

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme 360 Capital Office Fund (TOF)

ACN/ARSN ARSN 106 453 196

1. Details of substantial holder (1)

Name Centuria Capital Limited ACN 095 454 336 (**Centuria**), Centuria Investment Holdings Pty Limited ACN 116 455 862 in its capacity as trustee of Centuria Capital No. 2 Office Fund (**CIH**), Centuria Property Funds Limited ACN 086 553 639 in its capacity as responsible entity of Centuria Metropolitan REIT No. 1 ARSN 124 364 718 (**CPF**); and each subsidiary of Centuria as set out in Annexure A (**Centuria Group**)

ACN/ARSN (if applicable)

The holder became a substantial holder on 23 / 11 / 2016

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary units	21,071,706	21,071,706	28.76% (based on 73,279,751 units on issue)

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Centuria	Relevant interest under section 671B(7)(b) of the <i>Corporations Act 2001</i> (Act) as a result of having entered into the Share Sale Agreement (see Annexure B) pursuant to which Centuria would have a relevant interest if that agreement is performed. (As Centuria is not, and will not be, the registered holder of the units, its ability to vote and dispose of these units is qualified accordingly.)	21,071,706 ordinary units
CIH	Relevant interest under section 671B(7)(b) of the Act as a result of having agreed with Centuria to enter into the Unit Sale Deed – TOF (see Annexure C) at 'Completion' of the Share Sale Agreement pursuant to which CIH would have a relevant interest if that deed is performed. If both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' (as each is defined in the Unit Sale Deed – TOF) are satisfied, upon Completion of the Unit Sale Deed – TOF and the transfer of the 14,648,622 TOF units to CIH pursuant to that deed, CIH will have a relevant interest pursuant to section 608(1)(a) of the Act. (As CIH will not be the registered holder of the TOF units until Completion of the Unit Sale Deed – TOF (and subject to the satisfaction of the two conditions described above), its ability to vote and dispose of these units is qualified accordingly until that time.)	14,648,622 ordinary units

CPF	Relevant interest under section 671B(7)(b) of the Act as a result of having agreed with Centuria to enter into the Unit Sale Deed – TOF (see Annexure C) at 'Completion' of the Share Sale Agreement pursuant to which CPF would have a relevant interest if that deed is performed. If the 'TOF Unit Acquisition Condition' but not the 'Placement Condition' (as each is defined in the Unit Sale Deed – TOF) is satisfied, upon Completion of the Unit Sale Deed – TOF and the transfer of the 6,423,084 TOF units to CPF pursuant to that deed, CPF will have a relevant interest pursuant to section 608(1)(a) of the Act. (As CPF will not be the registered holder of the units until Completion of the Unit Sale Deed – TOF (and subject to the satisfaction of the condition described above), its ability to vote and dispose of these units is qualified accordingly until that time.)	6,423,084 ordinary units
Each member of the Centuria Group	Each member is an associate of Centuria and accordingly, has a relevant interest in the same TOF units as CIH and SPF under section 608(3)(a) of the Act. (As each member is not, and will not be, the registered holder of the units, its ability to vote and dispose of these units is qualified accordingly.)	21,071,706 ordinary units

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	2,500,000 ordinary units
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185 as trustee for the 360 Capital Investment Trust	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	16,675,762 ordinary units
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Fund	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	1,808,737 ordinary units
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	18,926 ordinary units
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 2	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	31,561 ordinary units
Centuria, CIH, CPF and each member of the Centuria Group	360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 3	CIH and CPF (upon Completion of the Unit Sale Deed – TOF, assuming both the 'TOF Unit Acquisition Condition' and the 'Placement Condition' are satisfied)	36,720 ordinary units

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Centuria, CIH, CPF and each member of the Centuria Group	23/11/2016	Nil. The purchase price under the Unit Sale Deed – TOF is \$2.25 plus the 'Agreed Distribution' per TOF unit		21,071,706 ordinary units

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

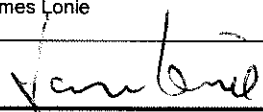
Name and ACN/ARSN (if applicable)	Nature of association
Each member of the Centuria Group	Each member of the Centuria Group is a wholly-owned subsidiary of Centuria.

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Centuria and each member of the Centuria Group	Level 39, 100 Miller Street, North Sydney, New South Wales, 2060

Signature

print name	James Lonie	capacity	Company secretary
sign here		date	25 / 11 / 2016

DIRECTIONS

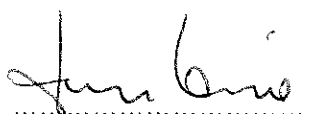
- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."

- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
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Annexure "A"

This is Annexure "A" of 1 page referred to in the Form 603 (Notice of initial substantial holder), signed by me and dated 25 November 2016.



James Lonie
Company Secretary

Entity	ACN
Centuria Life Limited	087 649 054
Centuria Capital Private Limited	N/A
Over Fifty Funds Management Pty Ltd	103 265 649
Over Fifty Seniors Equity Release Pty Ltd	095 362 388
Over Fifty Capital Pty Ltd	007 108 509
Over Fifty Investments Pty Ltd	100 169 186
Centuria Employee Share Fund Pty Ltd	148 816 666
Centuria Property Funds Limited	086 553 639
Centuria Funds Management Limited	607 153 588
Centuria Investment Holdings Pty Limited	116 455 862
Centuria Property Services Pty Ltd	092 526 924
Centuria Strategic Property Limited	103 003 603
Centuria Finance Pty Ltd	095 179 356
Strategic Property Holdings No. 7 Pty Limited	109 196 189
Centuria Investment Services Pty Limited	095 364 917
Belmont Road Management Pty Limited	603 347 815
Belmont Road Development Pty Limited	602 287 276

Annexure “B”

This is Annexure "B" of 146 pages referred to in the Form 603 (Notice of initial substantial holder), signed by me and dated 25 November 2016.

Jan 6 1911

James Lonie

Company Secretary

Execution version

Share sale agreement

360 Capital Group Limited
Seller

Centuria Capital Limited
Buyer

Centuria Funds Management Limited in its capacity as responsible entity of
the Centuria Capital Fund
Guarantor

Clayton Utz
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 15387/15435/0000

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Share sale agreement

Date

Parties

360 Capital Group Limited ABN 18 113 569 136 of Level 8, 56 Pitt Street, Sydney NSW 2000 (**Seller**)

Centuria Capital Limited ABN 22 095 454 336 of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (**Buyer**)

Centuria Funds Management Limited ACN 607 153 588 in its capacity as responsible entity of the Centuria Capital Fund of Level 8, 56 Pitt Street, Sydney NSW 2000 (**Guarantor**)

Background

- A. 360CPL owns the Shares, being all of the issued shares of the Company.
- B. The Seller wishes to procure 360CPL to sell the Shares and the Buyer wishes to buy the Shares on the terms and conditions of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

360 Directors means each of the directors of the Seller.

360 GST Group means the GST group that includes 360CPL as the representative member.

360CFML means 360 Capital FM Limited ABN 15 090 664 396.

360CPL means 360 Capital Property Limited ABN 46 146 484 433.

Accounting Standards means, at any time:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports;
- (b) the accounting standards approved under the Corporations Act; and
- (c) generally accepted accounting principles, policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in paragraph (b).

Acquisition Date means 16 December 2010.

Actual Net Asset Amount means the aggregate amount of the assets less the aggregate amount of the liabilities of the Target Entities as at Completion as shown in the Completion Balance Sheet.

Allotment Date has the meaning given in the Underwriting Agreement.

ASIC means the Australian Securities and Investments Commission.

Asset means the assets listed in Schedule 7.

Associate has the meaning set out in section 12 of the Corporations Act.

ASX means the Australian Securities Exchange or ASX Limited (ACN 008 624 691) (as the context requires).

Authorisation means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Regulatory Authority or any other person.

Base Balance Sheet means the unaudited statement of financial position of the Target Entities as set out in Part 1 of Schedule 3.

Base Net Asset Amount means \$10,000,000.

Business means the property funds management business conducted by the Trustee Target Entities.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

Buyer Group Member means the Buyer and each Related Entity of the Buyer and after Completion includes the Target Entities.

Buyer Warranties means the warranties set out in Schedule 2.

Claim means any claim, demand or cause of action arising under this agreement in relation to:

- (a) any provision of this agreement;
- (b) the Shares or their sale; or
- (c) any other matter connected with the Trustee Target Entities,

other than a Tax Claim.

Claim Notice has the meaning given in clause 13.2.

CMA means Centuria Metropolitan REIT No.1 ARSN 124 364 718.

Centuria means the Buyer and the Guarantor.

Company means 360 Capital Investment Management Limited ACN 133 363 185.

Competing Proposal means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 19.9% or more of the stapled securities in TGP or of the share capital of any material Subsidiary of the Seller;
- (b) acquiring Control of the Seller or acquiring any shares in any Target Entity;
- (c) other than as a result of directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, some or all of the shares in the Seller, directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of the Seller's business or assets or the business or assets of a Target Entity;
- (d) otherwise directly or indirectly acquiring or merging with the Seller or a Target Entity;
- (e) requiring the Seller to abandon, or otherwise not to proceed with, the Transaction or which proposal, agreement, arrangement or transaction would otherwise result in the Transaction not proceeding; or
- (f) undertaking a Relevant Competing Proposal,

whether by way of takeover bid, trust scheme, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Completion means the completion of the sale and purchase of the Shares in accordance with clause 6.

Completion Balance Sheet means the statement of financial position prepared and finalised in accordance with clause 7.

Completion Date means the date on which Completion occurs.

Condition means each condition specified in clause 2.1.

Confidential Information means:

- (a) all information relating to the operations or affairs of the Trustee Target Entities including all financial or accounting information, all customer names and lists, terms and conditions of supply, sales records, marketing analysis and research and reports and other marketing information and all trade secrets, know how, operating procedures and technical information; and
- (b) all other information treated by any Trustee Target Entity as confidential or capable of being protected at law or equity as confidential information or the disclosure of which might cause loss or damage to or otherwise adversely affect a Trustee Target Entity,

in whatever form and in each case including information that has been disclosed by the Seller or a Trustee Target Entity or their respective Representatives under the terms of a confidentiality agreement.

Consolidated Group has the meaning given in the Tax Act.

Control has the meaning given in section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Cost means any cost, expense, charge, liability or disbursement.

Defaulting Party has the meaning given in clause 6.5.

Defence Costs means costs, expenses or other payments:

- (a) that were incurred by a Buyer Group Member in its personal capacity or by Centuria Investment Holdings Pty Limited as trustee of Centuria Capital No. 2 Office Fund or Centuria Property Funds Limited as responsible entity of CMA;
- (b) in respect of which the relevant Buyer Group Member is not entitled to recover or be indemnified out of the assets of a fund or trust other than Centuria Capital No. 2 Office Fund;
- (c) were incurred on or after the date on which the relevant Buyer Group Member became aware of the TOF Acquisition Proposal;
- (d) that are in the nature of:
 - (i) fees of third party experts, consultants and advisors such as lawyers, accountants and financial advisers; or
 - (ii) monies payable to TOF unitholders, including under the Scheme Proposal or a takeover bid for TOF; and
- (e) that were directly incurred by the relevant Buyer Group Member in connection with preventing, or seeking to prevent, a TOF Acquisition Proposal from completing.

Draft Completion Balance Sheet has the meaning given in clause 7.1.

Due Diligence Materials means:

- (a) the written information and documents provided to the Buyer, John McBain, Simon Holt, Nicolas Blake, Nicolas Collishaw, Victor Georos, Jason Huljich, Fiona Smedley, James Lonie, Rowan McDonald, Trent Baxter, Gavin Sultana, Melissa Almasi or Alice Moore by the Seller, the Target Entities and their respective Representatives before the date of this agreement; and
- (b) the written questions raised by the Buyer, John McBain, Simon Holt, Nicolas Blake, Nicolas Collishaw, Victor Georos, Jason Huljich, Fiona Smedley, James Lonie, Rowan McDonald, Trent Baxter, Gavin Sultana, Melissa Almasi or Alice Moore in the due diligence process and the written responses given to those questions by the Seller, the Target Entities and their respective Representatives before the date of this agreement.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

Employee means each employee of a Seller Group Member as at the date of this agreement with the exception of the following persons:

- (a) Mr Tony Pitt;
- (b) Mr Ben James;
- (c) Mr Glenn Butterworth;
- (d) Mr James Storey; and

- (e) Ms Ainslie McFarland.

