 1, the wording of which have been retained but which are repeated in Schedule 1.

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#### 4        No resettlement

Nothing in this deed constitutes a resettlement or redeclaration of the Scheme.

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#### 5        Governing law

This deed is governed by the law in force in the state of New South Wales, Australia.

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**6 Partial Invalidity**

If any provision of this deed is or becomes invalid, redundant or unenforceable or purports to amend an invalid provision of the Constitution, that provision will be read with the necessary changes (if possible) to remedy such circumstances and to give effect to the intention of this deed or, failing that, will be deemed deleted from this deed and such circumstances will not affect the other provisions of this deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modification made necessary by the deletion of the invalid, redundant or unenforceable provision.

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**7 Full effect**

The provisions of this deed will be read with such changes as are necessary, and the Constitution will be read with such changes as are necessary (including reading down to the extent of any inconsistency), to ensure the provisions and the intention and purpose of this deed take full effect.

**Executed as a deed**

**Executed by 360 Capital RE Limited ACN  
090 939 192** by or in the presence of:

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Signature of Director

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Signature of Secretary/other Director

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Name of Director in full

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Name of Secretary/other Director in full

## Schedule 1

# Constitution of 360 Capital Industrial Fund

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# The deed

## Constitution of 360 Capital Industrial Fund

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Date ► 15 August 2002

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Responsible Entity **360 Capital RE Limited**  
ABN 62 090 939 192 of Level 8, 56 Pitt Street Sydney NSW 2000  
(the **Responsible Entity**)

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Recitals

- 1 The Responsible Entity holds a dealer's licence issued under part 7.3 of the Corporations Act which permits it to operate the trust as a managed investment scheme.
- 2 The Trust will be a fixed term, property trust.
- 3 The Responsible Entity intends to issue one or more Prospectuses which will enable investors to acquire Units in the Trust.
- 4 The Responsible Entity will manage the Trust for the Unit Holders for the Term and, at the end of the Term, will wind up the Trust.
- 5 This Deed is the constitution of the Trust and contains the terms and conditions which govern the operation of the Trust.

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**This deed provides:**

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## 1 Definitions and interpretation

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### 1.1 Definitions

In this Deed

Term	Meaning
<b>Accrued Income</b>	for a Distribution Period means the amount the Responsible Entity calculates as the Net Income for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
<b>Acquisition Costs</b>	<p>in respect of a Property:</p> <ol style="list-style-type: none"> <li>1 for the purposes of determining the Exit Mechanism Fee for each Property for which an Exit Mechanism Fee has been calculated the Independent Value of that Property at the last occurring Exit Date for that Property; and</li> <li>2 for the purposes of determining the Exit Mechanism Fee for each Property for which an Exit Mechanism Fee has not been calculated, the aggregate of: <ul style="list-style-type: none"> <li>• the purchase price payable for the relevant Property;</li> <li>• all stamp duty, registration fees, legal costs and agents' commissions; and</li> <li>• all fees paid to Experts and other persons engaged to assist in the process of the selection, assessment, legal and structural engineering due diligence and negotiation of the purchase of the relevant Property.</li> </ul> </li> </ol>
<b>Applicant</b>	a person who makes an application to become a Unit Holder in accordance with an application form attached to a Prospectus.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning given to that term by Division 2 of Part 1.2 of the Corporations Act.
<b>ASTC Settlement Rules</b>	the ASTC Settlement Rules and any other rules of ASTC which apply while the Units are CHESSE Approved Securities, each as amended from time to time.
<b>ASX</b>	ASX Limited ACN 008 624 691 or the market operated by it as the context requires.
<b>Attached Security</b>	A Security which is from time to time Stapled or to be Stapled to a Unit.
<b>Authorised Investment</b>	those investments that the Responsible Entity has the power to make pursuant to clause 7.1.

Term	Meaning
<b>Business Day</b>	a business day as defined in the Listing Rules but if Units are not Officially Quoted, a day on which banks are generally open for business in Sydney, Australia.
<b>CHES Approved Securities</b>	securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASTC) in accordance with the ASTC Settlement Rules.
<b>Compliance Committee</b>	the compliance committee established by the, Responsible Entity in accordance with Part 5C.5 of the Corporations Act.
<b>Compliance Plan</b>	the compliance plan of the Trust created pursuant to Part 5C.4 of the Corporations Act.
<b>Compliance Plan Auditor</b>	an auditor registered under Part 9.2 of the Corporations Act and appointed under clause 20.1 to audit the Compliance Plan.
<b>Consumer Price Index</b>	<p>the Consumer Price Index, as published by the Australian Bureau of Statistics for the 8 Capital Cities Weighted Average (All Groups) on the basis that:</p> <ol style="list-style-type: none"> <li>1 the reference base for the index shall be the fiscal year 1989/90; and</li> <li>2 if the Australian Statistician updates the reference based of the index, appropriate arithmetical adjustments will be made to preserve the intended continuity of the calculation,</li> </ol> <p>PROVIDED THAT if the Consumer Price Index is suspended or discontinued, references to "Consumer Price Index" will mean the index, scale or other system which most closely measures economic inflation on a weighted average basis for the 8 capital cities of Australia;</p>
<b>Contract</b>	a contract for the sale and purchase of a Property pursuant to which the Responsible Entity (or the Custodian as agent of the Responsible Entity) will acquire the Property on trust for the Unit Holders.
<b>Corporations Act</b>	the Corporations Act 2001 and includes the regulations made under that Act from time to time.
<b>Current Unit Value</b>	the current market value of a Unit determined by the Responsible Entity on the basis of an Independent Valuer's valuation of the Property and an independent assessment of the other Trust Property and the liabilities of the Trust.
<b>Custodian</b>	the party appointed as custodian pursuant to clause 2.3.
<b>Deed</b>	this constitution and any schedules or annexures to it.
<b>Directors</b>	the directors of the Responsible Entity from time to time.

Term	Meaning
<b>Distributable Income</b>	<p>any amount determined by the Responsible Entity from time to time to be distributed to Unit Holders, including:</p> <ol style="list-style-type: none"> <li>1 the Net Income of the Trust;</li> <li>2 other Income of the Trust; and</li> <li>3 any other amount of whatever nature.</li> </ol>
<b>Distribution Date</b>	the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period being a date no later than 28 days after the end of a Distribution Period.
<b>Distribution Period</b>	<p>each 3 month period in a year ending on the last days of March, June, September and December ("<b>quarter</b>") except that:</p> <ol style="list-style-type: none"> <li>4 if the first Purchase Date occurs during a Distribution Period then the first Distribution Period will be from the first Purchase Date to the end of the quarter (or, if there is less than one full calendar month remaining in the quarter then to the end of the next quarter);</li> <li>5 if the termination of the Trust occurs during a Distribution Period then the last Distribution Period will end on the date of termination;</li> <li>6 the Responsible Entity may change the duration or dates for the commencement or end of the Distribution Period (in which case the Responsible Entity must notify the Unit Holders of the new dates) provided that the Distribution Period does not exceed 6 months.</li> </ol>
<b>Exercise Price</b>	in relation to a Unit issued on the exercise of an Option, the Market Price of a Unit no more than 15 days before the date upon which the Option is issued
<b>Expert</b>	includes solicitors, barristers, accountants, bankers, financial advisers, valuers, architects, engineers, quantity surveyors and other professionally qualified consultants,
<b>Financial Year</b>	<p>the period of 12 months ending on 30 June in each year during the continuance of the Trust and includes:</p> <ol style="list-style-type: none"> <li>1 the period commencing on the date the Trust is established and expiring on the next 30 June; and</li> <li>2 the period between 1 July last occurring before the termination of the Trust and the date of termination of the Trust.</li> </ol>
<b>First Prospectus</b>	the first Prospectus issued by the Responsible Entity in respect of the Trust.
<b>Gross Asset Value</b>	the total value of the Trust assets.
<b>Gross Proceeds</b>	the aggregate of all moneys (including base rent, turnover rent, licence fees, outgoings and other moneys payable in respect of the use or occupation of the Property) received from the tenants and other occupants and users of the Property and all other revenue generated by or in respect of the use of the

<b>Term</b>	<b>Meaning</b>
	Property.
<b>GST</b>	the tax known as or imposed in the nature of a goods and services tax, value added tax or supply tax.
<b>Income</b>	all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles.
<b>Independent Expert</b>	for the purposes of a Merger Proposal, an expert who is experienced in assessing the merits of proposals such as the Merger Proposal and who is independent of the Responsible Entity, its related bodies corporate and Associates.
<b>Independent Value</b>	the value of each Property determined by an Independent Valuer.
<b>Independent Valuer</b>	<p>a person with the relevant professional qualification and experience who:</p> <ol style="list-style-type: none"> <li>1 does not have a pecuniary interest that conflicts with his or her obligation to provide a proper valuation of the relevant Unit; and</li> <li>2 is independent of: <ul style="list-style-type: none"> <li>• the Responsible Entity;</li> <li>• any company related to the Responsible Entity;</li> <li>• any person who is an Associate of the Responsible Entity; and</li> <li>• any person acting in concert with the Responsible Entity in relation to the sale or issue of the relevant Unit.</li> </ul> </li> </ol>
<b>Issue Price</b>	in relation to a Unit or an Option, the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with clause 3.4.
<b>Liabilities</b>	all liabilities of the Trust, including any provisions the Responsible Entity considers should be taken into account in determining liabilities. To the extent applicable Australian accounting standards require any amounts representing Unit Holder's funds to be classified as a liability, then for the purposes of calculating the Net Asset Value in this Constitution, the Unit Holders' funds are not to be treated as a liability.
<b>Liquid</b>	has the same meaning as in section 601KA of the Corporations Act.
<b>Listed</b>	admitted to the Official List.
<b>Listing Rules</b>	the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Term	Meaning
<b>Loan Funds</b>	the loan or other financial accommodation described in clause 11.1.
<b>Market Price</b>	has the meaning given in clause 1.3.
<b>Marketable Parcel</b>	has the meaning given to it in the Listing Rules.
<b>Merger Proposal</b>	a merger proposal determined by an Independent Expert to: <ol style="list-style-type: none"> <li>1 be in the best interests of Unit Holders; and</li> <li>2 relate to Property.</li> </ol>
<b>Net Asset Value</b>	the total value of the Trust Property calculated in accordance with clause 25, less the Liabilities.
<b>Net Income</b>	in relation to the Trust, ' <b>net income</b> ' as defined in section 95 of the Tax Act as calculated for each Financial Year or other relevant period.
<b>Official List</b>	the official list of ASX.
<b>Official Quotation or Officially Quoted</b>	official quotation by ASX of Units.
<b>Option</b>	an option granted by the Responsible Entity in respect of unissued Units.
<b>Optionholder</b>	the person for the time being registered as a holder of an Option, including any persons jointly registered.
<b>Personal Representative</b>	an executor or administrator of the estate of a deceased Unit Holder or Applicant, the trustee of the estate of a Unit Holder or Applicant under a legal disability or a person who holds a general power of attorney granted by a Unit Holder or Applicant.
<b>Proceeds Fund</b>	the fund established under clause 10.1 and into which the Gross Proceeds and all other Income generated by the Trust must be deposited.
<b>Property</b>	either: <ol style="list-style-type: none"> <li>1 a parcel or parcels of land that have satisfied the Responsible Entity's investment criteria and strategy described in Schedule 2 and which the Responsible Entity (or the Custodian as agent of the Responsible Entity) acquires or intends to acquire and hold for the Trust and includes all buildings and other improvements on that land and all fixtures, fittings, plant, equipment and other assets acquired or held from time to time for the purposes of the Trust and, where the context permits, includes any part of it. Where more than one Property is acquired or is to be acquired for the Trust,</li> </ol>

Term	Meaning
	<p>a reference to the Property includes a reference to each Property; or</p> <p>2 units in a unit trust or interests in another investment vehicle which holds property of the kind described in paragraph 1.</p>
<b>Prospectus</b>	a prospectus, product disclosure document or any other similar document inviting applications for Units, issued by the Responsible Entity in compliance with the Corporations Act and includes any replacement of it or supplementary Prospectus.
<b>Purchase Date</b>	the date on which the purchase or other acquisition of a Property by the Responsible Entity or the Custodian (as the case may be) is completed.
<b>Register</b>	the register of Unit Holders required to be kept by the Responsible Entity under section 169 of the Corporations Act and to be established and maintained by the Responsible Entity in accordance with clause 5.
<b>Restricted Securities</b>	has the meaning given to it in the Listing Rules.
<b>Restriction Agreement</b>	means a restriction agreement within the meaning and for the purposes of the Listing Rules.
<b>Security</b>	has the meaning given to that term in section 92(1) of the Corporations Act.
<b>Subscription Fund</b>	the fund established under clause 10.1 and into which all Issue Prices must be deposited.
<b>Subscription Sum</b>	<p>the price to be paid by an Applicant for a Unit in the Trust and which:</p> <p>1 under the First Prospectus is \$1.00; and</p> <p>2 subject to the Responsible Entity determining another amount in accordance with clause 3.9 or as otherwise permitted under the Corporations Act, at all other times under each subsequent Prospectus will be</p> <p>an amount calculated as follows:</p> $\frac{\text{Net Asset Value} - \text{Accrued Income} + \text{Transaction Costs}}{\text{Units in issue}}$
<b>Tax Act</b>	the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997, and includes the regulations made under those Acts from time to time.
<b>Term</b>	has the meaning given to that word in clause 2.1.
<b>Terms of Issue</b>	in relation to a Unit or an Option, the terms and conditions upon which that Unit or Option is issued (other than those in this Deed).



