

**KIWI INCOME PROPERTIES LIMITED
NEW ZEALAND PERMANENT TRUSTEES LIMITED**

**DEED OF VARIATION AND RESTATEMENT
OF KIWI INCOME PROPERTY TRUST
DEED OF TRUST**

RUSSELL McVEAGH

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
2.	COMPLIANCE WITH AND INCORPORATION OF CERTAIN LISTING RULES.....	9
3.	CONSTITUTION OF THE TRUST FUND	10
4.	UNITS	10
5.	ISSUE OF NEW UNITS OR CONVERTIBLE OBLIGATIONS	11
6.	ISSUE PRICE	12
7.	REDEMPTION OR ACQUISITION OF UNITS BY THE MANAGER.....	13
8.	RESTRICTIONS ON FINANCIAL ASSISTANCE	14
9.	ALTERATION OF RIGHTS OF UNIT HOLDERS.....	14
10.	INTEREST AND SUSPENSION OF INTEREST	14
11.	CONVERSION.....	16
12.	INVESTMENTS	18
13.	DISTRIBUTIONS	20
14.	REGISTER.....	24
15.	CONSOLIDATION AND SUBDIVISION OF UNITS.....	26
16.	CALLS ON UNITS.....	26
17.	FORFEITURE AND LIEN.....	27
18.	TRANSFER AND TRANSMISSION OF UNITS	28
19.	RESTRICTIONS ON ACQUISITIONS	30
20.	ENFORCEMENT OF ACQUISITION RESTRICTIONS.....	32
21.	COMPULSORY ACQUISITION PROVISIONS.....	33
22.	HOLDING BY BARE TRUSTEE.....	36
23.	REMUNERATION OF TRUSTEE	36
24.	REMOVAL AND RETIREMENT OF TRUSTEE.....	37
25.	REMUNERATION OF MANAGER.....	38
26.	REMOVAL AND RETIREMENT OF MANAGER	42
27.	BORROWING POWERS	43
28.	ACCOUNTS.....	44
29.	AUDITOR.....	44
30.	SUBORDINATION ON DISSOLUTION	45
31.	COVENANTS	46
32.	REPORTS AND INFORMATION FOR TRUSTEE	46
33.	PROVISIONS RELATING TO DEBT TRUSTEE AND CONVERTIBLE OBLIGATIONS	48
34.	EVENTS OF DEFAULT	50
35.	MEETINGS	51
36.	NOTICES	53
37.	AMENDMENTS TO DEED	54

38. TRUSTEE'S AND MANAGER'S POWERS AND INDEMNITIES.....	55
39. WINDING UP	58
40. MANAGEMENT OF THE TRUST	59
41. GOVERNING LAW	60
42. LIMITATION OF LIABILITY	60
43. TAXATION LIABILITY	60
44. COUNTERPARTS	61
FIRST SCHEDULE	63
Meetings of Unit Holders	63

DEED dated 19 August 2009

PARTIES

KIWI INCOME PROPERTIES LIMITED (referred to in this Trust Deed as the Manager)

NEW ZEALAND PERMANENT TRUSTEES LIMITED (referred to in this Trust Deed as the Trustee)

INTRODUCTION

The Manager and the Trustee are parties to a Trust Deed dated 21 August 1992 (as amended by deeds dated 2 July 1993, 29 October 1993, 7 October 1994, 21 December 1995, 8 November 1996, 10 November 1997, 12 December 1997, 21 April 1998, 13 January 2000, 5 March 2001, 13 June 2002, 19 December 2002, 31 March 2003, 11 December 2003, 26 April 2004, 13 May 2005, 31 May 2005, 9 November 2005, 28 March 2007 and 13 August 2009 ("**Trust Deed**")) which constitutes a unit trust known as Kiwi Income Property Trust ("**Trust**").

COVENANTS

The Trustee and the Manager hereby amend and restate the Trust Deed by deleting all of the provisions of, and the schedule to, the Trust Deed and replacing them with the provisions of and schedules to this deed.

1. DEFINITIONS AND INTERPRETATION

1.1 In this deed, unless the context otherwise requires:

"**Act**" means the Unit Trusts Act 1960.

"**Auditor**" means the auditor of the Trust Fund for the time being appointed pursuant to section 29.

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

- (a) real estate of every description (including any interest or estate therein) whether improved or unimproved and all improvements standing on land including (without limitation) buildings, fixtures and fittings;
- (b) plant, equipment and furnishings used in association with the foregoing;
- (c) (the property described in sub-clauses (a) and (b) of this clause together "real estate");
- (d) Cash;
- (e) mortgages of or other security interests in any real estate (or any interest therein) which are certified by the Manager to be incidental to the assets of the Trust and appropriate for the Trust to acquire, hold or deal with;
- (f) any share, security (as defined in the Securities Act) or like interest in any Person:
 - (i) no less than 90% of the assets of which consist of real estate while any interest therein is held by the Trust; or

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

"Bonus Instrument" has the meaning given to that term in clause 11.9.

"Bonus Issue" has the meaning given to that term in clause 11.9.

"Borrow" means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments or otherwise howsoever in any currency (but does not include:

- (a) Units (other than those which pursuant to their terms of issue are redeemable at the option of the holder or on a specified date (not being the date on which the Trust is determined and wound up);
- (b) Convertible Obligations (which, at the option of the Trust, shall be satisfied by the issue of Units or redeemed in Cash); or
- (c) any borrowing or raising of money that is, with the concurrence of the Auditor, treated for accounting purposes as capital, equity or other Unit Holders' Funds),

and **"Borrowing"** and **"Borrowed"** have a corresponding meaning.

"Cash" includes a cheque.

"Conversion" means the conversion of Convertible Obligations by the issue of fully paid Units in accordance with section 11 and **"Convert"** and **"Converted"** have a corresponding meaning.

"Convertible Obligation Holders" means the persons whose names are for the time being entered in the Register as holders of Convertible Obligations, and **"Convertible Obligation Holder"** has a corresponding meaning.

"Convertible Obligations" means notes, options, debt instruments or other obligations and securities, whether secured or unsecured, which are issued by the Manager on behalf of the Trust on the condition that they shall not be redeemed in cash (otherwise than on default) or may not be so redeemed, but may be satisfied by the issue of Units.

"Date of Enforcement" means the date on which the Trustee makes a declaration pursuant to clause 34.2.

"Debt Trustee" means the Trustee, in its capacity as trustee for the Convertible Obligation Holders.

"Distribution" means:

- (a) the direct or indirect transfer of money or property, other than Units, to or for the benefit of a Unit Holder; or
- (b) the incurring of a debt to or for the benefit of a Unit Holder;

in relation to Units held by that Unit Holder, whether by means of a purchase of property, the redemption or other acquisition of Units, a distribution of indebtedness or by some other means.

"Extraordinary Resolution" has the meaning set out in paragraph 12(a) of the First Schedule to this deed.

"Final Conversion Date" means the date on which the relevant Convertible Obligations will, in the absence of circumstances requiring early Conversion, Convert into Units as described in the Terms relating to those Convertible Obligations.

"Financial Year" in relation to the Trust means the period of twelve months ending on 31 March in each year, provided that the first financial year of the Trust shall be deemed to be the period commencing on 28 August 1992 and terminating on 31 March 1993 and the last financial year of the Trust shall be deemed to be the period commencing on 1 April immediately preceding the date of termination of the Trust and ending on the date of termination of the Trust.

"Gross Income" in relation to a Financial Year means the gross income of the Trust Fund in respect of that Financial Year, taking account of all income accrued or accruing due but (subject to clause 13.5) disregarding realised and unrealised capital gains and losses on Investments.

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

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

"Income" means the net income earned by the Trust Fund, determined in accordance with clauses 13.5 and 13.6.

"Independent Adviser" means a merchant bank, chartered accountant or other financial adviser selected by the Trustee and approved by the Manager in accordance with clause 11.12.

"Interest Group", in relation to any action or proposal affecting rights attached to Units or Convertible Obligations (as contemplated by section 9), means a group of holders of Units or Convertible Obligations:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise holders of Units or Convertible Obligations of one or more Classes, except where action is taken in relation to some holders of Units or Convertible Obligations in a Class and not others, or a proposal expressly distinguishes between some holders of Units or Convertible Obligations in a Class and other holders of Units or Convertible Obligations in that Class, in

which case the holders of Units or Convertible Obligations in that Class may fall into two or more interest groups.

"Interest Payment Date" means, in respect of a Convertible Obligation the dates set out in the relevant Terms for the payment of interest to the relevant Convertible Obligation Holders.

"Interest Rate" means the interest rate calculated in accordance with the Terms relating to the relevant Convertible Obligations.

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

"Listing Rules" means the NZSX listing rules of NZX in force from time to time.

"Manager" means the person appointed as manager of the Trust in accordance with this deed from time to time, being, at the date of this deed, Kiwi Income Properties Limited.

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

"Minimum Number" in relation to any Class of Units or Convertible Obligations means such number of Units or Convertible Obligations (as the case may be) of that Class as the Manager may from time to time, with the approval of the Trustee, designate as the minimum number which may be held by a Unit Holder or Convertible Obligation Holder, provided that in relation to any Class of Units or Convertible Obligations listed on the NZSX, the Minimum Number shall mean a "Minimum Holding" of those Units or Convertible Obligations as that term is defined in the Listing Rules.

"Month" means calendar month.

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

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

"NZSX" means the main board equity security market operated by NZX.

"NZX" means New Zealand Exchange Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline and NZX Regulation Personnel).

"Offer Document" means in respect of a Convertible Obligation or Unit, any registered prospectus (or where a registered prospectus is not required any other offer document) relating to the issue of that Convertible Obligation or Unit, as amended from time to time.

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

"**Optional Conversion Date**" means the date or dates (if any) set out in the relevant Terms upon which the Convertible Obligation Holders may elect to Convert the relevant Convertible Obligation.

"**Ordinary Resolution**" means (subject to Listing Rule 1.1.7) a resolution that is approved by a simple majority of the Votes of those Unit Holders entitled to vote and voting on the question.

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

"**Principal Amount**" means, in respect of a Convertible Obligation, the nominal amount or face value of that Convertible Obligation as described in the Terms relating to the relevant Convertible Obligation.

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

"**Record Date**" has the meaning given to that term by the Listing Rules and, in respect of an Interest Payment Date, subject to the Listing Rules, shall be the date set by the Manager in accordance with the Terms of the relevant Convertible Obligations.

"**Register**" means the register to be kept pursuant to section 14.

"**Registered Address**" in relation to a Convertible Obligation Holder means the address of the Convertible Obligation Holder for the time being recorded in the Register.

"**Registered Bank**" has the meaning given to that term in section 2 of the Reserve Bank of New Zealand Act 1989.

"**Registrar**" means BK Registries Limited or such other registrar as the Manager and the Trustee may determine from time to time.

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

"**Section 18 Resolution**" has the meaning given to that term in paragraph 12(b) of the First Schedule to this deed.

"**Securities Act**" means the Securities Act 1978.

"**Senior Creditors**" means creditors of the Trust in respect of all liabilities of the Trust other than any liability which, by the terms of its creation or issue, is expressed to rank equally with, or after, the Convertible Obligations, but excluding contingent liabilities.

"**Suspension Notice**" means a notice given by the Manager to the Debt Trustee pursuant to clause 10.4.

"**Terms**" in relation to an issue of Convertible Obligations or Units means those terms and conditions set out in the Offer Document relating to such Convertible Obligations or Units.

"Trust" has the meaning given to it in paragraph A of the Introduction, as amended by further deeds from time to time.

"Trust Deed" has the meaning given to it in paragraph A of the Introduction, as amended by further deeds from time to time.

"Trust Fund" means the Trust Fund described in clause 3.3.

"Trustee" means the person appointed as trustee of the Trust in accordance with this deed from time to time, being, at the date of this deed, New Zealand Permanent Trustees Limited.

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

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

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

"Winding Up Event" means an event referred to in clause 39.1 of this deed (upon the occurrence of which the Trust shall determine and be wound up).

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

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

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

- 1.4 Where this deed provides for the approval of the Trustee or the Debt Trustee to be obtained, in determining whether or not to give its approval, the Trustee or the Debt Trustee shall have due regard to the best interests of the Unit Holders or Convertible Obligation Holders (as applicable).
- 1.5 For the purposes of this deed, the Trust shall be deemed to be insolvent if either:
- (a) it is unable to pay its liabilities to creditors ranking in priority to the Convertible Obligation as they fall due; or
 - (b) its Net Asset Value is less than zero (for these purposes all liabilities of the Trust ranking equally with, or after, the Convertible Obligations shall be disregarded).

2. COMPLIANCE WITH AND INCORPORATION OF CERTAIN LISTING RULES

- 2.1 For so long as any Units or Convertible Obligations are Listed:
- (a) the Manager and the Trustee shall comply with the Listing Rules subject to:
 - (i) the requirements of the Act and any other applicable legislative or regulatory requirements; and
 - (ii) the terms of any Ruling given from time to time by NZX.
- In particular, but without limitation, the Trustee shall, for the purpose set out in this clause 2.1 have the power to enter into any guarantee, indemnity, set-off or other security arrangement for the purposes of procuring the provision of a security obligation in favour of NZX;
- (b) there shall be deemed to be incorporated into this deed such provisions of the Listing Rules as NZX may from time to time require to be contained or incorporated by reference in this deed (as they may be modified by any Ruling relevant to the Trust) and those provisions shall have the same effect as though they were set out in this deed; and
 - (c) a provision of this deed shall be of no effect to the extent it is inconsistent with any applicable Listing Rule, and in those circumstances the applicable Listing Rule shall prevail.
- 2.2 For the purposes of clause 2.1, there shall be deemed to be made to the Listing Rules such modifications as may be necessary to enable their spirit and intent to be achieved in their application to the Trust.
- 2.3 Failure to comply with any of the Listing Rules or with paragraph 7(b) of the First Schedule, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Manager or the Trustee provided that:
- (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules or paragraph 7(b) of the First Schedule, as the case may be, is not entitled to enforce that transaction or contract; and
 - (b) this provision shall not affect the rights of any Unit Holder or Convertible Obligation Holder against the Manager arising from failure to comply with the Listing Rules or paragraph 7(b) of the First Schedule.

- 2.4 If NZX has given a Ruling authorising any act or omission, which in the absence of that Ruling would be in contravention of the Listing Rules or this deed (including any provision incorporated in accordance with clause 2.1(b)), that act or omission is deemed to be authorised by the Listing Rules and by this deed notwithstanding such contravention or inconsistency.
- 2.5 A reference in this deed to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

3. CONSTITUTION OF THE TRUST FUND

- 3.1 The Trustee has been appointed as the trustee of the Trust and agrees to act as trustee for the Unit Holders to hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed.
- 3.2 The Debt Trustee has also been appointed and agrees to act as trustee for the Convertible Obligation Holders upon and subject to the terms and conditions set out in this deed, and the Terms of any relevant Convertible Obligation, or deemed to be included in this deed by law.
- 3.3 The Trust Fund shall consist of all the cash, investments, assets, rights, and other property for the time being held by the Trustee upon the trust in clause 3.1, including:
- (a) the proceeds of subscriptions for Units and Convertible Obligations;
 - (b) the proceeds of sale of any Investments;
 - (c) all additions or accretions thereto; and
 - (d) all income and gains held pending distribution or reinvestment.
- 3.4 The Trustee shall be entitled in accordance with section 6 of the Act to nominate another person in which shall be vested the Investments. The Trustee shall (without prejudice to its liability under section 6(2) of the Act) cause any such nominated person to comply with the covenants and obligations on the part of the Trustee expressed or implied in this deed to the extent that the same are applicable to such nominated person as a consequence of the Investments being vested in it.

4. UNITS

- 4.1 The beneficial interest in the Trust Fund shall be divided into Units. Subject to the rights attaching to unpaid or partly paid Units and other Units with special rights, and to clause 13.12, each Unit shall confer an equal interest in the Trust Fund.
- 4.2 No Unit shall confer any interest in any particular part of the Trust Fund and no Unit Holder shall be entitled to require the transfer to that Unit Holder of any of the Investments nor (subject to the rights of Unit Holders created by this deed and by law) shall any Unit Holder be entitled to interfere with or question the exercise or non-exercise by the Manager or the Trustee of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this deed or in respect of the Trust Fund or any part or parts thereof. Except where expressly provided to the contrary in this deed or where the context does not so permit, all the benefits and provisions (including but not limited to those expressed to enure for the benefit of and bind the Unit Holders of any Class or Classes) contained in this deed enure for the benefit of and bind each Unit Holder of the relevant Class or Classes.

- 4.3 The Manager may at its discretion at any time apply to NZX or any other stock exchange for quotation of the Units of any Class.
- 4.4 If the Manager so determines, part of a Unit may be created and shall be denoted by figures up to two decimal places. In the absence of such a determination by the Manager parts of a Unit, and following such a determination, smaller parts of a Unit, shall be ignored for all purposes of this deed. References in this deed to a Unit shall include references to part of a Unit, unless the context otherwise requires.