Employee Entitlements means all entitlements to long service leave and personal/carer's leave of Transferring Employees accrued as at Completion but excluding entitlements to annual leave.

Encumbrance means:

- (a) a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement; or
- (b) any other similar arrangement giving any interest in or power over any interest in real or personal property whether created or otherwise arising by contract, at law, in equity, through a preferential or adverse right or in connection with any claim in favour of any person, whether registered or unregistered, including any Security Interest,

by way of, or having similar commercial effect to, security for the payment of a debt or other monetary obligation or the performance of any other obligation, and includes:

- (c) any agreement to grant or create an interest or power described in paragraph (a) of this definition; and
- (d) a Security Interest.

End Date means 23 January 2017 or any other date agreed in writing between the Seller and the Buyer.

Enterprise Agreement has the meaning given in section 12 of the Fair Work Act 2009 (Cth).

Entity has the meaning given in section 64 of the Corporations Act.

EWIC Agreements means the agreements in place as at the date of this agreement between the various Funds and East West International Capital Pty Ltd ACN 121 769 453 in connection with the financing arrangements pertaining to the Funds.

Exclusivity Period means the period from and including the date of this agreement to the earlier of:

- (a) the Completion Date;
- (b) the date of termination of this agreement; and
- (c) the End Date.

Exit Fees means any fee owed or which at any time becomes owing to a Trustee Target Entity.

Exit Payment means the payment to be made by each Target Entity to permit each Target Entity to leave the Seller Consolidated Group on Completion clear of any Group Liability pursuant to section 721-35 of the Tax Act calculated or estimated in accordance with the principles set out in the Tax Sharing Agreement.

Fund means each of the following managed investment schemes:

- (a) TIX;
- (b) TOF;

- (c) 360 Capital 441 Murray Street Property Trust ARSN 097 139 207;
- (d) 360 Capital Havelock House Property Trust ARSN 100 593 548;
- (e) 360 Capital 111 St Georges Terrace Property Trust ARSN 098 126 660; and
- (f) 360 Capital Retail Fund No. 1 ARSN 601 486 668.

Fund Accounts means, in respect of a Fund, the accounts for the Fund for the year ending 30 June 2016.

General Security Deed means the general security deed granted by Centuria Investment Holdings Pty Limited as trustee for the Centuria Capital No.2 Industrial Fund on or about the date of this agreement to 360 Capital Custodian No. 2 Pty Ltd ACN 103 076 713 as trustee for the 360 Capital Finance Trust (which includes a fixed charge over the 33,148,945 TIX units the subject of the TIX Unit Sale Agreement).

Group Liability has the meaning given in section 721-10 of the Tax Act.

GST has the meaning given in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Group has the meaning given to that term in the GST Act.

Guarantee means any guarantee, bond, security deposit, letter of credit or suretyship or any other obligation to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of, obligation of, liability of or the insolvency of any other person.

Head Company has the meaning given in section 995-1 of the Tax Act.

Hostile Proposal means:

- (a) subject to paragraph (b), any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):
 - (i) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, 20% or more of the securities in a Fund listed on the ASX; or
 - (ii) becoming the responsible entity of a Fund listed on the ASX,
 (a Relevant Listed Transaction) but
- (b) excludes:
 - (i) any Relevant Listed Transaction which a Seller Group Member or any of their respective Associates or Representatives has:
 - A. solicited, invited or initiated (including by the provision of non-public information to any Third Party), any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Relevant Listed Transaction or communicated to any

person an intention to do anything referred to in this paragraph A;

- B. participated in or continued any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Relevant Listed Transaction or participated in or continued any negotiations or discussions with respect to any actual, proposed or potential Relevant Listed Transaction;
- C. negotiated, accepted or entered into, or offered or agreed to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Relevant Listed Transaction;
- D. disclosed or otherwise provided any non-public information about the business or affairs of a Fund that is listed on ASX to a Third Party (other than a Regulatory Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Relevant Listed Transaction (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of a Fund that is listed on ASX); or
- E. communicated to any person an intention to do anything referred to in paragraphs B. to D.

Indemnified Losses means, in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

Independent Expert means any independent expert in respect of the Transaction appointed by the Seller.

Independent Expert's Report means the initial independent expert's report prepared by the Independent Expert in connection with the Transaction.

Initial Purchase Price has the meaning given in clause 4.1.

Last Accounts means the audited financial report of the Target Entities for the financial year ended on 30 June 2016.

Loan Agreement means the agreement titled 'loan agreement' in the agreed form between 360 Capital Custodian No. 2 Pty Ltd ACN 103 076 713 as trustee for the 360 Capital Finance Trust, Centuria Funds Management Limited as responsible entity for the Centuria Capital Fund, Centuria Investment Holdings Pty Limited as trustee for the Centuria Capital No.2 Industrial Fund and the Buyer pursuant to which 360 Capital Custodian No. 2 Pty Ltd ACN 103 076 713 as trustee for the 360 Capital Finance Trust will lend \$50,000,000 to Centuria Funds Management Limited as responsible entity for the Centuria Capital Fund.

Loan Event of Default has the meaning given to the term 'Event of Default' in the Loan Agreement.

Material Contract means any agreement or arrangement to which a Target Entity has entered into in its personal capacity that:

- (a) requires or may require payments to or by the Target Entity in excess of \$500,000.00 in aggregate; or
- (b) cannot be performed in full within 12 months from the date it was entered into or terminated by the Target Entity on 1 month's notice or less.

Modern Award has the meaning given in section 12 of the Fair Work Act 2009 (Cth).

Non-Defaulting Party has the meaning given in clause 6.5.

Notes means the notes issued by the Company as responsible entity of the 360 Capital Investment Trust pursuant to the information memorandum dated 17 September 2014.

Notes Payment has the meaning given in clause 6.2(b).

Noteholder Consent means all necessary approvals to enable the repurchase or redemption of the Notes on such terms as the Seller reasonably determines.

Obligations means all the liabilities and obligations of the Buyer to the Seller under or by reason of this agreement and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) arise from the making of any advance or loan on or before the date of this agreement or from any future advances or loans;
- (d) are in existence before or come into existence on or after the date of this agreement;
- (e) relate to the payment of money or the performance or omission of any act;
- (f) sound in damages only;
- (g) accrue as a result of any default of this agreement; or
- (h) would exist but for an event of insolvency affecting any person,

and irrespective of:

- (i) whether the Buyer is liable or obligated solely, jointly or jointly and severally with another person;
- (j) the circumstances in which the Seller comes to be owed each liability or obligation, including any assignment of any liability or obligation; or
- (k) the capacity in which the Buyer and the Seller comes to owe or to be owed that liability or obligation.

Offer has the meaning given in the Underwriting Agreement.

Offer Securities has the meaning given in the Underwriting Agreement.

Permitted Encumbrance means:

- (a) the PPS Register Security Interests with the following Registration Numbers:
- (i) 201112230852952;
 - (ii) 201112290098693;
 - (iii) 201112300013927;
 - (iv) 201201140052620;
 - (v) 201211160055875;
 - (vi) 201306140083696;
 - (vii) 201308090009308;
 - (viii) 201308280015417;
 - (ix) 201310090063360;
 - (x) 201404290035897;
 - (xi) 201602120079979;
 - (xii) 201404290036245;
 - (xiii) 201404290036127;
 - (xiv) 201404290035222;
 - (xv) 201404290035976;
 - (xvi) 201404290032834; and
 - (xvii) 201203280098410;
- (b) every lien arising by operation of law securing the unpaid balance of purchase money for property acquired in the ordinary course of ordinary business under an instalment contract on the supplier's standard terms where such unpaid balance is not yet due;
- (c) every retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of ordinary business under an instalment contract on the supplier's standard terms where such unpaid balance is not yet due;
- (d) any Encumbrance pertaining to a Trustee Target Entity solely in its capacity as trustee, custodian or responsible entity of a Fund; and
- (e) every security interest that is of a kind described in section 12(3)(b) or 12(3)(c) of the PPSA that is not a security interest within the meaning of section 12(a) of the PPSA.

Power means any right, power, authority, discretion, remedy or privilege.

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchase Price means:

- (a) the Initial Purchase Price payable under clause 4.1 at Completion;
- (b) plus any amount payable after Completion under clause 4.2(a) or less any amount payable after Completion under clause 4.2(b) (as applicable); and
- (c) as otherwise adjusted in accordance with this agreement.

Recipient has the meaning given in clause 23.3.

Records means all originals and copies of all books, records, reports, correspondence, files, manuals and other documents and information created by, owned by, or relating to the Target Entities or any Fund or any Sub-Trust, whether in printed, electronic or any other form with respect to the period prior to Completion and including all:

- (a) statutory books and registers, minute books, books of account, trading and financial records, employee records, tax returns and related correspondence;
- (b) customer lists, supplier lists, price lists, pricing models and sales and marketing materials;
- (c) title deeds and other documents of title; and
- (d) originals and copies of all contracts and Authorisations.

Regulatory Authority means:

- (a) any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian; or
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Reimbursement Fee means \$2,300,000 (exclusive of GST).

Related Bodies Corporate has the meaning set out in section 50 of the Corporations Act.

Related Entity of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act;
- (b) in respect of clause 25 only, a person acting in concert with that corporation or with a related body corporate of that corporation; and
- (c) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (a), or, if paragraph (b) applies, any person referred to in paragraph (b), directly or indirectly:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

Related Party has the meaning set out in section 228 of the Corporations Act.

Released Encumbrances means all Encumbrances relating to the Shares or the Target Entities other than the Permitted Encumbrances.

Relevant Competing Proposal means a transaction that involves an acquisition, directly or indirectly, of a legal, beneficial or economic interest in some or all of the shares, assets, liabilities or units that are the subject of a Transaction Document.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representatives means, in relation to a party, all officers, employees, professional advisers, agents and attorneys of the party or of its Related Entities (and in respect of a financial advisor, each director, officer, employee or contractor of that financial advisor).

Scheme Proposal means any proposal to acquire securities in a Fund or to merge or staple a Fund with another entity.

Security Interest has the meaning given in section 12 of the PPSA.

Seller Board means the board of directors of the Seller.

Seller Consolidated Group means the Consolidated Group of which the Seller is the Head Company.

Seller Group Guarantee means any Guarantee provided by any Seller Group Member in relation to the obligations of a Target Entity.

Seller Group Member means the Seller and each Related Entity of the Seller other than the Target Entities.

Seller Shareholders means the persons holding shares in the Seller.

Settlement Date has the meaning given in the Underwriting Agreement.

Shares means all of the shares in the capital of the Company, being 9,850,000 ordinary shares.

Standard Rate in relation to interest payable on any payment due under this agreement means the rate which is the 90 day Bank Bill Swap Reference Rate (Average Bid) as published in the Australian Financial Review on the first date on which interest accrues on that payment (or if that rate or publication is not published, the rate determined by the Seller, acting reasonably, to be the nearest equivalent rate having regard to prevailing market conditions).

Sub-Trust means each trust for which a Target Entity acts as the trustee as at Completion, excluding the Funds.

Subiaco Investment Management Agreement means the agreement in the form set out in Schedule 5.

Subiaco Exit Fee means any fee owed or which at any time becomes owing to a Target Entity in respect of the 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732.