Term	Meaning
<b>Terms of Offer</b>	in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option.
<b>Transaction Costs</b>	an allowance (which is independently verifiable) for the total cost of acquiring the Trust Property. However, subject to the Corporations Act (if relevant) the Responsible Entity may in connection with any particular application for Units deem these costs to be a lesser sum or zero
<b>Trust</b>	the managed investment scheme established by this Deed and to be known as the " <b>360 Capital Industrial Fund</b> ".
<b>Trust Auditor</b>	an auditor registered under part 9.2 of the Corporations Act and appointed to audit the Trust under clause 20.1.
<b>Trust Costs</b>	<p>the total of all fees, costs, charges, expenses and other amounts ("<b>costs</b>") incurred or payable in relation to the establishment, operation and winding up of the Trust or in respect of the Trust Property including, but not limited to:</p> <ol style="list-style-type: none"> <li>1 the purchase price payable for the Property;</li> <li>2 the costs incurred by the Responsible Entity in and about the establishment of the Trust and the purchase of the Property including, but not limited to: <ul style="list-style-type: none"> <li>• all stamp duty, registration fees, legal costs and agents' commissions;</li> <li>• valuation fees for any valuation of the Property;</li> <li>• accountant's fees for any financial or other accounting information, advice or report included or referred to in each Prospectus;</li> <li>• fees payable to any Expert or other person whose advice or report is included or referred to in or obtained for the purpose of each Prospectus;</li> <li>• commissions which may lawfully be paid in respect of applications for Units under each Prospectus, other than commissions to be paid by the Responsible Entity out of its own fees;</li> <li>• all costs incurred in the issue of the Units including, without limitation, costs incurred in the preparation, verification, registration, printing, distribution and promotion of each Prospectus;</li> <li>• underwriting fees payable in relation to each Prospectus to an underwriter of any issue of Units pursuant to an underwriting agreement;</li> <li>• all costs incurred in relation to the engagement of Experts and other persons to assist in the process of selecting, assessing and negotiating the purchase of a Property; and</li> <li>• any option fee paid or payable by the Responsible Entity or any Associate of the Responsible Entity to ensure the right to purchase the Property.</li> </ul> </li> <li>3 the fees properly payable to the Responsible Entity and the Custodian for the performance of their duties and the provision of their services to the Trust;</li> <li>4 the costs of auditing the Trust accounts and all other services of the Trust Auditor required by this Deed or the Corporations Act;</li> <li>5 the costs of establishing, maintaining and auditing the Register;</li> <li>6 the costs incurred in connection with the sale of the Property including</li> </ol>

Term	Meaning
	marketing expenses, legal fees, brokerage and commission;
7	the valuation fees payable in relation to the Property;
8	the fees and premiums incurred in respect of obtaining and maintaining insurance in relation to the Property;
9	the costs incurred in connection with any rearrangement of the capital structure of the Trust;
10	the costs incurred in connection with convening or holding any meeting of Unit Holders and implementing any resolution passed by Unit Holders;
11	the costs incurred in connection with any modification of this Deed;
12	bank charges on the Subscription Fund, Proceeds Fund and any other banking accounts operated solely for the Trust;
13	income tax, capital gains tax, GST, stamp duties, financial institutions duties and bank account debit taxes and fines and penalties relating to any of these and any other tax, duty or impost payable by the Responsible Entity on account of or on behalf of the Trust;
14	the costs of preparing, printing and posting statements, cheques, Trust accounts, notices, reports and other documents sent to Unit Holders;
15	the costs incurred by or on behalf of the Responsible Entity in connection with its retirement and the appointment of a substitute, including costs associated with the preparation, execution and stamping of any deed of retirement and release;
16	except where the court otherwise directs, the costs incurred in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) made or brought by or against the Responsible Entity in respect of any actual or alleged breach or default under this Deed;
17	the costs incurred by the Responsible Entity in the initiation conduct and settlement of any court proceedings (including any negotiations, conferences and demands) to enforce or to protect the rights of Unit Holders;
18	the rates, taxes, charges, assessments and impositions, whether governmental, municipal or otherwise, assessed, charged, levied or imposed in respect of the Property;
19	premiums and other costs incurred in insuring any Trust Property;
20	the costs of professional indemnity insurance in relation to directors and officers of the Responsible Entity and members of the Compliance Committee;
21	the costs incurred in preparing and lodging returns, notices or statements under the Corporations Act or any other law binding on the Responsible Entity;
22	the costs of acquiring, establishing, maintaining and developing computer software and systems specifically required for the administration of the Trust;
23	the costs incurred by or in relation to the compliance plan (including maintaining and auditing) and the Compliance Committee including fees paid to members of the Compliance Committee;
24	the costs in connection with the management and administration of the Trust and Trust Property, the performance of the functions and duties of the Responsible Entity under this Deed and under any law;
25	amounts incurred by the Responsible Entity in engaging independent contractors, agents, contractors, consultants, Experts and other service providers in connection with the management and administration of the Trust

Term	Meaning
	<p>and Trust Property;</p> <p>26 the admission of the Trust to the Official List of the ASX and compliance with the Listing Rules;</p> <p>27 the costs associated with handling complaints pursuant to clause 15;</p> <p>28 the costs associated with ownership of a Property including, but not limited to, the cost of managing (including fees paid to any managing agent) insuring, repairing, maintaining, operating, upgrading and improving the Property;</p> <p>29 the costs (including interest and bank fees and charges) associated with any loan or other financial accommodation and any security granted to finance the purchase of a Property or to finance any other cost of ownership;</p> <p>30 the costs incurred as a consequence of any approval granted or condition imposed by any relevant authority;</p> <p>31 the costs of leasing, licensing, selling or otherwise disposing of or dealing with a Property or any estate or interest therein (including fees and commissions paid to any agent); and</p> <p>32 all other costs, fees, charges and expenses arising from the ownership or the proper management of the Trust Property or arising from the proper performance of the Responsible Entity's obligations under this Deed and/or any law.</p>
<b>Trust Property</b>	<p>(and where the context permits, includes reference to any part of):</p> <ol style="list-style-type: none"> <li>1 the Properties;</li> <li>2 the Issue Prices;</li> <li>3 the Gross Proceeds;</li> <li>4 any Authorised Investments; and</li> <li>5 any other right, entitlement, property or income acquired or derived from the Trust Property described in paragraphs (a) to (d) inclusive or to which the Responsible Entity becomes entitled for the benefit of the Trust.</li> </ol>
<b>Unit</b>	<p>the interest in the Trust which a Unit Holder acquires by applying in accordance with an application form attached to a Prospectus and having the application accepted by the Responsible Entity. Each interest is expressed as a number and in percentage form, with 100% being the aggregate, for the time being, of all Units in the Trust. The proportion that each Unit Holder's Subscription Sum bears to the total Subscription Sums raised from time to time determines that Unit Holder's percentage interest in the Trust.</p>
<b>Unit Holder</b>	<p>a person whose name is, for the time being, entered in the Register as the holder of a Unit (including persons jointly registered).</p>
<b>Valuation Date</b>	<p>a date on which the Responsible Entity calculates the Net Asset Value.</p>

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and, unless the context indicates a contrary intention:
- (b) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (c) a reference to this Deed or to any other deed, agreement or document includes, respectively, this Deed or that other deed, agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (d) words importing the singular include the plural (and vice versa), words denoting a , given sex include the other sex, and words denoting individuals include corporations, bodies corporate and firms (and vice versa);
- (e) references to currency are references to Australian currency;
- (f) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, regulations and other statutory instruments issued under any legislation;
- (g) a reference to the Listing Rules or the ASTC Settlement Rules includes any modification or replacement of those rules or any other rules (however described) issued under those rules;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit and annexure;
- (i) if any day appointed or specified by this Deed for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified will be deemed to be the next Business Day;
- (j) if more than one person is under an obligation to act or not to act under this Deed, the liability of those persons so identified binds each of them severally and every two or more of them jointly, and if more than one person receives the same benefit under this Deed the benefit is to be enjoyed by each of them severally;
- (k) references to payments to any party to this Deed will be construed to include payments to another person upon the direction of such party;
- (l) all payments to be made under this Deed must be made by unendorsed bank cheque or other immediately available funds and in Australian currency;
- (m) any obligation to give notice or make payment to joint Unit Holders shall be satisfied by giving the notice or making the payment to the Unit Holder first named in the Register for that Unit; and
- (n) any word or expression defined in or for the purposes of the Corporations Act, unless otherwise defined in clause 1.1 or the context otherwise requires, has the same meaning when used in this Deed, and the clauses of interpretation specified in or applicable for the purposes of the Corporations Act, unless the context otherwise requires, apply in the interpretation of this Deed.

### **1.3 Market Price**

- (a) Clause 1.3 only applies while the Trust is Listed.
- (b) Subject to clauses 1.3(d) and 1.3(f), the Market Price for a Unit on any Business Day is either:
  - (1) the volume weighted average traded price for an Interest for all sales on ASX (excluding transactions referred to in clause 1.3(e)) for the 10 Business Days

- immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day) (**VWAP**); or
- (2) a price obtained pursuant to a bookbuild carried out in accordance with clause 1.3(c).
- (c) For the purposes of clause 1.3(b)(2):
- (1) the bookbuild must be arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market; and
- (2) the Responsible Entity must be satisfied on reasonable grounds that the bookbuild was conducted in accordance with normal market practice for bookbuilds.
- (d) If in respect of clause 1.3(c), the Responsible Entity considers the period of 10 Business Days to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.
- (e) For the purposes of clauses 1.3(c), the following transactions are excluded when calculating Market Price:
- (1) any transaction defined in the Listing Rules as a “Special Crossing”;
- (2) any transaction defined in the Listing Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the closing phase or after-hours adjust phase;
- (3) any transaction pursuant to the exercise of Options over Units; or
- (4) any transaction which the Responsible Entity considers is not reflective of natural supply and demand.
- (f) If the Responsible Entity believes that the calculations in clause 1.3(b) do not provide an appropriate reflection of the market price of a Unit or in the case of clause 1.4(c)(2), if the Responsible Entity believes that it is either not feasible or undesirable to conduct a bookbuild in accordance with clause 1.4(d), the Market Price on any Business Day is an amount determined by an Approved Valuer, applying the principles in this clause 1.3.
- (g) If required to determine the Market Price of a Unit pursuant to this clause 1.3, the Approved Valuer must determine a Market Price which is in its reasonable opinion the fair market price of the Interest, having regard to:
- (1) the nature of the proposed offer of Units for which purpose the market price of an Interest is being calculated; and
- (2) the circumstances in which the proposed offer of Units will be made.
- (h) The Market Price of an Option on any Business Day must be determined in the same manner as the Market Price for a Unit is determined.

## **1.4 General compliance provision**

At all times when the Trust is a registered scheme:

- (a) a provision of this Deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency;
- (b) clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Deed; and
- (c) this clause 1.4 prevails over all other provisions of this Deed including any that are expressed to prevail over it.

## 1.5 Inconsistency with the Listing Rules

- (a) Despite anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4.
- (b) While the Trust is Listed, the following clauses apply:
- (1) despite anything in this Deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this Deed prevents an act being done that the Listing Rules require to be done;
  - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (4) if the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is taken to contain that provision;
  - (5) if the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is taken not to contain that provision; and
  - (6) if any provision of this Deed is or becomes inconsistent with the Listing Rules, this Deed is taken not to contain that provision to the extent of the inconsistency.

## 1.6 Additional provisions required to list

Despite any other provision of this Deed, the following provisions apply and prevail to the extent of any inconsistency:

***[Include any additional provisions required to facilitate listing on the ASX]***

## 2 The Trust

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### 2.1 Establishment and Term of Trust

- (a) By this Deed, the Responsible Entity establishes the Trust as a fixed term, property trust to be registered as a managed investment scheme under Part 5C.1 of the Corporations Act.
- (b) The Trust shall commence operation on the day on which the ASIC registers the Trust as a managed investment scheme and, unless it is wound up earlier, shall continue in force for a period of 80 years from the first Purchase Date and may be extended under paragraph (e) ("**Term**").
- (c) ***[Intentionally deleted]***
- (d) The Responsible Entity shall sell the Property at the expiration of the Term whereupon the Trust shall come to an end.
- (e) ***[Intentionally deleted]***
- (f) ***[Intentionally deleted]***.
- (g) The Trust shall be wound up if, within 12 months from the date of commencement of the Trust, the Responsible Entity has not purchased or entered into a contract to purchase the first Property.

## **2.2 Enforceability of constitution**

- (a) This Deed is the Trust's constitution and is legally enforceable as between each Unit Holder and the Responsible Entity.
- (b) To the extent to which there is any inconsistency between the terms of this Deed and the requirements of the Corporations Act, the latter shall prevail and the terms of this Deed shall be construed accordingly.

## **2.3 Trust Property held on trust**

- (a) The Responsible Entity will act as trustee for the Unit Holders and, except where any part of the Trust Property is held by the Unit Holders or by a Custodian pursuant to paragraph (b), will hold the Trust Property on trust for the Unit Holders. If any part of the Trust Property is held by or in the name of the Unit Holders, it shall be deemed to be held by them as tenants in common in proportion to their respective Unit holdings in the Trust.
- (b) The Responsible Entity shall, if required by the Corporations Act, and otherwise may, appoint any person to act as custodian of any Trust Property and to hold any Trust Property on trust for the Responsible Entity or the Unit Holders. Any Custodian appointed by the Responsible Entity must enter into a written agreement with the Responsible Entity detailing the terms and conditions of the appointment. The written agreement must be consistent with the provisions of this Deed.
- (c) If the Responsible Entity appoints a Custodian, the Responsible Entity may delegate to the Custodian any of the Responsible Entity's functions or obligations in relation to the Trust Property held by the Custodian provided that no such delegation shall:
  - (1) in any way relieve the Responsible Entity from its liability or responsibility to the Unit Holders in respect of in the performance of its functions or obligations in relation to that Trust Property; or
  - (2) impose any liability or responsibility to the Unit Holders on the Custodian except as agreed with or accepted by the Custodian.

## **3 Offer and issue of interests in trust**

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### **3.1 Offer of Units**

The Responsible Entity:

- (a) may offer Units for sale at any time;
- (b) shall determine the number of Units to be offered, the Issue Price and the rights, terms and conditions applicable to any Units. Those rights, terms and conditions attaching to Units will prevail to the extent of any inconsistency with this Deed; and
- (c) shall cause the issue of any Prospectus required to offer Units.

### **3.2 Offer of Options**

- (a) The Responsible Entity may not grant Options unless the Trust is Listed.
- (b) The Responsible Entity may grant Options only in accordance with clause 12 and subject to this Deed.
- (c) The Responsible Entity may grant Options only in accordance with the Terms of Offer and the Terms of Issue of an Option.

### 3.3 Underwriting of issue

- (a) The Responsible Entity may arrange for:
- (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of instalments in respect of partly paid Units; or
  - (3) the exercise of Options,
- to be underwritten by an underwriter on terms determined by the Responsible Entity.
- (b) The underwriter may:
- (1) be the Responsible Entity or a related body corporate of the Responsible Entity; and
  - (2) take up any Units or Options not subscribed for.
- (c) The Responsible Entity may issue Units and Options under this clause 3.3 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

### 3.4 Issue Price

- (a) The Issue Price to acquire a Unit is:
- (1) while the Trust is not Listed, the Subscription Sum; and
  - (2) while the Trust is Listed, the Market Price on a Business Day no more than 15 days prior to the day on which the offer or issue is made.
- (b) Where the Trust is Listed, the Responsible Entity may issue:
- (1) Options at an Issue Price of Nil and otherwise on the terms and conditions set out in the Terms of Offer and Terms of Issue; and
  - (2) Units under any Option for the Exercise Price.

### 3.5 Applications

- (a) Each application for a Unit must comprise:
- (1) a completed application form in the form prescribed by the Responsible Entity;
  - (2) subject to clause 3.6, payment specified in the form specified by the Responsible Entity or by transfer of property of a kind able to be vested in the Responsible Entity for the Issue Price.
- (b) Each application must be delivered to the Responsible Entity in the manner prescribed by the Responsible Entity.
- (c) The Responsible Entity may request any further information from an Applicant that the Responsible Entity may reasonably require to assess the Applicant's application.
- (d) The Responsible Entity may, in its absolute discretion, accept or reject an application, and it shall not be required to give an Applicant any reason for rejection. If the Responsible Entity rejects an application, the Responsible Entity shall return the Issue Price to the Applicant named in the rejected application within 14 days of rejection.

### 3.6 Deposits

- (a) The Responsible Entity may, in its discretion, accept a deposit as part payment of the Issue Price and nominate a date or dates for payment of the balance.



- (b) If an Applicant fails to pay the balance of the Issue Price on the due date or dates, the Responsible Entity may, in addition to or in lieu of any other right or remedy available, forfeit the deposit.

### 3.7 Becoming a Unit Holder

- (a) An Applicant shall be entitled to have his name entered on the Register as a Unit Holder when:
  - (1) the Responsible Entity has accepted the Applicant's application under clause 3.5 and confirmed in writing to the Applicant the Responsible Entity's approval to the issue of Units to that Applicant; and
  - (2) payment of the full amount of the Issue Price has been received by the Responsible Entity in cash or by cheque and the cheque has been cleared.
- (b) The Responsible Entity is not obliged to issue certificates evidencing membership of the Trust.

### 3.8 [Deleted by prior supplemental deed]

[deleted.]

### 3.9 Rights issue

- (a) The Responsible Entity may, from time to time, offer further Units for subscription to all Unit Holders named in the Register on a date determined by the Responsible Entity.
- (b) A Unit Holder may not transfer its entitlement in respect of any Units offered to it under clause 3.9(a) in favour of another person, unless the Responsible Entity makes it an express term of the issue that the offer is transferable.
- (c) Where:
  - (1) Units are offered only to Unit Holders (and to all Unit Holders) named in the Register on a date determined by the Responsible Entity;
  - (2) those offers are made at substantially the same time;
  - (3) all Units offered are in the same class;
  - (4) all of the Units that are offered for subscription are at the same price; and
  - (5) the amount of Units offered to each Unit Holder is proportionate to the value of that Unit Holder's existing interest in the Trust,

the Units may be offered and issued at a price determined by the Responsible Entity, but not less than 70% of the amount which otherwise would have been calculated and determined to be the Issue Price.