5. ISSUE OF NEW UNITS OR CONVERTIBLE OBLIGATIONS

- 5.1 Subject to clause 6.1 and to any applicable provisions of the Listing Rules, the Manager may invite offers, subscriptions or applications for Units of any Class and may issue Units of any Class upon and subject to the terms and conditions contained in this deed and otherwise in such manner and upon such terms and conditions as the Manager shall determine provided that unpaid Units, partly paid Units and other Units with special rights conferring other than an equal interest in the Trust Fund shall not be issued without the consent of the Trustee.
- 5.2 (a) The Manager may from time to time, with the approval of the Trustee, but subject always to the provisions of this deed and to any applicable Listing Rules, issue Convertible Obligations upon such terms and conditions as it thinks fit including, at its discretion, the right for the holders of the Convertible Obligations to participate in such manner and to such extent as the Manager before the issue may determine, with the holders of the Class or Classes of Units by the issue of which the Convertible Obligations are to be redeemed in:
- (i) any issue of Units or Convertible Obligations of the Trust offered to Unit Holders;
 - (ii) any issue of Units, in, or Convertible Obligations of, the Trust made in pursuance of any capitalisation of the profits or reserves of the Trust.
- (b) Without prejudice to the generality of clause 5.2(a):
- (i) the provisions of clause 5.4 shall apply to the issue of Convertible Obligations as it applies to the issue of Units, with all necessary modifications;
 - (ii) the provisions of sections 7, 8, 9 and 14, and sections 18, 19, 20, 21, 22 and 42 shall apply to Convertible Obligations as they apply to Units, with all necessary modifications, and in particular references to Quoted Units shall be construed as references to Quoted Convertible Obligations;
 - (iii) where the terms of issue of any Convertible Obligations or the Listing Rules provide for meetings of Convertible Obligation Holders, all the provisions of sections 35 and 36 and the provisions of the First Schedule to this deed (but excluding paragraph 15 of that Schedule) shall apply to meetings of Convertible Obligation Holders, with all necessary modifications;
 - (iv) references in clause 5.4, sections 7, 8, 9 and 14, and sections 18, 19, 20, 21, 22, 35.3, 35.7 and 36 (and in any relevant definitions) to "Units" and "Unit Holders" shall, unless the context or the terms of any particular Convertible Obligation otherwise require, be deemed to include Convertible Obligations and Convertible Obligation Holders

respectively, to the intent that such references shall reflect the references to "Equity Securities" and to the holders of Equity Securities in the Listing Rules; and

- (v) references to Terms in relation to an issue of Convertible Obligations shall mean the Terms relevant to such issue.

5.3 The Manager shall in inviting offers in terms of this section 5 comply with all of the relevant provisions of the Act and of the Securities Act.

5.4 Any proposed issue of Units may in the Manager's discretion be underwritten. The Manager shall have power to:

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

5.5 There is no maximum number of Units which may be issued.

5.6 No Convertible Obligation Holder shall be concerned or obliged to enquire whether any Convertible Obligation has been issued in contravention of any provision of this deed. Each Convertible Obligation issued for valuable consideration shall be deemed to be validly issued and constituted by this deed and the Convertible Obligation Holder shall be entitled to the benefit of the provisions of this deed and the Terms notwithstanding that it may subsequently be determined that the issue of such Convertible Obligation was in breach of any provision of this deed but without prejudice to the Debt Trustee's rights pursuant to this deed against the Manager in relation to such breach.

5.7 No Convertible Obligation Holder shall be entitled to enforce any of its rights or remedies hereunder directly against the Trust unless the Debt Trustee shall fail to enforce such rights or remedies after having become bound to do so in accordance with the provisions of this deed.

5.8 Notwithstanding anything to the contrary in this deed, the Trustee shall not have any personal liability in respect of the payment of any amount in connection with any Convertible Obligation and the Trustee's liability in respect of such Convertible Obligations shall be limited to the assets for the time being in the Trust.

6. ISSUE PRICE

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

- (a) if the Units of the relevant Class are listed on the NZSX, the issue price for each such Unit shall be:
 - (i) at least 90% of the weighted average of the prices at which Units of that Class were sold through the NZSX during the period of seven days immediately preceding the date of the invitation, provided that if no sale occurred on any such day, clause 6.1(b) shall apply; and

- (ii) not less than the minimum price at which those Units are required to be issued by the provisions of any particular Listing Rule in accordance with which those Units are being issued;
 - (b) in any other case, the issue price for each such Unit shall not be less than 90% of the Net Asset Value per Unit on the date immediately preceding the date of the invitation.
- 6.2 The provisions of clauses 6.1(a) and 6.1(b) shall not apply in respect of the issue of any Unit pursuant to a pro rata issue made to all Unit Holders that does not require approval of holders of Quoted Equity Securities under the Listing Rules. The issue price of any such Unit shall be determined by the Manager with the approval of the Trustee.
- 6.3 For the purposes of the issue of any Unit pursuant to a dividend reinvestment scheme constituted pursuant to clause 13.11(e):
 - (a) the seven day period referred to in clause 6.1(a) shall be such period of seven consecutive days as the Manager with the approval of the Trustee shall determine; and
 - (b) the date for determination of the Net Asset Value per Unit pursuant to clause 6.1(b) shall be such date as the Manager with the approval of the Trustee shall determine.
- 6.4 The Net Asset Value per Unit shall be calculated by dividing the Net Asset Value of the Trust Fund on the relevant date by the number of Units then on issue. In making this calculation, adjustment shall be made for partly paid Units in a manner determined by the Manager and approved by the Auditor.
- 6.5 The Manager may require any applicant for Units to pay, in addition to the basic issue price of those Units, such fee as the Manager may fix as a condition of issue of those Units provided that, in respect of any particular issue of Units, each applicant shall be required to pay the same fee as each other applicant. The Manager may deduct and retain such fee from the subscription moneys received by the Manager in respect of those Units. In this event, the number of Units issued shall be that number which has an aggregate issue price equal to the subscription moneys received or receivable by the Manager less the amount of such fees.
- 6.6 All subscription moneys received by the Manager upon an issue of Units (other than any amounts deducted in accordance with clause 6.5) shall become subject to the trusts created by clause 3.1 upon receipt by the Manager. The Manager shall in accordance with section 14 of the Act pay all such moneys into a separate bank account and shall pay such moneys to the Trustee within seven days of receipt. If the Manager decides to reject any application for Units (in whole or in part) it shall forthwith return, or direct the Trustee to return, the subscription moneys (or the relevant portion thereof) to the applicant.
- 6.7 The provisions of clause 6.1 shall not apply in respect of the issue of any Unit in exchange for, or upon the conversion of, any Convertible Obligation. The issue price of any such Unit shall be determined pursuant to the terms of issue of the relevant Convertible Obligation.

7. REDEMPTION OR ACQUISITION OF UNITS BY THE MANAGER

- 7.1 The Manager may, but shall not be obliged to, purchase or otherwise acquire Units from one or more Unit Holders. Units purchased or otherwise acquired by the Manager itself out of its own funds shall be the property of the Manager. The Manager shall be at liberty to deal with such Units, as a Unit Holder, as it sees fit.

- 7.2 Subject to any applicable provisions of the Listing Rules, the Manager, with the approval of the Trustee, may redeem or acquire Units on behalf of the Trust and may pay for such Units from the Trust Fund. Units so redeemed or acquired by the Manager shall cease to exist and shall be deemed to be cancelled forthwith upon redemption or acquisition. The Manager shall make an appropriate entry on the Register in respect of such cancellation.

8. RESTRICTIONS ON FINANCIAL ASSISTANCE

- 8.1 The Manager shall not cause the Trust to give financial assistance for the purpose of, or in connection with, the purchase of Units issued, or to be issued, by the Trust unless the giving of that assistance complies with any applicable Listing Rules.

9. ALTERATION OF RIGHTS OF UNIT HOLDERS

- 9.1 The Manager shall, before taking action affecting the rights attached to any Unit, comply with the provisions of all applicable Listing Rules.
- 9.2 For the purposes of clause 9.1, the issue of further Units (in accordance with section 5) which rank equally with, or in priority to, any existing Units, whether as to Voting rights, Distributions, the payment of interest (in the case of Convertible Obligations) or otherwise, is deemed not to be an action affecting the rights attaching to those existing Units.

10. INTEREST AND SUSPENSION OF INTEREST

- 10.1 Unless and to the extent that the relevant Terms provide otherwise:
- (a) interest shall be payable on the Principal Amount of each Convertible Obligation at the Interest Rate. That interest shall be paid by the Trustee (subject to this section 10) by instalments in arrears in accordance with the Terms of the relevant Convertible Obligations.
 - (b) Subject to clause 11.7, interest will accrue on the Principal Amount of the Convertible Obligations on a daily basis during:
 - (i) the period beginning on (and including) the date on which the Convertible Obligations are issued and ending on (but excluding) the first Interest Payment Date; and
 - (ii) each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the subsequent Interest Payment Date.
 - (c) Whenever interest is required to be calculated for a period of less than six months, it is to be calculated on the basis of a full calendar year and the number of days lapsed.
 - (d) Interest on any Convertible Obligation not paid when due, including interest which is subject to a Suspension Notice given in accordance with clause 10.4 will, so long as it remains unpaid, bear interest at the same rate per annum as the interest rate payable on the Convertible Obligations in accordance with clause 10.1(a), such interest to be compounded on each such Interest Payment Date until paid.

- (e) Payments of interest are to be made by cheque drawn on a bank in New Zealand and mailed to the Convertible Obligation Holder (or to the first named of two or more joint Convertible Obligation Holders) at his or her address appearing in the relevant Register. Upon application by a Convertible Obligation Holder to the Manager prior to the Record Date, payments may be made by transfer to a New Zealand dollar account designated by the payee with a bank in New Zealand. Payments in all cases are to be made subject to any fiscal or other laws and regulations applicable to the Manager or the Convertible Obligation Holder.
- (f) If the due date for payment of an amount of interest on, or any amount in respect of, any Convertible Obligation is not a Business Day, the Convertible Obligation Holder is not entitled to payment of the amount payable until the next following day which is a Business Day. The Convertible Obligation Holder is not then entitled to any further interest or other payment for that delay.

10.2 The Trustee shall, unless and until otherwise requested by the Debt Trustee or prevented by law, pay all interest in respect of the Convertible Obligations to the Convertible Obligation Holders as at the Record Date for such payment (subject to the Terms of the relevant Convertible Obligations), and each such payment shall operate as a payment by the Trustee in satisfaction, to the extent of the payment, of the Trustee's obligation to pay interest.

10.3 The Manager shall be entitled at any time, whether or not the Debt Trustee has made a declaration under clause 34.2, to suspend the payment of interest on the Convertible Obligations wholly or partly if:

- (a) the Trust is, or would as a result of making the payment of interest due on the next Interest Payment Date become, insolvent; or
- (b) the Trust is in default in the payment of moneys due in respect of any Borrowing.

Such suspension shall take effect from the delivery to the Debt Trustee of a Suspension Notice.

10.4 If the Manager determines to suspend the payment of interest in accordance with clause 10.3, the Manager shall give to the Debt Trustee notice to that effect. That notice shall incorporate a certificate signed by not less than two directors of the Manager on behalf of all of its directors:

- (a) stating that one or more of the circumstances specified in clause 10.3 exists; and
- (b) if the circumstances specified in clause 10.3(b) exist, specifying details of the relevant default in payment of any Borrowings.

10.5 The Debt Trustee may following receipt of a Suspension Notice require the Manager to produce a report from the Auditor as to whether in its opinion the circumstances specified in that Suspension Notice exist. The Manager shall procure that the Auditor produces that report within 14 days after request by the Debt Trustee. If that report expresses the opinion that the relevant circumstances specified in the Suspension Notice do not exist, then the Suspension Notice shall be of no effect and the payment of interest shall cease to be suspended.

10.6 Notwithstanding clause 10.5, the Debt Trustee may accept any Suspension Notice as conclusive evidence of the existence of the circumstances specified in that Suspension

Notice, and the Debt Trustee shall not be obliged to enquire further or to call for an Auditor's report in accordance with clause 10.5.

- 10.7 If payment of interest is suspended pursuant to clause 10.3, the obligation to pay that interest shall not be extinguished, and interest shall continue to accrue on the Convertible Obligations. Subject to the Terms of the relevant Convertible Obligations, the interest accrued on each Convertible Obligation (whether before or after the date of suspension) shall be paid on Conversion of that Convertible Obligation when and if neither circumstance specified in clause 10.3(a) or 10.3(b) exists except where Conversion occurs on a declaration made by the Debt Trustee under clause 34.2 resulting from the occurrence of a Winding Up Event, in which case the provisions of clause 30.2 shall apply.
- 10.8 At any time while payment of interest is suspended pursuant to clause 10.3, the Debt Trustee may require the Manager to produce a certificate given by not less than two directors on behalf of all the directors or a report from the Auditor, as to whether the circumstances specified in the Suspension Notice pursuant to which payment of interest was suspended, still exist. The Manager shall procure that such certificate or report shall be produced within 14 days after request by the Debt Trustee.

11. CONVERSION

- 11.1 A Convertible Obligation shall only be redeemed in Cash, in the circumstances (if any) described in the Terms relating to the relevant Convertible Obligation. Subject to the preceding sentence, Convertible Obligations will be redeemed by the issue of fully paid Units in the manner described in this section 11. The redemption of Convertible Obligations by the issue of Units will be deemed to be a repayment of the Principal Amount.
- 11.2 Each Convertible Obligation shall be Converted on the earliest to occur of:
- (a) the Final Conversion Date;
 - (b) where provided for in the relevant Terms, an Optional Conversion Date, where the Convertible Obligation Holder elects to Convert that Convertible Obligation pursuant to clause 11.3;
 - (c) a date determined in accordance with clause 11.4;
 - (d) the making by the Debt Trustee of a declaration pursuant to clause 34.2; and
 - (e) the making by the Manager of a declaration that in its reasonable opinion, there has been a change in law that will result in a material increase in the cost of funding the Convertible Obligations for the Trust.
- 11.3 Subject to the Terms of the relevant Convertible Obligations, any Convertible Obligation Holder may, by notice given to the Registrar no earlier than one month and no later than one week prior to any Optional Conversion Date, elect that all, or a lesser number being an integral multiple of 1,000, of the Convertible Obligations held by that Convertible Obligation Holder be Converted into fully paid Units on that Optional Conversion Date. Each such notice shall be in such form as may be prescribed from time to time by the Manager for this purpose.
- 11.4 If a Takeover Offer is made to the holders of all of the Units (or in respect of all of the Units other than those held by the offeror or an Associated Person of the offeror), the Manager shall notify Convertible Obligation Holders within five Business Days of the making of the Takeover Offer. Any Convertible Obligation Holder may within 21 days

after the date on which that notification is despatched to Convertible Obligation Holders, by notice given to the Manager, elect that all of the Convertible Obligations held by that Convertible Obligation Holder be Converted. Any Conversion pursuant to this clause shall take place on a date selected by the Manager, being not later than 30 days after the date on which notification is despatched to Convertible Obligation Holders. In this sub-clause "**Takeover Offer**" means an offer or offers for Units made to Unit Holders generally, or any scheme or arrangement having a similar effect. The ability of the Convertible Obligation Holder to elect shall not apply if an offer has been made to acquire the Convertible Obligations, and in the opinion of an Independent Adviser that offer is at least as favourable to Convertible Obligation Holders as if the Convertible Obligations had been Converted prior to the Takeover Offer and the Units arising from Conversion had been subject to the Takeover Offer.

- 11.5 Subject to clauses 11.9, 11.10 and 11.11 in each of the circumstances specified in clause 11.2 in respect of any Convertible Obligations, the Manager shall cause those Convertible Obligations to be Converted in accordance with the Terms of such Convertible Obligations.
- 11.6 All allotments made under clause 11.5 shall be accepted by the Convertible Obligation Holder in full satisfaction of the Trust's liability to the Convertible Obligation Holder in respect of the Principal Amount of that Convertible Obligation.
- 11.7 Subject to the Terms of any Convertible Obligations, on the date of Conversion of each Convertible Obligation the Manager shall (subject to section 10 and clause 30.2) cause the Trustee to pay to the Convertible Obligation Holder interest on that Convertible Obligation accrued to the date prior to Conversion.
- 11.8 Units allotted to Convertible Obligation Holders upon Conversion shall rank *pari passu* in all respects with the other issued Units, provided however that (subject to the Terms of the relevant Convertible Obligations) they shall not be entitled to participate in any Distribution declared, paid or made in respect of any period that has ended on or prior to the date of Conversion. For this purpose, a final Distribution paid in respect of a Financial Year of the Trust in respect of which an interim Distribution has also been paid shall be deemed to be paid in respect of the last six months of that Financial Year.
- 11.9 Subject to the Terms of any Convertible Obligations, if prior to Conversion of any Convertible Obligation the Trust shall make to Unit Holders any issue (a "**Bonus Issue**") of Units, notes, debentures or other instruments or obligations ("**Bonus Instruments**") by way of capitalisation of profits, reserves or otherwise (other than an issue made pursuant to a dividend reinvestment plan or unit purchase plan) then the terms of Conversion of the relevant Convertible Obligations shall be adjusted in a manner, as agreed between the Manager and the Debt Trustee, which ensures that Convertible Obligation Holders are not adversely impacted by any dilution as a result of the Bonus Issue. If the Debt Trustee and the Manager are unable to agree upon the adjustment to be made, the matter will be determined by an Independent Adviser nominated by the Debt Trustee and approved by the Manager in accordance with clause 11.12.
- 11.10 Subject to the Terms of any Convertible Obligations, if Units are consolidated or subdivided in accordance with section 15 then the terms of Conversion of the relevant Convertible Obligations shall be adjusted in a manner, as agreed between the Manager and the Debt Trustee, which ensures that Convertible Obligation Holders are not adversely impacted by any dilution as a result of the consolidation or subdivision. If the Debt Trustee and the Manager are unable to agree upon the adjustment to be made, the matter will be determined by an Independent Adviser nominated by the Debt Trustee and approved by the Manager in accordance with clause 11.12.
- 11.11 Subject to the Terms of any Convertible Obligations, whenever any change in the capital structure of the Trust (other than a change of the nature referred to in clauses 11.9 or

11.10) takes place, the Manager shall advise the Debt Trustee of details of that change and the terms of Conversion of the relevant Convertible Obligations shall be adjusted in a manner, as agreed between the Manager and the Debt Trustee, which ensures that Convertible Obligation Holders are not adversely impacted by any dilution as a result of such change in the capital structure of the Trust. If the Debt Trustee and the Manager are unable to agree upon the adjustment to be made, the matter will be determined by an Independent Adviser nominated by the Debt Trustee and approved by the Manager in accordance with clause 11.12.