Subsidiary in relation to an Entity, has the meaning given to that term in the Corporations Act and for the purposes of this agreement:

- (a) an Entity will be deemed to be a 'Subsidiary' of an Entity if the first mentioned Entity is required by accounting standards to be consolidated with second mentioned Entity;

- (b) a trust may be a 'Subsidiary', for the purposes of which any units or other beneficial interests in that trust will be deemed to be shares;
- (c) a corporation will be a 'Subsidiary' of a trust if the corporation would have been a subsidiary (as defined in the Corporations Act) if that trust were a body corporate; or
- (d) a trust will be a 'Subsidiary' of a trust if the first mentioned trust would have been a subsidiary (as defined in the Corporations Act) if both trusts were bodies corporate.

Superior Proposal means a publicly announced, bona fide Competing Proposal of the kind referred to in any of paragraphs (b), (c) or (d) of the definition of Competing Proposal (and not resulting from a breach by the Seller of any of its obligations under clause 19 of this agreement (it being understood that any actions by the Seller's Representatives in breach of clause 19 shall be deemed to be a breach by the Seller for these purposes)) which the Seller Board, acting in good faith, and after receiving written legal advice from its legal advisor and written financial advice from its financial advisor, determines:

- (a) is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Seller Shareholders (as a whole) than the Transaction (as the Transaction may be amended or varied following application of the matching right set out in clause 19.5, taking into account all terms and conditions of the Competing Proposal).

Supplier has the meaning given in clause 23.3.

Target Entity means each of the Company, 360 Capital Properties No.1 Limited ACN 082 352 083, 360 Capital Canberra Pty Ltd, BDIF Nominees Pty Ltd, 360 Capital Institutional Investment Pty Ltd ACN 118 020 527 and ACN 062 671 872 Pty Ltd ACN 062 671 872 in their personal capacity.

Target Entity Guarantee means any Guarantee provided by a Target Entity in relation to the obligations of any Seller Group Member.

Tax means any tax, levy, excise, charge, surcharge, contribution, goods and services tax, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges, but excludes any Duty.

Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) or either of them.

Tax Assessment means any notice, demand, assessment, amended assessment, determination, return or other document issued by a Tax Authority or lodged with a Tax Authority under a system of self-assessment as a result of which a Target Entity may be required to make a payment of Tax or Duty.

Tax Authority means any Regulatory Authority responsible for the assessment, collection, withholding or administration of Tax or Duty in any country or jurisdiction.

Tax Claim means any claim against the Seller under clause 15.2.

Tax Funding Agreement means an agreement between the members of a Consolidated Group governing compensation as between those members for group liabilities and use of Tax losses.

Tax Funding Liabilities means any liability to make payments under a Tax Funding Agreement to fund a Head Company in respect of a group liability.

Tax Release Deed means a deed of release (in the form set out at Schedule 4 of the Tax Sharing Agreement) between the Seller and the Target Entities.

Tax Sharing Agreement means the tax sharing agreement dated 22 August 2006 between the Seller, the Target Entities and others and includes any Tax Funding Agreement between the same parties.

Tax Warranties means the Warranties set out in paragraphs 7.8, 7.9, 7.10, 7.13, 7.14 and 12 of Schedule 1.

TGP means the stapled entity comprising the Seller and 360 Capital Investment Trust ARSN 104 552 598.

Third Party means a person other than the Buyer and its Associates.

Third Party Claim means any claim or potential claim by any person other than any Buyer Group Member or any Seller Group Member against a Trustee Target Entity.

Third Party Consents means each of the following consents:

- (a) consent from the agent under the Syndicated Facility Agreement dated 31 January 2011 (as amended from time to time) between, amongst others, the Company in its capacity as responsible entity of TIX, National Australia Bank and Commonwealth Bank of Australia to the acquisition of all of the share capital in the Company and 33,148,945 units in TIX, and a waiver by that agent (acting on the instructions of the majority lenders under that agreement) of any breach of clause 19.1(hh) of that agreement, as a result of the change in name of the Company to Centuria Properties Fund No.2 Limited.
- (b) consent from each financier under the common terms deed dated 15 April 2014 between, amongst others, the Company in its capacity as custodian of TOF, National Australia Bank and Commonwealth Bank of Australia to the acquisition of all of the share capital in the Company and 21,071,706 units in TOF, and a waiver by those financiers of any potential default, default and review event which may arise under that deed in connection with such acquisitions.
- (c) consent from the financier under the Bill Acceptance and Discount Facility Agreement dated 13 June 2013 (as amended from time to time) between the Company in its capacity as responsible entity of the 360 Capital Havelock House Property Trust and National Australia Bank to the acquisition of:
 - (i) all of the share capital in the Company; and
 - (ii) units in 360 Capital Havelock House Property Trust pursuant to the Transaction Documents,
 and a waiver by that financier of any breach of clause 19.1(ee) of that agreement, as a result of the change in the name of the Company to Centuria Properties Fund No.2 Limited.
- (d) consent of the lender under the Facility Agreement dated on or about 22 June 2015 between the Company in its capacity as responsible entity of the 360 Capital Retail Fund No.1 and St George Bank to the acquisition of:
 - (i) all of the share capital in the Company; and

- (ii) units in 360 Capital Retail Fund No.1 pursuant to the Transaction Documents.
- (e) waiver from the lender under the Facility Agreement dated 15 June 2011 (as amended from time to time) between the Company in its capacity as responsible entity of the 360 Capital 111 St George's Terrace Property Trust and Commonwealth Bank of Australia trading as Bankwest, of any potential event of default and event of default arising in connection with the acquisition of:
 - (i) all of the share capital in the Company; and
 - (ii) the units in 360 Capital 111 St George's Terrace Property Trust pursuant to the Transaction Documents; and
- (f) waiver from the lender under the Fifth Restated Facility Agreement dated 16 February 2016 between the Company in its capacity as responsible entity of the 360 Capital 441 Murray Street Property Trust and Commonwealth Bank of Australia trading as Bankwest of any potential event of default and event of default arising in connection with the acquisition of:
 - (i) all of the share capital in the Company; and
 - (ii) the units in 360 Capital 441 Murray Street Property Trust pursuant to the Transaction Documents,

and a waiver of lender of any breach of clause 10.2(n) of that agreement, as a result of the change in the name of the Company to Centuria Properties Fund No.2 Limited.

TIX means 360 Capital Industrial Fund ARSN 099 680 252.

TIX Unit Sale Agreement means the agreement titled 'unit sale deed - TIX' in the agreed form between the Seller, the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Diversified Property Industrial Sub Trust, the Company as trustee of the 360 Capital Diversified Property Industrial Sub Trust No.2, Centuria Investment Holdings Pty Limited as trustee of Centuria Capital No. 2 Industrial Fund, 360 Capital FM Limited and the Buyer in relation to the sale of 33,148,945 units in TIX from the Seller to the Buyer;

TOF means 360 Capital Office Fund ARSN 106 453 196.

TOF Acquisition Proposal means:

- (a) subject to paragraph (b), any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):
 - (i) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 40% or more of the securities in TOF; or
 - (ii) becoming the responsible entity of TOF, but
- (b) excludes:
 - (i) the Transaction contemplated by the Transaction Documents;
 - (ii) the Scheme Proposal;

- (iii) any proposal, agreement, arrangement or transaction referred to in paragraph (a) which a Buyer Group Member or any of their respective Associates or Representatives has:
 - A. directly or indirectly received a material benefit not received by all other TOF security holders (including in the nature of a transition or facilitation payment); or
 - B. solicited, invited, supported, encouraged, negotiated or proposed with, from or to a Third Party; and
- (iv) without limiting the paragraph (iii) above, any agreement, arrangement or transaction which a Buyer Group Member or their respective Associates or Representatives has voted in favour of or has reached any agreement, understanding, arrangement or transaction involving the sale or disposal of any units or other securities in TOF or indicated any intention to do so (unless it accepts into a bid where acceptances have exceeded more than 50% of the TOF securities).

TOF Unit Acquisition Condition means the obtaining of all relevant TOF unitholder approvals at a duly convened general meeting of securityholders of TOF including for the purposes of item 7 of section 611 Corporations Act required to complete the transfer of units in TOF in accordance with the TOF Unit Sale Agreement.

TOF Unit Sale Agreement means the agreement titled 'unit sale deed - TOF' in the agreed form between the Buyer, the Seller, the Company, the Company as trustee of the 360 Capital Investment Trust, the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Diversified Property Office Sub Trust, the Company as trustee of the 360 Capital Diversified Property Office Sub Trust 2, the Company as trustee of the 360 Capital Diversified Property Office Sub Trust 3, Centuria Investment Holdings Pty Limited as trustee of Centuria Capital No. 2 Office Fund, Centuria Property Funds Limited as responsible entity of CMA, 360 Capital FM Limited and Moelis Australia Advisory Pty Limited in relation to the sale of units in TOF.

TOT means 360 Capital Total Return Fund comprising 360 Capital Total Return Passive Fund ARSN 602 304 432 and 360 Capital Total Return Active Fund ARSN 602 303 613.

TOT Investment Management Agreement means the agreement between the Company as responsible entity of TOT and 360CFML in the form set out in Schedule 4.

TOT Meeting means a meeting of the TOT Unitholders to consider and if thought fit approve the TOT Resolution.

TOT Resolution means a resolution approving the appointment of 360CFML as responsible entity of TOT.

TOT Unitholder means a holder of units in TOT.

Transaction means the transactions contemplated by the Transaction Documents (including this agreement).

Transaction Document means each of:

- (a) this agreement;
- (b) the TIX Unit Sale Agreement;
- (c) the TOF Unit Sale Agreement;

- (d) the agreement titled 'call option deed' between the Seller, the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Trust, 360 Capital FM Limited, Centuria Funds Management Limited as trustee of Centuria Capital No. 2 Fund, the Guarantor and the Buyer in the agreed form in relation to the option over:
 - (i) 1,855,000 units in 360 Capital 441 Murray Street Property Trust;
 - (ii) 3,574,166 units in 360 Capital Havelock House Property Trust;
 - (iii) 8,166,914 units in 360 Capital 111 St Georges Terrace Property Trust; and
 - (iv) 21,499,000 units in 360 Capital Retail Fund No.1;
- (e) the agreement titled 'retail call option deed' between the Seller, the Company as trustee of the 360 Capital Diversified Property Fund, 360 Capital FM Limited, Centuria Funds Management Limited as trustee of Centuria Capital No. 2 Fund, the Guarantor and the Buyer in the agreed form in relation to the option over 7,044,584 units in 360 Capital Retail Fund No.1;
- (f) the agreement titled 'put option deed' between the Seller, the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Trust, 360 Capital FM Limited, the Buyer, the Guarantor and Centuria Funds Management Limited as trustee of Centuria Capital No. 2 Fund in the agreed form in relation to the option over:
 - (i) 1,855,000 units in 360 Capital 441 Murray Street Property Trust;
 - (ii) 3,574,166 units in 360 Capital Havelock House Property Trust;
 - (iii) 8,166,914 units in 360 Capital 111 St Georges Terrace Property Trust; and
 - (iv) 21,499,000 units in 360 Capital Retail Fund No.1;
- (g) the Loan Agreement;
- (h) the General Security Deed;
- (i) the Underwriting Agreement;
- (j) the TOT Investment Management Agreement;
- (k) if the wind up of the 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 is not completed by the Completion Date, the Subiaco Investment Management Agreement; and
- (l) any other document agreed by the parties to be a Transaction Document for the purposes of this agreement.

Transferring Employees means those Employees who accept the Buyer's offer of employment made under clause 10.

Transitional Instrument has the meaning given in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth).

Trustee Target Entity means each of the Company, 360 Capital Properties No.1 Limited ACN 082 352 083, 360 Capital Canberra Pty Ltd, BDIF Nominees Pty Ltd, 360 Capital Institutional Investment Pty Ltd ACN 118 020 527 and ACN 062 671 872 Pty Ltd ACN 062 671 872 in their

personal capacity and in their capacity as responsible entity of the relevant Fund or trustee of the relevant Sub-Trust.

Underwriting Agreement means the agreement titled 'underwriting agreement' between the Buyer, the Guarantor and Moelis Australia Advisory Pty Limited in relation to the underwriting of approximately \$150,000,000 Centuria capital raise in a form acceptable to the Buyer and the Guarantor.