For the purposes of this Deed, the price so determined by the Responsible Entity shall be deemed to be the Issue Price for the Units so issued.

- (d) If, for the purposes of an issue of Units under this clause 3.9, the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude certain Unit Holders that are resident in a country outside Australia ("**Foreign Unit Holders**") and not unfair to those Foreign Unit Holders, the Responsible Entity may, instead of issuing the Units to the Foreign Unit Holders, sell the Units to which the Foreign Unit Holders would have been entitled under this clause 3.9 but for the fact that they are Foreign Unit Holders. In doing so, the Responsible Entity shall take reasonable steps to maximise the net sale price of the relevant Units and promptly pay the net sale price to the Foreign Unit Holders.

### 3.10 Distribution reinvestment plan

Where Units are issued upon reinvestment of distributions, the Units may be issued at a price determined by the Responsible Entity, but not less than 90% of the Issue Price. For the purposes of this Deed, the price so determined by the Responsible Entity shall be deemed to be the Issue Price for the Units so issued.

## 4 Membership of trust

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- (a) Unit Holders are bound by the terms of this Deed.
- (b) The beneficial interests in the Trust are divided into Units. A Unit is not capable of division.
- (c) Subject to the provisions of this Deed (and, in the case of partly paid Units, subject to the due payment of the Subscription Sum in full) every Unit shall be of equal value and shall confer upon the Unit Holder an equal interest in the Trust Property. No Unit shall confer an interest in any particular part of the Trust Property but only such interest in the Trust Property as a whole as is conferred by a Unit under the provisions contained in this Deed.
- (d) No Unit Holder may lodge a caveat against the titles to the Property in respect of its Unit.
- (e) No Unit Holder may interfere with the valid exercise of any of the Responsible Entity's powers or discretions conferred by the Corporations Act or this Deed.

## 5 Register of unit holders register

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### 5.1 Register

- (a) The Responsible Entity must establish and maintain the Register:
  - (1) in accordance with the Corporations Act; and
  - (2) at the registered office of the Responsible Entity.
- (b) In addition to the Corporations Act requirements as to the contents of the Register, but subject to the requirements of any law pertaining to privacy, the Responsible Entity may include any other information in the Register that it considers appropriate.

### 5.2 Details of Unit Holders

A Unit Holder must promptly notify the Responsible Entity of a change to his, her or its name or address. The Responsible Entity shall alter the Register accordingly.

### 5.3 Noting encumbrances

Unless required by law, the Responsible Entity shall not be obliged to note on the Register any encumbrances on a Unit Holder's Unit, but the Responsible Entity is not prevented from doing so.

### 5.4 Inspection of Register

The Responsible Entity shall make the Register available for inspection and will provide copies of it in accordance with section 173 of the Corporations Act and the requirements of any law pertaining to privacy.

## 5.5 Reliance on Register

For the purposes of determining the identity of a Unit Holder at any given time, the Responsible Entity is entitled to rely exclusively on the contents of the Register.

## 5.6 Suspension of registration

Subject to the Listing Rules, the Responsible Entity may refuse, in its discretion, to register any transfer or transmission of a Unit Holder's Unit during the 14 days immediately preceding 1 July of any year during the Term.

# 6 Duties of responsible entity

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## 6.1 Duties Generally

The Responsible Entity shall perform the duties required of it under:

- (a) section 601FC of the Corporations Act;
- (b) this Deed; and
- (c) the Compliance Plan.

## 6.2 Management of the Trust

The Responsible Entity shall operate and manage the Trust for the Unit Holders. In performing these functions, the Responsible Entity will establish and maintain a reporting system that will provide the Unit Holders with regular, comprehensive and detailed information concerning the management and investment performance of the Trust.

## 6.3 Listing the Trust

The Responsible Entity must ensure that the Trust is Listed as soon as possible after 14 September 2012. Each Unit Holder has a right to enforce this clause against the Responsible Entity.

# 7 Powers of responsible entity

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## 7.1 Powers generally

Subject to the provisions of this Deed and any restriction imposed by law, the Responsible Entity has the legal capacity and all of the powers of a natural person and a body corporate required to carry out its obligations and exercise its powers and discretions under this Deed. Without limiting the generality of this clause, the Responsible Entity's powers include the powers:

- (a) to investigate and identify properties that may fulfill the Responsible Entity's investment strategy described in Schedule 2 and to negotiate with the vendors of those properties with the intention of entering into an option over, or a Contract to acquire, such properties;
- (b) to purchase or otherwise acquire the Property and any estate or interest in the Property;
- (c) to enter into any option, contract, assignment, agreement or other arrangement in respect of the acquisition or disposal of the Property;

- (d) to enter into any lease, licence or other like agreement granting a right or interest in respect of the Property and any variation, assignment, extension or surrender of any such right or interest;
- (e) to create and grant any easement, covenant or other right or interest in favour of a third party in respect of the Property;
- (f) to accept the benefit of any easement, covenant or other right or interest created or granted by a third party in respect of or relating to the Property;
- (g) to execute any transfer of the Property;
- (h) to develop, upgrade, construct, repair, landscape, alter or improve the Property and to engage or employ any architect, engineer, builder, contractor and consultant for that purpose;
- (i) to make development and building applications, enter into building contracts, prepare, approve and vary any plans, specifications and contracts, purchase, lease and hire any goods, plant and equipment, and do all other things necessary for or incidental to any works on or about the Property;
- (j) to enter into any agreement relating to the operation, management, maintenance, development, upgrading or improvement of the Property;
- (k) to make interest bearing deposits with any bank carrying on business under the authority of an Act of any state or territory of Australia or of the Commonwealth of Australia;
- (l) to invest all or part of the Trust Property in any investments which are authorized by the laws relating to the investment of trust funds;
- (m) to engage or employ any person to act as agent of the Responsible Entity or as trustee or custodian of any Trust Property;
- (n) to grant an option to any person to purchase the Property;
- (o) to sell the Property and any estate or interest in it to any person in one lot or as several parcels or interests at a price and upon terms and conditions which the Responsible Entity thinks fit;
- (p) to subdivide the Property (including subdivision by strata titles) and do all things necessary or desirable for effecting any subdivision;
- (q) to purchase or hire or take on hire-purchase, lease or licence, on such terms as the Responsible Entity shall decide, any goods (including furniture, furnishings, fittings, electrical and other appliances and equipment) which, in the opinion of the Responsible Entity, are necessary or desirable for the proper and efficient management and operation of the Property and to this end, to execute contracts, hire-purchase agreements, leases, licences or hiring agreements;
- (r) to engage or employ any Expert, agent, consultant, adviser, contractor and workman as may be necessary or desirable in relation to the identification, investigation, negotiation, acquisition, ownership, development, management, operation, maintenance and disposal of the Property as the Responsible Entity thinks fit;
- (s) to make all elections, give all notices and enter all agreements under the Tax Act in relation to the Trust and to prepare, execute and lodge all or any returns required by law in connection with the Trust;
- (t) to institute, prosecute or defend any action or proceeding which affects the Trust and to conduct, pursue, abandon, settle, compromise or release any action or proceeding in any manner that the Responsible Entity thinks fit;
- (u) to apply for, purchase and otherwise deal in patents, copyright, trade marks and other intellectual property rights and licences pertaining to any Trust Property;
- (v) to insure the Trust Property which is capable of being so insured against damage and destruction, public liability, breakdown, loss of rent and such other risks as the Responsible Entity deems prudent with an insurer approved by the Responsible Entity;

- (w) to execute, issue and deliver any document which the Responsible Entity considers necessary or expedient in relation to the exercise of any of its powers conferred by this Deed or by law;
- (x) to pay the Trust Costs as and when they fall due for payment or upon such terms as the Responsible Entity may agree with any creditor of the Trust; and
- (y) to do any other act or thing which, in the opinion of the Responsible Entity, is necessary or desirable for the proper and efficient management and operation of the Trust or the Trust Property.

## **7.2 Power To Delegate And Seek Advice**

- (a) The Responsible Entity may, in its discretion, engage:
  - (1) related bodies corporate of the Responsible Entity;
  - (2) directors or officers of the Responsible Entity; or
  - (3) other persons in any way associated with the Responsible Entity,
 as independent contractors, agents, contractors and consultants, notwithstanding their relationship to the Responsible Entity, to perform any of its duties or exercise any of its powers or discretions under the Corporations Act or this Deed.
- (b) The terms and conditions of all engagements of agents shall be specified in writing and shall be determined by the Responsible Entity.
- (c) In accordance with section 601FB(2) of the Corporations Act, the Responsible Entity shall be deemed to have done or failed to do anything that the agent has done or failed to do for the purposes of the engagement, even if the agent acted fraudulently or outside the scope of his authority.
- (d) In addition to the engagement of agents, the Responsible Entity may engage any Expert or other adviser to assist it in the performance of its powers and duties under this Deed and the Corporations Act. The Responsible Entity may rely on the opinion, advice or on information obtained from any Expert or other adviser if such reliance is in good faith.
- (e) For the avoidance of doubt, any amounts incurred by the Responsible Entity in engaging independent contractors, agents, contractors, consultants, Experts and other service providers are Trust Costs.

## **7.3 Other specific powers**

Subject to the Corporations Act and the Listing Rules, the Responsible Entity or any of its Associates may:

- (a) in any capacity, subscribe for, purchase, hold or otherwise deal with Units;
- (b) act as the responsible entity in relation to any other managed investment schemes; and
- (c) be interested in or enter into any contract or transaction with itself or with any of its Associates or with any Unit Holder.

# **8 Management of the trust property**

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## **8.1 The Responsible Entity's Management Powers**

- (a) The Responsible Entity is authorised by the Unit Holders to manage the Trust Property and act as if the Responsible Entity were the owner of the Trust Property.

- (b) Subject always to the provisions of any lease or licence of the Property, the Responsible Entity will have unrestricted access to all areas of the Property for the purpose of carrying out its rights and obligations under this Deed.

## **8.2 Principal Objective**

The principal objective of the Responsible Entity in managing the Trust Property is to maximise the Unit Holders' financial return on their investment in the Trust Property in the most efficient manner possible in both the short term and the long term.

## **8.3 Responsible Entity to provide additional services**

Without limiting the Responsible Entity's obligations at law, the Responsible Entity will provide, or procure the provision of, the following additional services during the Term:

- (a) property and facilities management; and
- (b) tenancy management.

## **8.4 Property and Facilities Management**

- (a) The Responsible Entity acknowledges that the main objectives in respect of property and facilities management are to:
  - (1) maintain the Property and all services to it to industry standards at all times; and
  - (2) minimise maintenance costs and obtain the longest possible economic life from the Property.
- (b) The Responsible Entity may either employ its own staff or engage others to provide property and facilities management services. All salaries and other employment related expenses and all fees, commissions and other costs and expenses incurred or payable by the Responsible Entity in respect of property and facilities management are Trust Costs.

## **8.5 Tenancy Management**

- (a) The Responsible Entity acknowledges that the main objective in respect of tenancy management is to maintain tenant satisfaction and maximise the rental income from the Property.
- (b) The Responsible Entity may either employ its own staff or engage others to provide tenancy management services. All salaries and other employment related expenses and all fees, commissions and other costs and expenses incurred or payable by the Responsible Entity in respect of tenancy management are Trust Costs.

## **8.6 Sub-Contracting**

The Responsible Entity may engage or subcontract any consultant, contractor or agent to perform any of the services that the Responsible Entity is to perform in relation to the Trust either under law or pursuant to this Deed. The Responsible Entity shall ensure that any person who performs any such services is suitably qualified and experienced and, where appropriate, licensed under any applicable legislation.

## 9 Responsible entity's fees and indemnities

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### 9.1 Deduction from Trust Property

- (a) The Responsible Entity is entitled to receive fees (which it may deduct from the Trust Property) of the amount and in the manner and at the times set out in Schedule 1.
- (b) The Responsible Entity may pay from or be reimbursed from Trust Property for all Trust Costs incurred by the Responsible Entity in accordance with the terms of this Deed.

### 9.2 Indemnities

- (a) The Responsible Entity is entitled to be indemnified out of the Trust Property for:
  - (1) all Trust Costs incurred by it;
  - (2) all liabilities incurred by it in relation to the proper performance of its duties or exercise of its powers as Responsible Entity under this Deed; and
  - (3) all other liabilities incurred by it in relation to the operation of the Trust other than liabilities incurred as the result of breach of trust, recklessness or fraud on the part of the Responsible Entity.
- (b) If at any time the Income from the Trust Property and other moneys available to the Trust are insufficient to meet the Trust Costs and other liabilities of the Trust ("**shortfall**"), the Responsible Entity may provide to or borrow for the Trust (on reasonable commercial terms) funds sufficient to meet the shortfall. If the Responsible Entity does this, it may, in its discretion, recoup the funds provided or borrowed out of future Income or out of the capital of the Trust Property.
- (c) The rights of indemnity of the Responsible Entity and any creditor of it are limited to the Trust Property and do not exist against Unit Holders personally.

### 9.3 Limited Liability of Unit Holders

- (a) A Unit Holder is not liable to contribute more than its Subscription Sum in order to meet the Trust Costs or any other liabilities of the Trust incurred by the Responsible Entity on behalf of the Trust.
- (b) Where any asset forming part of the Trust Property is held by or in the name of the Unit Holders, each Unit Holder is severally liable, in proportion to its Unit in the Trust, for all liabilities incurred by the Unit Holders in respect of that asset.

## 10 Bank accounts

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### 10.1 Responsible Entity to open bank accounts

- (a) The Responsible Entity must open and maintain for the Trust the following bank accounts with a recognised bank trading in Australia:
  - (1) the Subscription Fund; and
  - (2) the Proceeds Fund.
- (b) The Responsible Entity shall, if required by the Corporations Act, and otherwise may, procure the Custodian to hold and control the Subscription Fund and/or the Proceeds Fund.

## 10.2 Subscription Fund

- (a) The Responsible Entity must deposit into the Subscription Fund all Issue Prices which it receives under clause 3.5.
- (b) If an offer of Units made by the Responsible Entity is not fully subscribed within 13 months of the issue of the relevant Prospectus (or such other period, if any, specified in that Prospectus or by law):
  - (1) the Responsible Entity must immediately notify all Applicants under the relevant Prospectus and, within 28 days, refund to each Applicant the Subscription Sum that Applicant paid to the Responsible Entity together with any interest earned on that Subscription Sum, less any bank charges and taxes; and
  - (2) the Responsible Entity shall remove each Applicant's details from the Register in relation to that application.
- (c) Unless otherwise required by any law and subject to paragraph (b), the Responsible Entity may retain any interest earned on the Subscription Fund for the purposes of the Trust.

## 10.3 Purchase of Property

The Responsible Entity shall apply all moneys standing to the credit of the Subscription Fund in the following manner upon the settlement of a Property:

- (a) first, to acquire the Property and to meet all acquisition costs;
- (b) second, to meet other Trust Costs; and
- (c) third, pay the balance, if any, into the Proceeds Fund or, if it is intended to use any balance to acquire another Property, allow all or part of the balance to remain in the Subscription Fund pending the acquisition of another Property.

## 10.4 Proceeds Fund

- (a) The Responsible Entity must collect the Gross Proceeds and all other income generated by the Trust and promptly deposit the same into the Proceeds Fund.
- (b) The Responsible Entity shall, to the extent that it is possible to do so, pay all costs, fees, charges and expenses associated with the Trust, including the Responsible Entity's fees, the Trust Costs and any indemnities payable under clause 9.2 out of the Proceeds Fund.
- (c) The Responsible Entity shall hold and administer the Proceeds Fund in accordance with the Corporations Act and relevant ASIC policies.