- 11.12 If an Independent Adviser is required for the purposes of clause 11.4 or clauses 11.9, 11.10 or 11.11, the Debt Trustee shall select a merchant bank, chartered accountant, or other financial adviser and shall notify the Manager of the name of that adviser. The Manager shall within seven days indicate whether or not it approves that adviser. Failure by the Manager to indicate whether or not it approves the adviser within seven days will be deemed to be approval of that adviser. The Manager shall not unreasonably withhold its approval of any such adviser.
- 11.13 Upon the agreement between the Debt Trustee and the Manager pursuant to clauses 11.9, 11.10 or 11.11, or determination of an Independent Adviser pursuant to this section 11, the Manager shall promptly notify the Convertible Obligation Holders of the details of that agreement or determination.

12. INVESTMENTS

- 12.1 Subject to the following provisions of this section 12, and to the provisions of clause 38.10 the Manager (or, if applicable, any attorney or sub-agent appointed pursuant to clause 40.2) shall have absolute and uncontrolled discretion as to the investment and expenditure of any sums forming part of the Trust Fund and as to the purchase, sale, transfer, exchange or alteration of any Investments from time to time. The Manager alone shall be entitled from time to time to cause to be effected any transactions which it may consider to be in the interests of Unit Holders. The Trustee shall from time to time, to the extent of the Trust Fund held by it or by any company nominated by it pursuant to clause 3.4, effect and pay for such Investments and expenditures or purchases, sales, transfers, exchanges or alterations of Investments as may be directed in writing by the Manager and shall do all things necessary on its part to give effect to any such direction.
- 12.2 The Trust Fund shall be invested only in Authorised Investments and the principal investment policy of the Trust shall be the purchase of and investment in real estate and property associated therewith so as to achieve income with security over a term of years.
- 12.3 Where any investment, expenditure, purchase, sale, transfer, exchange or alteration of the nature described in clause 12.1 to a value exceeding \$1,000,000 is proposed by the Manager, the Manager shall not commit to the same (except in a form which is conditional on the matters referred to in this section 12) unless it shall have first prepared and delivered a submission to the Trustee and received the Trustee's acceptance of the submission. The Manager's submission shall contain a description of the proposal, its cost or estimated cost and shall be accompanied by a valuation or commercial appraisal from a Qualified Adviser.
- 12.4 The Trustee shall upon receipt of a submission delivered pursuant to clause 12.3 give the Manager written confirmation of that receipt and shall accept each submission so made by the Manager unless in the opinion of the Trustee:
- (a) the proposal involves the acquisition of an investment which is not an Authorised Investment; or

- (b) the valuation or commercial appraisal does not support the price proposed to be paid or received; or
 - (c) where the proposal is for extensions, additions or alterations to existing Authorised Investments or the erection of new improvements the valuation or commercial appraisal does not support the estimated costs; or
 - (d) the proposal is manifestly not in the interests of Unit Holders or does not comply with this deed.
- 12.5 The Trustee's acceptance or rejection of a submission made by the Manager shall be by notice in writing given by the Trustee to the Manager within five Business Days of receipt by the Trustee of such submission or within such extended period as shall be agreed by the Manager. Where the Trustee rejects the Manager's submission, the rejection shall be accompanied by the reasons of the Trustee for the rejection.
- 12.6 If the Trustee does not within the period of five Business Days or within such extended period give notice in writing to the Manager approving a proposal the Trustee shall be deemed to have rejected such proposal.
- 12.7 If the Trustee rejects any proposal made by the Manager, the Manager may summon a meeting of Unit Holders in accordance with section 35 and shall put before the meeting its proposal and the Trustee's reason for rejection. The Trustee's rejection may be cancelled by Extraordinary Resolution of Unit Holders and such resolution shall take effect as if it were an approval by the Trustee.
- 12.8 Subject to the provisions of this deed and all proper enquiries and legal steps deemed necessary by the Trustee, the Trustee shall take all steps necessary on its part to give effect to and carry out any proposal of the Manager.
- 12.9 The Trustee shall not act on the direction of the Manager to acquire, dispose of or make any Investment or Borrowing if in the opinion of the Trustee conveyed in writing to the Manager the proposed transaction is manifestly not in the interests of Unit Holders, or does not comply with this deed. The Trustee shall not be liable to the Unit Holders or the Manager for so refusing to act on any direction.
- 12.10 The Manager shall ensure that all Investments (other than those in respect of which the Manager and the Trustee have agreed on the then Market Value) are valued by a Qualified Adviser at intervals of not more than 12 months or such longer period as the Trustee may approve in any specific case. If at any time in respect of any Investment the Manager shall be of the opinion that the determination of the value of that Investment does not accurately reflect the current value of that Investment, the Manager may, with the approval of the Trustee, assess the current value of that Investment as at any day in such manner as the Manager sees fit having regard to the most recent determination of the value of that Investment, or the cost of that Investment, as the case may be, and to the time which has elapsed since that determination or the acquisition of that Investment. The value of any Investment determined by the Manager pursuant to this clause 12.10 shall be deemed to be the Market Value of that Investment for all purposes of this deed until such time as a new value is determined pursuant to the definition of "Market Value" or pursuant to this clause 12.10. Notwithstanding the foregoing, the Trustee may at any time appoint an independent valuer to value, at the expense of the Trust, the assets of the Trust, and the Manager shall send a copy of the valuation report to the Auditor.
- 12.11 Any Investments shall as soon as reasonably practicable after receipt of the necessary documents by the Trustee be registered (if registrable in nature) in the name of the Trustee or any company nominated by it pursuant to clause 3.4, and be held in safe custody by the Trustee or by some person selected by the Trustee in accordance with

clause 38.6(g), and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions hereof.

- 12.12 Subject to this section 12 and to section 27, the Manager shall be entitled to direct the Trustee on behalf of the Trust Fund to enter into any arrangement in such manner as the Manager sees fit which has the effect of granting security to a third party over all or any part or parts of the Trust Fund to secure any or all liabilities or obligations incurred or undertaken by the Manager for the purposes of the Trust and the Trustee shall give effect to any such direction, provided that the Trustee may before entering into any such agreement, obligation or security arrangement require that its liability thereunder is to its satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust Fund.
- 12.13 The Trustee shall be entitled, if it wishes, to nominate the solicitor appointed to act in connection with the acquisition of any real estate.
- 12.14 Unless otherwise agreed by the Trustee, the Manager shall insure all buildings to their full reinstatement value against fire, earthquake, storm, flood and such other risks as buildings of a similar nature are normally insured against, and against loss of rent, in each case on terms and with insurers approved by the Trustee.
- 12.15 (a) The Manager may from time to time by notice in writing to the Trustee, if it considers it necessary or desirable to do so, direct the Trustee on behalf of the Trust Fund to enter into any guarantee or similar arrangement with respect to the obligations of any Person (whether or not wholly-owned by the Trust) through whom any of the assets of the Trust Fund are held (and to secure such guarantee or other arrangement upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit) provided that the Trustee may, before entering into any such guarantee or other arrangement, or any related security arrangement, require that its liability under any of the same is to its satisfaction limited to the assets for the time being in the Trustee's hands as trustee of the Trust Fund.
- (b) Any guarantee given pursuant to clause 12.15(a) shall be taken into account for the purpose of the limit contained in clause 27.3(a) to the extent that:
- (i) the guarantee is given in respect of moneys Borrowed by any Person; and
 - (ii) those moneys are not also taken into account for the purposes of that limit.

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

13. DISTRIBUTIONS

- 13.1 The Manager shall distribute to Unit Holders in accordance with clause 13.3 all of the Income earned in each Financial Year unless the Manager, with the approval of the Trustee, determines that it is in the best interests of the Trust for an amount of Income to be retained by the Trust. In this event the Trustee may retain the relevant amount and invest and reinvest it in accordance with section 12.
- 13.2 The Manager may from time to time by notice in writing to the Trustee direct the Trustee:
- (a) subject to clause 13.1, either to reinvest or distribute Income;

- (b) to distribute all or any part of the capital of the Trust Fund to Unit Holders, and if necessary realise Investments in order to produce Cash to make any such distribution.

The Trustee shall (subject to clauses 12.4 and 12.9 in respect of any direction to realise Investments and to clauses 13.1 and 13.4) act in accordance with any such direction.

- 13.3 (a) All Distributions pursuant to clauses 13.1 or 13.2 shall be distributed in Cash to the Unit Holders on the date nominated by the Manager in a notice given to the Trustee pursuant to clause 13.2 (being a date not later than 2 months after the Record Date). All Distributions shall (subject to clauses 13.4 and 13.12 and to the rights attaching to unpaid or partly paid Units and other Units with special rights) be distributed amongst the Unit Holders in proportion to the number of Units held by them according to the amounts paid or credited as paid on the Units in respect of which the Distribution is paid but no amount paid or credited and paid on a Unit in advance of calls shall be treated for the purposes of this clause as paid on that Unit.
- (b) The Trustee or the Manager may deduct from any Distribution payable to any Unit Holder all sums of money, if any, presently payable by such Unit Holder on account of calls or instalments on the Units in respect of which the Distribution is payable, but subject thereto, and save as expressly permitted by the terms of this deed, or as required by law, no deduction or retention shall be made from any Distribution.
- 13.4 The Manager may as a condition of issue of any Units provide that those Units shall not participate in full in any Distribution or Distributions, or shall participate in Distributions on a basis calculated by reference to the period for which they have been held by a particular Unit Holder or the amount of the issue price paid or payable thereon. The Trustee shall take all necessary steps to give effect to any such condition.
- 13.5 In determining Income of the Trust Fund for any period there shall be taken into account in respect of that period all income accrued or accruing and all costs, charges and expenses accrued or accruing, including, without limiting the generality of the foregoing.
- (a) all fees, costs and disbursements payable to the Manager and the Trustee;
 - (b) all costs and expenses incurred in respect of Investments (including, without limitation, the costs and expenses incurred in connection with the insurance, valuation, repair, maintenance, acquisition or sale of Investments);
 - (c) all depreciation of Investments of an amount determined by the Manager;
 - (d) all costs and disbursements incurred in connection with this deed or in connection with the Trust Fund or the administration thereof (including the costs of valuations);
 - (e) due allowance for prepayments, doubtful debts and bad debts;
 - (f) all taxes (including without limitation income taxes) or duties paid or payable by or in respect of the Trust Fund;
 - (g) the fees and expenses of the Auditor in connection with the audit of the Trust Fund;
 - (h) all contingencies which it may be necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust for that period;

- (i) any amount considered necessary to provide for the amortisation of the cost of any leasehold property forming part of the Investments; and
- (j) such other provisions as the Manager with the approval of the Trustee deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust for that period,

provided that the Manager may, in consultation with the Auditor, notwithstanding the foregoing, determine that any particular cost, charge or expense shall be charged against capital rather than against Gross Income.

In determining Income the Manager may disregard:

- (a) realised and unrealised capital gains and losses on Investments;
- (b) unrealised gains and losses on derivative contracts;
- (c) the deferred tax component of the tax expense for the relevant period;
- (d) any applicable capital gains tax;
- (e) any other amount that the Manager with the approval of the Trustee considers to be of a capital nature; and
- (f) any other amount that the Manager with the approval of the Trustee considers necessary to represent more correctly the cash available for distribution for that period.

Without prejudice to the generality of the foregoing, no deductions shall be made from Income except to the extent permitted by this deed.

13.6 If any question shall arise as to whether any money or property constitutes Income (or Gross Income) such question shall be determined by the Manager in consultation with the Auditor or, where this deed so provides, the Trustee.

13.7 A Unit Holder may elect to have any moneys payable to such Unit Holder pursuant to this section 13 or to any other provision of this deed made by:

- (a) post; or
- (b) payment to a nominated account with a bank.

Payment shall be effected when, in compliance with the Unit Holder's instructions, the Trustee or the Manager on behalf of the Trustee:

- (c) posts a cheque to the address of the Unit Holder shown in the Register; or
- (d) deposits the payment:
 - (i) with the Manager's bank; or
 - (ii) with a branch of the nominated bank (the choice being the Manager's),
 for transmission to the nominated account.

In the absence of an election, the Manager shall effect payment by posting a cheque to the address of the Unit Holder shown in the Register.

- 13.8 Unless taken into account in determining Income in accordance with clause 13.5, all capital gains or losses whether on revaluation or realisation of Investments will be credited or debited, as the case may be, to a capital reserve account in the accounts of the Trust. Such capital reserve account shall be maintained in two parts: a realisation account in which gains or losses on realisation shall be entered, and a revaluation account in which gains or losses on revaluation shall be entered.
- 13.9 The Manager may, with the approval of the Trustee, resolve to capitalise any sum standing to the credit of the capital reserve account referred to in clause 13.8, and any undistributed Income, to the intent that the relevant sum be set free for distribution amongst the Unit Holders who would have been entitled thereto if the relevant sum were distributed in Cash, and in the same proportions, on condition that the same be not paid in Cash but be applied either in or towards paying up any amounts unpaid on any Units held by those Unit Holders respectively or paying up in full Units to be allotted and distributed, credited as fully paid up to and amongst those Unit Holders in such proportion or partly in one way and partly in the other. Such Units shall, when issued, rank *pari passu* in all respects with all other fully paid Units with full participation rights then on issue, and all amounts so capitalised shall be treated as funds subscribed by Unit Holders.
- 13.10 Where Convertible Obligation Holders are entitled to participate in any Distribution, such Persons shall be entitled to participate in any such Distribution to the extent, and in the manner, authorised by the Terms of the Convertible Obligations held by them.
- 13.11 (a) The Manager in its discretion may, in accordance with this clause 13.11, give to Unit Holders the right to elect to receive, in lieu of Distributions in Cash (such Distributions being in this clause 13.11 called "**Cash Distributions**") an allotment of fully paid Units.
- (b) The terms of any scheme pursuant to which Units may be allotted to Unit Holders pursuant to this clause 13.11 ("**Scheme**") shall be such as may be determined from time to time by the Manager and approved by the Trustee and NZX.
- (c) The Manager may from time to time give written notice to the Unit Holders specifying the terms of a Scheme and advising that any Unit Holder who wishes to elect to receive Units in lieu of Cash Distributions may do so upon giving prior written notice to the Manager that such Unit Holder so elects ("**Election Notice**"). The Manager (having received any necessary approval from NZX) may at any time and from time to time, subject to the approval of the Trustee, change the terms of any Scheme by giving written notice of such change to Unit Holders. No such change shall be made during the period commencing on the date seven days before the Record Date and ending on the date of payment of that Cash Distribution.
- (d) An Election Notice shall be effective in respect of any Cash Distribution so long as it is received before the Record Date in respect of that Cash Distribution at the Office, or at such other address as the Manager may from time to time determine, provided that Election Notices received whilst the Register is closed shall not take effect until the day upon which the Register is re-opened.
- (e) Subject to the Manager having given notice pursuant to clause 13.11(c), the following provisions shall apply in respect of each Cash Distribution made after the date of giving of that notice, other than any Cash Distribution in respect of which the Manager has, with the approval of the Trustee, determined that this clause shall not apply:
- (i) the amount of the Cash Distribution shall be limited to the amount actually required to be paid to Unit Holders after taking into account the

Unit Holders who have elected to receive fully paid Units in accordance with this clause 13.11;

- (ii) at the same time as the Cash Distribution is made, the Manager shall issue and allot to the Unit Holders who have given and have not revoked an Election Notice (but to no others) such number of fully paid Units as such Unit Holders are entitled to receive pursuant to the terms of the Scheme. The Manager shall capitalise out of the amount for the time being standing to the credit of the Trust's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution a sum equal to the aggregate issue price of the additional Units to be so allotted and issued and shall apply such sum in paying up in full the issue price of such Units;
 - (iii) the additional Units to be so allotted shall rank *pari passu* in all respects with the then existing fully paid Units with full participation rights, and shall have the right to participate in full in all Cash Distributions declared or made after the date of allotment.
- (f) An Election Notice may be revoked by written notice from the Unit Holder concerned to the Manager but unless notice of such revocation is received by the Manager before the Record Date in respect of any Cash Distribution it shall not be effective in respect of that Cash Distribution, but shall be effective in respect of all subsequent Cash Distributions.
- (g) An Election Notice shall not attach to the Units in respect of which it has been given but shall be personal to the Unit Holder concerned and shall in respect of any Units transferred be automatically revoked upon registration of the transfer of the Units. The Manager shall upon registration of the transfer of any Units or the allotment of new Units to a new Unit Holder advise such new Unit Holder in writing of such Unit Holder's rights under any Scheme then in force.
- 13.12 Notwithstanding any other provision of this deed, the Manager may direct the Trustee to pay such supplementary Distributions to Unit Holders resident outside New Zealand as may be provided for by Part LE of the Income Tax Act 1994 and as may be agreed by the Manager and the Trustee as being fair and equitable.
- 13.13 Subject to the provisions of the Unclaimed Money Act 1971, any Distribution or any other money payable to any Unit Holder or Convertible Obligation Holder or former Unit Holder or Convertible Obligation Holder remaining unclaimed for five years from the date upon which they became payable, shall, at the expiry of such period of five years, be forfeited to the Trust Fund. After forfeiture, the Person or Persons who would have been entitled to payment of such distribution or other moneys if they had not been forfeited shall be entitled to payment thereof upon producing to the satisfaction of the Manager sufficient evidence that such Person or Persons would have been entitled to such distribution or other moneys had they not been forfeited.
- 13.14 The Trustee shall not act on the direction of the Manager to pay or make any Distribution of any nature (whether capital or Income) while the payment of interest on any Convertible Obligation is suspended pursuant to section 10, or while any interest which has not been suspended is due and unpaid.

14. REGISTER

- 14.1 The Manager shall keep and maintain, or cause to be kept and maintained, an up-to date register of Unit Holders and shall comply with all of the provisions of the Securities Act in respect of that register.