Underwriting Termination Circumstances means a right on the part of Moelis Australia Advisory Pty Limited to terminate under clause 10.1 of the Underwriting Agreement in respect of a termination event set out in:

- (a) paragraph 1.2(a), 1.2(b) in Part 1 of Schedule 3 of the Underwriting Agreement; or
- (b) paragraph 2.3(a) or 2.3(b) in Part 2 of Schedule 3 of the Underwriting Agreement; or
- (c) paragraph 1.1(a) in Part 1 of Schedule 3 of the Underwriting Agreement, provided that the reason that Centuria is unable to issue the Offer Securities on the Allotment Date is not something reasonably within the control of Centuria and is not as a result of Moelis Australia Advisory Pty Limited otherwise validly terminating or being released from its obligations under the Underwriting Agreement and is not as a result of any relevant securityholder or financier approval, consent or resolution not being obtained or passed (as the case may be),

only.

Warranties means the warranties set out in Schedule 1.

Warranty Claim means any Claim by the Buyer arising out of a breach of a Warranty.

1.2 Reasonable endeavours

Any provision of this agreement which requires a party to use reasonable endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
- (b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

1.3 Knowledge and awareness of the Seller

If any Warranty is qualified by the Seller's awareness or knowledge, the facts of which the Seller is aware or that are within the Seller's knowledge are taken to be and are limited to all facts, matters and circumstances of which one or more of Mr Tony Pitt, Glenn Butterworth, Charisse Nortje or Ben James is actually aware at the date the Warranty is given.

1.4 Business Days

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately preceding Business Day except where this agreement expressly specifies otherwise.

1.5 General rules of interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to this agreement is to this agreement as varied, novated, ratified or replaced from time to time;
- (h) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (i) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (j) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (k) a reference to **\$** or **dollar** is to Australian currency; and
- (l) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.6 Agreed form

A reference to a document being in the agreed form is a reference to the document initialled by the parties on the date of this agreement to confirm their agreement to its terms.

2. Conditions precedent

2.1 Conditions

Clauses 3, 4 and 6 do not become binding on the parties and have no force or effect, and Completion cannot take place, unless each of the conditions listed in the first column of the following table has been either satisfied or waived in accordance with clause 2.4:

Condition	Right to waive
<p>(a) The resolutions to approve:</p> <p>(i) the appointment of 360CFML as the new responsible entity of 360 Capital Investment Trust ARSN 104 552 598; and</p> <p>(ii) any other matters required by law or a Regulatory Authority in respect of the Transactions,</p> <p>have been passed at a duly convened general meeting of securityholders of TGP.</p>	Seller and Buyer
(b) Each Transaction Document has been duly executed by the relevant parties.	Seller and Buyer
(c) Moelis Australia Advisory Pty Limited has not validly terminated the Underwriting Agreement before the Completion Date in the Underwriting Termination Circumstances.	Seller and Buyer
(d) The Seller has obtained the Noteholder Consents.	Seller
(e) The TOF Unit Acquisition Condition has been satisfied.	Seller and Buyer
(f) The Third Party Consents have been obtained.	Seller and Buyer

2.2 Reasonable endeavours to satisfy Conditions

- (a) Each party must use all reasonable endeavours to ensure that each Condition is satisfied as soon as practicable after the date of this agreement and in any event before the End Date and in particular:
- (i) the Seller must procure that the 360 Directors, in the absence of a Superior Proposal, votes and recommends that each securityholder vote in favour of the resolutions contemplated in clause 2.1(a);
 - (ii) the Seller must comply its obligations in clause 19.5;
 - (iii) each party must co-operate with, and comply with all reasonable requests of the other party for the purposes of procuring the satisfaction of any Condition and must not take any action that will or is likely to hinder or prevent the satisfaction of any Condition; and
 - (iv) each party must keep the other party informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms.
- (b) The Buyer undertakes to not terminate, vary or waive or fail to enforce its rights under the Underwriting Agreement without the Seller's prior written consent.
- (c) The Buyer must use all reasonable endeavours to prevent termination of the Underwriting Agreement including any of the Underwriting Termination

Circumstances from occurring and to ensure Centuria raises approximately \$150,000,000 under the capital raising to which the Underwriting Agreement relates.

2.3 Notice in relation to satisfaction of Conditions

Each party must within 1 Business Day after becoming aware of the satisfaction of any Condition notify the other party of the satisfaction of that Condition and provide reasonable evidence that the Condition has been satisfied.

2.4 Waiver of Conditions

A Condition may be waived and may only be waived:

- (a) if one party is specified in the second column of the table in clause 2.1 opposite that Condition, by that party by notice to the other party; or
- (b) if more than one party is specified in the second column of the table in clause 2.1 opposite that Condition, by written agreement between all of those parties.

A party entitled to waive or to agree to waive a Condition under this clause 2.4 may do so in its absolute discretion. A party that waives or agrees to waive a Condition is not prevented from bringing a Claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.

2.5 Failure of Conditions

A party is entitled to terminate this agreement by notice to the other party at any time before Completion:

- (a) if any Condition has become incapable of satisfaction and that Condition has not been waived in accordance with clause 2.4 within 10 Business Days after the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction;
- (b) if any Condition has not been satisfied or waived in accordance with clause 2.4 before the End Date; or
- (c) if any Condition, having been satisfied on or before the End Date ceases to be satisfied before Completion,

except where the relevant Condition has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the party seeking to terminate to comply with its obligations under clause 2.2.

3. Sale and purchase of Shares

On Completion the Seller must procure 360CPL to sell and the Buyer must buy (or cause the purchaser identified in the relevant Transaction Document to buy) the Shares from 360CPL for the Purchase Price free from all Encumbrances and together with all rights attaching or accruing to the Shares after the date of this agreement.

4. Purchase Price

4.1 Initial Purchase Price

The initial purchase price payable for the sale of Shares by 360CPL is \$101,500,000.00 (**Initial Purchase Price**).

4.2 Additional payments after the Initial Purchase Price

The Initial Purchase Price will be subject to the following adjustments once the Actual Net Asset Amount has been determined in accordance with clause 7:

- (a) if the Actual Net Asset Amount exceeds the Base Net Asset Amount the Buyer must pay to the Seller the amount by which the Actual Net Asset Amount exceeds the Base Net Asset Amount within 5 Business Days of the determination of the Actual Net Asset Amount in accordance with clause 7;
- (b) if the Actual Net Asset Amount is less than Base Net Asset Amount the Seller must pay to the Buyer the amount by which the Actual Net Asset Amount is less than the Base Net Asset Amount within 5 Business Days of the determination of the Actual Net Asset Amount in accordance with clause 7; and
- (c) if the Actual Net Asset Amount is equal to the Base Net Asset Amount then no further payments are due.

4.3 Payment of Purchase Price

On Completion, the Buyer must pay to the Seller (who shall hold the Purchase Price for and on behalf of 360CPL) the Initial Purchase Price for the sale of Shares by 360CPL in accordance with clause 6.3 and clause 22.

5. Period before Completion

5.1 Buyer access

For the purposes of assisting the Buyer and its Representatives to understand the Business and to prepare for the transition to the Buyer's normal working procedures, the Seller must procure that from the date of this agreement until Completion the Buyer and its Representatives are given reasonable access on reasonable notice to:

- (a) the Assets, Properties and Records; and
- (b) all officers and senior employees of the Target Entities during business hours,

provided that the Seller is not obliged to comply with this clause 5.1 to the extent that giving that access would cause material disruption to or have a material adverse effect on, the day to day conduct of the Business or constitute a breach by the Seller or a Target Entity of any law or of the terms of any agreement to which it is party.

5.2 Conduct of Business

The Seller must use reasonable endeavours to procure during the Exclusivity Period, except with the prior consent of the Buyer, each Trustee Target Entity conducts the Business in the ordinary and usual course consistent with its usual business practices and does not make any significant change to the nature or scale of any activity comprised in the Business. Until Completion and subject to clause 19 where applicable, the Seller must promptly notify the Buyer of any abnormal or unusual events with respect to the Business or the occurrence of any event outside the ordinary course of business of the Business.

5.3 Restricted conduct

- (a) The Seller must procure that during the Exclusivity Period, except with the prior consent of the Buyer, such consent not to be unreasonably withheld or delayed, no Target Entity:

- (i) issues or allots any share capital or options, securities or other rights convertible into share capital;
 - (ii) buys back or redeems any shares or otherwise reduces its share capital or provides financial assistance for the acquisition of its own shares or shares in its holding company;
 - (iii) declares or pays any dividends or distributions to the extent it would result in the net assets of the Company as at Completion being less than the Base Net Asset Amount;
 - (iv) alters the provisions of its constitution;
 - (v) disposes of, creates or permits to exist any Encumbrance over, or declare itself the trustee of, any material asset except in the ordinary course of business;
 - (vi) enters into, terminates or varies any Material Contract or varies, terminates or fails to renew any of its Material Contracts, Authorisations or commitments, except in the ordinary course of business;
 - (vii) acquires or disposes of any assets (other than in the ordinary course of the business), whose aggregate value exceeds \$500,000;
 - (viii) or any Seller Group Member cancels any existing insurance policy in the name of or for the benefit of the Target Entities except the cancelled policy was immediately replaced by a replacement policy on terms no less favourable to the Target Entities; and
 - (ix) defers any capital expenditure or undertakes any capital expenditure that is in excess of \$250,000.00 or changes any accounting method, practice or principle used by it.
- (b) The Seller must use reasonable endeavours to procure during the Exclusivity Period, except with the prior consent of the Buyer, such consent not to be unreasonably withheld or delayed, each Trustee Target Entity does not, in respect of each Fund and each Sub-Trust do any of the following where it would have a material adverse effect on the Buyer or a Buyer Group Member in connection with the Transaction, a Target Entity or the Business:
- (i) issue or allot any units or options, securities or other rights convertible into units;
 - (ii) buy back or redeem any units or otherwise reduces the number of units on issue;
 - (iii) declare or pay any distributions except in the ordinary course of business;
 - (iv) alter the provisions of the Fund's constitution or the Sub-Trust's trust deed, as applicable;
 - (v) dispose of, create or permit to exist any Encumbrance over, or declare itself the trustee of, any material asset of the Fund or Sub-Trust, as applicable, except in the ordinary course of business;
 - (vi) enter into, terminate or varies any material contract of the Fund or Sub-Trust or varies, terminates or fails to renew any of material contracts, Authorisations or commitments of the Fund or Sub-Trust, except in the ordinary course of business;

- (vii) acquire or dispose of any assets whose aggregate value exceeds \$2,000,000 except in connection with any leasing arrangements undertaken in the ordinary course of business;
 - (viii) cancel any existing insurance policy in the name of or for the benefit of the Fund or Sub-Trust, as applicable, except where the cancelled policy was immediately replaced by a replacement policy on terms no less favourable to the Fund or Sub-Trust;
 - (ix) undertake any new capital expenditure of a Fund or Sub-Trust, as applicable, that is in excess of \$250,000.00 or change any accounting method, practice or principle used by the Fund or Sub-Trust.
- (c) During the Exclusivity Period, the Buyer must not, and must ensure that its Related Entities do not, undertake any conduct, act or omission in connection with an actual, proposed or potential Scheme Proposal except:
- (i) with the prior consent of the Buyer; or
 - (ii) to the extent that the relevant conduct, act or omission is undertaken in consultation with the Seller and is to defeat a Competing Proposal.
- (d) During the Exclusivity Period, the Seller must use reasonable endeavours to procure that no Trustee Target Entity enters into, terminates or varies any debt facilities in connection with the EWIC Agreements, except with the prior consent of the Buyer, such consent not to be unreasonably withheld or delayed.