## 10.5 Calculation of Distributable Income

The Distributable Income of the Trust for a Distribution Period or a Financial Year will be such amount as the Responsible Entity determines. If, for a period ending on the last day of a Distribution Period or a Financial Year, the Responsible Entity has not made a determination for the purpose of this clause 10.5, then the Distributable Income of the Trust for the relevant period will be the Net Income of the Trust for that period.

## 10.6 Persons who will receive Distributable Income

Subject to the terms of issue of any Unit or class of Units, the Distributable Income of the Trust will be accounted for either within the Proceeds Fund or in a separate distribution account and, after payment of all relevant taxes and charges, will be distributed to Unit Holders registered at the close of business on the last day of the period to which the distribution relates, in proportion to their respective Units.



## 10.7 Time for Distribution of Distributable Income

The Responsible Entity will distribute the Distributable Income for a Distribution Period to Unit Holders no later than the Distribution Date for the relevant Distribution Period. The Responsible Entity may require the withholding from distributions to Unit Holders during any period an amount which the Responsible Entity considers is necessary to minimise variations in distributions over the longer term.

## 10.8 Unit Holder's presently entitled to Distributable Income

At the end of each Distribution Period or Financial Year, the Unit Holders will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period or Financial Year in proportion to their respective Unit holdings at such time.

## 10.9 Apportionment and distribution of amount categories

The Responsible Entity may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Unit Holder.

## 10.10 Nature of distribution to Unit Holders

If any question arises as to whether distributions to Unit Holders are of a capital or income nature or whether a particular expense is chargeable against capital or income then the question will be resolved having regard to the following points in this order of priority:

- (a) first, the terms of this Deed;
- (b) second, the provisions of the Tax Act; and
- (c) third, generally accepted accounting principles.

## 10.11 Other distributions

The Responsible Entity may, at any time, determine that capital or Income be distributed to the Unit Holders.

## 10.12 Restricted Securities

A Unit Holder who holds Restricted Securities is not entitled to any distributions in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing Rules or ASX.

# 11 Arranging finance for the trust

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## 11.1 Power to Borrow

The Responsible Entity is empowered to arrange a loan or other financial accommodation for the Trust to complete the purchase of each Property, to develop, upgrade and improve the Property and for any other purpose disclosed to Unit Holders in every Prospectus ("**Loan Funds**"). The Responsible Entity may authorise the establishment of the loan account for the Loan Funds in its own name or in the name of the Custodian.

## 11.2 No recourse to Unit Holders personally

- (a) Subject to paragraph (b), the Responsible Entity must ensure that any Loan Funds for the Trust arranged by the Responsible Entity do not result in the financier or other provider of those Loan Funds having any recourse against the Unit Holders or any assets of the Unit Holders other than the Trust Property.
- (b) If each Prospectus discloses a requirement for Unit Holders to provide additional security for any Loan Funds or to have a liability beyond the Unit Holders' respective interest in the Trust Property, the Responsible Entity is authorised to include that additional security or liability in the terms upon which the Loan Funds are obtained.

## 11.3 Security may be offered

The Responsible Entity may mortgage, charge or otherwise encumber the Trust Property as security for repayment of the Loan Funds.

## 11.4 Loan Arrangements

The Responsible Entity must ensure that Loan Funds are arranged only on terms in accordance with the investment criteria and strategy described in Schedule 2.

## 11.5 General powers of the Responsible Entity in relation to the Loan Funds

The Responsible Entity may:

- (a) enter, rollover, discharge or increase the existing Loan Funds and take out new Loan Funds;
- (b) repay any Loan Funds from any source which forms part of the Trust Property, including from cash generated from income of the Property;
- (c) if a Property is more than one separate lot of real estate then arrange separate Loan Funds for each lot of real estate;
- (d) arrange separate Loan Funds for each Property; and
- (e) take Loan Funds from more than one lender.

## 11.6 Additional Borrowing Powers

In addition to the other powers contained in this clause 11, the Responsible Entity may exercise any or all the following powers:

- (a) to borrow and raise money from, and to secure by mortgage, bill of sale, lien or charge, fixed or floating legal, equitable or otherwise, the payment of money to, any person, corporation, governmental or municipal body on such terms with or without security or interest as the Responsible Entity deems fit, and the Responsible Entity is expressly empowered to join with any company or natural person in executing any mortgage or other document for the purpose of securing the payment of money and to give and to execute a registrable fixed or fixed and floating charge over all or any of the Trust Property (both present and future) held by it as Responsible Entity and to give and execute any other charge or security registrable under the Corporations Act;
- (b) to borrow and raise money to be used in deriving income or gain in augmentation of the Trust Property notwithstanding that the Trust Property may already be wholly invested or applied or that the money to be borrowed or raised may exceed the sum or value of the Trust Property and no lender will be concerned to enquire whether the necessity for any borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;

- (c) to borrow and raise money by way of offshore loans outside the ordinary jurisdiction and in a currency other than Australian dollars;
- (d) in its absolute discretion, as if the Responsible Entity were acting on its own behalf, solely or jointly with any person, corporation or association, to open bank accounts of every description on such terms and conditions as the Responsible Entity thinks fit and to conduct and operate the accounts in such manner as the Responsible Entity thinks fit in accordance with the customs, usages and practices of banks including, without limitation, the power to operate any account on overdraft and to agree to the bank debiting any account with interest, costs, charges, expenses and liabilities incurred by the bank from time to time on behalf of the Responsible Entity;
- (e) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments; and
- (f) to enter into any arrangement:
  - (1) for the purpose of managing financial risks relating to risks arising from changes in foreign currency exchange rates, interest rates or discount rates; or
  - (2) which is a currency or rate swap transaction, a forward rate or currency transaction, a forward rate bill transaction, an interest rate, currency, bond, put or call option, a cap transaction, floor transaction, collar transaction, a combination of any of these transaction or any other similar transaction,

## 12 Options

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### 12.1 Applicable provisions

This clause 12 applies while the Trust is Listed.

### 12.2 Terms and subscription

- (a) This clause 12 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Responsible Entity.

### 12.3 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

### 12.4 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Optionholder on the termination or winding up of the Trust, the liabilities of the Responsible Entity cease in respect of each Option.

## 12.5 Optionholder's rights and interest

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to,
 Unit Holders.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Responsible Entity is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Responsible Entity to ensure that it assumes the covenants and obligations of the outgoing Responsible Entity under those Options.

## 12.6 Redemption or repurchase

- (a) The Responsible Entity may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Responsible Entity must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 12.6(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Responsible Entity and the Responsible Entity may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 12.6(a) form part of the Fund and the Responsible Entity is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Responsible Entity retains title in law to each and every Option and right so purchased in its name until the Option or right is resold, reissued or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

## 12.7 Application of Schedules 3 and 4

The provisions of Schedule 3 and Schedule 4 to this Deed will have force and effect only if a Court makes a determination they were valid or effective.

# 13 Meetings of unit holders

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## 13.1 Convening of meetings of Unit Holders

The Responsible Entity may convene a meeting of Unit Holders at any time and shall call a meeting of Unit Holders when required to do so by the Corporations Act.

## 13.2 Part 2G.4 of the Corporations Act

Subject to the provisions of this clause 13 and clause 14 and the Listing Rules, all meetings of Unit Holders shall be convened and conducted in accordance with Part 2G.4 of the Corporations Act and the Listing Rules.

### 13.3 Notice

- (a) The Responsible Entity must ensure that a notice of a meeting of Unit Holders is given in accordance with the requirements of the Corporations Act and clause 24.2.
- (b) The Responsible Entity must send a notice of a meeting of Unit Holders to:
  - (1) Unit Holders entitled to vote at a meeting of Unit Holders;
  - (2) each Director of the Responsible Entity;
  - (3) each member of the Trust's compliance committee;
  - (4) the Trust Auditor;
  - (5) the Compliance Plan Auditor;
  - (6) such other person or persons as the Directors may approve; and
  - (7) any other person entitled under this Deed or the Corporations Act to attend.
- (c) If a Unit Holder does not receive, or was not sent, a notice of a meeting of Unit Holders neither circumstance invalidates any resolution passed at any such meeting.
- (d) Only matters that appear in a notice of meeting may be dealt with at a meeting of Unit Holders.

## 14 Proceedings at meetings of unit holders

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### 14.1 Quorum

A quorum for a meeting of Unit Holders is 2 Unit Holders, each being a Unit Holder present in person, by proxy, attorney or Personal Representative.

### 14.2 Chairman

The chairman of the meeting of Unit Holders must be appointed pursuant to section 252S of the Corporations Act. In the case of an equality of votes, the chairman shall not have a casting vote.

### 14.3 Voting rights

At meetings of Unit Holders:

- (a) each Unit Holder entitled to vote may vote in person or by proxy, attorney or Personal Representative;
- (b) on a show of hands, every person present who is a Unit Holder or a proxy, attorney or Personal Representative of a Unit Holder has one vote; and
- (c) on a poll, every person present who is a Unit Holder or a proxy, attorney or Personal Representative of a Unit Holder has for each dollar of the value of the total interest held by the person, or in respect of which the person is appointed a proxy, attorney or Personal Representative, one vote.

### 14.4 Right to appoint proxy

A Unit Holder is entitled to appoint another person (whether a Unit Holder or not) as the Unit Holder's proxy to attend and vote instead of the Unit Holder at any meeting of Unit Holders.

## 14.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Corporations Act and the Listing Rules. The Responsible Entity may, in its discretion, accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act.

## 14.6 Voting - show of hands

At any meeting of Unit Holders a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded in accordance with clause 14.8.

## 14.7 Results of voting

Unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of meetings of Unit Holders, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## 14.8 Poll

- (a) Subject to paragraph (b), a poll may be demanded before a vote is taken, or before or immediately after the declaration of the result of the show of hands by:
- (1) the chairman of the meeting of Unit Holders;
  - (2) at least 5 Unit Holders present in person or by proxy, attorney or Personal Representative entitled to vote on the resolution; or
  - (3) any one or more Unit Holders present in person or by proxy, attorney or Personal Representative holding at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A poll may not be demanded on any resolution concerning the election of the chairman of the meeting or the adjournment of the meeting.

## 14.9 Manner of taking a poll

- (a) If a poll is duly demanded, it must be taken in such manner as the chairman directs.
- (b) The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll may be withdrawn.

## 14.10 Meeting may continue

A demand for a poll does not prevent the continuation of the meeting for the transaction of other business.

## 14.11 Adjournment

The chairman may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to such time and place as the chairman thinks fit.

## 14.12 Unit Holders Bound

Every Unit Holder, whether or not present or represented at a meeting, is bound by a resolution duly passed by Unit Holders at a meeting duly convened and held in

accordance with the provisions of this Deed and, where applicable, the provisions of the Corporations Act. The Responsible Entity must, to the extent that it is able, give effect to every resolution so passed unless the resolution is inconsistent with any law, and the Responsible Entity is not liable for anything done or omitted to be done by it pursuant to or with the authority of the resolution.

### **14.13 Restrictions on voting rights**

A Unit Holder is not entitled to vote on a resolution at a meeting of Unit Holders where that vote is prohibited by law or an order of a court of competent jurisdiction.

### **14.14 Restricted Securities**

A Unit Holder who holds Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing rules or ASX.

## **15 Complaints by unit holders**

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### **15.1 Complaints handling procedure**

The Responsible Entity shall:

- (a) within 14 days of receipt of a written complaint, acknowledge receipt of the complaint and, at the same time, advise the Unit Holder of the expected time frame within which the Responsible Entity intends to resolve the complaint;
- (b) consider all aspects of the complaint within the expected time frame advised to the Unit Holder and, during that time, keep the Unit Holder informed as to the progress of the complaint;
- (c) provide the Unit Holder with a written response to the complaint; and
- (d) in resolving the complaint, consider which, if any, remedies should be made available to the Unit Holder in accordance with the Responsible Entity's policy regarding remedies and shall outline those remedies to the Unit Holder, including any further avenues available for the Unit Holder if they are dissatisfied with the Responsible Entity's resolution of the matter.

### **15.2 Responding to Complaints**

In responding to complaints from Unit Holders under clause 15.1:

- (a) the expected time frame within which the Responsible Entity intends to resolve a complaint shall not exceed one month;
- (b) the Responsible Entity shall provide reasons for its response to the Unit Holder's complaint;
- (c) the Responsible Entity may request any further information and assistance from the Unit Holder that it reasonably requires in order to assess properly the Unit Holder's complaint; and
- (d) the Responsible Entity shall immediately cease considering a Unit Holder's complaint if the Unit Holder withdraws the complaint in writing.

### **15.3 Complaints handling officer**

The Responsible Entity shall appoint a complaints handling officer to be responsible for conducting the complaints handling procedure. The complaints handling officer shall keep detailed records of all complaints made by Unit Holders and the Responsible Entity's response to all complaints.

### **15.4 Costs of complaints handling**

All costs associated with the Trust's complaints handling procedure and the remuneration of the complaints handling officer shall be paid out of Trust Property.

### **15.5 Dispute resolution**

If a Unit Holder's complaint cannot be resolved under clause 15.1, for whatever reason, the Unit Holder may request that the dispute be resolved by a legal practitioner, who will act as an expert and not an arbitrator, appointed by the President for the time being of the Law Society of Western Australia (Inc.). The decision of the legal practitioner shall be final and binding on the Unit Holder and the Responsible Entity, and the costs of the legal practitioner shall be shared equally between the Unit Holder and the Responsible Entity.

### **15.6 External complaints resolution scheme**

A Unit Holder may lodge a complaint in relation to the Responsible Entity with the external complaints resolution scheme of which the Responsible Entity is a member.

## **16 Responsible entity may require information**

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- (a) Subject to the requirements of any law pertaining to privacy, any Unit Holder who is asked by the Responsible Entity to supply information in respect of its Unit must do so within 14 days of service of a notice from the Responsible Entity. (For example, the information may be requested in relation to determining whether or not there exists a tax liability in relation to the relevant Unit Holder.)
- (b) If any particular information given to the Responsible Entity under paragraph (a) ceases to be correct for any reason then it is the duty of the Unit Holder which has that information to give notice to the Responsible Entity of the fact that the particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unit Holder fails to provide information required by paragraph (a) or (b) then the Responsible Entity will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unit Holder will have no claim against the Responsible Entity or the Trust Property for any loss suffered as a result of the assumption being incorrect.
- (d) Any person who supplies incorrect information under paragraph (a) or (b) must indemnify the Responsible Entity against all loss and damage suffered by the Responsible Entity as a consequence of its reliance upon such incorrect information.



## 17 Withdrawal from trust

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### 17.1 Application of this clause

Unless the Responsible Entity determines otherwise, while Units are Officially Quoted, none of the provisions of clauses 17.2 to 17.8 (inclusive) apply.

### 17.2 Unit Holder's right to withdraw

- (a) If the Trust is not Liquid, then a Unit Holder may withdraw from the Trust in accordance with subclauses 17.3 to 17.7 inclusive and Part 5C.6 of the Corporations Act.
- (b) If the Trust is Liquid, then a Unit Holder may withdraw from the Trust in accordance with subclause 17.8 and Part 5C.6 of the Corporations Act (if applicable).
- (c) The withdrawal procedures set out in this clause are subject to the provisions of the Corporations Act, including Part 5C.6, and if there is any inconsistency between the two then the Corporations Act will prevail to the extent of the inconsistency.