- 14.2 The Register shall be kept or caused to be kept by the Manager but shall be held by the Registrar at such place as the Registrar may from time to time stipulate.
- 14.3 There shall be entered in the Register:
- (a) the names and addresses of the Unit Holders;
 - (b) the number of Units held by each Unit Holder;
 - (c) the date on which the name of every Person was entered in the Register as a Unit Holder;
 - (d) the date on which any Person ceased to be a Unit Holder; and
 - (e) such other information as may be required by the Securities Act.
- 14.4 The Manager shall not be bound to register more than two Persons as the holders of any Unit. Joint Unit Holders shall be jointly and severally liable in respect of all payments required to be made in respect of the relevant Units. On the death of any joint Unit Holder, the survivor or survivors will be the only Persons recognised by the Manager and the Trustee as having title to the Unit, but the Manager and the Trustee may require such evidence of death as they may deem fit. Only the Person whose name stands first in the Register as one of the joint Unit Holders of any Unit shall be entitled to delivery of any notice, cheque or other communication from the Manager or the Trustee, and any notice, cheque or other communication given to any such Person shall be deemed to have been given to all the joint Unit Holders. With the consent of all joint Unit Holders of a relevant Unit, the Manager may amend the name of the Person standing first in the Register.
- 14.5 The Manager shall cause the Register to be audited by the Auditor at annual intervals.
- 14.6 Any change of name or address of a Unit Holder shall be notified by such Unit Holder in writing to the Manager, who shall alter the Register accordingly.
- 14.7 The Manager, the Auditor, and any representative of them, and any Unit Holder shall be entitled to inspect the Register free of charge at any time during normal business hours.
- 14.8 Each of the Manager and the Trustee shall be entitled:
- (a) to rely absolutely on the Register as being correct;
 - (b) for all purposes to treat a Person whom it believes to be the Person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units; and
 - (c) to effect transfers or other dealings of any nature with Units on the basis of the information recorded in the Register relating to those Units.
- 14.9 Notwithstanding clause 14.8, the Manager shall be entitled, in its absolute discretion before giving effect to any transfer, conversion or other dealing with any Units to require the production to the Manager of evidence satisfactory to it that the Person seeking to effect such dealing is the Person named in the Register as the holder of the Units in question.
- 14.10 Except as required by law or by this deed, neither the Manager nor the Trustee shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any Person as having any interest in any

Unit except for the Person recorded in the Register as the Unit Holder, and accordingly no notice of any trust, charge, pledge or equity shall be entered upon the Register.

14.11 The Manager:

- (a) may in its discretion, if so requested by a Unit Holder or a transferee of Units; and
- (b) shall, if so requested by a Unit Holder who produces satisfactory evidence that Units held by that Unit Holder are held as a bare trustee or nominee and two or more other persons are separate beneficial owners of parcels of those Units or have other separate Relevant Interests in parcels of those Units,

register the Units held by that Unit Holder or transferee in two or more separately identifiable parcels. The Manager may thereafter, so as it considers convenient or appropriate, communicate with that Unit Holder, make distributions and otherwise act, as if the separate registered parcels were each held by different Unit Holders.

14.12 Any rights, powers or discretions conferred on the Trustee by this section 14 shall also apply to the Debt Trustee.

15. CONSOLIDATION AND SUBDIVISION OF UNITS

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

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

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

16. CALLS ON UNITS

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

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

16.3 Any sum which by the terms of issue of a Unit becomes payable on allotment or at any fixed date, shall be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable. In the case of non-payment, all the

relevant provisions of this deed as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

- 16.4 On the hearing of any action for the recovery of any money due for any call, it shall be sufficient to prove that the name of the Unit Holder sued is entered in the Register as the holder or one of the holders of the Units in respect of which such debt accrued, and that the call and notice of such call was duly given to that Unit Holder in terms of this deed. Proof of the matters referred to above shall be conclusive evidence of the debt, and it shall not be necessary to prove any other matter whatsoever.
- 16.5 If by the conditions of allotment of any Unit, the whole or part of the amount of the issue price shall be payable by instalments, every such instalment shall, when due, be paid to the Manager by the Unit Holder for the time being or the legal personal representatives of the Unit Holder.

17. FORFEITURE AND LIEN

- 17.1 If a Unit Holder fails to pay any call or instalment of a call on the due date for payment, the Manager may, at any time during such time as any part of the call or instalment remains unpaid, serve a notice on the Unit Holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Manager or the Trust by reason of such non-payment.
- 17.2 The notice shall name a further day (not earlier than 14 Business Days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Units in respect of which the call was made will be liable to be forfeited.
- 17.3 If the requirements of any such notice are not complied with, any Unit in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Manager to that effect. Such forfeiture shall include all Distributions declared in respect of the forfeited Units and not actually paid before the forfeiture.
- 17.4 When any Unit has been so forfeited, notice of the resolution shall be given to the Unit Holder in whose name the Unit stood immediately prior to the forfeiture or the legal personal representatives of that Unit Holder. An entry of the forfeiture, with the date thereof, shall be made in the Register.
- 17.5 A forfeited Unit may be sold or otherwise disposed of on such terms and in such manner as the Manager thinks fit. At any time before a sale or disposition the forfeiture may be cancelled on such terms as the Manager thinks fit.
- 17.6 A Person whose Units have been forfeited shall cease to be a Unit Holder in respect of the forfeited Units, but shall notwithstanding such forfeiture remain liable to pay all money which, at the date of forfeiture, was payable by such Person in respect of the Units. Such liability shall cease if and when the Manager or the Trust receives payment in full of all such money in respect of the Units.
- 17.7 The Trustee shall have a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others) and upon the proceeds of sale for any unpaid calls or instalments owing in respect of such Unit, any interest payable on such amounts, and for such amounts (if any) as the Trustee or the Manager may be called upon to pay under any statute or legislative enactment in respect of Units of a deceased or other Unit Holder, whether the period for the payment, fulfilment or discharge shall have

actually arrived or not. Such lien shall extend to all Distributions from time to time declared in respect of the relevant Unit. Unless otherwise determined by the Manager, the registration of a transfer of Units shall operate as a waiver of the Trustee's lien, if any, on such Units.

- 17.8 The Trustee may sell, in such manner as it thinks fit, any Units on which it has a lien. No sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 Business Days after notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the Unit Holder, or the persons entitled thereto by reason of the death or bankruptcy of the Unit Holder.
- 17.9 The net proceeds of the sale of any forfeited Unit which is sold within 12 months of the date of forfeiture, or of Units sold for the purpose of enforcing a lien, shall be applied in or towards satisfaction of any unpaid calls, instalments, interest, and expenses. The residue, if any, shall be paid to the former Unit Holder, or the legal personal representatives or assigns of the former Unit Holder.
- 17.10 A certificate signed by the Manager that the power of sale has arisen and is exercisable by the Manager or the Trustee (as the case may be) under this deed, or that a Unit has been duly forfeited, shall be conclusive evidence of those matters.
- 17.11 For giving effect to any such sale after forfeiture, or for enforcing a lien, the Manager may authorise any Person to transfer any Unit sold to the purchaser. The purchaser shall be registered as the Unit Holder in respect of the Units comprised in any such transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Units be affected by any irregularity or invalidity in the sale.

18. TRANSFER AND TRANSMISSION OF UNITS

- 18.1 Subject to such of the restrictions of this deed as may be applicable, any Unit Holder may transfer all or any of the Units held by such Unit Holder by instrument in writing in accordance with clause 18.2.
- (a) Any Units disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act.
- (b) Every instrument of transfer not falling within the provisions of subclause (a) above shall be in such form as the Manager may approve from time to time and shall be signed by the transferor and, if the Manager so requires, the transferee.
- 18.2 The instrument of transfer duly stamped with all duties payable shall be left at the Office for registration with such evidence as the Manager may require to prove the title of the transferor or the transferor's right to transfer the Units. Subject to section 14 and clause 18.4, and on being satisfied that the provisions of this clause and all statutory provisions have been complied with, the Manager shall register the transfer in the Register.
- 18.3 The transferor of a Unit shall be deemed to remain the holder of the Unit until the name of the transferee is entered in the Register in respect thereof.
- 18.4 The Manager may decline to register any transfer of Units where:
- (a) the Trustee has a lien on the Units or any of them;

- (b) the instrument of transfer is not accompanied by such evidence as the Manager may reasonably require to show the right of the transferor to make the transfer; or
 - (c) registration of the transfer (together with registration of any further transfer or transfers held by or on behalf of the Manager and awaiting registration) would result in less than the Minimum Number standing in the name of the transferee. This power shall not be exercised before due enquiry has been made by the Manager as to whether any further transfers to the same transferee are pending and whether such transfers would increase the holding to the Minimum Number.
- 18.5 The Manager may at any time give notice to any Unit Holder holding less than the Minimum Number of Units of any Class that such Unit Holder's holding is less than the Minimum Number and that unless the Unit Holder notifies the Manager in writing within such reasonable period as is specified in the notice given by the Manager (being not less than three months) of such Unit Holder's objection, the provisions of clause 18.6 shall apply.
- 18.6 A Unit Holder upon whom notice has been served under clause 18.5 shall ensure that within three months (or such longer period as the Manager may determine) after receiving the notice, the relevant Units are disposed of or further Units are acquired to bring the relevant holding to the Minimum Number. If, after such period, and taking into account any objection received pursuant to clause 18.5, the Manager is not satisfied that suitable arrangements have been made for the disposition or acquisition of further Units, the Manager may arrange for the sale of the relevant Units on behalf of the Unit Holder, through the NZSX, at the best price reasonably obtainable at the relevant time. For this purpose, the Unit Holder shall be deemed to have authorised the Manager to act on behalf of such Unit Holder in relation to the sale of the relevant Units, and to sign all documents relating to such sale and transfer as may be required to give effect to it. The net proceeds of sale shall be held on trust by the Manager for, and paid (together with interest at such rate as the Manager deems appropriate) to, the Unit Holder on receipt of payment relating to the relevant Units.
- 18.7 All instruments of transfer which have been registered may be retained by the Manager. If the Manager, pursuant to the powers contained in this deed, refuses to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return the transfer to the transferee together with such documents of title which may have been left with the transfer.
- 18.8 Subject to any applicable Listing Rule, registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding 30 Business Days in any calendar year without the approval of the Trustee.
- 18.9 The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) and in the case of the death of one or more of several joint Unit Holders the survivor or survivors shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. Nothing contained in this clause 18.9 shall release the estate of a deceased joint Unit Holder from any liability in respect of any Unit which had been jointly held by that Unit Holder with other Persons.
- 18.10 Any manager of a mentally disordered person or any Person becoming entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder shall, upon such evidence being produced as may from time to time be properly required by the Manager, have the right either to be registered as a Unit Holder in respect of the Unit or, instead of being so registered, to make such transfer of the Unit as the mentally disordered, deceased or bankrupt Person could have made. The Manager shall in either case have the same right to decline or suspend registration as it would have had in the case of a transfer of the Unit

by the mentally disordered, deceased or bankrupt Person before such Person became mentally disordered, or before the death or bankruptcy of such Person, as the case may be.

- 18.11 If the Person becoming entitled to a Unit as under clause 18.10 elects to be registered personally, the Person shall deliver or send to the Manager a notice in writing signed by the Person stating that the Person so elects. If the Person elects to have another Person registered, the Person shall execute in favour of such other Person a transfer of the relevant Unit. All the limitations, restrictions and provisions of this deed relating to the right to transfer and the registration of transfers of Units shall be applicable to any such notice or transfer as if the mental disorder, death or bankruptcy of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.
- 18.12 Where any Unit Holder becomes mentally disordered, dies or becomes bankrupt, the manager or personal representatives or the assignee of the Unit Holder's estate, as the case may be, shall upon the production of such evidence as may from time to time be properly required by the Manager, be entitled to the same distributions and other advantages, and to the same rights (whether in relation to meetings of the Unit Holders or to voting or otherwise), as the Unit Holder would have been entitled to if the Unit Holder had not become mentally disordered, died or become bankrupt. Where two or more Persons are jointly entitled to any Unit in consequence of the death of the Unit Holder they shall, for the purposes of this deed be deemed to be joint holders of the Unit.

19. RESTRICTIONS ON ACQUISITIONS

- 19.1 In this section 19, and in section 20, unless the context otherwise requires:

"**Default**" means non-compliance with the requirements of this section 19;

"**Defaulter**" means a person who has a Relevant Interest in Quoted Units which have been acquired in breach of the requirements of this section 19 (other than a breach committed by the Manager);

"**Defaulter's Units**" means, in relation to a Defaulter, Quoted Units in which the Defaulter has a Relevant Interest.

- 19.2 If NZX gives any Ruling in respect of the matters dealt with by sections 19, 20 or 21, or any matter dealt with by section 4 of the Listing Rules, that Ruling is binding on the Manager, the Trustee and all Unit Holders, and shall take effect as if that Ruling were itself incorporated in this deed.
- 19.3 If a takeovers code is in force under the Takeovers Act 1993 that is applicable to the Trust then subject to:
- (a) any applicable provisions of that code; and
 - (b) the Manager first obtaining the approval of NZX and complying with any condition of that approval; and
 - (c) such conditions as NZX may from time to time impose,

the whole of sections 19 to 21, or such part or parts thereof as may be determined by NZX, shall cease to apply and shall be deemed to be cancelled with effect from the date upon which that code comes into force, except that they shall nevertheless continue to apply in respect of any non-compliance with the provisions of section 19 which has occurred prior to that date.

- 19.4 No Restricted Transfer of Quoted Units may take place unless:
- (a) a notice has been given to the Manager and to NZX in a manner complying with Listing Rule 10.2.3 for release to the market, not later than the time specified in clause 19.5, containing the particulars specified in Listing Rule 4.5.2;
 - (b) a notice of any change in, or addition to, the particulars notified under sub-clause (a) is given not later than the time specified in clause 19.5;
 - (c) any Restricted Transfer status report if required by clause 19.10 has been given in accordance with that clause.
- 19.5 A notice under clause 19.4(a) shall be given:
- (a) if any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transfer;
 - (b) if no Transferee is an Insider, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the Transfer.
- 19.6 A notice under clause 19.4(b) shall be given:
- (a) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect, in the case of a change to price or other consideration, and at least 15 Business Days before the change takes effect, in the case of a change to any other particulars specified in Listing Rule 4.5.2;
 - (b) if no Transferee is an Insider:
 - (i) in the case of the change to price or other consideration, at least two hours during which NZX is open for business if the Restricted Transfer complies with Listing Rule 4.5.5, and at least one Business Day in any other case, before the change takes effect; and
 - (ii) in the case of a change to any other particulars specified in Listing Rule 4.5.2, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the change takes effect.
- 19.7 If a notice is given under clause 19.4(a), the Manager shall:
- (a) give notice, as soon as can be achieved, and before the expiry of the relevant notice period referred to in clause 19.4, containing the particulars required by Listing Rule 4.5.6; and
 - (b) comply (so far as is applicable) with Listing Rule 4.5.7.
- 19.8 If any Transferee under a Restricted Transfer is an Insider, the Manager shall (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a notice being given under clause 19.4(a) in respect of that Restricted Transfer, commission an Appraisal Report which complies with Listing Rule 4.5.8, and deal with that Appraisal Report in accordance with the requirements of that Listing Rule.
- 19.9 The Manager shall comply with the provisions of Listing Rules 4.4.5 and 4.4.6.

- 19.10 If a Restricted Transfer is not completed within three months of the notice required to be given under clause 19.4, or of any status report given under this clause 19.10, then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer shall be provided to the Manager and NZX in a manner complying with Listing Rule 10.2.3 for release to the market, including:
- (a) advice as to when the Restricted Transfer is intended to be completed; and
 - (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.
- 19.11 On receipt of the information provided under clause 19.10, the Manager shall promptly:
- (a) advise NZX of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or of the response initially provided under clause 19.7; and
 - (b) confirm to NZX that the Manager is complying with Listing Rule 10.1.

20. ENFORCEMENT OF ACQUISITION RESTRICTIONS

- 20.1 If a person acquires a Relevant Interest in any Quoted Units in breach of section 19 (not being a breach committed only by the Manager):
- (a) no Vote may be cast in respect of the Defaulter's Units on a poll (and any Vote cast shall be disregarded) while the Default is unremedied;
 - (b) the Defaulter's Units may be sold by the Manager in accordance with clause 20.2 but this power may not be exercised:
 - (i) until one month after the Manager has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Units, to the registered holder) of its intention to exercise this power; and
 - (ii) if, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Units to a person who is not a Defaulter.
- 20.2 If the power of sale specified in clause 20.1(b) becomes exercisable and is exercised:
- (a) the Manager shall arrange for the sale of the Defaulter's Units through NZX or in some other manner approved by NZX;
 - (b) each holder of Defaulter's Units is deemed to have authorised the Manager to act on behalf of that holder in relation to the sale of the relevant Units, and to sign all documents relating to such sale which may be required to give effect thereto;
 - (c) the net proceeds of sale shall be accounted for to the holder of the relevant Defaulter's Units and shall be held on trust by the Manager for, and paid (after deduction of amounts referred to in sub-clause (d)) to, holders of the relevant Units upon entry of the transfer relating to the relevant Units in the Register; and
 - (d) the Manager may deduct from the proceeds of sale any costs of sale and any costs to the Manager of determining whether a person is a Defaulter and exercising powers permitted by this section 20, and any amounts which the

Manager may choose to pay to members of any Affected Group acting pursuant to clause 20.4, in reimbursement of expenses incurred by those members.