5.4 Permitted acts

Nothing in clauses 5.2 and 5.3 restricts the Seller or any Target Entity or Trustee Target Entity from doing any of the following permitted actions:

- (a) that is expressly contemplated or permitted in this agreement or any Transaction Document;
- (b) that is expressly disclosed in the Due Diligence Materials;
- (c) that the board of any Target Entity or Trustee Target Entity (as applicable) reasonably considers is necessary to meet any relevant legal obligations arising by operation of law or arising under an arrangement or agreement included in the Due Diligence Materials;
- (d) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (e) that is necessary for a Target Entity or a Trustee Target Entity (as applicable) to meet its legal or contractual obligations as disclosed in the Due Diligence Materials; or
- (f) approved in writing by the Buyer, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt it would not be reasonable for the Buyer to withhold consent to a proposal by the Seller to acquire units in TIX for the purposes of defeating a Hostile Proposal.

5.5 Third Party Consents and Released Encumbrances

- (a) The Seller must procure that the Seller Group uses all reasonable endeavours to obtain as quickly as possible after the date of this agreement:

- (i) the Third Party Consents; and
 - (ii) releases of all Released Encumbrances.
- (b) Without limitation, the Seller must issue (or procure that a Trustee Target Entity issues) within 5 Business Days after the date of this agreement requests for consents and requests for releases in respect of each Third Party Consent and each Released Encumbrance.
- (c) If any Third Party Consent or Released Encumbrance is not delivered to the Buyer by Completion the Seller:
 - (i) must after Completion continue to use all reasonable endeavours to procure the delivery of any outstanding Third Party Consent or Released Encumbrance; and
 - (ii) indemnifies the Trustee Target Entities and the Buyer against, and must pay to the Buyer on demand the amount of, any Indemnified Loss suffered or incurred after Completion by any Trustee Target Entity or the Buyer under or in connection with any outstanding Third Party Consent or Released Encumbrance provided the Trustee Target Entities and the Buyer take all reasonable steps to mitigate such Indemnified Loss.

5.6 Transition planning

The parties must ensure that, as soon as possible after the execution of this agreement, their Representatives meet and use all reasonable endeavours to determine the most appropriate method of implementing the steps required to ensure a smooth integration of the Target Entities with the Buyer following Completion.

5.7 Acknowledgments

The parties acknowledge and agree that until Completion:

- (a) the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Diversified Property Industrial Sub Trust and the Company as trustee of the 360 Capital Diversified Property Industrial Sub Trust No.2 have an absolute discretion as to whether and how to exercise the voting rights attached to the 33,148,945 TIX units the subject of the TIX Unit Sale Agreement and there is no agreement, arrangement or understanding on the performance of which any Buyer Group Member will have power to exercise the voting rights attached to those TIX units; and
- (b) the Company, the Company as trustee of the 360 Capital Investment Trust, the Company as trustee of the 360 Capital Diversified Property Fund, the Company as trustee of the 360 Capital Diversified Property Office Sub Trust, the Company as trustee of the 360 Capital Diversified Property Office Sub Trust 2 and the Company as trustee of the 360 Capital Diversified Property Office Sub Trust 3 have an absolute discretion as to whether and how to exercise the voting rights attached to the TOF units the subject of the TOF Unit Sale Agreement and there is no agreement, arrangement or understanding on the performance of which any Buyer Group Member will have power to exercise the voting rights attached to those TOF units.

5.8 Run off insurance

- (a) The Seller must, at the cost of the Buyer, maintain professional indemnity and crime run-off insurance:

- (i) on terms approved by the Buyer;
- (ii) with a policy period of 84 months from Completion; and
- (iii) with a limit of \$20,000,000 in the aggregate,

which provides coverage for each Target Entity as a third party beneficiary (as defined in the *Insurance Contracts Act 1984* (Cth)) in respect of losses and/or liabilities suffered by a Target Entity arising from facts, matters, events, circumstances, acts and/or omissions occurring prior to Completion (**Insurance Policy**).

- (b) At Completion the Seller must provide to the Buyer a copy of the policy wording of the Insurance Policy including the identity of the insurer, the policy number and a copy of the policy schedule.
- (c) The Seller undertakes that it will not following Completion:
 - (i) amend or cancel the Insurance Policy; or
 - (ii) intentionally do anything or fail to do anything that would entitle the insurer of the Insurance Policy to cancel or avoid cover or to deny or reduce its liability for any covered claim.
- (d) If a fact, matter, event or circumstance arises, or a Claim is made which gives rise to, or could reasonably be expected to give rise to, a claim by a Target Entity on the Insurance Policy (**Insurance Claim**), then:
 - (i) the Seller must, at the expense of the Buyer, provide any reasonable assistance requested by the Target Entity for the purpose of making the Insurance Claim;
 - (ii) in the event a deductible is applicable to the Insurance Claim the Buyer is responsible for the payment of the deductible; and
 - (iii) the Target Entity is entitled to any and all proceeds of insurance paid by any insurer in respect of the Insurance Claim.

6. Completion

6.1 Time and place for Completion

Completion must take place at the offices of Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000 at 2:00pm on the later of:

- (a) the date which is 5 Business Days after the Conditions in clauses 2.1(a), 2.1(b), 2.1(d) and 2.1(e) have been satisfied or waived in accordance with clause 2.4; and
- (b) 9 January 2017,

or at any other place, date or time as the Seller and the Buyer agree in writing.

6.2 Provision of information before Completion

- (a) The Buyer must provide to the Seller no later than 3 Business Days before Completion:

- (i) the names of each person that the Buyer requires to be appointed as a director, secretary or public officer of each Target Entity together with a signed consent to act in that capacity; and
 - (ii) the address of any new registered office that the Buyer requires the Target Entities to adopt.
- (b) The Seller must provide to the Buyer no later than 5 Business Days before Completion a written direction to pay part of the Initial Purchase Price equal to the aggregate amount outstanding under the Notes as at Completion as single payment (**Notes Payment**) to the single person nominated by the Seller as set out in the direction for the purposes of satisfying the Company's obligations as responsible entity of the 360 Capital Investment Trust under the terms of the Notes.

6.3 Parties' obligations to effect Completion

At Completion or, in the case of step 1, at or before Completion, each party must perform, or procure the performance of, the following:

Step	Party required to take action	Action
1.	The Seller	<p>Duly convene and hold a meeting of the directors of the Company at which the directors resolve, subject to Completion occurring:</p> <ul style="list-style-type: none"> (a) to approve the registration of the Buyer as the holder of the Shares; (b) to record the resignation of each director, secretary and public officer of the Company whose resignation effective from Completion is to be delivered under step 3(e) of this table; (c) to appoint as directors, secretaries and public officers of the Company each person notified under clause 6.2(a)(i); (d) to change the registered office of the Company to the address notified under clause 6.2(a)(ii); (e) to revoke each existing authority to operate any bank account of the Company and approve any new authority as may be provided by the Buyer to the Seller before the relevant board meeting; and (f) to revoke any existing powers of attorney granted by the Company.
2.	The Seller	<p>Duly convene and hold a meeting of the directors of each other Target Entity at which the directors resolve, subject to Completion occurring:</p> <ul style="list-style-type: none"> (a) to record the resignation of each director, secretary and public officer of the Target Entity whose resignation effective from Completion is to be delivered under step 3(e) of this table; (b) to appoint as directors, secretaries and public officers of the Target Entity each person notified under clause 6.2(a)(i);

Step	Party required to take action	Action
		<ul style="list-style-type: none"> (c) to change the registered office of the Target Entity to the address notified under clause 6.2(a)(ii); (d) to revoke each existing authority to operate any bank account of the Trustee Target Entity and approve any new authority as may be provided by the Buyer to the Seller before the relevant board meeting; and (e) to revoke any existing powers of attorney granted by the Trustee Target Entity.
3.	The Seller	<p>Deliver to the Buyer:</p> <ul style="list-style-type: none"> (a) completed transfers of the Shares in favour of the Buyer as transferee duly executed by 360CPL as the registered holder as transferor and any original share certificates, or duly executed indemnities for any lost share certificates, in respect of all Shares; (b) all statutory registers, minute books and other record books, financial records, including asset registers, management accounts, budgets, ledgers, journals, books of account and other Records of the Trustee Target Entities in their possession or control and the common seal, if any, of each Target Entity; (c) details of the ASIC corporate key of each Target Entity, being an 8 digit number uniquely associated with a company's ACN; (d) all insurance policies and certificates of currency in relation to all insurances held by each Target Entity, except in the case of any policy held as part of a group insurance policy held by any Seller Group Member, in which case the Seller must deliver to the Buyer a copy of that policy and certificates of currency; (e) the written resignation of each director, secretary and public officer of each Target Entity; (f) all documents to effect the removal of Tony Pitt, Ben James and Allan Sutton as responsible managers under any Australian Financial Services Licence relating to a Target Entity; (g) duly signed minutes of each meeting convened under steps 1 and 2 of this table; (h) an original counterpart of each other Transaction Document duly executed by the relevant Seller Group Members; and (i) an original counterpart of the Tax Release Deed duly executed by the Seller and the Target Entities.
4.	The Seller	Deliver to the Buyer:

Step	Party required to take action	Action
		<p>(a) the Tax Release Deed duly signed by the parties to that deed and the Tax Sharing Agreement duly signed by the parties to that agreement;</p> <p>(b) any Third Party Consents;</p> <p>(c) evidence of the release of each Released Encumbrance, executed by the holder of each Encumbrance in the agreed form and evidencing the power of the grantor to procure that the holder of each Encumbrance updates the PPS Register within 10 Business Days of release of that Encumbrance;</p> <p>(d) for examination by the Buyer, any power of attorney under which this agreement or a document required to be delivered under this agreement is executed by a Seller Group Member; and</p> <p>(e) copies of each deed of retirement and appointment in the agreed form recording the retirement of the Company as trustee for:</p> <ul style="list-style-type: none"> (i) 360 Capital Diversified Property Fund; and (ii) 360 Capital Trust; (iii) 360 Capital Retail Fund; (iv) 360 Capital Diversified Property Industrial Sub Trust; (v) 360 Capital Diversified Property Industrial Sub Trust No.2; (vi) 360 Capital Diversified Property Office Sub Trust; (vii) 360 Capital Diversified Property Office Sub Trust No. 2; (viii) 360 Capital Diversified Property Office Sub Trust No. 3; (ix) Lachlan Property Income Fund; and (x) Trafalgar Opportunity Fund No.4. <p>respectively, each such deed to include a full release and indemnity by 360 Capital FM Limited in favour of the Company in respect of all liabilities (including without limitation liabilities of the Company as guarantor of the Notes) incurred by the Company as trustee of each trust;</p> <p>(f) copies of each deed of retirement and appointment in the agreed form recording the appointment of A.C.N. 062 671 872 ACN 062 671 872 as trustee for:</p>

Step	Party required to take action	Action
		<ul style="list-style-type: none"> (i) BIPT Marple Ave Sub Trust; (ii) BIPT Clarinda Rd Sub Trust; (iii) BOPT Railway Parade Sub Trust; (iv) BIF Noble Park Sub Trust; (v) BIF Scrivener Street Sub trust; (vi) Becton Veterans' Affairs Building Property Trust; (vii) BOPT 422 Lt Collins St Sub Trust; (viii) BOPT Elizabeth Plaza Sub Trust; and (ix) BOPT Mahuhu Crescent Sub Trust. <p>(g) executed deed of termination in respect of the Business Services and Management Agreement between the Company and 360 Capital Financial Services Pty Limited ACN 084 389 695 (TCF) which releases and indemnifies the Company in respect of any and all liabilities of the Company under that agreement such that termination will occur on or before Completion.</p>
5.	The Buyer	<p>Pay:</p> <ul style="list-style-type: none"> (a) the Initial Purchase Price less the Notes Payment to the Seller; and (b) the Notes Payment to the single person nominated by the Seller as set out in the direction provided under clause 6.2(b).
6.	The Buyer	Deliver to the Seller an original counterpart of each other Transaction Document duly executed by the Buyer.

6.4 Interdependence of obligations at Completion

The obligations of the parties under clause 6.3 are interdependent and must be performed, as nearly as possible, simultaneously. If any obligation specified in clause 6.3 is not performed on or before Completion then, without limiting any other rights of the parties, Completion is taken not to have occurred and any document delivered, or payment made, under clause 6.3 must be returned to the party that delivered it or paid it.