### 17.3 Withdrawal offers—non-Liquid

- (a) If the Trust is not Liquid, the Responsible Entity may in its absolute discretion make a withdrawal offer to Unit Holders giving them the opportunity to make a withdrawal request to the extent assets are available and able to be converted into money in time to satisfy withdrawal requests by Unit Holders. The withdrawal offer must—
  - (1) be made in accordance with this clause 17 and comply with Part 5C.6 of the Corporations Act
  - (2) specify the date on which withdrawals under the offer will be deemed to occur
  - (3) specify the Trust Property to be used to satisfy withdrawal requests
  - (4) only be made to Unit Holders whose names are recorded on the Register on a date to be specified by the Responsible Entity. The date specified by the Responsible Entity must be no earlier than three days prior to and no later than the date on which the withdrawal offer is sent to Unit Holders, and
  - (5) be made by posting a written and dated withdrawal offer to the address of the Unit Holder shown on the Register. The withdrawal offer must contain all information required by Part 5C.6 of the Corporations Act, including the period of time in which the withdrawal offer will remain open for acceptance.
- (b) The Responsible Entity may cancel a withdrawal offer before it closes if it contains a material error or if it is in the best interests of Unit Holders to do so. A written and dated cancellation notice cancelling the withdrawal offer must be sent to Unit Holders. The cancellation notice must be sent to Unit Holders by the same method as the withdrawal offer and will be effective on the date it is sent.

### 17.4 Withdrawal requests—non-Liquid

A Unit Holder may in response to a withdrawal offer under clause 17.3 make a withdrawal request to the Responsible Entity requesting withdrawal of all or some of the Unit Holder's Units. A withdrawal request must—

- (a) be made only in response to a withdrawal offer, and a Unit Holder must not request to withdraw from the Trust under any other circumstances
- (b) comply with all terms of the withdrawal offer and be in the form or manner specified in the withdrawal offer
- (c) be subject to all of the conditions attaching to a withdrawal offer, and

- (d) be received at the place and in the manner specified by the Responsible Entity no later than the date on which the withdrawal offer closes.

### **17.5 Acceptance of withdrawal requests—non-Liquid**

- (a) If a Unit Holder makes a valid withdrawal request under clause 17.4, then subject to clause 17.5(2), the Responsible Entity must within 21 days after the withdrawal offer closes—
- (1) pay the withdrawal payment described in clause 17.6 to the Unit Holder
  - (2) cancel the Units withdrawn, and
  - (3) update the Register accordingly.
- (b) If an insufficient amount of money is available from the assets specified in the withdrawal offer to satisfy all withdrawal requests, then the withdrawal requests are to be satisfied proportionally in accordance with the formula set out in clause 601KD of the Corporations Act. The formula result must be rounded to the nearest whole number of Units for each Unit Holder.

### **17.6 Withdrawal payment—non-Liquid**

- (a) If the Responsible Entity accepts a withdrawal request by a Unit Holder under clause 17.5, then it must, within 21 days after the withdrawal offer closes, pay to the Unit Holder for each Unit withdrawn the Current Unit Value of the Unit determined not more than three months prior to the date the withdrawal is deemed to occur, less withdrawal costs. Withdrawal costs are the total amount, which may be nil but in any event will not exceed 5% of the Current Unit Value of the Unit, determined or estimated by the Responsible Entity as the costs incurred, or which would be incurred, in funding the withdrawal requests (including by the sale or disposal of Trust Property), divided by the Units on issue. The withdrawal costs represent the costs, charges, fees, expenses, commissions, losses, damages, and taxes and all amounts payable in respect to them or like payments associated with a withdrawal under this clause 17.
- (b) The Responsible Entity may deduct from an amount payable to the Unit Holder under clause 17.6(a)—
- (1) if the Unit is a partly paid Unit, the amount of any Subscription Sum unpaid in respect of the Unit
  - (2) any tax payable by the Responsible Entity in respect of the withdrawal of the Unit, and
  - (3) any other amount due by the Unit Holder to the Responsible Entity.

### **17.7 Payments from Trust Property—non-Liquid**

- (a) All amounts paid by the Responsible Entity to meet withdrawal requests under this clause 17 must be made out of the Trust Property, and the Responsible Entity will not be obliged to make any payment out of its own funds under any circumstances.
- (b) The Responsible Entity may determine whether or not any portion of a withdrawal payment under clause 17.6 represents income or capital gain of the Trust. If an amount paid to a Unit Holder represents income or capital gain of the Trust then the Responsible Entity must notify the Unit Holder of the extent to which the amount paid is composed of, and the types of, income and capital gain.

### **17.8 Withdrawals—Liquid**

- (a) If the Trust is Liquid, the Responsible Entity may in its absolute discretion make a withdrawal offer to Unit Holders giving them the opportunity to make a withdrawal request

to withdraw all or part of their Units from the Trust, and may determine the form, manner and conditions on which a withdrawal request may be made under this clause 17.8.

- (b) A Unit Holder may in response to a withdrawal offer under clause 17.8(a) make a withdrawal request to the Responsible Entity requesting withdrawal of all or some of the Unit Holder's Units. A withdrawal request must:
- (1) comply with all terms of the withdrawal offer and be in the form or manner specified in the withdrawal offer
  - (2) be subject to all of the conditions attaching to a withdrawal offer, and
  - (3) be received at the place and in the manner specified by the Responsible Entity. If the offer closes on a certain date, then the withdrawal request must be received no later than the closing date.
- (c) The Responsible Entity may in its absolute discretion accept or reject withdrawal requests under this clause 17.8. If the Responsible Entity accepts a withdrawal request, then it must process the withdrawal request in accordance with the terms and conditions on which the withdrawal offer was made.

## 17.9 Buy back of Units and cancellation

Subject to the Listing Rules, the Corporations Act and any applicable ASIC policy and relief, the Responsible Entity may effect a buy back of Units by purchasing Units (whether on market or not) on any terms and at any time it determines. Any Units bought back may be cancelled by the Responsible Entity.

## 17.10 Small Holdings

- (a) Subject to the provisions of this clause the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Unit Holder which comprise less than a Marketable Parcel as notified by the Responsible Entity to Unit Holders from time to time without request by the Unit Holder.
- (b) The Responsible Entity may only sell or redeem Units pursuant to this clause on one occasion in any 12 month period. The Responsible Entity must notify the Unit Holder in writing of its intention to sell or redeem Units under this clause.
- (c) The Responsible Entity will not sell or redeem the relevant Units:
- (1) before the expiry of 6 weeks from the date of the notice given under this clause; or
  - (2) if, within the 6 weeks allowed under paragraph (1), the Unit Holder advises the Responsible Entity that the Unit Holder wishes to retain the Units.
- (d) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides. The proceeds of the sale or redemption will not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.
- (e) The Responsible Entity's power to sell or redeem the Units under this clause lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity is appointed as the attorney of and is authorised to execute on behalf of any Unit Holder a transfer of their Units under this clause and do any other things the Responsible Entity considers necessary or desirable to effect such transfer.

## 18 Transfer of interests

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### 18.1 Right to Transfer

- (a) Subject to paragraph (b), and the rules applicable while the Trust is admitted to an uncertificated trading system and to their terms of issue, a Unit Holder is entitled to transfer the Unit Holder's Unit only in accordance with this clause 18.
- (b) Except as permitted by the Listing Rules, a Unit Holder must not dispose of Restricted Securities during the applicable escrow period.

### 18.2 Form of Transfer

- (a) Any instrument of transfer must:
  - (1) be in a form acceptable to the Responsible Entity and signed by the transferor, transferee and the Responsible Entity; and
  - (2) state that the transferee agrees to be bound by this Deed.
- (b) If Units are to be transferred in a manner permitted by an uncertificated trading system to which the Trust is admitted, then the Responsible Entity may require before registration of any such transfer that it be provided with any documents which the rules of that system require or permit the Responsible Entity to require be provided to it to authorise registration.

### 18.3 Responsible Entity may decline to register if criteria not met

Subject to the Listing Rules, and the rules of any applicable uncertificated trading system, the Responsible Entity may decline to register any instrument of transfer unless:

- (a) it complies with the requirements in clause 18.2;
- (b) if the transferor's Unit is encumbered, the encumbrance is released or otherwise dealt with to the satisfaction of the person in whose favour the encumbrance is granted;
- (c) it is duly stamped (if applicable);
- (d) it is accompanied by evidence the Responsible Entity may reasonably require to show the right of the transferor to transfer the Unit;
- (e) all fees which are due and payable in respect of the Unit Holder's Unit have been paid to the persons who are owed the fees (creditors) except if the creditors agree to waive this requirement; and
- (f) the Responsible Entity approves of the transferee having regard to the capacity of the transferee to meet the obligations of Unit Holders in the Trust (although such approval must not be unreasonably withheld).

### 18.4 Entry of transfer in Register

- (a) Subject to clause 5.6, upon being satisfied that the provisions of this clause 18 have been complied with, the Responsible Entity will make the appropriate entry of the transfer in the Register.
- (b) Subject to the Listing Rules, the transferring Unit Holder remains the owner of the Unit Holder's Unit until the name of the transferee is entered in the Register as holder of that Unit.
- (c) Upon entry in the Register, the transferee of the Unit acquires the same rights and interest as previously held by the transferor, irrespective of the price paid by the transferee.

### **18.5 Instrument of transfer to be retained by Responsible Entity**

The Responsible Entity will retain every instrument of transfer until the Trust is wound up.

### **18.6 Transferee to be bound**

Every transferee of a Unit Holder's Unit is deemed to be bound by this Deed from the date of the entry of the transfer in the Register.

### **18.7 Notice of refusal**

If the Responsible Entity declines to register any transfer then it must send the transferee a notice of the refusal within 2 months after the instrument of transfer is lodged.

## **19 Transmission of interests**

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### **19.1 Unit of deceased Unit Holder and deceased joint holder**

- (a) If a Unit Holder (not being one of several joint holders) dies or becomes insane, the Responsible Entity will recognise only the Personal Representative of that Unit Holder as having any title to or interest in the Unit registered in the name of that Unit Holder or any benefits accruing in respect of that Unit.
- (b) If a Unit Holder who is one of the joint registered holders of any Unit dies, the Responsible Entity will recognise only the surviving joint registered holder or holders of that Unit as having any title to or interest in, or any benefits accruing in respect of, that Unit.
- (c) Nothing in this Deed will be taken to release the estate of a deceased Unit Holder from any liability accrued by that Unit Holder with respect to the Trust.
- (d) Where two or more persons are jointly entitled to any Unit in consequence of the death of the registered holder of that Unit, for the purpose of this Deed they will be deemed to be joint holders of the Unit.

### **19.2 Unit on transmission event**

- (a) Subject to the Bankruptcy Act 1966 and the Corporations Act, a person ("**Transmittee**") who gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as a Unit Holder may:
  - (1) elect to be registered as a Unit Holder in respect of that Unit by giving a signed notice in writing to the Responsible Entity; or
  - (2) transfer that Unit to another person;
- (b) A transfer under sub-clause 19.2(a)(2) is subject to the provisions of clause 18 of this Deed;
- (c) If the Responsible Entity has acted in good faith in registering a Transmittee or the transferee of a Transmittee as a Unit Holder under this clause 19.2, that person' must indemnify the Responsible Entity to the extent of any loss or damage suffered by the Responsible Entity as a result of such registration.

### **19.3 Rights and duties of Transmittee**

- (a) Subject to paragraph (b), a Transmittee who:

- (1) has given to the Responsible Entity the information referred to in clause 19.2;  
and
- (2) has not yet been registered as a Unit Holder or transferred the relevant Unit to another person,

is entitled to the same rights and duties to which the Transmtee would be entitled if registered as the Unit Holder in respect of that Unit.

- (b) Subject to the Corporations Act, a Transmtee will not be entitled in respect of a Unit to exercise any right conferred on Unit Holders in relation to meetings of Unit Holders until the Transmtee is registered as a Unit Holder in respect of that Unit.

## 20 Audit and accounting auditors

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### 20.1 Auditors

- (a) The Responsible Entity must ensure that, at all times, there is a registered auditor appointed to audit the Trust and a registered auditor appointed to audit compliance with the Compliance Plan.
- (b) The appointment, retirement and removal of the Trust Auditor and the Compliance Plan Auditor shall be conducted in accordance with the Corporations Act.
- (c) The Responsible Entity will engage and instruct the Trust Auditor to produce an audit report and perform the other duties imposed on an auditor of a managed investment scheme by the Corporations Act in relation to the Trust. The Responsible Entity shall allow the Trust Auditor access to all documents and records that the Trust Auditor reasonably requires in order to prepare his report and discharge his duties under the Corporations Act.
- (d) The Responsible Entity will engage and instruct the Compliance Plan Auditor to produce an audit report and perform the other duties imposed on an auditor of a compliance plan by the Corporations Act in relation to the Trust. The Responsible Entity shall allow the Compliance Plan Auditor access to all documents and records that the Compliance Plan Auditor reasonably requires in order to prepare his report and discharge his duties under the Corporations Act.
- (e) The Trust Auditor and the Compliance Plan Auditor shall be remunerated by the Responsible Entity out of Trust Property. The remuneration amounts shall be determined by the Responsible Entity.

### 20.2 Accounts

- (a) The Responsible Entity shall keep and maintain financial records and conduct the financial reporting in respect of the Trust in accordance with the Corporations Act and applicable Australian Accounting Standards.
- (b) The accounting records of the Trust shall be kept at the registered office of the Responsible Entity.

## 21 Changing the responsible entity

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### 21.1 Retirement of Responsible Entity

The Responsible Entity may retire only in accordance with section 601FL of the Corporations Act.

## 21.2 Removal of Responsible Entity

The Responsible Entity may be removed in accordance with section 601FM of the Corporations Act.

## 21.3 Consequence of change of Responsible Entity

- (a) On retirement or removal, the Responsible Entity will hand over the books in its possession or control and provide reasonable assistance to the new responsible entity in accordance with section 601FR of the Corporations Act.
- (b) Subject to section 601FS(2) of the Corporations Act and paragraph (c) of this clause, on retirement or removal of the Responsible Entity the rights, obligations and liabilities of the former Responsible Entity in relation to the Trust become the rights, obligations and liabilities of the new responsible entity.
- (c) Retirement or removal of the Responsible Entity will not prejudice any rights or remedies already accrued to the Responsible Entity or to any Unit Holder under or in respect of this Deed.

## 21.4 Name of Trust to be changed

- (a) If 360 Capital RE Limited has retired or is removed as the Responsible Entity, the new Responsible Entity must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with 360 Capital RE Limited or any of its Associates from the title of the Trust and this Deed and such letters, words or expressions must not be used in any connection with the Trust and this Deed.
- (b) Clause 21.4(a) does not apply if the new Responsible Entity obtains the consent of 360 Capital RE Limited not to take the action set out in that clause.

## 22 Changing the constitution

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- (a) This Deed may be modified or repealed and replaced only in accordance with section 601GC of the Corporations Act. The Responsible Entity must provide a consolidated copy of the modified or new constitution to the Compliance Committee within 7 days of the modified or new constitution being lodged at the ASIC.
- (b) Notwithstanding any other provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), to the extent to which any provision of this Deed is inconsistent to any requirement of the Corporations Act, that provision shall be read down and shall not apply to the extent of the inconsistency, subject to any relief granted by the ASIC under the Corporations Act.
- (c) If the Corporations Act, as it applies to the operation of the Trust as a managed investment scheme, is changed or a provision of this Deed is otherwise contrary to the law, the Responsible Entity shall have the right to amend this Deed so that it complies with the relevant law.

## 23 Winding up of trust

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### 23.1 Winding up

Upon the expiration of the Term, which shall be determined pursuant to clause 2.1, the Responsible Entity shall cause the Trust to be wound up.

### 23.2 Notification of winding up

The Responsible Entity shall notify each Unit Holder of the winding up of the Trust prior to the Trust being wound up.

### 23.3 Division of Trust Property

Subject to clauses 23.4 and 23.5 and the terms of issue of any Unit or class of Units, after notifying each Unit Holder of the winding up of the Trust, the Responsible Entity shall as soon as reasonably practicable sell, call in and convert the Trust Property into money or cause it to be sold, called in and converted into money and shall divide the proceeds of such sale, calling in and conversion, less all Trust Costs (including the cost of the final distribution of capital and income and all proper provisions for liabilities), among the Unit Holders in accordance with their Units at the date of the distribution, and in so doing, the Responsible Entity may rely exclusively on the evidence of the Register.