- 20.3 No purchaser or other person dealing with the Manager shall be concerned to enquire whether the power of sale specified in clause 20.1(b) has become properly exercisable, or as to the propriety or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Manager. The receipt of the Manager is a good discharge to the purchaser for the purchase price, and no question may be raised as to the title of the purchaser to Units sold in purported exercise of the power of sale specified in clause 20.1(b).
- 20.4 The Manager shall, if so directed by a resolution of an Affected Group (passed by a simple majority of Votes), exercise the power referred to in clause 20.1(b), if that power has become exercisable.
- 20.5 Neither the Manager nor any officer of the Manager shall be under any liability whatsoever to any Defaulter, any holder of Defaulter's Units, or any person whom the Board believes to be a Defaulter or holder of Defaulter's Units, for or in connection with the exercise or purported exercise of the powers specified in this section 20.
- 20.6 The sole remedy of the Manager, a Unit Holder or any other person, in respect of a breach or alleged breach of section 19 shall be to exercise, or require the Manager to exercise, the powers referred to clause 20.1. Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of section 19. Nothing in this clause affects the remedies of a Unit Holder against the Manager in respect of a breach of sections 19, 20 or 21 by the Manager.
- 20.7 The Manager shall use reasonable endeavours to ascertain for the purposes of clause 20.1(a) whether any Units are Defaulter's Units. If any Unit Holders, or NZX, alleges that any Units are Defaulter's Units, the Manager shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any person is or is not entitled to vote at that meeting pursuant to clause 20.1(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 20.1(a), but this provision shall not prejudice any action which any person may have against any Unit Holder by reason of that holder having cast a vote at any meeting in breach of clause 20.1(a).

21. COMPULSORY ACQUISITION PROVISIONS

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

- (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
 - (c) the consideration which the Majority Holder is prepared to provide for Affected Securities.
- 21.3 Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (a) if the Acquisition Notice contains the statement in clause 21.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
 - (b) if the Acquisition Notice contains the statement in clause 21.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- 21.4 The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:
- (a) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Manager and NZX a report from an independent, appropriately qualified person who has been previously approved by NZX ("**Expert**") confirming that for the purposes of this section 21, that consideration is fair to the Remaining Holders, using the same criteria set out in clause 21.4(c)(v).
 - (b) If, within 10 Business Days after the date of the Acquisition Notice, the Manager receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the Manager shall forthwith notify the Majority Holder and NZX of that fact and the consideration shall then be determined in accordance with sub-clauses (c) and (d). If such objections are not received, the consideration shall be as specified in the Acquisition Notice.
 - (c) If objections of the nature referred to in subclause (b) are received by the Manager, the consideration shall be fixed by an Expert who shall:
 - (i) be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9), if any, and otherwise by all the directors of the Manager after consultation with the Trustee and after approval by NZX; and
 - (ii) be a different Expert from the person referred to in subclause (a); and
 - (iii) be directed to provide a decision within 20 Business Days after being appointed;
 - (iv) act as an expert and not as an arbitrator; and
 - (v) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Trust as a whole and the rights and obligations attached to those Affected Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority

Holder, their respective holdings of Units or the relative extent of those holdings.

- (d) If the consideration determined by the Expert appointed in accordance with sub-clause (c):
- (i) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that Expert shall be borne by the Remaining Holders who made the objections referred to in sub-clause (b) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash);
 - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that Expert shall be borne by the Majority Holder.
- 21.5 The Majority Holder shall pay or provide the consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if the consideration requires to be determined in terms of clause 21.4(c), within two Business Days after it has been so determined.
- 21.6 If any holder of Affected Securities which are to be acquired cannot be located by the Majority Holder, the Majority Holder shall pay or provide the consideration due to that holder to the Manager. The Manager shall hold that consideration upon trust for that holder for a period of five years from the date of its receipt by the Manager. If that consideration is not claimed by that holder within that period, it may be forfeited by the Manager for the benefit of the Trust. The Manager shall nevertheless, at any time after such forfeiture, annul the forfeiture and pay or provide the consideration to a claimant who produces satisfactory evidence of entitlement.
- 21.7 Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 21.5 and 21.6, the Manager shall forthwith execute on behalf of all the holders of those Securities transfers of those Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the relevant register in respect of those Affected Securities. If the Manager fails to execute any such transfer, the Majority Holder may do so.
- 21.8 If a Majority Holder fails to give an Acquisition Notice when required to do so by this section 21, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this section 21, fails to do so, then the provisions of clauses 20.1 to 20.5 and 20.7 shall apply with the following modifications:
- (a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;
 - (b) the failure to comply with this section 21 shall be deemed to be a Default; and
 - (c) the Remaining Holders shall be deemed to be an Affected Group.

22. HOLDING BY BARE TRUSTEE

22.1 For all purposes of sections 19, 20 and 21 and notwithstanding anything in those sections:

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

22.2 Without limiting clause 22.1:

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

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

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

23. REMUNERATION OF TRUSTEE

23.1 The Trustee shall be paid out of the Trust Fund in respect of its services a fee equal to 0.1% per annum of the Gross Value of the Trust Fund provided that in any Financial Year the minimum fee paid to the Trustee in respect of the Trust shall be \$5,000, unless such Financial Year consists of a period of less than twelve months, in which event the minimum fee shall be that proportion of \$5,000 which equates to the proportion which the actual number of months in that Financial Year bears to twelve. The Trustee shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee. For the purposes of this clause 23.1 and clause 25.15, "value added tax" shall include, but not be limited to, goods and services tax as that term is defined in the Goods and Services Tax Act 1985.

23.2 The fee referred to in clause 23.1 shall be calculated daily on the basis of the Gross Value of the Trust Fund from day to day (or on such other basis as the Manager and the Trustee may agree), and shall be paid in arrears on the last day of each month and on the date of termination of the period of the Trust provided that if any further payment is required to

ensure that the Trustee receives the minimum fee specified in clause 23.1, such further payments shall be made as of the last day of the relevant Financial Year in respect of the Trust.

- 23.3 The remuneration of the Trustee may not be increased without the approval of a meeting of Unit Holders duly convened and held.

24. REMOVAL AND RETIREMENT OF TRUSTEE

- 24.1 The Trustee may be removed from office as trustee by the High Court on the application of the Manager or the Minister of Justice pursuant to section 10 of the Act or by an Extraordinary Resolution of Unit Holders.

- 24.2 The Debt Trustee may be removed from office by an Extraordinary Resolution of Convertible Obligation Holders, subject to the due appointment of a new Debt Trustee and the transfer to such new Debt Trustee of the moneys and investments (if any) held by the Debt Trustee under this deed.

- 24.3 The Trustee or the Debt Trustee may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do, subject to the due appointment of a new Trustee or Debt Trustee (as the case may be) and:

- (a) in the case of a new Trustee, the transfer to such new Trustee of all of the Investments and all other property or assets of any nature of the Trust Fund; and
- (b) in the case of a new Debt Trustee, the transfer to such new Debt Trustee of the moneys and investments (if any) held by the Debt Trustee under this deed.

- 24.4 Where the Trustee or Debt Trustee is removed pursuant to clauses 24.1 or 24.2 or retires pursuant to clause 24.3, it shall in its alternative capacity (as Trustee or Debt Trustee as the case may be) give notice of its retirement in accordance with clause 24.3.

- 24.5 The Manager shall, upon the Trustee being removed from office pursuant to clause 24.1, or retiring pursuant to clause 24.3 or 24.4:

- (a) have power to appoint a Trustee (qualified in terms of the Act) to act which Trustee shall have all powers conferred on the Trustee by this deed or by law and be treated for all purposes as the Trustee (subject to paragraph (b) of this clause);
- (b) as soon as practicable summon a meeting of Unit Holders, and take such steps as that meeting or any subsequent meeting of Unit Holders may by Extraordinary Resolution require to affirm the appointment as Trustee of the Trustee appointed pursuant to paragraph (a) of this clause or of some other entity qualified in terms of the Act (other than the Trustee which has been removed or which has retired from office);
- (c) if at the meeting held under paragraph (b) of this clause 24.5 the Unit Holders do not by Extraordinary Resolution appoint another entity qualified in terms of the Act to be the Trustee, the Trustee appointed by the Manager pursuant to paragraph (a) of this clause shall continue in office as Trustee. No person shall be appointed as a new Trustee unless qualified to act as such pursuant to section 5 of the Act;

- 24.6 The Manager shall, upon the Debt Trustee being removed from office pursuant to clause 24.2 or retiring pursuant to clause 24.3 or 24.4:

- (a) have power to appoint a Debt Trustee (qualified in terms of the Securities Act) to act which Debt Trustee shall have all powers conferred on the Debt Trustee by this deed or by law and be treated for all purposes as the Debt Trustee provided that no new Debt Trustee shall be appointed unless such appointment is first approved by an Extraordinary Resolution of Convertible Obligation Holders;
- (b) promptly call a meeting of Convertible Obligation Holders for the purpose of approving the appointment of a new Debt Trustee and, if approval is given, the Manager shall exercise its power of appointment.

24.7 The ability to appoint different Persons to the roles of Debt Trustee and Trustee is subject to the provisions of the Securities Act and the Securities Regulations 1983 and any exemption granted in accordance with that Act.

25. REMUNERATION OF MANAGER

25.1 In this section 25, unless the context otherwise requires:

"**Base Fee**" has the meaning set out in clause 25.3 of this deed.

"**Cap**" means, in respect of any Half Year, an amount in cents per Unit, determined as follows:

$$C = T + (GV \times 0.15\% \text{ per annum} \div WAU) \div 10\%$$

where:

C = Cap;

T = Threshold (as defined in this section);

GV = average Gross Value of the Trust Fund for that Half Year; and

WAU = weighted average number of Units on issue over that Half Year.

"**Deficit**" means, where the Unit Holder Return for the relevant Half Year is less than the Threshold, the difference, expressed in cents per Unit, between the Threshold and the Unit Holder Return for that Half Year.

"**Excess**" means, where the Unit Holder Return for the relevant Half Year is more than the Cap, the difference, expressed in cents per Unit, between the Unit Holder Return and the Cap for that Half Year.

"**Half Year**" means the six month periods ending 30 September and 31 March in each Financial Year.

"**Performance Fee**" has the meaning set out in clause 25.5 of this deed.

"**Threshold**" means, in respect of any Half Year, an amount calculated as 10% per annum of the opening Unit price for that Half Year (calculated in accordance with clause 25.7) and expressed in cents per Unit.

"**Unit Holder Return**" means, in the relevant Half Year, an amount expressed in cents per Unit, being any Distribution(s) per Unit (including any imputation credits) declared in respect of that Half Year plus or minus (as the case may be) the change in Unit price of the Units of the Trust over the relevant Half Year (calculated in accordance with clause 25.7) plus or minus any Deficit or Excess arising in previous Half Years and applied pursuant to clause 25.8.

25.2 The Manager shall be entitled, in respect of its services in respect of each Financial Year to a fee to be paid from the Trust Fund, such fee to comprise the aggregate of a Base Fee (plus GST) and a Performance Fee (plus GST), provided that the combined

fee (excluding GST) will not exceed 0.70% of the average of the Gross Value of the Trust Fund in respect of any Financial Year.

25.3 The Base Fee for a Financial Year is 0.55% per annum of the average of the Gross Value of the Trust Fund for that Financial Year ("**Base Fee**").

25.4 The Base Fee shall be calculated and paid in cash quarterly (in respect of the quarters ending March, June, September and December) in arrears by reference to the average of the Gross Value of the Trust Fund during the relevant preceding quarter (which average shall be determined from day to day or in such other manner as the Manager and the Trustee may agree).

25.5 The Performance Fee shall be calculated in respect of each Half Year of the relevant Financial Year in arrears ("**Performance Fee**") as follows:

(a) If the Unit Holder Return in the relevant Half Year is greater than the Threshold, the Performance Fee for the Half Year is the lower of:

(i) 10% of the amount by which the Unit Holder Return is greater than the Threshold expressed in cents per Unit; and

(ii) 10% of the amount by which the Cap exceeds the Threshold expressed in cents per Unit,

multiplied by the weighted average number of Units on issue during the relevant Half Year.

(b) If the Unit Holder Return in the relevant Half Year is less than or equal to the Threshold, no Performance Fee shall be payable.

25.6 Subject to clauses 25.11 and 25.12 the Performance Fee shall be calculated in respect of each Half Year and paid in Cash half-yearly in arrears on the same date as Distributions are paid in respect of the relevant Half Year.

25.7 For the purposes of calculating the opening price of Units and any change in the price of Units:

(a) the opening Unit price (subject to any adjustment provided for under this section 25 for a change to the issued capital) for the relevant Half Year shall be the volume weighted average of the prices at which Units were traded through the NZSX during the last five trading days of the previous Half Year; and

(b) the closing Unit price for the relevant Half Year shall be the volume weighted average of the prices at which Units were traded through the NZSX during the last five trading days of the relevant Half Year,

or, if no trades occurred during the relevant period, the volume weighted average of the prices at which Units were traded through the NZSX on the last five trading days on which trades occurred prior to that period.

25.8 In the event of there being any Deficit or Excess arising from any Half Year it shall be subtracted from or added to (as the case may be) the Unit Holder Return for the purposes of the calculation of the Performance Fee in respect of subsequent Half Year periods subject to the following:

(a) the oldest Deficit and/or Excess (as the case may be) shall be applied first, but subject thereto each Deficit and each Excess must be applied as soon as possible;

- (b) if an Excess is to be applied, it shall be applied to determine Unit Holder Return in the relevant Half Year only to the extent of the Cap;
- (c) a Deficit may only be applied to reduce the Unit Holder Return in the relevant Half Year to the extent that the Unit Holder Return is greater than or equal to the Threshold; and
- (d) if a Deficit or Excess has not been applied in accordance with this clause 25.8 in the calculation of the Performance Fee in respect of any Half Year falling within the period of 24 months following the end of the Half Year in respect of which that Deficit or Excess arose, it shall be extinguished.

25.9 Where there has been a Rights issue during the relevant Half Year the following adjustments will be made:

- (a) the opening price shall be calculated as follows:

$$AP = \frac{(O \times n) + (P \times n_1)}{n + n_1}$$

where:

AP = adjusted opening price for the purposes of clause 25.7(a);
O = the opening price of Units on issue at the start of the relevant Half Year;
n = the number of Units on issue at the start of the relevant Half Year;
P = rights issue price; and
n₁ = number of Units taken up under the rights issue.

- (b) an adjustment to each Excess and Deficit will be calculated as follows:

$$AED = ED \times \frac{AP}{O}$$

where:

AED = Adjustment to each Excess and Deficit;
ED = Excess or Deficit (as applicable, calculated in accordance with clause 25.8);
AP = adjusted opening price calculated in accordance with sub-paragraph (a) above; and
O = the opening price of Units on issue at the start of the relevant Half Year.

25.10 In the event of any other material change to the issued capital of the Trust (other than a rights issue but including, although not limited to, a subdivision, consolidation, cancellation of Units, a discounted issue of securities under a dividend reinvestment scheme, or an issue of securities under a unit purchase plan) during the relevant Half Year, the opening price and any Excess or Deficits being carried forward shall be adjusted by the Manager (in consultation with the Trustee) to fairly reflect the effect of the reorganisation on the price of the Units. The Manager shall ensure that the method of calculation is approved by a suitably qualified independent chartered accountant (appointed with the approval of the Trustee) as being fair and reasonable in the circumstances.

25.11 On receipt of payment of any Performance Fee:

- (a) the Manager shall (subject to the approval of Unit Holders of the Trust or an appropriate waiver from the Listing Rules) immediately thereafter subscribe (or cause a person nominated by the Manager to subscribe) for, and shall issue to itself or such person, a number of Units (rounded down to the nearest whole number of Units) determined as follows:

$$\text{Number of Units} = \frac{\text{Amount of Performance Fee}}{P}$$

where "P" is the volume weighted average price of the Units on the NZSX over the five trading days preceding the date of receipt of payment of the Performance Fee, provided that if no trades occurred during the relevant period, the volume weighted average of the prices at which Units were traded through the NZSX on the last five trading days on which trades occurred prior to that period.

- (b) The Manager or other person to whom the Units are issued shall immediately pay an amount equal to the Performance Fee to the Trustee as payment for the issue of the Units pursuant to clause 25.11(a). Units issued as part of these arrangements shall be issued on the same day as Distributions are paid in respect of that Half Year.

25.12 The obligation to subscribe for Units described in clause 25.11 above shall have no application:

- (a) to any Performance Fee or other amount paid in the event the Trust is terminated or the Manager ceases to hold office;
- (b) if the issue of any Units pursuant to that clause would breach the Listing Rules;
- (c) if the Manager, having taken legal advice from a firm experienced in matters of this nature, determines that it would be, or would likely be, a breach of any law to issue any Units pursuant to that clause; or
- (d) if a majority of the Independent Directors (as defined in the Listing Rules) of the Manager determine that the issue of Units pursuant to the above mechanism is not in the best interests of the Trust,

provided that in such cases the Manager shall be entitled to be paid the Performance Fee for that Half Year in Cash.

25.13 If the Manager ceases to hold office as manager of the Trust the Manager will be entitled to the following:

- (a) all fees (in respect of the Base Fee and Performance Fee) which have accrued prior to the date of termination or cessation (as the case may be) in cash out of the Trust Fund in one lump sum within 14 days of the Manager ceasing to hold office. If the Manager ceases to hold office on a day other than the last day of a Half Year the Manager's entitlement to remuneration under this clause 25.13 for the then current Half Year shall be calculated by reference to the date upon which it ceased to hold office and section 25 shall apply, with all necessary modifications;
- (b) 10% of the aggregate amount of all Excesses available to be applied under clause 25.8 (after deducting all Deficits available to be applied under that paragraph) multiplied by the number of Units on issue at the date the Manager ceases to hold office,

provided that the aggregate of all payments to be made to the Manager pursuant to this clause 25.13 shall not exceed 0.85% per annum of the Gross Value of the Trust Fund (determined by reference to the Gross Value of the Trust Fund on the date on which the Manager ceases to hold office).

- 25.14 The Manager shall be entitled to receive, in addition to any fees payable pursuant to this section 25, any value added tax or duty or similar tax or duty payable in respect of such fee.
- 25.15 The remuneration of the Manager may not be increased without the approval of the Trustee and of a meeting of Unit Holders duly convened and held.