6.5 Notice to complete

If Completion does not occur in accordance with this clause 6 because of the failure of any party (**Defaulting Party**) to satisfy any of its obligations under this clause 6 then:

- (a) the Buyer (where the Defaulting Party is the Seller); or

- (b) the Seller (where the Defaulting Party is the Buyer),

(in either case the **Non-Defaulting Party**) may give the Defaulting Party a notice requiring the Defaulting Party to satisfy those obligations within a period of 5 Business Days after the date of the notice and specifying that time is of the essence in relation to that notice.

6.6 Remedies for failure to comply with notice

If the Defaulting Party fails to comply with a notice given under clause 6.5, the Non-Defaulting Party may without limiting its other rights or remedies available under this agreement or at law:

- (a) immediately terminate this agreement, in which case the Non-Defaulting Party may seek damages for breach of this agreement; or
- (b) seek specific performance of this agreement, in which case:
 - (i) if specific performance is obtained the Non-Defaulting Party may also seek damages for breach of this agreement; and
 - (ii) if specific performance is not obtained the Non-Defaulting Party may then terminate this agreement in which case the Non-Defaulting Party may seek damages for breach of this agreement.

6.7 Title and risk

Beneficial ownership of and risk in the Shares will pass from the Seller to the Buyer on Completion.

6.8 Post Completion actions

Immediately following Completion the Buyer and the Seller must procure that:

- (a) relevant ASIC forms are lodged to reflect the actions taken under clause 6.3;
- (b) the Encumbrances listed in item 4(c) of clause 6.3 are removed from the PPS Register; and
- (c) each Released Encumbrance is removed from the PPS Register.

7. Adjustment to Purchase Price

7.1 Preparation and delivery of Completion Balance Sheet

The Seller must prepare and deliver to the Buyer no later than 10 Business Days after Completion a draft of a statement of financial position of the Target Entities as at Completion (**Draft Completion Balance Sheet**) in the form and including the items specified in Part 2 of Schedule 3 and prepared in accordance with:

- (a) the specific principles and policies set out in Part 3 of Schedule 3;
- (b) to the extent that the treatment of any item is not dealt with in the principles and policies referred to in clause 7.1(a), those accounting principles, policies and practices adopted by the Target Entities in the preparation of the Base Balance Sheet specified in Part 1 of Schedule 3; and
- (c) to the extent that the treatment of any item is not dealt with in the principles and policies referred to in clauses 7.1(a) or 7.1(b), the Accounting Standards in force as at Completion.

7.2 Assistance from Target Entities

The Buyer must from the Completion Date until the Completion Balance Sheet has been determined in accordance with this clause 7 procure that the Target Entities provide all assistance reasonably required to enable the Seller to comply with the provisions of clause 7.1, including by providing access to the Seller to the Records and the employees of the Target Entities.

7.3 Buyer's response to Draft Completion Balance Sheet

The Buyer must within 5 Business Days after the date on which it receives the Draft Completion Balance Sheet give to the Seller either:

- (a) a notice stating that the Buyer agrees with the Draft Completion Balance Sheet; or
- (b) a notice stating that the Buyer does not agree with the Draft Completion Balance Sheet and specifying:
 - (i) each item in the Draft Completion Balance Sheet that it disputes (**Disputed Item**);
 - (ii) a summary of the grounds on which it disputes each Disputed Item; and
 - (iii) the proposed adjustment to each Disputed Item,
 (**Dispute Notice**).

If the Buyer gives notice under clause 7.3(a) or if at the conclusion of the 5 Business Day period referred to in this clause 7.3 the Buyer has not given a notice under clause 7.3(a) or a Dispute Notice under clause 7.3(b) then the Draft Completion Balance Sheet will constitute the Completion Balance Sheet for the purposes of this agreement.

7.4 Negotiation of Disputed Items

If the Buyer gives a Dispute Notice under clause 7.3(b) then:

- (a) the Draft Completion Balance Sheet is final and conclusive of all matters specified in it except for the Disputed Items;
- (b) the Buyer and the Seller must confer and use reasonable endeavours to resolve each Disputed Item;
- (c) if any Disputed Item is not resolved within 20 Business Days after the date that a Dispute Notice is given under clause 7.3(b) then either party may give a notice to the other party stating that it requires the Disputed Item to be determined by expert determination in accordance with clause 7.5; and
- (d) if neither party gives a notice under clause 7.4(c) within 30 Business Days after the date that a Dispute Notice is given under clause 7.3(b) then the Draft Completion Balance Sheet is to be adjusted to reflect the resolution of any Disputed Items under clause 7.4(b) and will be final and conclusive of all matters specified in it.

7.5 Expert determination

Any expert determination of a Disputed Item must be conducted in accordance with the following provisions:

- (a) the expert must be a person (or firm of accountants) agreed between the parties or failing agreement between the parties within 10 Business Days after the referral to

expert determination, a person (or firm of accountants) nominated by the Chief Executive Officer of the Australian Disputes Centre (**Expert**);

- (b) the Expert must make the determination in accordance with the terms of this agreement;
- (c) the Expert will act as an independent expert and not as an arbitrator;
- (d) the Expert must decide the procedure to be followed;
- (e) the Expert must make the determination within the shortest possible time but, in any event, within 20 Business Days after the date of appointment;
- (f) the Buyer and the Seller must provide the Expert with any information and assistance reasonably required by the Expert to determine the Disputed Items referred to the Expert;
- (g) all correspondence between a party and the Expert must be in writing and copied to the other parties;
- (h) the Buyer and the Seller must keep all information disclosed during the Expert determination confidential;
- (i) the Expert must issue a written determination containing reasons;
- (j) the determination of the Expert will be final and binding in the absence of manifest error; and
- (k) the costs of the Expert must be paid in accordance with the determination of the Expert and in the absence of such a determination must be paid by the Buyer and the Seller in equal shares.

7.6 Adjustment of Draft Completion Balance Sheet

The Draft Completion Balance Sheet is to be adjusted to reflect the resolution of any Disputed Items under clause 7.4 or 7.5 and will constitute the Completion Balance Sheet for the purposes of this agreement.

8. Repayment of indebtedness

8.1 Indebtedness owed to the Target Entities

The Seller must procure that on or before Completion all indebtedness owed from any Seller Group Member to any Target Entity is discharged and extinguished in full.

8.2 Indebtedness owed to any Seller Group Member

The Seller must procure that on or before Completion all indebtedness owed from a Target Entity to any Seller Group Member is discharged and extinguished in full.

9. Release of Guarantees

9.1 Target Entity Guarantees

The Seller must use all reasonable endeavours to procure the release with effect from Completion of each Target Entity from any actual, contingent or accrued liabilities under each Target Entity Guarantee, including by providing to the beneficiary under each Target Entity Guarantee an equivalent Guarantee and any information or document reasonably required by

that beneficiary as a condition of releasing that Target Entity Guarantee. If any Target Entity Guarantee is not released by Completion the Seller:

- (a) must after Completion continue to use all reasonable endeavours to procure the release of each Target Entity Guarantee; and
- (b) indemnifies the Target Entities and the Buyer against, and must pay to the Buyer on demand the amount of, any Indemnified Loss suffered or incurred after Completion by any Target Entity or the Buyer under or in connection with a Target Entity Guarantee.

9.2 Seller Group Guarantees

The Buyer must use all reasonable endeavours to procure the release with effect from Completion of each Seller Group Member from any actual, contingent or accrued liabilities under each Seller Group Guarantee, including by providing to the beneficiary under each Seller Group Guarantee an equivalent Guarantee and any information or document reasonably required by that beneficiary as a condition of releasing that Seller Group Guarantee. If any Seller Group Guarantee is not released by Completion the Buyer:

- (a) must after Completion continue to use all reasonable endeavours to procure the release of each Seller Group Guarantee; and
- (b) indemnifies the Seller against, and must pay to the Seller on demand the amount of, any Indemnified Loss suffered or incurred after Completion by any Seller Group Member under or in connection with a Seller Group Guarantee.

10. Employees

10.1 Offer of employment

The Buyer may, but is not required to, make an offer of employment to any Employee which must be made as soon as reasonably practicable after the date of this agreement and in any event within 10 Business Days after the date of this agreement.

10.2 Terms of offer of employment

An offer of employment made under clause 10.1 must:

- (a) be conditional on and effective from Completion;
- (b) be conditional on the Employee's employment with the relevant Seller Group Member not ceasing before Completion;
- (c) be on terms and conditions (including terms relating to superannuation) that are substantially similar to and, considered on an overall basis, no less favourable than, the terms and conditions of employment that applied to that Employee immediately before Completion;
- (d) require acceptance at least 5 Business Days before Completion;
- (e) provide that the Employee's employment with the relevant Seller Group Member will be treated as service with the Buyer for the purposes of all service-related entitlements (other than in respect of accrued annual leave) and the continuity of the Employee's employment with the relevant Seller Group Member and the Buyer is deemed to be unbroken; and

- (f) provide that by accepting the offer of employment the Employee will be taken to resign from employment with the relevant Seller Group Member with effect Completion.

10.3 Terminating employees and notice of acceptance or rejection

- (a) If, before Completion, the employment of any Employee receiving an offer of employment under clause 10.1 terminates for any reason, the Seller must, as soon as reasonably practicable notify the Buyer of that termination.
- (b) If an Employee advises a party to this agreement that he or she accepts or rejects the offer of employment, that party must immediately advise the other party of the acceptance or rejection.

10.4 Acceptance of offer of employment

The Seller must allow, and must procure that each Seller Group Member allows, the Buyer reasonable access to the Employees during normal working hours for the purposes of the Buyer encouraging acceptance of the offer. The Seller must, and must procure each Seller Group Member to, use reasonable endeavours not to discourage the Employees from accepting the offers of employment.

10.5 Acceptance of resignation and release

With effect from Completion the Seller must, in respect of each Employee who accepts the Buyer's offer of employment:

- (a) accept (or where the Employee is employed by another Seller Group Member must procure that that Seller Group Member accepts) the resignation of that Employee; and
- (b) release (or where the Employee is employed by another Seller Group Member must procure that that Seller Group Member releases) that Employee from employment with the relevant Seller Group Member and from any post-employment restrictions that would limit the Employee's ability to perform their role with the Buyer, for example, pursuant to non-competition or non-solicitation obligations.

10.6 Seller's payment obligations

On or before the Completion Date, the Seller must pay, or procure that the relevant Seller Group Member pays, to or in respect of each Transferring Employee:

- (a) all amounts to which the Transferring Employee is entitled including by way of wages, salary, allowances, superannuation contributions, entitlements to annual leave and commissions accrued or arising at Completion (whether arising by law or under any Transitional Instrument, Modern Award, Enterprise Agreement, contract or arrangement) in relation to their employment by the Seller Group Member before Completion; and
- (b) to the extent it has not already done so, any bonus payments which have fallen due for payment before the Completion Date,

but nothing in this clause 10.6 places any obligation on the Seller to make payment of the Employee Entitlements.

10.7 Buyer's payment obligations

With effect from Completion, the Buyer must pay to or in respect of each Transferring Employee as and when they fall due:

- (a) all wages, salary, allowances, superannuation contributions and commissions of that Transferring Employee after Completion;
- (b) all annual leave, long service leave and personal/carer's leave of that Transferring Employee accruing after Completion; and
- (c) all Employee Entitlements of that Transferring Employee.

10.8 Buyer's payment obligations

- (a) The Buyer must notify the Seller in writing of the Employees that have accepted an offer in accordance with this clause 10.
- (b) As a Completion deliverable, the Seller must provide the Buyer with a list of the items set out in Schedule 1 clause 9.1 in respect of each Transferring Employee to the extent not already provided.

11. Other obligations following Completion

11.1 Change of name of Target Entities

The Buyer must procure that the name of each Target Entity is changed such that any reference to "360 Capital" is removed within 10 Business Days of Completion.