### 23.4 Delay in sale

The Responsible Entity shall be entitled to postpone the sale, calling in and conversion of any part of the Trust Property for such time as it thinks is desirable to do so, in the interests of the Unit Holders, and shall not be responsible for any loss attributable to such postponement except to the extent that such loss may be attributable to the Responsible Entity's own breach of trust, recklessness or fraud.

### 23.5 Retention of Trust Property

The Responsible Entity shall be entitled, to the extent permitted by the Corporations Act and paragraph 131.5A of ASIC Regulatory Guide 133, to retain in its hands or under its control for as long as it thinks fit such part of the Trust Property as, in its opinion, may be required to meet any Trust Costs, provided that Trust Property so retained, to the extent that it is ultimately found not to be so required, shall remain part of the Trust Property for conversion and distribution in accordance with clause 23.3.

### 23.6 Audit following winding up

After the Trust has been wound up, the Responsible Entity shall cause an independent audit of the Trust's final accounts to be conducted by the Trust Auditor. The auditor's report must be distributed to all persons who were Unit Holders immediately prior to the winding up of the Trust.

## 24 General provisions

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### 24.1 Governing law

This Deed shall be governed by and construed in accordance with the laws of the State of Western Australia. The parties agree to submit to the jurisdiction of the courts of Western Australia.



## 24.2 Notices

- (a) Any notice, demand, consent or other communication (including a cheque) shall be in writing and shall be deemed to be properly served or given:
- (1) if sent by facsimile transmission to the intended recipient at its then current facsimile address; or
  - (2) if delivered at or posted by prepaid registered post to the address of the intended recipient as shown in this Deed or in the Register.
- (b) The Responsible Entity may by notice in writing to the Unit Holders change the address to which any notice, demand, consent or other communication to the Responsible Entity is to be served or given.
- (c) Any notice, demand, consent or other communication shall be deemed to have been properly served or given to the addressee:
- (1) if sent by facsimile transmission, upon receipt by the sender of confirmation of successful transmission to the addressee's facsimile number;
  - (2) if posted, two days after the date of posting; and
  - (3) if left or delivered, from the time it is left or delivered.

## 24.3 Waivers

Any time or indulgence granted by any party shall not in any way affect the rights of that party under this Deed and a party shall not be deemed to have waived any of the provisions under this Deed unless such waiver is in writing and duly executed by the relevant party or parties. No waiver of any right, obligation or breach of this Deed shall be held or construed to be a waiver of any other subsequent or antecedent right, obligation or breach of this Deed.

## 24.4 Severance

Each of the terms and conditions contained in this Deed shall be deemed to be separate and severable from the others of them and if any one or more of them is determined to be invalid or unenforceable by any Court of competent jurisdiction or inconsistent with any statute or regulation, such determination and any consequential severance shall not invalidate the rest of this Deed which shall remain in full force and effect as if such severed terms and conditions had not been made a part thereof.

## 24.5 No partnership

The relationship between the Responsible Entity and a Unit Holder or between a Unit Holder and another Unit Holder shall not constitute or be deemed to constitute a partnership.

## 24.6 Stamp duties and legal costs

All stamp duties assessed on or in relation to this Deed and all legal costs associated with this Deed shall form part of the Trust Costs.

## 24.7 Goods and services tax

- (a) Notwithstanding any other provision in this Deed to the extent that any party to this Deed ("**Supplier**") is liable to pay GST in connection with the supply of any goods and/or services supplied under this Deed ("**Affected Goods and/or Services**"), the Supplier may add an amount equal to the amount of the GST to the agreed price of all Affected Goods and/or Services. The Supplier shall issue a tax invoice to the other party indicating

the amount of the GST and otherwise complying with the requirements of any relevant legislation or regulation. Any party paying consideration for the Affected Goods and/or Services under this Deed will pay the agreed price plus an amount equal to the amount of the GST within 14 days after receiving the relevant tax invoice.

- (b) Without limiting the generality of paragraph (a), it is acknowledged that the Responsible Entity's fees described in Schedule 1 are exclusive of GST. The Responsible Entity is entitled to be reimbursed for all GST payable by it in relation to the supply of its services under this Deed in addition to the fees described in Schedule 1.

## 25 Valuation of Trust Property

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### 25.1 Periodic valuations

The Responsible Entity may cause Trust Property to be valued at any time, however the Responsible Entity must do so as and when required by the Corporations Act.

### 25.2 Net Asset Value

The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

### 25.3 Valuation methodology

The Responsible Entity may determine valuation methods and policies for each category of Trust Property and change them from time to time. While the Trust is:

- (a) not Listed, unless the Responsible Entity determines otherwise, the value of a piece of Trust Property for the purpose of calculating Net Asset Value will be its historical cost. If the Responsible Entity values a piece of Trust Property at other than its historical cost, then the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Subscription Sum that is independently verifiable; and
- (b) Listed, the value of a piece of Trust Property for the purpose of calculating Net Asset Value will be its market value unless the Responsible Entity determines:
- (1) there is no market in respect of the piece of Trust Property; or
  - (2) the market value does not represent the fair value of the Trust Property.

Where the Responsible Entity makes such a determination, the Responsible Entity must at the same time determine the method of valuation of the relevant piece of Trust Property.

## Schedules

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# Schedule 1

## Responsible Entity's Fees

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### 1 Entitlement to Fees

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- (a) During all periods when the Trust is not Listed, the Responsible Entity will be entitled to the unlisted trust management fee calculated and payable in accordance with the terms of section 2 of this Schedule.
- (b) During all periods when the Trust is Listed, the Responsible Entity will be entitled to the listed trust management fee calculated and payable in accordance with the terms of section 3 of this Schedule.
- (c) In addition to the Fees, there will be Trust Costs incurred by the Responsible Entity for which the Responsible Entity is entitled to be reimbursed.
- (d) The Responsible Entity may deduct the Fees and the Trust Costs incurred from the Trust Property.

### 2 Unlisted Trust Management fee

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- (a) While the Trust is unlisted, the annual unlisted trust management fee shall be an amount determined by the Responsible Entity but which is not more than 6% per annum of the Gross Proceeds received from the Properties during the relevant year. It shall be payable by consecutive monthly installments or at such other intervals and at times as may be determined by the Responsible Entity from time to time (but at intervals not more often than monthly), in accordance with item 3(b).
- (b) The Responsible Entity will invoice the Trust for the trust management fee, monthly in advance, commencing on the first Purchase Date. Payment of the trust management fee will be made by deduction from the Proceeds Fund by the Responsible Entity.
- (c) The Responsible Entity's entitlement to the trust management fee arises on the first day of each month during the Term.

### 3 Listed Trust Management fee

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While the Trust is Listed:

- (a) the Responsible Entity is entitled to receive out of the Trust a listed trustee management fee calculated at the rate of 0.65% per annum of Gross Asset Value; and
- (b) the management fee is calculated and accrues on a daily basis and is payable in arrears on a monthly basis.

## Schedule 2

### Investment Strategy for the Property

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Each Property shall consist of the freehold or leasehold estate of land and satisfy the Responsible Entity's investment strategy, which includes the following criteria for each Property:

- (a) the purchase price shall be supported by a written valuation provided by an Independent Valuer;
- (b) each Property will be located in an established or industrial zoned precinct within Australia or new Zealand;
- (c) The Responsible Entity may acquire Properties funded initially wholly through debt facilities made available to the Trust, provided that the Responsible Entity believes at the time of acquisition that such debt will be paid down to a loan to valuation ratio not exceeding 65% within 9 months of the acquisition of the relevant Property.
- (d) no single Property acquisition will constitute more than 35% of the total portfolio value at the date of acquisition;
- (e) where the Responsible Entity acting reasonably so determines, the Responsible Entity shall commission an independent building condition report which, in the reasonable opinion of the Responsible Entity, provides a satisfactory assessment of the condition of any buildings and services located on the Property, together with a satisfactory forecast of the reliability and longevity of those buildings and services;
- (f) where the Responsible Entity acting reasonably so determines, the Responsible Entity shall commission an independent quantity surveyor's report, which in the reasonable opinion of the Responsible Entity, identifies satisfactory anticipated annual depreciation benefits available to Unit Holders (unless written down values are provided by the vendor of the Property);
- (g) the Responsible Entity shall obtain an independent legal due diligence which, in the reasonable opinion of the Responsible Entity, satisfactorily reports that the relevant leases and licences contain the terms and conditions which one would ordinarily expect to find in those documents in relation to similar properties and do not impose any unduly onerous obligations on the landlord; and
- (h) the acquisition of each Property shall be subject to the formal approval of board of directors of the Responsible Entity.

# Schedule 3

**NOTE: The provisions of this Schedule 3 will only have force and effect if a Court makes a determination they were valid or effective.**

## Convertible Notes

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### 1. Definitions

The following definitions apply in this Deed:

**Convertible Note** means a note which, at the election of the Note Holder in accordance with the terms of issue, is convertible into a Unit.

**Note Holder** means a person registered as the holder of a Convertible Note, including any persons jointly registered.

### 2. Options

Despite and notwithstanding clauses 3.2 and 12 of this Deed, the Responsible Entity may issue Options while the Trust is not Listed on the terms set out in clause 3 of this Schedule 3.

### 3. Implementation of the Acquisition

#### 3.1 Paramountcy

This clause 3 has effect notwithstanding any other provision of this Deed (including clauses 3.2 and 12), and any provision of this Deed which is inconsistent with this clause 3 does not operate to the extent of any inconsistency.

#### 3.2 Issue of Convertible Notes

The Responsible Entity may offer and issue up to 300 million Convertible Notes at an issue price of \$0.40 per Convertible Note.

#### 3.3 Terms of Convertible Notes

The Convertible Notes will be issued on the terms and conditions set out in schedule 4 to this Deed (**Terms**) and such Terms will prevail over any other provision of this Deed.

#### 3.4 Conversion of Convertible Notes

Subject to the Terms, in connection with conversion in accordance with the terms of issue of the Convertible Notes, the Responsible Entity must take all steps required to convert one Convertible Note into one Unit, including:

- (a) redeeming the relevant Convertible Note at a redemption price of \$0.40 per Convertible Note; and
- (b) issuing one Unit at the issue price set out in clause 3.5,

and such amounts will be set off against each other. For the avoidance of doubt, on conversion, no amount is payable by the Responsible Entity to the Note Holder and no amount is payable by the Note Holder to the Responsible Entity.

**3.5 Issue price of Units upon conversion**

Subject to the Terms, the issue price of a Unit issued pursuant to the conversion of a Convertible Note (for the purposes of this clause 3, the **Conversion Price**) is \$0.40.

**3.6 Voting rights**

Holders of Convertible Notes will have voting rights in respect of their Convertible Notes, the value of such rights to be determined in accordance with section 253F of the Corporations Act.

**3.7 Interest in the Trust**

An Convertible Note confers on the Note Holder an interest in the Trust.

**3.8 Application of other provisions**

Clause 12 of this Deed applies, to the extent applicable, in respect of Convertible Notes issued in accordance with this clause 3 of Schedule 3 when the Trust is Unlisted.

# Schedule 4

**NOTE: The provisions of this Schedule 4 will only have force and effect if a Court makes a determination they were valid or effective.**

## Terms

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### 1. Form, Face Value, issue and title

#### 1.1 Form

Notes are redeemable, unsecured, convertible notes in the Fund issued by the Issuer in registered uncertificated form. Notes are constituted under, and issued according to, the Trust Deed and the Constitution. Notes take the form of entries in the Register. No certificate will be issued to a Holder unless the Issuer determines that a certificate should be available or is required by any applicable law or regulation. Notes are unsecured notes for the purposes of section 283BH of the Corporations Act.

#### 1.2 Face Value

Each Note will have a Face Value of \$0.40.

#### 1.3 Issue

Each Note will be issued by the Issuer at an issue price of \$0.40 per Note. The issue price must be paid in full on application.

#### 1.4 Title

An entry in the Register is conclusive evidence that the person is the absolute owner of Notes subject to correction for fraud or error. Except as required by law, the Issuer must treat the person entered in the Register as the absolute owner of Notes.

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### 2. Ranking

#### 2.1 Subordination and ranking

The Holder Claims are subordinated to the claims of Senior Creditors in that if at any time an Event of Insolvency occurs in relation to the Fund (otherwise than for the purposes of a Solvent Reorganisation) the amount payable to the Holders under this clause 2 will only be paid after the debts owing to all Senior Creditors have been paid in full.

Holder Claims will at all times rank *pari passu* and without any preference among themselves and *pari passu* and without any preference among the rights and claims of holders of Equal Ranking Obligations.

#### 2.2 Holder acknowledgments

Each Holder acknowledges and agrees that:

- (a) the claims of Senior Creditors to which it is subordinated include each Senior Creditor's entitlement to interest under section 563B of the Corporations Act



and it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act;

- (b) the debt subordination effected by this clause 2 is not affected by any act or omission of the Issuer or any Senior Creditor which might otherwise affect it at law or in equity;
- (c) to the maximum extent permitted by applicable law, it may not exercise or claim (nor will the Trustee exercise or claim on its behalf) any right of set-off or counterclaim in respect of any amount owed by it to the Issuer against any amount owed to it by the Issuer in respect of Notes and it shall waive and be deemed to have waived such rights of set-off or counter-claim;
- (d) it must pay or deliver to the liquidator any amount or asset received on account of its claim in the winding-up of the Issuer in respect of Notes in excess of its entitlement under this clause 2; and
- (e) it may not exercise any voting rights as a creditor in any administration which follows an Event of Insolvency until after all Senior Creditors have been paid in full or otherwise in a manner inconsistent with the subordination contemplated in this clause 2.

### 3. Interest

#### 3.1 Interest

Subject to these Terms, the Issuer shall pay interest in respect of a Note no later than one month after an Interest Payment Date to the person recorded as Holder on the Record Date in respect of that Interest Payment Date.

#### 3.2 Interest amount

- (a) The amount of an Interest Payment in respect of a Note on an Interest Payment Date is calculated according to the following formula:

$$\text{Interest Payment} = \frac{\text{Interest Rate} \times \text{Face Value} \times N}{365}$$

where:

**Interest Rate** is:

- (i) from the Issue Date to the earlier of the Maturity Date and the date of a Liquidity Event (if any), 12% per annum;
- (ii) in circumstances where the Issuer has not satisfied the Listing Condition, from 17 December 2012 to the Maturity Date or the Liquidity Event (whichever is the earlier), 16% per annum; or
- (iii) from the date of a Liquidity Event (if any) to the Extended Maturity Date, 10% per annum.

**Face Value** is the Face Value of each Note;

**N** means in respect of:

- (i) the first Interest Payment Date, the number of days from (and including) the date the relevant Note is issued until (but not including) the first Interest Payment Date; and

- (ii) each subsequent Interest Payment Date, the number of days from (and including) the preceding Interest Payment Date until (but not including) the relevant Interest Payment Date.
- (b) Interest accrues daily and is payable to Holders in arrears on the relevant Interest Payment Date subject to these Terms.
- (c) If any Interest Payment Date would otherwise fall on a calendar day which is not a Business Day, the Interest Payment Date will be postponed to the next calendar day which is a Business Day.

### **3.3 Unpaid Interest**

Accrued Interest on Notes that is not paid on the Interest Payment Date on which it becomes due and payable and which remains unpaid shall:

- (a) remain owing and not form part of the principal owing to the Holder; and
- (b) bear interest at the Interest Rate.

### **3.4 Calculation of interest**

All calculations of interest will be rounded to two decimal places. For the purposes of making any Interest Payment in respect of a Holder's aggregate holding of Notes, any fraction of a cent will be disregarded.