26. REMOVAL AND RETIREMENT OF MANAGER

- 26.1 The Manager shall cease to hold office as Manager of the Trust if:
- (a) the Manager is removed from office by the High Court pursuant to section 19(1) of the Act on the application of the Trustee, any Unit Holder, or the Minister of Justice; or
 - (b) the Trustee certifies pursuant to section 19(2) of the Act that it is in the interests of Unit Holders that the Manager should cease to hold office; or
 - (c) the Unit Holders by Section 18 Resolution direct that the Manager should cease to hold office; or
 - (d) the Manager is removed from office by the Trustee on any of the grounds specified in clause 26.2.
- 26.2 The Trustee shall be entitled to remove the Manager if:
- (a) the Manager is materially in breach of its obligations under this deed;
 - (b) the Manager fails to carry out its duties to the satisfaction of the Trustee; or
 - (c) the Manager is wound up (except for the purposes of an amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager.
- 26.3 If the Manager ceases to hold office pursuant to clauses 26.1, 26.2 or 26.5, the Manager shall immediately desist from all activities related to the Trust. The Manager shall be entitled to all fees payable in accordance with clause 25.13 to apply, with all necessary modifications).
- 26.4 In addition, if the Manager ceases to hold office pursuant to clause 26.1(c) (other than as a result of the Manager being in material breach of its obligations under this deed) the Manager shall be entitled to an additional fee equal to 0.85% of the Gross Value of the Trust Fund. Such fee shall be paid in Cash out of the Trust Fund in one lump sum and determined by reference to the Gross Value of the Trust Fund on the date on which the relevant resolution is passed. The fee shall be paid within 14 days of that date.
- 26.5 The Manager may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Trustee of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 26.8.
- 26.6 The Trustee shall have power in accordance with section 23(1) of the Act to appoint a company qualified pursuant to section 4 of the Act as a temporary Manager of the Trust in place of a Manager which has retired or been removed from office.
- 26.7 The Trustee shall upon a vacancy in the office of Manager occurring summon a meeting of Unit Holders in accordance with section 23(2) of the Act, and shall take such steps as

that meeting or any subsequent meeting of Unit Holders may require to secure the appointment as Manager of the Trust of the temporary Manager appointed pursuant to clause 26.6 or some other company qualified pursuant to section 4 of the Act, and approved by the Trustee.

- 26.8 A new Manager appointed pursuant to clause 26.7 shall forthwith upon such appointment execute a deed in such form as the Trustee may require whereby the new Manager undertakes to the Trustee and the Unit Holders to be bound by all the covenants on the part of the Manager under this deed from the date of such appointment. On and from such date the retiring Manager shall be absolved and released from all such covenants (save in respect of any prior breach of this deed) and the new Manager shall exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager in all respects as if such new Manager had been originally named as a party to this deed.

27. BORROWING POWERS

- 27.1 The Trustee shall have power, if so directed by the Manager pursuant to clause 27.2 and subject to clause 27.3(a), to Borrow, and to give security in respect of any Borrowing over all or any part or parts of the Trust Fund.
- 27.2 The Manager may subject to clause 27.3 at any time and from time to time if the Manager considers it necessary or desirable to do so, by notice in writing to the Trustee require the Trustee to Borrow on behalf of the Trust Fund, and if the Manager so directs, to secure such Borrowing upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit. Any such notice shall specify the party from whom the Borrowing is to be made, and the terms of the Borrowing. The Manager shall not give any such notice unless it has arranged the Borrowing with such party.
- 27.3 The Trustee shall on receipt of a direction by the Manager pursuant to clause 27.2 take all necessary steps to give effect to that direction provided however:
- (a) No such Borrowing shall be made if the effect of that Borrowing would be such that immediately after that Borrowing, the total of money Borrowed by the Trust Fund and outstanding would exceed 40% of the Gross Value of the Trust Fund at that date (calculated taking account of the proceeds of the Borrowing) provided that, if at any time (due to circumstances outside the Manager's control) the total Borrowings exceed 40% of the Gross Value of the Trust Fund, the Manager (in consultation with the Trustee) shall forthwith take such action (which may include the disposal of assets) as may be appropriate to generate sufficient Cash to repay, and the Manager shall apply that Cash in repaying Borrowings such that the total amount Borrowed immediately after such repayment does not exceed 40% of the Gross Value of the Trust Fund at that date.
 - (b) The Trustee shall not be required to execute any agreement, security or other document in respect of any Borrowing which (in the opinion of the Trustee) would render the Trustee personally liable in respect of such Borrowing and unless the liability of the Trustee thereunder is to the satisfaction of the Trustee limited to the assets for the time being in the Trust.
- 27.4 No person lending money to or otherwise dealing with the Trustee shall be bound to inquire as to whether the limit in clause 27.3(a) have been exceeded, and no breach of such limit shall affect the validity or enforceability of any loan or any other transaction.

28. ACCOUNTS

- 28.1 The Manager and the Trustee shall, having regard to their separate functions and obligations, keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place and of the issue of Units and of all other matters for which accounts should properly be kept. The Manager shall, in particular, keep or cause to be kept such accounts as may be necessary to enable it to comply with its obligations pursuant to section 11 of the Act and such accounts as may be necessary to ensure that moneys received, expended or distributed by the Trust are credited or, as the case may be, debited to the appropriate funds available for distribution to the different Classes of Unit Holders or Convertible Obligation Holders and so as to ensure that the entitlement of any Unit Holder or Convertible Obligation Holder (as the case may be) to participate in the Trust Fund at any particular time may readily be ascertained. The Manager and the Trustee shall provide to each other from time to time any information necessary for this purpose.
- 28.2 The Manager shall cause to be prepared semi annual and annual accounts in respect of the Trust Fund for each Financial Year.
- 28.3 The annual accounts prepared in accordance with clause 28.2 shall be audited by the Auditor who shall report to the Manager and the Trustee:
- (a) whether the annual accounts read in conjunction with the notes thereto disclose a true and fair view of the state of affairs of the Trust as at the end of the period to which they relate and of the results of the Trust for such period; and
 - (b) whether in examining such annual accounts and the records and books of account the Auditor has obtained any knowledge of any default in the fulfilment of the terms of this deed by the Trustee or the Manager and, if so, particulars of each such default.
- 28.4 In carrying out the Auditor's duties, the Auditor shall be entitled to require from the Manager and the Trustee such information, explanations, documents, certificates and accounts as the Auditor may consider necessary, and the Manager or the Trustee (as the case may be) shall forthwith provide the same to the Auditor.
- 28.5 The Manager shall forward to each Person referred to in the next sentence a copy of the semi annual and annual accounts of the Trust Fund together (in the case of the annual accounts) with the Auditor's report thereon. Such accounts and report shall be sent to each Person who is a Unit Holder or Convertible Obligation Holder as at the date upon which they are dispatched, and also to each Person who was a Unit Holder or Convertible Obligation Holder on the date as at which such accounts are made up. This clause is subject to clause 36.9.
- 28.6 The Manager shall in accordance with section 20 of the Act cause to be filed with the District Registrar (as defined in the Act) the statements and documents required to be filed pursuant to that section.

29. AUDITOR

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

- 29.2 Any vacancy in the office of Auditor occurring under clause 29.1 shall be filled by the Trustee (after consultation with the Manager) appointing an Auditor qualified for appointment in terms of clause 29.1.
- 29.3 The Auditor may also be the auditor of the Manager and may be the auditor of any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or servant (or the partner of an officer or servant) of the Manager or of the Trustee.
- 29.4 The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Fund.

30. SUBORDINATION ON DISSOLUTION

- 30.1 If for any reason whatsoever, upon the determination and winding up of the Trust, the Principal Amount of any Convertible Obligation has not been satisfied by the issue of Units, then upon the determination and winding up of the Trust the amount recoverable by each Convertible Obligation Holder in respect of the Principal Amount of the Convertible Obligations held by that Convertible Obligation Holder, and the amount for which that Convertible Obligation Holder is entitled to prove in the determination and winding up, shall be limited to the amount (if any) which that Convertible Obligation Holder would have received had the Convertible Obligations held by such Convertible Obligation Holder been Converted immediately prior to the commencement of the termination and winding up, in all respects as if that Convertible Obligation Holder were the holder of Units rather than Convertible Obligations, and any balance of the Principal Amount of that Convertible Obligation Holder's Convertible Obligations shall be deemed to have been irrevocably discharged and satisfied. Nothing in this clause shall be construed so as to limit the obligation of the Trust in accordance with this deed to Convert the Convertible Obligations by the issue of Units, or the obligation of Convertible Obligation Holders to accept Units in redemption of the Convertible Obligations.
- 30.2 If upon determination and winding up of the Trust accrued interest (including without limitation suspended interest) is owing to any Convertible Obligation Holder in respect of Convertible Obligations then payment of that interest shall be subordinated to the payment of all moneys payable to the Senior Creditors of the Trust so that interest shall not be payable to the Debt Trustee or the Convertible Obligation Holders until such Senior Creditors have been paid in full.
- 30.3 Any payment in respect of the Convertible Obligations to which the Convertible Obligation Holders would be entitled but for the provisions of this section 30 shall be paid or delivered by the Trustee or other person making a distribution in a determination and winding up to the Senior Creditors of the Trust rateably accordingly to the amounts owed to them until the Senior Creditors have been paid in full.
- 30.4 If upon any distribution on a determination and winding up of the Trust any amount (an "**Excess Amount**") is received by the Debt Trustee or any Convertible Obligation Holder in contravention of clause 30.3, the Debt Trustee or the relevant Convertible Obligation Holder shall pay such Excess Amount forthwith to the Trustee and pending such payment shall hold the Excess Amount in trust for the Trustee. The Debt Trustee (without prejudice to any of its rights under this deed) shall be entitled to deduct from any Excess Amount the costs and expenses incurred by the Debt Trustee (the certificate of the Debt Trustee as to which shall be conclusive) in or about the performance by the Debt Trustee of any of its obligations under this section 30.
- 30.5 The Trustee, the Debt Trustee and the Manager declare that they have entered into their respective covenants in this section 30 for the benefit of the Senior Creditors of the Trust from time to time, to the intent that pursuant to the Contracts (Privity) Act 1982 any

Senior Creditor may enforce those respective covenants against the Manager, the Trustee or the Debt Trustee, as the case may be.

- 30.6 All Convertible Obligation Holders shall be irrevocably bound by the provisions of this section 30 and the Debt Trustee shall as against the Convertible Obligation Holders be absolutely entitled to give effect to the provisions of this clause in such manner as the Debt Trustee thinks fit, and no Convertible Obligation Holder shall be entitled to take or bring any action whatsoever to prevent the Debt Trustee from giving effect to the same.
- 30.7 The provisions of this section 30 apply only to payments in respect of the Convertible Obligations, and nothing in this clause or elsewhere in this deed shall affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Debt Trustee or other amounts payable to the Debt Trustee under this deed or the rights and remedies of the Debt Trustee in respect thereof.
- 30.8 The provisions of this section 30 are subject to the Terms of the relevant Convertible Obligations.

31. COVENANTS

- 31.1 **Manager's Covenants:** The Manager covenants with the Debt Trustee that it will:
- (a) use its best endeavours to ensure that the Trust is carried on in a proper and efficient manner;
 - (b) permit the Debt Trustee through its agent, attorney or representative to attend any meeting of Unit Holders of the Trust and to be heard on any part of the business of the meeting which concerns the Debt Trustee or the Convertible Obligation Holders;
 - (c) whenever requested, give to the Debt Trustee or any chartered accountant or other person appointed by the Debt Trustee such oral or written information as they may reasonably require relating to its business;
 - (d) use reasonable endeavours to ensure that Units issued upon Conversion are upon issue listed on the NZSX;
 - (e) use reasonable endeavours to ensure that all Convertible Obligations which are listed on the NZSX upon their issue remain listed on the NZSX;
 - (f) not exercise its power under clause 37.1 to agree with the Trustee to amend this deed without the prior written consent of the Debt Trustee. The Debt Trustee may withhold its consent if in its opinion the proposed amendment in any way is, or is likely to become, prejudicial to the interests of Convertible Obligation Holders or any class of Convertible Obligation Holders;
 - (g) notify the Debt Trustee if the Manager has failed to comply with this deed.

32. REPORTS AND INFORMATION FOR TRUSTEE

- 32.1 The Manager covenants with the Debt Trustee that it will within three months after the end of each financial quarter of the Trust, or within such further time as the Debt Trustee may in writing permit, provide to the Debt Trustee a certificate signed by not less than two directors of the Manager on behalf of all of the directors, in such form and with such qualifications (if any) as the Debt Trustee may in its discretion approve, stating to the best of the directors' knowledge and belief after having made all due enquiry, whether or

not since the date as at which the last such certificate was given, or, in the case of the first such certificate, since the first date of allotment of outstanding Convertible Obligations:

- (a) any matters have in their opinion occurred to affect adversely the interests of the Convertible Obligation Holders, and if so giving particulars thereof;
- (b) all interest due on the Convertible Obligations has been paid;
- (c) all Convertible Obligations due for Conversion, or which any Convertible Obligation Holder is entitled to Convert, have been Converted (including how many Convertible Obligations have been Converted);
- (d) the Registrar has duly maintained the Register in respect of Convertible Obligations;
- (e) the Manager has duly observed and performed all their obligations under this deed;
- (f) any event specified in clause 34.1 has occurred, and if so particulars of that event;
- (g) there has been any material change in the nature of the business of the Trust, and if so particulars of that change;
- (h) the Trust has remained solvent; and
- (i) the Trust has been in material default in payment of moneys due in respect of Borrowings,

such certificate shall also state the number of Convertible Obligations outstanding as at the date five Business Days prior to the date of the certificate.

32.2 The Manager shall from time to time:

- (a) at the request in writing of the Debt Trustee, make available for its inspection the whole of the accounting and other records of the Trust;
- (b) provide to the Debt Trustee copies of all other accounts, reports, notices and circulars issued by the Trust to Unit Holders, or any class of Unit Holders, or to the Convertible Obligation Holders, at the time of such issue;
- (c) provide to the Debt Trustee at the same time as it provides copies of its audited financial statements a separate report by the Auditor stating:
 - (i) whether or not in the performance of its duties as Auditor it has become aware of any matter which, in its opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Debt Trustee by this deed or any Act or regulation, and if so giving particulars thereof;
 - (ii) whether or not its audit has disclosed any matter, and if so giving particulars thereof, calling in its opinion for further investigation by the Debt Trustee in the interests of the Convertible Obligation Holders;
 - (iii) that it has perused the most recent directors' reporting certificate given since the last report by the Auditor and that, so far as matters

which it has observed in the performance of its duties are concerned, the statements made in such certificate are correct;

- (d) give to the Debt Trustee such information as it requires with respect to all matters relating to such records.

33. PROVISIONS RELATING TO DEBT TRUSTEE AND CONVERTIBLE OBLIGATIONS

33.1 Any moneys paid to and held by the Debt Trustee in respect of Convertible Obligations, and which are subject to the trusts described in clause 3.2, may, at the discretion of the Debt Trustee, be invested in the name of the Debt Trustee or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income arising from all such investments made by the Debt Trustee shall until the Date of Enforcement belong to the Trust.

33.2 The Debt Trustee may, on or at any time after the Date of Enforcement, apply to the court for an order that the powers and trusts contained in this deed in respect of Convertible Obligations be exercised under the direction of the court and for any other order or direction in relation to the execution and administration of the powers and trusts contained in this deed in respect of Convertible Obligations as the Debt Trustee may deem expedient and it may assent to, approve of or oppose any application to the court made by or at the instance of any Convertible Obligation Holder and shall be indemnified out of the Trust Fund against all costs, charges and expenses incurred by and in relation to any such application or proceedings.

33.3 Subject to any direction or request given pursuant to clause 34.2 and any relevant provisions of the Listing Rules the Debt Trustee may at any time by notice in writing to the Manager, waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Manager or the Trustee of any provision expressed or implied in this deed in respect of Convertible Obligations provided the Debt Trustee is satisfied that the interests of the Convertible Obligation Holders will not be materially prejudiced thereby but such waiver shall not prejudice the rights of the Debt Trustee or the Convertible Obligation Holders in respect of any other breach.

33.4 In addition to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder it is expressly declared that:

- (a) The Debt Trustee may, without liability for loss, obtain and act on, or decline and elect not to act on:
- (i) the opinion or advice of or any information obtained from any barrister, solicitor, valuer, stockbroker, chartered accountant or other adviser whether obtained by the Manager or by the Debt Trustee or otherwise, although the same may subsequently be found to contain some error or not be authentic;
 - (ii) a certificate signed by any two directors on behalf of the Manager concerned as to any fact or matter prima facie within the knowledge of the Manager or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Convertible Obligation Holders;
 - (iii) the statements contained in any certificate or report given pursuant to this deed as conclusive evidence of the facts stated therein;

- (b) the Debt Trustee shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Convertible Obligation Holders or any Class thereof which the Debt Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings thereat or for any other reason;
- (c) the Debt Trustee shall not be responsible for the money subscribed by the applicants for, or subscribers of, the Convertible Obligations, or be bound to see to the application thereof;
- (d) notwithstanding any other provision of this deed, the Debt Trustee shall exercise reasonable diligence to ascertain whether or not any breach of the terms of this deed or of the terms or conditions of issue of any Convertible Obligations has occurred and, except where it is satisfied that the breach will not materially prejudice the interests of the Convertible Obligation Holders thereof, shall do all such things as it is empowered to do to cause any breach of those terms to be remedied;
- (e) the Debt Trustee shall exercise reasonable diligence to ascertain whether or not the assets of the Trust that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Convertible Obligations as they become due;
- (f) except as otherwise expressly provided in this deed, the Debt Trustee:
 - (i) shall as regards all trusts, powers, authorities and discretions vested in it by this deed have absolute discretion as to the exercise thereof and as to the conduct of any action, proceeding or claim and provided it shall have acted with reasonable care and diligence it shall not be responsible for any loss or cost that may result from the exercise or non-exercise thereof;
 - (ii) may refrain from exercising any discretion vested in it by this deed until it has a direction to act from the Convertible Obligation Holders given by Extraordinary Resolution and the Debt Trustee shall not be responsible for any loss or cost that may result from the non-exercise of the relevant discretion;
- (g) the Debt Trustee, whenever it thinks it expedient in the interests of the Convertible Obligation Holders to do so, may:
 - (i) delegate at any time to any person any of the trusts, powers, authorities or discretions vested in the Debt Trustee by this deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Debt Trustee may think fit, and the Debt Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate;
 - (ii) authorise such person as it thinks fit to act as its representative at any meeting;
 - (iii) in addition to the exercise of the powers contained in clause 33.2, apply to the court for directions in relation to any question arising, either before or after the Date of Enforcement.