11.2 Change of fund names

The Buyer must procure that the name of each Fund is changed such that any reference to "360 Capital" is removed within 20 Business Days of Completion and must apply to the ASX to change the ASX code of the relevant Fund as soon as practical after Completion.

11.3 360 Capital Subiaco Square Shopping Centre Property Trust

- (a) In circumstances where the wind up of the 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 is not completed by the Completion Date, the parties must cause their respective Related Entities to enter into the Subiaco Investment Management Agreement, whereby the Company will engage 360CFML to perform all obligations and receive all benefits associated with the management of 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 until such time as the wind up of that fund is complete.
- (b) The parties agree that the Seller is entitled to the benefit of any Subiaco Exit Fees and any responsible entity or management fees accruing prior to the wind up of the 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 received by or payable to the Company and the Buyer and Seller must do everything to ensure the Company receives and accounts to the Seller for such fees. In circumstances where the Company is paid any such fees after Completion, the Buyer must within 2 Business Days of such receipt, pay an amount equal to such fees to the Seller.

11.4 TOT

In circumstances where the responsible entity of TOT has not been changed from the Company to 360CFML by the Completion Date, the parties must cause their respective Related Entities to enter into the TOT Investment Management Agreement, whereby the Company will engage 360CFML to perform all obligations and receive all benefits (including fees) associated with the management of TOT and the parties must use their best endeavours to cause the Company to retire as, and 360CFML to agree to its appointment as, responsible entity of TOT as soon as practicable.

11.5 Access to Records

In addition to any other rights of access under this agreement, the Buyer must procure that for a period of 7 years after Completion (or for any longer period required by law) each Target Entity retains all the Records and makes available to the Seller and its Representatives on reasonable notice and at the expense of the Seller any Records which are reasonably required by the Seller:

- (a) to enable any Seller Group Member to prepare accounts, tax or Duty returns and other statutory returns or fulfil any other obligation relating wholly or partly to any period before Completion; or
- (b) in connection with the prosecution or defence of any claim by or against any Seller Group Member,

provided that nothing in this clause obliges any Target Entity to waive legal professional privilege. The Seller must comply, and must procure that each Seller Group Member complies, with any reasonable steps requested by the Buyer to preserve confidentiality in the Records.

11.6 Seller Group Names

The Buyer acknowledges that the relevant Seller Group Member remains the owner of all trade marks, brand names and business names containing the names "360 Capital" (**Seller Group Names**) and the parties agree that the Buyer must not and must procure that each Target Entity does not use any trade mark, brand name, business name, domain name or corporate name that contains or includes a Seller Group Name.

11.7 Appointment of proxy

- (a) From Completion until the Shares are registered in the name of the Buyer, the Seller must procure that 360CPL:
 - (i) appoints the Buyer as its sole proxy to attend shareholder's meetings and exercise the votes attaching to the Shares;
 - (ii) not attend and vote at any shareholders' meetings; and
 - (iii) take all other reasonable actions in the capacity of a registered holder of the Sale Shares as the Buyer directs.
- (b) The Buyer indemnifies the Seller against all Indemnified Losses relating to the implementation of any action taken in accordance with the proxy referred to in clause 11.7(a).

12. Warranties

12.1 Warranties

The Seller warrants to the Buyer that each Warranty is true and correct as at:

- (a) the date of execution of this agreement; and
- (b) the time immediately prior to Completion,

unless the Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.2 Warranties separate

- (a) Each Warranty is to be treated as a separate Warranty and is not limited by reference to any other Warranty or any other provision of any Transaction Document.
- (b) In so far as a Warranty is given in respect of "the Fund" or "the Funds" it is given separately in respect of each Fund.
- (c) In so far as a Warranty is given in respect of "the Sub-Trust" or "the Sub-Trusts" it is given separately in respect of each Sub-Trust.
- (d) In so far as a Warranty is given in respect of the Target Entities, it is given separately in respect of each Target Entity.
- (e) In so far as a Warranty is given in respect of the Trustee Target Entities, it is given separately in respect of each Trustee Target Entity.

12.3 Reliance

The Seller acknowledges that the Buyer has entered into this agreement and will complete this agreement in reliance on the Warranties.

12.4 Buyer's acknowledgments

The Buyer acknowledges and agrees that:

- (a) the Buyer has made and has relied on its own searches, investigations and enquiries in respect of the Company, the Business and the Assets and its own evaluation of any material provided by the Seller to the Buyer or its Representatives before the date of this agreement;
- (b) as part of its due diligence investigations and enquiries in respect of the Company, the Business and the Assets, the Buyer or its Representatives have had access to all documents and information they have requested from the Seller or its Representatives including the Due Diligence Materials;
- (c) the Buyer has extensive knowledge and experience of the property funds management industry in Australia and has had the benefit of independent legal, financial and technical advice relating to its proposed purchase of the Shares and the terms of this agreement;
- (d) no Seller Group Member has made and no Representative of any Seller Group Member has made any warranty as to the accuracy of any forecast, budget, estimate, projection, statement of opinion or statement of intention provided to the Buyer or its Representatives before the date of this agreement;
- (e) the Buyer is not entering into this agreement in reliance on, and it may not rely on, any forecast, budget, estimate, projection, statement of opinion, statement of intention or any other warranty, representation or other statement made or purporting to be made by or on behalf of any Seller Group Member, or its Representatives, other than the Warranties; and
- (f) any Claim by any Buyer Group Member must be based solely on and limited to the express provisions of this agreement and that, to the maximum extent permitted by law, all terms and conditions that may be implied by law in any jurisdiction and which are not expressly set out in this agreement are excluded (and to the extent that any terms and conditions of this type cannot be excluded then the Buyer irrevocably waives all rights and remedies that it may have in relation to, and

releases the Seller and each of its Representatives from any liability in respect of, any terms and conditions of this type).

12.5 Warranties by the Buyer

The Buyer warrants to the Seller:

- (a) that each Buyer Warranty is true and correct as at the date of execution of this agreement and as at the time immediately prior to Completion; and
- (b) that as at the date of this agreement it has no actual knowledge of any breach of any Warranty or any other fact, matter or circumstance that may give rise to a Warranty Claim being made against the Seller.

13. Limitations of liability

13.1 Disclosure and knowledge

The Seller is not liable in respect of a Claim if the fact, matter or circumstance giving rise to the Claim:

- (a) where the Claim is a Warranty Claim, it is disclosed or described in any Transaction Document or the EWIC Agreements;
- (b) is fairly disclosed in the Due Diligence Materials;
- (c) would have been disclosed to the Buyer had the Buyer conducted searches 10 Business Days before the date of this agreement of the public records maintained by ASIC, the Federal Court of Australia, the Supreme Court of New South Wales, the Supreme Court of Victoria, the PPSR Register established under section 147 of the PPSA and all ASX announcements relating to the Target Entities and the Funds;
- (d) is provided for or otherwise taken into account in the Last Accounts or the Completion Balance Sheet either specifically or as part of a general provision or allowance for matters of that type or nature or is disclosed in the Last Accounts or the Completion Balance Sheet by way of note or in any report forming part of the Last Accounts or the Completion Balance Sheet; or
- (e) was known to any of the directors of the Buyer or any of John McBain, Nicholas Collishaw, Jason Huljich, Neil Rogan or Simon Holt as at the date of this agreement including as a result of their due diligence inquiries.

13.2 Time limits for Claims

The Seller is not liable in respect of a Claim unless:

- (a) the Buyer gives the Seller notice describing in reasonable detail each fact, matter or circumstance giving rise to the Claim and stating why that fact, matter or circumstance gives rise to a Claim and including an estimate of the amount of the Claim (**Claim Notice**) no later than 20 Business Days after the Buyer first becomes aware of that fact, matter or circumstance;
- (b) the Claim Notice is received by the Seller no later than:
 - (i) 5 years after Completion in respect of a Warranty Claim arising out of a breach of a Tax Warranty; and
 - (ii) 12 months after Completion in respect of any other Claim;

- (c) within 12 months after the Claim Notice is received by the Seller either the Claim has been satisfied or settled or the Buyer has commenced legal proceedings against the Seller in respect of the Claim; and
- (d) the Company is a Related Entity of the Buyer on the date a Claim Notice in relation to a Claim other than a Tax Claim is received by the Seller.

13.3 Access to information

The Seller is not liable in respect of a Claim unless as soon as reasonably practicable after the Buyer gives a Claim Notice, the Buyer gives the Seller reasonable access during business hours to all Records relating to the Claim the subject of that Claim Notice and allows the Seller a period of 20 Business Days to investigate the facts, matters or circumstances that may give rise to the Claim provided that each Seller Group Member complies with any reasonable steps requested by the Buyer to preserve confidentiality in the Records.

13.4 Minimum amount for Warranty Claims

The Seller is not liable in respect of a Warranty Claim unless the amount that the Buyer would be entitled to recover in relation to that Warranty Claim is at least \$500,000.

13.5 Threshold for Warranty Claims

The Seller is not liable in respect of a Warranty Claim unless the aggregate amount that the Buyer would be entitled to recover, but for this clause 13.5, in relation to all Warranty Claims is at least \$1,000,000, in which case the Seller is liable for the whole of that amount and not merely the excess.

13.6 Insurance coverage

The Seller is not liable in respect of a Claim to the extent that:

- (a) any Buyer Group Member has a right to recover under any contract of insurance in respect of any fact, matter or circumstance giving rise to the Claim; or
- (b) the Company would have had a right to recover under a contract of insurance in respect of any fact, matter or circumstance giving rise to the Claim had the scope and amount of insurance cover maintained for the benefit of the Company post Completion been substantially similar to that in place immediately before Completion.

13.7 Other limitations

The Seller is not liable in respect of any Claim to the extent that:

- (a) provision for the Tax or Duty which is the subject of the Claim has been included in the Completion Balance Sheet;
- (b) the loss or damage giving rise to the Claim is recovered by any Buyer Group Member under another Claim or a Tax Claim or is made good or otherwise compensated for without cost to any Buyer Group Member;
- (c) the fact, matter or circumstance giving rise to the Claim gives rise to any Tax or Duty benefit to any Buyer Group Member;
- (d) the circumstances giving rise to the Claim are remedied by the Seller to the reasonable satisfaction of the Buyer within 30 Business Days after receiving notice of the Claim from the Buyer;

- (e) the Claim arises out of anything done or omitted to be done in accordance with the terms of any Transaction Document or with the prior written approval of the Buyer;
- (f) the Claim arises out of any voluntary act, omission or transaction carried out after Completion by or on behalf of any Buyer Group Member;
- (g) the Claim arises from any matter referred to in clause 15.4(j) or clause 15.4(k);
- (h) the amount of the Claim is increased as a result of the failure of the Buyer to comply with its obligations under clause 14 in respect of that Claim;
- (i) the Claim arises out of any change after Completion in the accounting policies or practices applied by any Buyer Group Member;
- (j) the Claim arises from a change in any legislation or regulation, any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority after the date of this agreement (whether or not retrospective in effect);
- (k) the Claim arises from a cessation of or a significant change in the nature of the business of the Target Entity after Completion;
- (l) the Claim relates to an Indemnified Loss in respect of which a Trustee Target Entity is entitled to reimbursement, recovery or indemnification out of the assets of a fund or trust or from a unitholder in a fund or trust;
- (m) the Claim relates to an Indemnified Loss in respect of which a Trustee Target Entity is not entitled to reimbursement, recovery or indemnification out of the assets of a fund or trust or from a unitholder in a fund or trust by virtue of facts or circumstances occurring after Completion; or
- (n) the Claim relates to an Indemnified Loss to the extent it arises as a result of a Buyer Group Member having a Relevant Interest in any units in a Fund after Completion.

13.8 Maximum recovery

The maximum aggregate amount recoverable by the Buyer from the Seller in relation to:

- (a) all Tax Claims and Claims in respect of clause 1 or 2 of Schedule 1 is 100% of the Purchase Price; and
- (b) all other Claims, is 60% of the Purchase Price.