### **3.5 Method of payment**

Any amount which is payable to Holders in respect of Notes in accordance with these Terms will, unless the Issuer and the relevant Holder otherwise agree, be paid without set-off or counterclaim by direct credit to a nominated account denominated in Australian dollars at a financial institution notified by the relevant Holder to the Registry

- (a) in the case of Interest Payments, no later than the Record Date; and
- (b) in the case of any other amount in respect of Notes, at least eight calendar days before the day on which the relevant payment is scheduled,

or, at the Issuer's option, by cheque drawn in favour of the Holder and sent by prepaid post to the address of the Holder in the Register.

### **3.6 Payments subject to applicable laws**

Payments in respect of Notes are subject in all cases to any fiscal or other laws and regulations applicable at the time, and in the place, of payment.

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## **4. Holder exit rights**

### **4.1 Conversion rights**

- (a) Subject to paragraphs (b) and (c), a Holder may, by giving a Conversion Notice, request Conversion of the Note held by it. Such a Conversion Notice may only be given during a Conversion Period.
- (b) A request under paragraph (a) requesting a Conversion may be in relation to some or all of the Holder's Notes, subject to the Face Value of the Notes the subject of the Conversion Notice being at least the lesser of \$5,000 or the balance of the Holder's holding of Notes.

- (c) Despite any other provision of this deed, a Holder's right to Conversion in accordance with these Terms is subject to the Holder receiving any necessary approval from the Foreign Investment Review Board or other regulatory body.

#### 4.2 Right of redemption upon Change of Control Event

- (a) The Issuer must give notice to the Holders as soon as reasonably practicable after it becomes aware of the occurrence of a Change of Control Event. If a Change of Control Event has occurred a Holder may request redemption of all (but not some) of the Holder's holding of Notes by giving an Exit Notice to the Issuer no later than 30 Business Days after the date of the notice issued by the Issuer under this clause 4.2 specifying such event (**Notification Period**).
- (b) In circumstances where a Holder elects redemption, the Issuer must pay to the Holder the Change of Control Redemption Amount within 20 Business Days of the conclusion of the Notification Period or in the case of a takeover bid within 20 Business Days of the later of conclusion of the Notification Period and the close of the relevant offer.

#### 4.3 Right of redemption or Conversion upon Event of Default

- (a) The Issuer must give notice to the Holders as soon as reasonably practicable after it becomes aware of the occurrence of an Event of Default. If an Event of Default has occurred a Holder may request:
- (i) redemption of all (but not some) of the Holder's holding of Notes; or
  - (ii) only in the case of paragraph (a) of the definition of "Event of Default" prior to termination or winding up of the Fund, Conversion of all (but not some) of the Holder's holding of Notes at any time prior to such Redemption being effected,
- in either case, by giving either a Conversion Notice or an Exit Notice (as applicable) to the Issuer no later than 45 Business Days after the date of the notice issued by the Issuer under this clause 4.2 specifying such event (**Notification Period**).
- (b) In circumstances where a Holder elects redemption, the Issuer must pay to the Holder the Redemption Amount in respect of the Notes within 20 Business Days of the conclusion of the Notification Period.
- (c) In circumstances where a Holder elects Conversion, the Issuer must effect the Conversion in accordance with clause 6 of these Terms as if the Notification Period was the Conversion Period.

#### 4.4 Other requirements of Conversion Notices and Exit Notices

- (a) Once given by a Holder, a Conversion Notice or an Exit Notice (as applicable) cannot be withdrawn without the written consent of the Issuer.
- (b) A Conversion Notice or an Exit Notice must be accompanied by evidence of title reasonably acceptable to the Issuer for Notes the subject of the Conversion Notice or Exit Notice (as applicable) and is not taken to be a valid Conversion Notice or Exit Notice (as applicable) unless and until such evidence is actually received by the Issuer.

- (c) A Holder must not deal with, transfer, dispose of or encumber any Notes the subject of a Conversion Notice or an Exit Notice once that Conversion Notice or Exit Notice (as applicable) has been given.
- (d) Where the Issuer has received a valid Conversion Notice or Exit Notice in respect of any particular Notes, any Conversion Notice or Exit Notice subsequently received will be taken to apply only to Notes which were not the subject of the prior Conversion Notice or Exit Notice (as applicable). The Issuer may apply such adjustments (if any) as the Issuer considers to be reasonably necessary to reflect this.
- (e) Where the Issuer has received a valid Conversion Notice or Exit Notice, the Issuer must convert or redeem the Notes in accordance with, and subject to, these Terms and the Constitution.

## **5. Issuer exit rights**

### **5.1 Early redemption due to the occurrence of an event**

If a Clean-Up Event occurs, the Issuer may, subject to applicable laws, redeem all Notes (but not some) at their Redemption Amount, by giving at least 15 Business Days notice of redemption to the Holders and the Trustee.

### **5.2 Redemption Notice**

A Redemption Notice given under this clause 5 is irrevocable and the Issuer must, on the date specific in that notice, redeem all Notes the subject of that notice.

### **5.3 Occurrence of a Tax Event**

In circumstances where there is a Tax Event, the Issuer may, in its absolute discretion, redeem all (but not some) of the Notes for the Redemption Amount or write to each Holder and provide that Holder with a period of at least 10 Business Days to elect whether it wishes to:

- (a) redeem all of their Notes (but not some) at the Redemption Amount; or
- (b) adjust the Interest Rate payable in respect of their Notes to reflect the fact that the Notes are no longer deductible.

Upon the conclusion of the period provided for Holders' elections (if any), the Issuer will:

- (c) for those Holders who have elected redemption, pay the Redemption Amount within 20 Business Days;
- (d) for those Holders who have elected an adjustment to the Interest Rate, adjust the Interest Rate payable in respect of their Notes to take effect within 20 Business Days; and
- (e) for those Holders who have not made a relevant election, either redeem their Notes or adjust the Interest Rate payable in respect of their Notes, as the Issuer determines in its discretion.

## **6. Conversion**

### **6.1 Conversion**

- (a) Where a Note is to be Converted under these Terms, on the Conversion Date:

- (i) the Issuer will redeem the Note for the Redemption Amount, and apply the whole of that amount towards the subscription by the Holder of the relevant Note of the number of new Ordinary Units calculated in accordance with clause 6.2; and
  - (ii) the Issuer must cause to be delivered to the relevant Holder (whether by way of issue of new Ordinary Units or transfer of existing Ordinary Units) the number of Ordinary Units calculated in accordance with clause 6.2.
- (b) The relevant Holder irrevocably and unconditionally:
- (i) acknowledges that compliance with the above process is in full and final satisfaction of the Holder's rights in respect of the relevant Note (whether as to Face Value, interest or otherwise); and
  - (ii) consents to be a unitholder of the Fund and agrees to be bound by the constitution of the Fund.
- (c) Any issue of Ordinary Units under this clause 6.1 will have an effect on and from, and be deemed to have been made on, the Conversion Date.

## 6.2 Conversion rate

The number of Ordinary Units to which a Holder is entitled upon Conversion of Notes is determined by the following formula:

**Number of Ordinary Units** = AFV / Conversion Price

where:

**AFV** means the aggregate Face Values of each Note being converted by the Holder.

**Conversion Price** means \$0.40, as adjusted in accordance with this clause 6.

## 6.3 Adjustments to Conversion Price prior to or in conjunction with listing

If the Issuer issues (other than in the case of a pro rata rights offer in which Holders are entitled to participate as if their Notes had converted into Ordinary Units or, following the Liquidity Event, an issue of Units which does not require member approval under the ASX Listing Rules) any Ordinary Units (other than Ordinary Units issued on Conversion of the Notes), the Conversion Price will be adjusted immediately using the following formula:

$$\text{Conversion Price} = \text{CP}_0 \times \left( \frac{(\text{UN} \times \text{NTA}) + (\text{UI} \times \text{A})}{(\text{UN} + \text{UI})} \right) / \text{NTA}$$

where:

**CP<sub>0</sub>** means the Conversion Price applying immediately before the application of this formula.

**UN** means the number of Ordinary Units on issue immediately before the issue of new Ordinary Units under the relevant issue.

**NTA** means an amount equal to the net tangible assets of the Fund per Ordinary Unit.

**UI** means the number of Ordinary Units issued under the relevant issue.

**A** means the subscription price per Ordinary Unit applicable under the relevant issue.

**6.4 Adjustments to Conversion Price for consolidation of Units**

If and whenever there shall be a consolidation of the Ordinary Units, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such alteration by the following fraction:

$$\text{Conversion Price} = \text{CP}_0 \times \frac{A}{B}$$

where:

**CP<sub>0</sub>** means the Conversion Price applying immediately before the application of this formula.

**A** means the aggregate number of Ordinary Units on issue immediately before such consolidation.

**B** means the aggregate number of Ordinary Units on issue immediately after such consolidation.

**6.5 Adjustments to Conversion Price for other capital transactions**

- (a) Subject to paragraph (b), if there is a consolidation or any other capital transaction undertaken by the Issuer in respect of the Ordinary Units in the Fund which, in and of itself, has a material adverse effect on the market value of a 360 Note, the Issuer may (acting reasonably) determine what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereof. Upon, and in accordance with, such determination, such adjustment shall be made to the Conversion Price.
- (b) An adjustment to the Conversion Price in accordance with paragraph (a) may only be made if the adjustment would result in a reduction to the Conversion Price.

**6.6 Adjustments binding**

Any adjustment of the Conversion Price pursuant to this clause 6 will be binding on all Holders. The Issuer will notify Holders of any such adjustment promptly.

**7. Repayment and purchase****7.1 Maturity**

The Issuer must redeem all (but not some) of the Notes which are not the subject of an Exit Notice at their Redemption Amount either:

- (a) if a Liquidity Event has not occurred, on the Maturity Date; or
- (b) if a Liquidity Event occurs prior to the Maturity Date, on the Extended Maturity Date.

**7.2 Payment of the Redemption Amount**

When any Notes become due for redemption in accordance with clause 7.1 of these Terms, the Issuer must pay to Holders the Redemption Amount within 30 Business Days of the Maturity Date or the Extended Maturity Date (as applicable).

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**8. Missed Payment Event**

If during the period from the occurrence of a Missed Payment Event until such Missed Payment Event is rectified, the Issuer:

- (a) pays any distribution of either income or capital (including via the issue of Ordinary Units or other Securities in the Fund) or makes any other payment on Ordinary Units or other Securities in the Fund which rank below or *pari passu* with the Notes; or
- (b) redeems, purchases, cancels or returns capital on any Ordinary Units or other Securities in the Fund which rank below or *pari passu* with the Notes in a return of capital or in a winding up of the Fund,

and fails to rectify such Missed Payment Event within 30 days of the occurrence of an event referred to in either (a) or (b) of this clause, there will be deemed to be an Event of Default.

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**9. Taxation and gross-up****9.1 Payment without withholding**

All payments in respect of Notes by or on behalf of the Issuer, will be made free and clear of, and without withholding or deduction for, or on account of, Taxes imposed, levied, collected, withheld or assessed by or on behalf of the Relevant Jurisdiction, unless the withholding or deduction of the Taxes is required by law. In that event, the Issuer will pay such additional amounts (**Additional Amounts**) as may be necessary in order that the net amounts received by the Holders after the withholding or deduction will equal the respective amounts which would otherwise have been receivable in respect of Notes in the absence of the withholding or deduction. However, no Additional Amounts will be payable in relation to any payment in respect of any Notes:

- (a) to, or to a third party on behalf of, a Holder who is liable for the Taxes in respect of such Notes by reason of their having some connection with the Relevant Jurisdiction other than the mere holding of Notes;
- (b) to, or to a third party on behalf of, a Holder who is liable for the Taxes in respect of Notes by reason of that person being an associate of the Issuer for the purposes of section 128F of the Tax Act;
- (c) to, or to a third party on behalf of, a Holder who could lawfully avoid (but has not so avoided) the deduction or withholding by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or other similar claim for exemption to any tax authority in the place where payment in respect of the relevant Notes is made; or
- (d) to, or to a third party on behalf of, a Holder who has not supplied to the Registry an appropriate tax file number, an Australian business number or exemption details, to the extent that such information would have reduced or eliminated the relevant Taxes.

**9.2 Additional Amounts**

Any reference in these Terms to any amounts in respect of Notes includes a reference to any Additional Amounts which may be payable under this clause 9.

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**10. No rights to new securities**

Notes confer no rights to participate in any bonus issues.

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**11. Further issues and transactions**

- (a) Until the Liquidity Event or until all the Notes are redeemed or converted (whichever is the earlier), other than the convertible notes to be issued to Walker Corporation Pty Limited or its nominee on or about the Issue Date, the Issuer will not create or permit to subsist any mortgage, charge, lien, pledge or other form of encumbrance or security or any instrument that ranks senior to or *pari passu* with the Notes, other than a Permitted Encumbrance, on the whole or any part of its present property or assets to secure any Relevant Indebtedness.
- (b) Prior to, or in conjunction with, the Liquidity Event, the Issuer must not:
  - (i) conduct any division or any reclassification of Ordinary Units; or
  - (ii) issue any options, warrants or further convertible or exchangeable securities in the Fund.
- (c) If, prior to the Liquidity Event, the Issuer makes yearly distributions on Ordinary Units in excess of 4.5 cents per annum per Ordinary Unit or such greater amount as is required to be distributed to prevent the Fund from paying tax or otherwise being affected by an adverse tax consequence, there will be deemed to have been an Event of Default.
- (d) Subject to paragraph (a), the Issuer may acquire, dispose of or otherwise deal with any assets of the Fund without requiring any consents from Holders or the Trustee.

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**12. Amendments and meetings****12.1 Amendments with Holder approval**

At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may amend these Terms if such amendment is authorised by a Special Resolution of the Holders or if otherwise permitted by clause 12.2.

**12.2. Amendments without Holder approval**

At any time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, without the consent or approval of Holders or the Trustee, amend these Terms in accordance with the Trust Deed if the Issuer is of the opinion that such amendment is:

- (a) made to cure any ambiguity or correct a manifest error;
- (b) of a formal, minor or technical nature;
- (c) necessary or expedient for the purpose of enabling the Notes to be:
  - (i) listed for quotation, or to retain quotation, on any stock exchange; or
  - (ii) offered for subscription or for sale under the laws for the time being in force in any place,



and, otherwise not materially prejudicial to the interests of Holders generally;

(d) necessary to comply with:

- (i) the provisions of any statute or the requirements of any statutory authority; or
- (ii) the Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of the Notes,

and, otherwise not materially prejudicial to the interests of Holders generally;  
or

(e) is not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to the interests of Holders generally,

provided that such amendment would not give rise to a Gross-Up Event or a Tax Event.

### **12.3 Amendment binding**

Any amendment of these Terms in accordance with this clause 12 is binding on all Holders.

### **12.4 Meetings of Holders**

The Trust Deed contains provisions for convening meetings of the Holders.

### **12.5 No consent of Senior Creditors**

Nothing in these Terms requires the consent of any Senior Creditor or holder of any Equal Ranking Obligation to the amendment of any Terms made in accordance with this clause 12.

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## **13. Issuer substitution**

The Trustee may, without the consent or approval of the Holders, agree with the Issuer to the substitution in place of the Issuer of any of its Related Bodies Corporate (or of any previous substitute under this clause) as the principal debtor under these Terms and the Trust Deed, subject to:

- (a) the Issuer being satisfied that the interests of the Holders will not be materially prejudiced by the substitution; and
- (b) compliance with certain other applicable conditions set out in the Trust Deed.

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## **14. Notices**

### **14.1 Service of notices**

- (a) Without limiting anything else in these Terms, a notice may be given by the Issuer to any Holder, or in the case of joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) to the Holder's address as shown on the Register or, in any case, by other electronic means determined by the Issuer. If the notice is signed, the signature may be original or printed.