- 33.5 The Debt Trustee shall not be bound to comply with a request or direction pursuant to the provisions of clause 34.2 unless the Debt Trustee shall first have been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may be rendered liable, and all costs, charges, damages and expenses which it may incur, by so doing.
- 33.6 Nothing expressed in this deed or implied by law shall prohibit the Debt Trustee or any of its related companies (all hereinafter in this clause where the context permits being included in the expression "the Debt Trustee") or the officers of the Debt Trustee from being a Unit Holder, Convertible Obligation Holder or other creditor of the Trust or from acting in any representative capacity for a Convertible Obligation Holder. The Debt Trustee may enter into any transactions with the Trust and shall not be accountable to the Trust or the Convertible Obligation Holders for any profits arising from any such transactions.
- 33.7 The Debt Trustee may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Convertible Obligation Holders, represent the Convertible Obligation Holders in any matter concerning them generally.
- 33.8 The powers, authorities and discretions conferred upon the Debt Trustee by this deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in trustees by law and to any powers, authorities and discretions which may from time to time be vested in the Debt Trustee as the holder of any Convertible Obligation.
- 33.9 Without prejudice to the right of indemnity by law given to trustees or any other provision of this deed, the Debt Trustee and every attorney, manager, agent or other similar person appointed by the Debt Trustee pursuant to this deed shall be entitled to a full and complete indemnity out of the Trust Fund in respect of all liabilities and expenses incurred in the execution or purported execution of the powers or trusts hereof and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, and may retain and pay out of any moneys in its hands arising from the trusts of this deed all sums necessary to effectuate such indemnity and also the remuneration and disbursements of the Debt Trustee provided for in this deed. This indemnity shall not extend to any matter which is attributable to the Debt Trustee's or other relevant person's dishonesty, or to the wilful commission or omission by the Debt Trustee or other relevant person of an act known by the Debt Trustee or other person to be a wilful breach of trust.

34. EVENTS OF DEFAULT

- 34.1 Subject to clause 34.2 the Debt Trustee may make the declaration referred to in that clause if:
- (a) default is made for a period of 14 days in the payment of any interest on the Convertible Obligations (unless that interest has been suspended pursuant to section 10);
 - (b) default is made for a period of 14 days after demand in writing in the payment of any other moneys payable pursuant to this deed in respect of Convertible Obligations;
 - (c) any Winding Up Event occurs, such that the Trust determines and is wound up;

- (d) a receiver is appointed of, or an encumbrancer takes possession of, or exercises its power of sale in respect of, the whole or any material part of the assets of the Trust;
- (e) the Trust is insolvent;
- (f) the Trust, without the prior consent in writing of the Debt Trustee, enters into any arrangement or composition with its creditors generally;
- (g) default is made by the Manager or the Trustee in the performance or observance of any provision binding upon it under this deed in respect of any Convertible Obligations (other than a default specifically referred to in any other paragraph of this clause) or in any other undertaking given to the Debt Trustee in respect of any matter relating to the provisions of this deed in respect of Convertible Obligations (whether or not the Debt Trustee shall have waived any prior default), and such default continues for more than 14 days after receipt by the Manager of a notice in writing from the Debt Trustee specifying the default and requiring the same to be remedied.

34.2 At any time after the occurrence of an event specified in clause 34.1, and while that event is continuing, the Debt Trustee may in its discretion and shall forthwith (subject to clause 33.5) upon being directed to do so by an Extraordinary Resolution of Convertible Obligation Holders, by notice to the Manager declare the Convertible Obligations to be immediately due for Conversion. Upon the Debt Trustee making that declaration, the Manager shall cause the Convertible Obligations to be Converted, and all interest accrued in respect of the Convertible Obligations shall (subject to section 10) become immediately due and payable.

35. MEETINGS

35.1 The Manager shall summon a meeting of:

- (a) Unit Holders upon the request in writing of the Trustee, or of one tenth in number of the Unit Holders, or of a Unit Holder or Unit Holders holding (at the date of the receipt by the Manager of the request) not less than one tenth of the value of the interests of the Unit Holders in the Trust Fund. The Manager shall in accordance with section 12(1)(d)(ii) of the Act lay before any such meeting copies of the last statements and summaries filed with the District Registrar of Companies in accordance with section 20(1)(b) and section 20(2) of the Act;
- (b) Convertible Obligation Holders for the purpose of considering the financial statements of the Trust for its last preceding Financial Year, giving directions to the Debt Trustee in relation to the exercise of its powers, or any other purpose stipulated in an applicable request at the request in writing of the Debt Trustee or of persons holding not less than one-tenth in nominal value or number of Convertible Obligations for the time being outstanding.

35.2 The Manager:

- (a) shall convene an annual meeting of Unit Holders to be held not later than 6 months after the end of each Financial Year and not later than 15 months after the previous annual meeting;
- (b) may at any time of its own volition convene a meeting of Unit Holders or Convertible Obligation Holders;

- (c) shall convene a meeting of Unit Holders, or any Class of Unit Holders, on the written request of the Trustee;
 - (d) shall convene a meeting of Unit Holders, or any Class of Unit Holders, on the written request of one twentieth in number of Unit Holders of any Class of Units, or of a Unit Holder or Unit Holders holding (in all cases, as at the date of receipt by the Manager of the request) not less than one twentieth of the Units of that Class then on issue PROVIDED THAT the request proposes the text of a resolution to be put to the meeting and is accompanied by an explanatory note as to the reasons for the resolution (such resolution and explanatory note to be included by the Manager in the notice issued for that meeting);
 - (e) shall convene any meeting requested pursuant to sub-clauses (c) or (d) above for a date falling no later than 60 Business Days from the date of receipt of the request, provided that if the annual meeting to be held under sub-clause (a) will be held within 90 Business Days of the date of receipt of the request, then the meeting may be deferred by the Manager so as to be held on the same day as that annual meeting or any date prior to it; and
 - (f) shall include, in or with any notice convening a meeting under sub-clause (d), a response from either or both of, the Manager and the Trustee if either wishes to do so.
- 35.3 Unit Holders of all Classes are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to Unit Holders entitled to vote at meetings of Unit Holders but are not entitled to vote at any such meeting unless the terms of the relevant Units so provide. This clause is subject to clause 36.9.
- 35.4 All meetings of Unit Holders or Convertible Obligation Holders shall be convened and held in accordance with the provisions set out in the First Schedule to this deed, and in the case of meetings of Convertible Obligation Holders, subject to clause 35.8 and with all necessary modifications.
- 35.5 The Unit Holders shall, by means of a Section 18 Resolution passed at a meeting of Unit Holders, have the power to give such directions to the Trustee as they think proper concerning the Trust, being directions that are consistent with the provisions of this deed and the Act.
- 35.6 Where any direction is given to the Trustee pursuant to clause 35.5 in respect of any matter, the Trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Trustee may also at its discretion in accordance with section 18(4) of the Act apply to the High Court for directions in respect of the matter.
- 35.7 A meeting of the Unit Holders in an Interest Group, or an Affected Group or a Relevant Group may be called by the Manager at any time, and shall be called on the written request of holders of Quoted Equity Securities carrying together not less than 5% of the Votes. All the provisions of this deed relating to meetings of Unit Holders apply, with all necessary modifications, to a meeting of an Interest Group, an Affected Group or a Relevant Group, except that:
- (a) the necessary quorum is two or more Unit Holders in the group present in person or by proxy, attorney or authorised representative, or, if there is only one Unit Holder in the group, that Unit Holder present in person or by proxy, attorney or authorised representative;

- (b) if the Manager so elects, one meeting may be held of Unit Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any Unit Holder in the group, present in person or by proxy, attorney or authorised representative, may demand a poll.

35.8 Every meeting summoned pursuant to clause 35.1(b) and any other meeting of Convertible Obligation Holders shall be summoned by sending by post a notice, specifying the time and place of the meeting, to every Convertible Obligation Holder at his last known address not later than 14 days before the date of the proposed meeting. The meeting shall be held under the chairmanship of a person nominated by the Debt Trustee or such other person as may be appointed in that behalf by the Convertible Obligation Holders present at the meeting.

35.9 Convertible Obligation Holders are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to Unit Holders entitled to vote at meetings of Unit Holders but are not entitled to vote at any such meeting provided that, where the Listing Rules or this deed expressly require that any matter relating to the Trust be submitted to Convertible Obligation Holders (or any Class of Convertible Obligation Holders) for approval or authorisation, Convertible Obligation Holders shall, to the maximum extent permitted by the Listing Rules or this deed, vote together as one Class with Unit Holders and holders of other securities in the Trust. This clause is subject to clause 36.9.

36. NOTICES

36.1 Any notice to be given to any Unit Holder shall be in writing and may be given personally, by sending it by post to the registered address of the Unit Holder or, if a Unit Holder has agreed to receive notices by email, by sending it to the email address designated by the Unit Holder. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected on the day following the day of posting. Where a notice is sent by email during a Business Day between 8.30am and 5.30pm, it will be deemed to have been served upon completion of an error-free transmission from the sender's information system. Where a notice is sent other than between 8.30am and 5.30pm on a Business Day by an error-free transmission from the sender's information system it will be deemed to have been served at 8.30am on the next Business Day.

36.1A If any Unit Holder has no registered address within New Zealand and has not supplied to the Manager an address within New Zealand or designated an email address for the giving of notices, but has supplied an address outside New Zealand, then any notice to be given to such Unit Holder shall be posted to such Unit Holder at such address and shall be deemed to have been received by such Unit Holder 24 hours after the time of posting.

36.2 A notice may be given by the Manager to the manager of a mentally disordered person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the Persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any other manner provided for in this section 36 in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

- 36.3 If any Unit Holder has no registered address and has not supplied to the Manager an address or designated an email address for the giving of notices, or if any two notices posted or emailed to a Unit Holder are returned to the Manager on consecutive occasions (or are known by the Manager not to have been successfully transmitted, in the case of emails by reason of the email address designated by the Unit Holder being incorrect or invalid or the Unit Holder's information system for any reason not accepting the email), then, notwithstanding anything contained elsewhere in this deed, until the Unit Holder shall give notice in writing to the Manager of some other address or rectification of the problem causing the unsuccessful transmission, the address of the Unit Holder for all purposes of this deed shall be deemed to be the Office.
- 36.4 Where under the terms of issue of any Convertible Obligations or this deed, the Convertible Obligation Holders are entitled to receive notices from the Manager, such notices may be given to them in the manner provided for in this section 36 as if such persons were Unit Holders.
- 36.5 Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.
- 36.6 Any notice, communication or information required by this deed to be given to the Trustee, the Debt Trustee or the Manager by any of them, shall be in writing and be signed by a duly authorised officer of the party giving the notice.
- 36.7 The Debt Trustee shall be entitled to receive all notices of and other communications relating to any general meeting of the Trust which any Unit Holder is entitled to receive.
- 36.8 Any representative of the Debt Trustee, being a person authorised to act for the purposes of this clause by resolution of the directors of the Debt Trustee, shall be entitled to attend any general meeting of the Trust, and to be heard at any such meeting which he or she attends on any part of the business of the meeting which concerns the Debt Trustee as such or the Convertible Obligation Holders for whom it is trustee.
- 36.9 If and when permitted by the Act and the Listing Rules, information referred to in clauses 28.5, 35.3 and 35.9 is not required to be sent to a Unit Holder, provided the information is made available to Unit Holders electronically in the manner prescribed by the Act or the Listing Rules, and subject to such other conditions as may be prescribed by the Act or Listing Rules.

37. AMENDMENTS TO DEED

- 37.1 The Trustee and the Manager may at any time make any alteration, modification, variation or addition to this deed (by means of a deed executed by the Trustee and the Manager) in any of the following cases:
- (a) if in the opinion of the Trustee it is made to correct a manifest error or is of a formal or technical nature; or
 - (b) if in the opinion of the Trustee it is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Trust or for safeguarding or enhancing the interests of the Trust or Unit Holders or any class thereof; or
 - (c) if it is authorised by an Extraordinary Resolution of Unit Holders; or
 - (d) if in the opinion of the Trustee it is not, or is not likely to become, prejudicial to the interests of the Unit Holders or any Class thereof; or

- (e) to provide for the issue of unpaid or partly paid Units; or
- (f) if in the opinion of the Trustee it is necessary or desirable to obtain or maintain listing of the Units of any Class on any stock exchange.

37.2 The Manager shall, together with the accounts of the Trust Fund for each Financial Year, send to the Persons entitled to receive the accounts a summary of the amendments (if any) to the Trust Deed which have been made since the date of the last such summary.

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

38.1 The Trustee, the Debt Trustee and the Manager, in incurring any debts, liabilities or obligations, or in taking or omitting any other action for or in connection with the affairs of the Trust, are each, and shall each be deemed to be, (in the case of the Trustee and the Manager) acting for and on behalf of the Trust and (in the case of the Debt Trustee) acting as trustee for and on behalf of Convertible Obligation Holders and not in their own respective capacities. Neither the Trustee, the Debt Trustee nor the Manager shall be under any personal liability, nor shall resort be had to their private property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust, but the Trust Fund only shall be liable or subject to levy or execution.

38.2 If contrary to clause 38.1 either the Trustee or the Manager shall be held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Trust or any action taken or omitted in connection with the Trust, then (subject to clause 38.3) the Trustee or the Manager (as the case may be) shall be entitled to indemnity and reimbursement out of the Trust Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined including, without limitation, legal fees and disbursements. The Manager shall, in consultation with the Auditor, determine whether any such amount should be charged against Gross Income or capital.

38.3 The Trustee and the Manager shall each be liable to the Trust Fund for any loss arising out of wilful default or wilful breach of trust but subject thereto neither the Trustee nor the Manager shall be liable to the Trust Fund or to any Unit Holder for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Trust or as a result of acting as Trustee or Manager (as the case may be) under this deed.

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

- (a) all costs, charges, disbursements and expenses incurred in connection with the investigation, negotiation, acquisition, registration, custody, disposal of or other dealing with an Authorised Investment, including, without limitation, commission, bank charges and stamp duty;
- (b) all income tax, capital gains tax, stamp duties, and all other duty, tax or impost properly charged to or payable by the Trustee or Manager (whether by any taxing authority or any other person) in connection with and for the account of the Trust;
- (c) interest on Borrowings, Convertible Obligations, discounts, acceptance underwriting and commitment fees in respect of finance and underwriting facilities;

- (d) costs of postage in respect of all cheques, accounts, certificates, distribution statements, notices, reports and other documents sent to all or any Unit Holders;
- (e) costs of convening and holding any meeting of Unit Holders;
- (f) costs of preparing and printing cheques, accounts, certificates, distribution statements, notices, reports and other documents required to be prepared in connection with the Trust, pursuant to this deed, the rules or requirements of any stock exchange on which the Units are listed or any relevant law;
- (g) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this deed and any supplemental deeds;
- (h) fees and expenses of any valuer, auditor, solicitor, barrister, property manager, agent or consultant, computer expert or other expert from time to time engaged by the Manager or by the Trustee in the discharge of their respective duties and exercise of powers under this deed;
- (i) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Register;
- (j) all costs, charges and expenses incurred in the advertising and promotion of the Trust;
- (k) all costs, charges and expenses incurred in connection with or which are incidental to the application for the listing of the Units on any stock exchange and the costs of the maintenance of such listing; and
- (l) any expense or liability which may be incurred by the Trustee or the Manager (as the case may be) in bringing or defending any action or suit in respect of the Trust or the provisions of this deed.

All such items shall, unless the Manager in consultation with the Auditor determines otherwise, be chargeable against the Gross Income.

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

- 38.5 (a) The Debt Trustee shall be entitled to be reimbursed out of the Trust Fund for all expenses the Debt Trustee incurs in connection with:
- (i) the preparation, execution and registration of this deed;
 - (ii) the exercise by the Debt Trustee of any right, power, duty or privilege conferred by this deed on the Debt Trustee or upon any Convertible Obligation Holder, including the taking of any expert advice deemed necessary or expedient by the Debt Trustee;
 - (iii) any breach or default in the observance or performance by the Manager of any provision of this deed or the terms of any Convertible Obligations;
 - (iv) the convening, and holding and carrying out of any directions or resolutions, of any meeting of Convertible Obligation Holders;

- (v) any application under the trusts and provisions of this deed for its consent to, or approval of, any act or matter.
- (b) The remuneration and other payments payable pursuant to this clause shall continue to be payable until the trusts of this deed shall be finally wound up and whether or not the trusts hereof shall be in the course of administration by or under the direction of the court.
- (c) All expenses incurred and payments made by the Debt Trustee in the lawful exercise of the powers conferred upon it or him by this deed, and all remuneration payable to the Debt Trustee, shall be payable on demand and shall be satisfied before any payment is made to the Convertible Obligation Holders, and until payment shall carry interest at the Interest Rate.