- (b) A notice given by a Holder to the Issuer must:
- (i) be in writing; and
  - (ii) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address below or the address last notified by the Issuer, or sent by facsimile transmission to the fax number below or the fax number last notified by the Issuer:

**360 Capital RE Limited**  
 Level 8  
 56 Pitt Street  
 Sydney NSW 2000

Facsimile: +61 2 9238 0354  
 Attention: Company Secretary

#### **14.2 When notice considered to be received**

Any notice is taken to be given:

- (a) if served personally or left at the intended recipient's address, when delivered;
- (b) if sent by post, on the second Business Day after it is mailed in a prepaid envelope to the intended recipient's address; and
- (c) if sent by facsimile or other electronic transmission, on production of a report by the sending machine or other system by which the transmission is sent indicating that the transmission has been made in its entirety to the correct fax number or other transmission address and without error.

#### **14.3 Notice to transferor bind transferee**

Every person who, by operation of law, transfer or other means, becomes entitled to be registered as the holder of any Notes is bound by every notice which, prior to the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those Notes.

#### **14.4 Service on deceased Holders**

A notice served in accordance with this clause 14 is (despite the fact that the Holder is dead and whether or not the Issuer has notice of the Holder's death) considered to have been properly served in respect of any Notes, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's place as the Holder or joint Holder. The service is sufficient service of the notice or document on the Holder's personal representative and any person jointly interested with the Holder in Notes.

#### **14.5 Copy of notices to Trustee**

Whenever the Issuer issues any notice under these Terms to Holders, the Issuer must at the same time provide to the Trustee a copy of the notice.

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### **15. Transfer of Notes**

#### **15.1 Transfer**

- (a) Subject to paragraph (b), a Holder may transfer any Notes the Holder holds by a written instrument of transfer in any usual form or in any other form

approved by either the Issuer or the Trustee, that is otherwise permitted by law.

- (b) Prior to a Holder transferring any Notes, the Holder must first give notice (**Notice**) to the Issuer that it wishes to sell all or some of its Notes (**Sale Notes**). Such notice must specify the number of Notes to be sold and the price per Note (**Sale Price**). The Notice is irrevocable except with the consent of the Issuer. Within 20 Business Days of the receipt of the Notice, the Issuer must notify the Holder whether or not it (or its nominee) wishes to purchase the Sale Notes for the Sale Price. If the Issuer notifies the relevant Holder that it (or its nominee):
- (i) does wish to purchase the Sale Notes, it must pay (or procure that its nominee pays) the Sale Price to the Holder within 30 Business Days of the receipt by the Issuer of the Notice; or
  - (ii) does not wish to purchase the Sale Notes, the Holder may transfer the Sale Notes to a third party within 30 Business Days of the receipt by the Issuer of the Notice for a price no less than the Sale Price.

## 15.2 Registration of transfer

A transferor of Notes remains the owner of Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of Notes.

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## 16. Enforcement by the Trustee

### 16.1 Enforcement by the Trustee

The Trustee may at any time, at its discretion and without further notice, institute such proceedings against the Issuer as it may think fit to enforce any term or condition binding on the Issuer under the Trust Deed or these Terms, except that the Trustee must not institute any proceedings or take any steps to enforce any payment obligation of the Issuer under or arising from the Trust Deed or the Notes sooner than the same would otherwise have been payable by it under these Terms, including, without limitation, payment of any principal or interest in respect of the Notes, any Redemption Amount or Interest Payment, and including damages awarded for the breach of any obligations, and in no event shall the Issuer, by virtue of the institution of any such proceedings or steps, be obliged to pay any sum or sums in cash or otherwise, sooner than the same would otherwise have been payable by it under these Terms.

### 16.2 Trustee not bound to enforce

The Trustee shall not in any event be bound to take any action referred to in clause 16.1 unless:

- (a) it shall have been so directed by a Special Resolution of the Holders; and
- (b) it shall have been indemnified as contemplated by the Trust Deed.

### 16.3 No other remedies against the Issuer

Except as permitted by this clause 16 (including, without limitation, any rights or remedies of the Trustee under clause 16.1), no remedy against the Issuer shall be available to the Trustee or the Holders in respect of any breach by the Issuer of any of its obligations under the Trust Deed or these Terms, other than payment of the costs, charges, liabilities, expenses or remuneration of the Trustee.

**16.4 Holders' right to enforce**

No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Note.

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**17. Non-resident Holders**

- (a) Where Notes are held by, or on behalf of, a person resident outside the Commonwealth of Australia, then, despite anything else to the contrary contained in or implied by these Terms, it is a condition precedent to any right of the Holder to receive payment of any monies in respect of those Notes that all necessary authorisations (if any) and any other statutory requirements which may then be in existence are obtained at the cost of the Holder and satisfied.
- (b) For the purposes of paragraph (a), authorisation includes any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with any government or any government agency.

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**18. Governing law**

- (a) These Terms are governed by the law in force in the state of New South Wales, Australia.
- (b) The Issuer, the Trustee and each Holder submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia in connection with matters concerning Notes or these Terms. The Issuer, the Trustee and each Holder waives any right they have to an objection to an action being brought in those courts, or to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

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**19. Fund listing**

- (a) No direct, indirect or implied assurance or representation is given to or for the benefit of Holders by any person that a Liquidity Event will occur.
- (b) Subject to the Terms, the Issuer may impose preconditions to a Liquidity Event as it determines in its absolute discretion, including that members of the Fund approve the Liquidity Event by a Special Resolution.
- (c) For the purposes of paragraph (b), any such preconditions must not affect any rights of Holders under the Terms or be inconsistent with the Terms, other than that members of the Fund approve the Liquidity Event by a Special Resolution and other than in circumstances where the relevant preconditions will take effect from the time that Holders have approved a Liquidity Event by a Special Resolution.
- (d) The Issuer may, in order to facilitate the Liquidity Event, amend the Terms provided that such amendments do not have a material adverse affect on Holders.

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**20. Purpose of the Notes**

The Issuer and the Holders acknowledge that the purpose of the issue of the Notes is to raise money which will be pooled to acquire an additional property portfolio with the further intention that the income and other benefits generated by the Fund will be to the benefit of the Holders and other members of the Fund.

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## 21. Interpretation and definitions

### 21.1 Interpretation

In these Terms:

- (a) headings and boldings are for convenience only and do not affect the interpretation of these terms;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (e) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (g) where the day on or by which any thing is to be done, or payment is to be made, is not a Business Day, that thing must be done, or payment must be made, on or by the next succeeding Business Day;
- (h) a reference to cash includes cheques and bank cheques;
- (i) a reference to a body including a commission or an exchange, whether statutory or not, which ceases to exist or whose functions or powers are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers and functions;
- (j) references to sums of money are to amounts in Australian dollars;
- (k) a reference to a thing or things after the words “include” or “including” or similar expressions is not limited to that thing or those things;
- (l) a calculation, determination, election or decisions made under these Terms, will (in the absence of manifest error, negligence, default or bad faith) be binding upon the Issuer, the Trustee and all Holders;
- (m) if a calculation is required under these Terms, the calculation will be rounded to four decimal places, provided that any amount to be paid to a Holder will be rounded down to the nearest whole cent; and
- (n) the word “amend” includes modify, cancel, amend or add to.

### 21.2 Definitions

Unless the context otherwise requires, defined terms in the Trust Deed apply to these Terms and the following terms will have the following meanings in these Terms:

**Accrued Interest** means, at any time, interest which has accrued under clauses 3.2(b).

**Associate** has the meaning set out in sections 12 - 16 (inclusive) of the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) or the market operated by it, as the context requires.

**Change of Control Event** means:

- (a) a takeover bid in respect of the Fund becomes unconditional;
- (b) a scheme of arrangement is approved pursuant to which a person will acquire 100% of the Ordinary Units in the Fund; and
- (c) the responsible entity of the Fund ceases to be an Associate of 360 Capital RE Limited.

**Change of Control Redemption Amount** means:

- (d) in circumstances where the Change of Control Event is triggered by a transaction pursuant to which the payment of consideration is involved to the holders of Ordinary Units in the Fund, the Change of Control Redemption Amount will be the greater of the Redemption Amount and such other amount which will be commensurate with such consideration payable in respect of Ordinary Units and will be calculated on the basis that the relevant Holder's Notes were Converted immediately prior to the Change of Control Redemption Amount being paid; and
- (e) in all other circumstances, the Redemption Amount.

**Clean-Up Event** means a circumstance where the Issuer (together with its Related Bodies Corporate) has, individually or in aggregate, redeemed or converted Notes equal to or in excess of 80% of the aggregate Face Value of the Notes on the Issue Date.

**Constitution** means the constitution of the Fund as amended from time to time.

**Conversion** means a Holder ceasing to hold Notes and receiving Ordinary Units in accordance with clause 6 of these Terms.

**Conversion Date** means the date determined by the Issuer which is to be no later than 20 Business Days after the conclusion of each Conversion Period.

**Conversion Notice** means a notice given by a Holder to the Issuer under clause 4.1 or 4.3.

**Conversion Period** means:

- (f) the 20 Business Day period prior to the Liquidity Event;
- (g) each 10 Business Day period ending on every Interest Payment Date which is a 30 June or a 31 December that occurs after the Liquidity Event; and
- (h) such other period as the Issuer determines.

**Conversion Price** has the meaning given in clause 6.2.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a director of the Issuer.

**Equal Ranking Obligations** means any obligation in relation to claims of holders of Securities which claims rank or are expressed to rank *pari passu* with Holder Claims under these Terms and the Trust Deed.

**Event of Default** means any of the following which has not been rectified within 30 days of its occurrence:

- (a) the failure by the Issuer to make Interest Payments or payments of Redemption Amounts in accordance with these Terms;
- (b) the termination of the Fund;
- (c) the winding up of the Fund; and
- (d) the occurrence of an Event of Insolvency in respect of the Fund.

**Event of Insolvency** means the appointment of an administrator, a liquidator, provisional liquidator or other similar officer in respect of the Fund or any corporate action is taken by the Issuer to appoint such a person.

**Exit Notice** means a notice given by a Holder to the Issuer under clause 4.2 or 4.3.

**Extended Maturity Date** means the date which is 4 years from the date of the Liquidity Event (if any).

**Face Value** means the face value of a Note, being \$0.40 per Note.

**Gross-Up Event** means the Issuer has or will become obliged to pay, in respect of an amount (the **Relevant Amount**) an Additional Amount that is at least 30% (or other percentage which is the corporate tax rate then prevailing in the Relevant Jurisdiction) of the Relevant Amount as a result of:

- (a) any change in the laws (or any rules or regulations under them) of the Relevant Jurisdiction; or
- (b) any change in any official interpretation or application of those laws, rules or regulations,

which becomes effective on or after the Issue Date, and the Issuer cannot avoid being obliged to pay the Additional Amount by taking reasonable measures available to it.

**Holder Claims** means the rights and claims of the Trustee (in respect of Notes) and of the Holders in respect of Notes.

**Interest Payment** means the interest payable on a Note on the Interest Payment Date, as calculated in accordance with clause 3.2.

**Interest Payment Date** means, subject to clause 3.2, 31 March, 30 June, 30 September and 31 December in each year and the final Interest Payment Date in respect of a Note shall, in the case of a redemption, end on the Redemption Date and, in the case of Conversion, end at the conclusion of the relevant Conversion Period.

**Interest Rate** has the meaning specified in clause 3.2.

**Issue Date** means 1 June 2012, or such later date as the Issuer may determine.

**Listing Condition** means the Issuer has convened a meeting of members of the Fund to consider any special resolution to approve amendments to the constitution of the Fund and to otherwise approve the listing of the Fund on the ASX that the Issuer

determines in its discretion should be a precondition to listing on the ASX and, subject to the passing of that resolution, has otherwise used reasonable endeavours to procure the listing of the Fund on the ASX on or prior to 17 December 2012. For the avoidance of doubt, satisfaction of the Listing Condition is not dependent on the passing of the resolution and, as such, the Listing Condition may be satisfied where the resolution is not passed and the Fund is not consequently listed.

**Listing Rules** means the listing rules of ASX.

**Liquidity Event** means the admission of the Fund to the official list of the ASX and the commencement of official quotation of the Ordinary Units on the ASX.

**Maturity Date** means the date which is 3 years from the Issue Date.

**Missed Payment Event** means the failure by the Issuer to:

- (i) deliver to a Holder Ordinary Units upon Conversion of their Notes in accordance with these Terms; and
- (j) pay a Holder their Redemption Amount in accordance with these Terms.

**Ordinary Units** means an ordinary unit in the Fund.

**Permitted Encumbrance** means an encumbrance in respect of:

- (k) financial accommodation provided to the Fund by National Australia Bank Limited pursuant to a facility entered into on 31 January 2011 as amended from time to time (including, for the avoidance of doubt, any historical and future amendments) and any refinancing thereof;
- (l) any hedging arrangements entered into between the Fund and National Australia Bank Limited; and
- (m) without limiting paragraph (a), other financial accommodation secured by the freehold or leasehold property (either directly or indirectly) of the Issuer or a subsidiary up to an LVR of 65% (calculated at the time of the relevant financing but excluding from that calculation the Notes) or any refinancing thereof.

**Record Date** means, in relation to any date on which the Issuer is obliged to make an Interest Payment to a Holder in relation to a Note, 8 calendar days before the relevant Interest Payment Date or such other date as the Issuer determines in its absolute discretion and notifies to Holders.

**Redemption Amount** in respect of a Note means the sum of:

- (a) 100% of the Face Value; and
- (b) any unpaid Accrued Interest calculated up to (but excluding) the Redemption Date as if that date were an Interest Payment Date.

**Redemption Date** means the date specified in a Redemption Notice on which Notes become due for redemption.

**Redemption Notice** means a notice provided by the Issuer to Holders and the Trustee in accordance with clause 5.1 of these Terms.

**Registry** means Boardroom (Victoria) Pty Limited ABN 65 110 851 333 or such successor registrar as the Issuer may appoint.



**Relevant Indebtedness** means any present or future indebtedness (whether being principal, premium, interest or other amounts) in the form of or evidenced by bank debt, notes, bonds, debenture securities, loan securities or other securities, whether issued for cash or in whole or in part for a consideration other than cash.

**Relevant Jurisdiction** means:

- (a) the Commonwealth of Australia or any State or Territory of Australia; or
- (b) in the event of any substitution, Solvent Reorganisation or other corporate action resulting in either the Issuer being incorporated in any other jurisdiction, that other jurisdiction or any political subdivision or any authority of that jurisdiction having power to tax.

**Security** means, in relation to the Fund, units in the Fund and any indebtedness of the Fund in the form of or represented by notes, bonds, debentures or other securities.

**Senior Creditors** means:

- (a) creditors of the Fund who are unsubordinated creditors of the Fund; and
- (b) creditors of the Fund whose claims are or are expressed to be subordinated to the claims of other creditors of the Fund (other than holders of Equal Ranking Obligations).

**Solvent Reorganisation** means, with respect to the Fund, solvent winding-up, deregistration, dissolution, scheme of arrangement or other reorganisation of the Fund solely for the purposes of a consolidation, amalgamation, merger or reconstruction, the terms of which have been approved by the holders of the Ordinary Units or by a court of competent jurisdiction under which the Issuer continues to be bound by its obligations under these Terms and the Trust Deed.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth).

**Tax Event** means a change in, or amendment to, the laws applicable in Australia, or any amendment to their application or official or judicial interpretation, which becomes effective after the Issue Date and which:

- (n) has the effect of requiring the Issuer to pay an additional amount; or
- (o) means the Notes are no longer deductible for Australian income tax purposes.

**Taxes** means any present or future taxes, duties, assessments or governmental charges of whatever nature.

**Terms** means the terms and conditions of the Notes set out in this Schedule 4.