38.6 Without prejudice to the generality of clauses 38.1 to 38.4:

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

- (g) the Trustee shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments, with any Person considered by the Trustee to be of good repute, and the Trustee shall not be responsible for any loss incurred by the Trust Fund as a result of any such documents being held by any such Person.
- 38.7 No provision of clauses 38.1 to 38.6 shall have the effect of exempting the Trustee, the Debt Trustee or Manager or any director or officer of the Trustee, the Debt Trustee or Manager from, or indemnifying any such Person against, any liability for breach of trust where the requisite degree of care and diligence has not been shown, having regard to the provisions of this deed and the powers, authorities and discretions conferred hereby.
- 38.8 The Manager shall use its best endeavours to ensure that the Trust is carried on in a proper and efficient manner.
- 38.9 The Manager shall:
- (a) make available upon demand to the Trustee for inspection the whole of the Manager's books and papers and all books and papers relating to the Trust;
- (b) give to the Trustee such information as the Trustee requires with respect to all matters relating to the Trust or to any business of the Manager, or to any property of the Manager (whether acquired before or after the date of this deed) or otherwise relating to the affairs of the Manager.
- 38.10 (a) Notwithstanding any other provision of this deed, the Manager shall not, without the prior approval of the Trustee, commit to any Specified Transaction (as defined in clause 38.10(b)) on behalf of the Trust.
- (b) For the purposes of clause 38.10(a) "Specified Transaction" means a transaction:
- (i) in which the Manager is directly or indirectly interested (other than in its capacity as Manager of the Trust); and
- (ii) which does not, pursuant to the Listing Rules, require the prior approval of a resolution of Unit Holders.
- 38.11 Subject to clause 38.10, the Manager may on behalf of the Trust engage any Person who is a Related Company of the Manager, or who is otherwise associated with the Manager, to provide services to the Trust (including, without limitation, as a property manager, agent or consultant) provided that the fees to be charged do not exceed then prevailing market rates and are first approved by the Trustee.
- 38.12 Subject to any resolution to the contrary passed at a meeting of Unit Holders duly convened and held, each of the Manager and the Trustee shall use their best endeavours to maintain the listing of the Units on the NZSX.

39. WINDING UP

- 39.1 The Trust shall determine and be wound up upon the occurrence of the earliest of the following events:
- (a) if the Manager certifies in writing that, in the opinion of the Manager, it is in the interests of Unit Holders that the Trust should be wound up;

- (b) if an Extraordinary Resolution of Unit Holders is passed resolving to wind up the Trust;
 - (c) if the office of Trustee becomes vacant, and a new Trustee is not appointed in accordance with clause 24.5 within two months of the vacancy occurring.
- 39.2 The Trustee shall within 14 days after the occurrence of any event referred to in clause 39.1, give to each Unit Holder notice of the occurrence of that event and of the intention of the Trustee to distribute the Trust Fund.
- 39.3 The Trustee shall as soon as practicable after the occurrence of an event referred to in clause 39.1:
- (a) sell, call in and convert into Cash the whole of the Trust Fund;
 - (b) pay out, discharge, or otherwise make proper provision for all liabilities of the Trust Fund (including any contingent liabilities);
 - (c) subject to clause 13.12, distribute all undistributed Income then existing to the Unit Holders in accordance with their rights to such Income; and
 - (d) subject to clause 13.12, distribute the remainder of the Trust Fund (less all costs and expenses incurred by the Trustee or the Manager in respect of the winding up of the Trust) amongst the Unit Holders in proportion to the numbers of Units held by them, subject to the particular rights of any Unit Holders to participate in any such distribution including in particular the rights attaching to unpaid or partly paid Units and other Units with special rights.
- 39.4 For the purposes of the Perpetuities Act 1964, the perpetuities period is the period of 80 years from the day prior to the date of the Trust Deed. Notwithstanding any other provision in this deed, no units may be issued or redeemed after the eightieth anniversary of the day preceding the date of the Trust Deed, unless that issue or redemption would not be breaching any rule of law or equity (including in particular the rule against perpetuities). For the avoidance of doubt, the reference to a perpetuity period in this clause 39.4 does not require that the Trust be wound up at the end of that period.

40. MANAGEMENT OF THE TRUST

- 40.1 The Trust shall be managed by the Manager (with full power to delegate to its officers and employees all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion) which hereby agrees to carry out and perform the duties and obligations on its part contained in this deed during the period of the Trust. Nothing contained in this deed shall be construed to prevent the Manager and the Trustee in conjunction or the Manager or the Trustee separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this deed.
- 40.2 Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing its duties and obligations, and after consultation with the Trustee:
- (a) by Power of Attorney appoint any Person to be the attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the

attorney or agent to sub-delegate any such powers, authorities or discretions;
and

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

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

41. GOVERNING LAW

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

42. LIMITATION OF LIABILITY

42.1 Notwithstanding anything contained in this deed (but subject to clause 43.4) or any rule of law no Unit Holder shall be or become personally liable in respect of any debt or liability of the Trust, and:

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

43. TAXATION LIABILITY

43.1 In this section:

"**Relevant Person**" means a Unit Holder or Convertible Obligation Holder (as applicable) and the personal representatives or successors of a Unit Holder or Convertible Obligation Holder (as applicable);

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

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

- (a) any tax payable by or on account of that Person or in respect of that Person's Units or Convertible Obligations (as applicable);
- (b) any withholding tax or similar amounts (including without limitation, approved issuer levy) required to be withheld or deducted by the Manager, the Trustee or the Debt Trustee in respect of a Unit Holder or Convertible Obligation Holder (as applicable).

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

43.3 Amounts deducted under clause 43.2 shall be applied in:

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

Where any such deduction has been made and applied in accordance with this clause, and the balance of the amount payable to or to be applied in respect of the Relevant Person has been so paid or applied, the full amount payable to or to be applied in respect of such Relevant Person shall be deemed to have been duly paid and satisfied by the Trust.

43.4 Each Relevant Person shall indemnify the Trustee, the Debt Trustee and the Manager in respect of any Taxation Amount paid or payable by the Manager, the Trustee or the Debt Trustee in respect of that Person.

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

44. COUNTERPARTS

44.1 This deed may be executed in any number of counterparts (including facsimile copies) and the counterparts together shall constitute a binding and enforceable deed.

EXECUTION

This Deed of Variation and Restatement was executed on behalf of Kiwi Income Properties Limited and New Zealand Permanent Trustees Limited on 19 August 2009.

FIRST SCHEDULE

Meetings of Unit Holders

VENUE OF MEETINGS

1. Meetings shall be held in such place and at such time as the Manager may determine.

NOTICE OF MEETINGS

2. (a) Notice of every meeting shall be given in the manner provided in the Trust Deed to:
 - (i) every Unit Holder who has supplied to the Manager an address for the giving of notices to him; and
 - (ii) every Person upon whom the ownership of any Unit devolves by reason of such Person being a legal personal representative or an assignee in bankruptcy of a Unit Holder where the Unit Holder would otherwise be entitled to receive notice,and all such Persons shall be entitled to attend meetings of Unit Holders.
- (b) A copy of the notice shall be sent to the Trustee.
- (c) Fourteen days' notice at least of every meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice shall specify the place, day and hour of the meeting and (except as provided in clause 35.2(d)) the general nature of the business to be transacted but it shall not be necessary to specify in the notice the terms of the resolutions to be proposed.
- (d) The accidental omission to give notice to, or the non-receipt of notice by, any person entitled thereto shall not invalidate proceedings at any meeting.
- (e) So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

QUORUM

3. (a) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (b) The quorum for meetings shall be five or more Unit Holders present in person or by proxy, attorney or authorised representative holding not less than 10% of the number of Units for the time being in existence.
- (c) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of Unit Holders, shall be dissolved. In any other case, it shall stand adjourned to such day and time not being less than seven days thereafter, and to such place as may be appointed by the chairman. At such adjourned meeting the Unit Holders present in person or by proxy, attorney or authorised representative and entitled to vote, whatever the number of Units held by them, shall be a quorum.

- (d) Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Unit Holders present at the adjourned meeting, whatever their number and whatever the number of Units held by them, shall form a quorum.

TRUSTEE AND MANAGER MAY ATTEND AND SPEAK

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

CHAIRMAN

5. A person nominated in writing by the Trustee shall preside at every meeting.

ADJOURNMENT OF MEETINGS

6. (a) The Chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

VOTING RIGHTS

7. (a) The only Persons entitled to vote in person, by proxy, attorney or by authorised representative shall be the Unit Holders registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- (b) Subject to any rights or restrictions for the time being attached to any Class or Classes of Units:
- (i) on a vote by voices or a show of hands, every Unit Holder shall have one vote; and
- (ii) on a poll every Unit Holder shall have:
- (aa) in respect of each fully paid Unit held by such Unit Holder, one vote; and
- (bb) in respect of each Unit which is not fully paid held by such Unit Holder, a fraction of the Vote or Votes which would be exercisable if such Unit were fully paid, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call),

provided that for so long as any Units are listed on NZSX, no Unit Holder shall be entitled to vote in favour of any resolution in respect of which such Person is prohibited from voting by the Listing Rules, and that a Unit that is not fully paid is not of the same Class as a fully paid Unit.

- (c) A Person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder and a donee of an enduring power of attorney complying with that Act, may vote in respect of any Units that are subject to the control of that Person, manager or attorney on a show of hands or on a poll, and on a poll may vote by proxy.

PROXIES

8. (a) Every notice convening a meeting of the Trust shall state that a Unit Holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not be a Unit Holder. The Manager shall send a form of proxy to every Unit Holder entitled to attend and vote at a meeting of the Trust, with the notice convening the meeting.
- (b) Votes may be given either personally, by proxy, attorney and also in the case of a corporation by an authorised representative. Subject to any applicable Listing Rules, an instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed.
- (c) Subject to any applicable Listing Rules, whenever the chairman of the meeting or an officer of the Trustee is appointed a proxy for a Unit Holder, and the Unit Holder has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which the Unit Holder's proxy is to vote upon any resolution coming before the meeting, the Unit Holder's vote shall be used in favour of the resolution.
- (d) The instrument of proxy shall be:
- (i) in writing under the hand of the appointor or of the Unit Holder's attorney duly authorised in writing or if the appointor is a corporation either under seal or under the hand of an officer or attorney so authorised; or
 - (ii) in such other form and authenticated in such other manner as the Manager may prescribe from time to time.
- (e) A Person appointed to act as a proxy need not be a Unit Holder.
- (f) The instrument of proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a Notary Public or in such manner as the Manager shall approve shall, at the choice of the person submitting such documents, be:
- (i) deposited at such place as the Manager may in the notice convening the meeting appoint; or
 - (ii) transmitted by such electronic means to such electronic address as the Manager may in the notice designate,
- (but if no such place is appointed or electronic address is designated, then at the Office) so as to be received in any case not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote. In default the instrument of proxy shall not be treated as valid provided that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.

- (g) An instrument of proxy shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.
- (h) An instrument or proxy in favour of the chairman of the meeting or the chairman, (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the instrument of proxy is used (whether on adjournment or not), the lawful proxy of the appointor.
- (i) A person appointed as a proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Unit Holder concerned.
- (j) A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the instrument of proxy or power of attorney or of the authority under which the instrument of proxy was executed or the transfer of the Units in respect of which the vote is given if no intimation in writing of such death, insanity, revocation or transfer is received by the Manager at the Office before the commencement of the meeting or adjourned meeting at which the instrument of proxy or power of attorney is used.

POWER OF ATTORNEY

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

REPRESENTATIVES OF A COMPANY

- 10. (a) A person authorised pursuant to a resolution of the directors or other governing body of a corporation which is a Unit Holder to act for it as its representative at any meeting shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Unit Holder. A person so authorised is in this schedule referred to as an "authorised representative".
- (b) An authorised representative shall be entitled to produce evidence of such representative's appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting, or for the taking of a poll, at which such representative proposes to vote.

PROCEDURE

11. (a) A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Trustee or any representative of the Trustee or by one or more Unit Holders holding or representing not less than 5% of the number of Units in existence. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) The demand for a poll may be withdrawn. If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Auditor, or if the Auditor is unable or unwilling to act, then such persons as the chairman nominates, shall act as scrutineers for the purposes of the poll. The chairman shall be entitled to declare the result of the poll upon receipt of a certificate from the Auditor setting out the maximum number of votes which could be cast at the meeting, and upon receipt of a notice from the scrutineers that, in the light of the Auditor's certificate, sufficient votes to determine the result of the resolution have been counted.
- (c) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Unit Holder or on behalf of Unit Holders.
- (d) A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 14 days from the date of the meeting) and place as the chairman may direct. No notice need be given of a poll not taken immediately.
- (e) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (f) On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all that Person's votes or cast all the votes the Person uses in the same way.
- (g) In the case of joint Unit Holders, the vote of the senior who tenders a vote whether in person, by proxy, attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Unit Holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

RESOLUTIONS

12. (a) The expression "Extraordinary Resolution" means a resolution passed at a meeting duly convened and held in accordance with the provisions of this schedule and carried by a majority of not less than 75% of the Persons voting thereat on a show of hands or if a poll is duly demanded, by a majority consisting of not less than 75% of the votes given on such poll.

- (b) The expression "Section 18 Resolution" means a resolution which meets the requirements of section 18 of the Act.
- (c) Where a particular majority is not required by this deed or by law, any matter arising at any meeting of Unit Holders duly convened and held shall be determined by a simple majority of the Persons voting thereat on a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 50% plus one of the votes given on such poll.
- (d) Subject to section 9 of this deed a meeting of Unit Holders shall have the following powers exercisable by Extraordinary Resolution:
 - (i) power to sanction the exchange of Units for, or the conversion of Units into shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed;
 - (ii) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders howsoever such rights shall arise;
 - (iii) subject to paragraph 12(f) of this schedule, power to assent to any alteration, modification of, variation, or addition to the provisions contained in this deed, or the conditions attaching to the Units and to authorise the Manager and Trustee to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
 - (iv) power to give any sanction, assent, release or waiver of any breach or default by the Manager, the Trustee or the Debt Trustee under any of the provisions of this deed;
 - (v) subject to the Act and the Securities Act (where applicable), power to discharge, release or exonerate the Manager, the Trustee or the Debt Trustee from all liability in respect of any act of commission or omission for which the Manager, the Trustee or the Debt Trustee has or may become responsible under this deed;
 - (vi) power to give directions to the Trustee as to the appointment of a new Manager in accordance with clause 26.7; and
 - (vii) power to sanction the exchange of Units for, or the conversion of Units into, units or interests in any other unit trust or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Extraordinary Resolution.
- (e) A meeting of the Unit Holders of any Class of Units shall have power by Extraordinary Resolution to vary the rights attaching to Units of that Class provided that such variation does not adversely affect the rights attaching to any other Class of Units, and provided further that any such meeting shall be convened and variation effected in accordance with the applicable provisions of the Listing Rules and this deed.
- (f) Unless the Manager is in material breach of its obligations under the Trust Deed, or has failed to carry out its duties to the satisfaction of the Trustee, the provisions of section 25, clause 26.3 and 26.4 and sections 38 and 40 of this deed and this paragraph 12(f) may not be altered without the prior written consent of the Manager and the Trustee.

EXTRAORDINARY RESOLUTION BINDS ALL UNIT HOLDERS

13. An Extraordinary Resolution passed at a meeting of the Unit Holders duly convened and held in accordance with this schedule shall be binding upon all Unit Holders whether present or not at the meeting and each of the Unit Holders, the Trustee and the Manager shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the Manager, the Trustee and the Unit Holders be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution. A resolution which affects a particular Unit Holder or a Class of Unit Holders only as opposed to the rights of the Unit Holders generally shall not be binding on such Unit Holder or Class of Unit Holders unless such Unit Holder agrees or (if more than one) a majority in number representing 75% in value of such Unit Holders agree to be bound by the terms of such Resolution.

MINUTES TO BE KEPT

14. Minutes of all resolutions and proceedings at every meeting shall be made by the Trustee, or if the Trustee shall not be present at any meeting by some person appointed by the chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Trustee. Any such minutes, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next meeting of Unit Holders, shall be prima facie evidence of the matters therein stated. Until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings to have been duly passed and had.

UNIT HOLDER PROPOSALS

15. (a) A Unit Holder may give written notice to the Manager of a matter the Unit Holder proposes to raise for discussion or resolution at the next meeting of Unit Holders convened under clause 35.2(a) and at which the Unit Holder is entitled to Vote.
- (b) If the written notice given under sub-paragraph (a) is received by the Manager more than 25 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Trust, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting.
- (c) If the written notice given under sub-paragraph (a) is received by the Manager not less than 10 Business Days and not more than 25 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting.
- (d) If the written notice given under sub-paragraph (a) is received by the Manager less than 10 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager need only give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting if it considers that it is practicable to do so, and in that case, it shall do so, but at the expense of the Unit Holder.

- (e) If the proposal includes a resolution, or the Manager intends that Unit Holders may vote on the proposal by proxy or by postal vote, the Manager must give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement (which together with the text of the resolution does not exceed 1,000 words) prepared by the proposing Unit Holder in support of the proposal, together with the name and address of the proposing Unit Holder. The Manager may include a response from either, or both of, the Manager and the Trustee.
- (f) The Manager is not required to include in or with a notice given by the Manager:
 - (i) any part of a statement prepared by a Unit Holder that the Manager and the Trustee consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (ii) any part of a proposal or resolution prepared by a Unit Holder that the Manager and the Trustee consider to be defamatory (within the meaning of the Defamation Act 1992).
- (g) Where the costs of giving notice of the Unit Holder proposal and the text of any proposed resolution are required to be met by the proposing Unit Holder:
 - (i) the proposing Unit Holder must as a precondition to the Manager's obligations under this paragraph 15, on receiving written notice from the Manager to do so, deposit with the Trustee such amount as the Manager (with the prior approval of the Trustee) considers to be a reasonable pre-estimate of the costs which may be incurred by the Manager and the Trustee in relation to giving notice of the Unit Holder proposal and the text of any proposed resolution; and
 - (ii) the Manager shall, promptly following the meeting, provide the Unit Holder with a statement of the actual costs incurred by the Manager and the Trustee in relation to giving notice of the Unit Holder proposal and the text of any proposed resolution and the requesting Unit Holder shall promptly pay all such costs. The amount deposited pursuant to this sub-paragraph (g) shall be set off against the actual costs incurred, but without prejudice to the liability of the Unit Holder for any deficit after such set-off. If the amount deposited exceeds the actual costs incurred, then any such surplus shall be promptly refunded to the original payer(s). In the absence of a manifest error, any statement from the Manager (which has been approved by the Trustee) setting out the actual costs incurred shall be conclusive evidence as to the relevant costs.
- (h) Nothing in this paragraph 15 shall apply to Convertible Obligation Holders.