13.9 Rights against third parties

If the Seller has made a payment to the Buyer in relation to any Claim and any Buyer Group Member has or subsequently obtains a right to recover an amount from any person other than the Seller in connection with the fact, matter or circumstance that gave rise to the Claim, the Buyer must:

- (a) within 20 Business Days after becoming aware of the right of recovery, notify the Seller of that right of recovery and provide all information in relation to the circumstances giving rise to that right as the Seller may reasonably require; and
- (b) take or procure that the relevant Buyer Group Member takes all reasonable steps to enforce that right of recovery.

13.10 Reimbursement of benefits subsequently received

If the Seller has made a payment to the Buyer in respect of a Claim (**Claim Amount**) and after that payment is made any Buyer Group Member receives any payment, benefit or credit (including any benefit in relation to Tax or Duty) by reason of the fact, matter or circumstance to which the Claim relates (**Recovery Amount**), then the Buyer must as soon as reasonably practicable repay to the Seller an amount equal to the lesser of the Claim Amount and the Recovery Amount less:

- (a) all costs incurred by any Buyer Group Member in recovering the Recovery Amount (including any increase in insurance premiums in respect of future periods); and
- (b) any Tax payable by any Buyer Group Member as a result of receiving the Recovery Amount.

13.11 Mitigation

Nothing in this agreement relieves any person from any duty at law to mitigate any loss or damage that it may suffer or incur in connection with any circumstances giving rise to a Claim or Tax Claim or as a result of any breach of this agreement (including a breach of any Warranty), including exercising all rights to be reimbursed or indemnified out of the assets of any Fund or Sub-Trust.

13.12 Exclusion of certain losses

- (a) No party is liable to any other party for any loss or damage resulting from a breach of this agreement (including a breach of any Warranty) which does not arise naturally or in the usual course of things from that breach except where this agreement specifically provides that that type of loss or damage is recoverable.
- (b) Without limiting clause 13.12(a), no party is liable to any other party for any loss or damage resulting from a breach of Warranty which relates to loss of opportunity, loss of goodwill, loss of reputation or other similar loss or damage of a consequential nature, even where that loss or damage arise naturally or in the usual course of things from that breach.

13.13 No action against officers and employees

The Buyer waives and must procure that each other Buyer Group Member waives all rights and claims that it may have personally against the current and former officers and employees of any Seller Group Member in relation to any matter arising directly or indirectly in connection with a Transaction Document or the sale of the Shares except to the extent that those rights or claims arise out of the fraud, wilful misconduct or wilful default of a current or former officer or employee of any Seller Group Member. The parties acknowledge and agree that:

- (a) the Seller has sought and obtained this waiver as agent for and on behalf of each Seller Group Member's respective current and former officers and employees and holds the benefit of this clause 13.13 as trustee for them; and
- (b) the provisions of this clause 13.13 may be enforced by the Seller on behalf of and for the benefit of each Seller Group Member's respective current and former officers and employees and those persons may plead this clause 13.13 in answer to any claim made by a Buyer Group Member against them.

13.14 Circumstances where limitations not to apply

None of the limitations in this clause 13 apply to any Claim to the extent that it arises out of, or is increased as a result of:

- (a) a breach of any of the Warranties set out in paragraphs 1, 2.1 and 3.4 of Schedule 1; or
- (b) any fraud by the Seller or any of its Representatives.

14. Third Party Claims

14.1 Notice

Without limiting any other rights of the Seller under this agreement, if after Completion the Buyer becomes aware of any Third Party Claim which may give rise to a Warranty Claim the Buyer must within 20 Business Days after becoming aware of the Third Party Claim give the Seller notice of the Third Party Claim (including reasonable details of the facts, matters or circumstances giving rise to the Third Party Claim, the basis of the Third Party Claim and an estimate of the amount of the Third Party Claim).

14.2 Obligations after notice given

If the Buyer gives notice under clause 14.1 then until the Third Party Claim has been finally resolved or the Seller gives notice under clause 14.3:

- (a) the Buyer must act and must procure that the Target Entity to which the Third Party Claim relates acts in good faith and with due diligence in relation to the Third Party Claim;
- (b) the Buyer must give to the Seller all information and assistance as the Seller may reasonably require in relation to the Third Party Claim and must regularly consult with the Seller in relation to the conduct of any proceedings or negotiations in relation to the Third Party Claim; and
- (c) the Buyer must not make and must procure that the Target Entity to which the Third Party Claim relates does not make any admission of liability, agreement, compromise or settlement in relation to the Third Party Claim without the prior written consent of the Seller, such consent not to be unreasonably withheld or delayed.

14.3 Assumption of conduct by Seller

The Seller may at any time before a Third Party Claim notified under clause 14.1 is finally resolved give notice to the Buyer assuming the conduct of the defence of the Third Party Claim.

14.4 Effect of assumption of conduct by Seller

If the Seller gives notice under clause 14.3 assuming the conduct of a Third Party Claim then:

- (a) the Buyer must allow and must procure that the relevant Target Entity allows the Seller to take over the conduct of all proceedings and negotiations in relation to the Third Party Claim and to settle or compromise the Third Party Claim with the prior written consent of the Buyer, which consent must not be unreasonably withheld or delayed;
- (b) the Seller must conduct those proceedings and negotiations in good faith and must act reasonably in all the circumstances including having regard to the likelihood of success and the effect of the proceedings or actions on the goodwill or reputation of the Buyer Group or the Business;

- (c) the Buyer must procure that the relevant Target Entity:
 - (i) provides the Seller and its professional advisers with all access to the employees and records of the Target Entity as the Seller may reasonably require in connection with the Third Party Claim and permits the Seller to take copies of those records;
 - (ii) uses all reasonable endeavours (including the reimbursement of all out of pocket expenses) to procure that employees and officers of the Target Entity provide all witness statements and other evidence as the Seller may reasonably require to avoid, dispute, resist, defend, appeal, compromise or mitigate the Third Party Claim;
 - (iii) takes all other action that the Seller may request to avoid, dispute, resist, defend, appeal, compromise or mitigate the Third Party Claim; and
 - (iv) does not make any admission of liability, agreement, compromise or settlement in relation to the Third Party Claim without the prior written consent of the Seller;
- (d) the Seller must give to the Buyer all information as the Buyer may reasonably require in relation to the Third Party Claim and must keep the Buyer informed in relation to the conduct and status of any proceedings or negotiations in relation to the Third Party Claim and provide the Buyer with reasonable access to copies of any notice, correspondence or other document, and reasonable details of any significant development in relation to the Third Party Claim;
- (e) the Seller indemnifies the Buyer against, and must pay to the Buyer on demand the amount of, any reasonable cost or expense incurred by the Buyer or the Target Entity arising out of or in connection with any action taken by, or omitted to be taken by, the Buyer or the Target Entity under this clause 14.4.

15. Tax

15.1 Exit from Seller Consolidated Group and GST Group

The Seller must:

- (a) procure that until the Completion Date each Target Entity remains a subsidiary member of the Seller Consolidated Group;
- (b) no later than 5 Business Days before Completion give to the Buyer a statement of the Group Liabilities of the Seller Consolidated Group that are due and payable but have not been paid before Completion and a draft calculation of the Exit Payment for each Target Entity;
- (c) no later than 2 Business Days before Completion:
 - (i) give to each Target Entity a calculation of the Exit Payment for the Target Entity based on the draft calculation referred to in clause 15.1(b) but amended as required to take account of any reasonable comments provided by the Buyer on or before the date that is 5 Business Days before Completion; and
 - (ii) procure that each member of the Seller Consolidated Group gives all other notifications required to be given under the Tax Sharing Agreement in connection with the proposed exit of the Target Entity from the Seller Consolidated Group; and

- (d) no later than one Business Day before Completion procure that each Target Entity pays to the Seller the Exit Payment for the Target Entity and provide to the Buyer written evidence of that payment having been made;
- (e) procure that the Tax Release Deed is executed before Completion; and
- (f) prior to Completion, procure that the representative member of the 360 GST Group notifies the Commissioner of Taxation in the approved form to revoke the approval of the Company as a member of the 360 GST Group, effective on Completion.

15.2 Tax indemnity

The Seller indemnifies the Buyer against, and must pay to the Buyer in accordance with this clause 15 the amount of, any Tax or Duty that any Target Entity is liable to pay in its personal capacity and which it is not entitled to reimbursement, recovery or indemnification from the assets of any fund or trust in respect of or by reference to any matter or event occurring or which is taken to have occurred in the period from the Acquisition Date to the Completion Date (including any Tax or Duty):

- (a) that the Target Entity is liable to pay as result of the Target Entity having been a member of the Seller Consolidated Group; or
- (b) that the Target Entity is liable to pay as result of the Target Entity having been a member of the 360 GST Group.

15.3 Time limit for Tax Claims

The Seller is not liable in respect of any Tax Claim unless notice of the Tax Assessment giving rise to the Tax Claim is given to the Seller under clause 16 no later than 5 years after Completion.

15.4 Other limitations

The Seller is not liable in respect of any Tax Claim to the extent that:

- (a) provision for the Tax or Duty which is the subject of the Tax Claim has been included in the Last Accounts or the Completion Balance Sheet;
- (b) the amount otherwise payable in respect of the Tax Claim has been recovered by the Buyer under a Warranty Claim;
- (c) the fact, matter or circumstance giving rise to the Tax Claim gives rise to any Tax or Duty benefit to any Buyer Group Member;
- (d) the Tax Claim arises out of anything done or omitted to be done in accordance with the terms of any Transaction Document or at the request, or with the prior written approval of the Buyer;
- (e) the Tax Claim arises out of any voluntary act, omission or transaction carried out by or on behalf of any Buyer Group Member after Completion;
- (f) the Tax Claim arises out of any change after Completion in the accounting policies or practices applied by any Buyer Group Member;
- (g) the Tax Claim relates to Tax or Duty in respect of which a Trustee Target Entity is entitled to reimbursement, recovery or indemnification out of the assets of a fund or trust or from a unitholder in a fund or trust;

- (h) the Tax Claim relates to Tax or Duty in respect of which a Trustee Target Entity is not entitled to reimbursement, recovery or indemnification out of the assets of a fund or trust or from a unitholder in a fund or trust by virtue of facts or circumstances occurring after Completion;
- (i) the Tax Claim relates to Tax or Duty Loss to the extent it arises as a result of a Buyer Group Member having a Relevant Interest in any units in a Fund after Completion;
- (j) the Tax Claim arises from the failure of any Buyer Group Member after Completion to make any valid claim or election in relation to Tax or Duty or to lodge in a timely manner any return, notice or other document relating to Tax or Duty;
- (k) the Tax Claim arises from a change by any Buyer Group Member after Completion in any claim or election in relation to Tax or Duty made before Completion or the amendment after Completion of any return relating to Tax or Duty of any Buyer Group Member relating to a period ending on or before Completion (except where that amendment is required by law or is approved by the Seller in writing before it is made);
- (l) the amount of the Tax Claim is increased as a result of the failure of the Buyer to comply with the provisions of clause 16;
- (m) the Tax Claim arises from a change in any legislation or regulation relating to Tax or Duty, any judicial or administrative interpretation of any legislation or regulation or any practice or policy or public or private ruling of any Tax Authority after the date of this agreement (whether or not retrospective in effect); or
- (n) the Tax or Duty which is the subject of the Tax Claim is GST which is recoverable from the recipient of a supply or for which an input tax credit is available.

15.5 Time for payment

The Seller must make any payment due under clause 15.2 no later than 20 Business Days after the Seller receives from the Buyer notice providing details of the amount due and the basis on which the Buyer claims payment under this clause except if payment is in respect of Tax or Duty actually payable in which case the Seller is not required to make payment until the day that is 5 Business Days before the last date on which payment of that Tax or Duty may lawfully be made without incurring penalties or interest for late payment.

15.6 Refunds

If the Seller has made a payment to the Buyer under this clause 15 (**Tax Payment Amount**) and any Buyer Group Member receives any refund in respect of any fact, matter or circumstance in respect of which that payment was made (**Tax Refund Amount**) then the Buyer must as soon as reasonably practicable after receipt pay to the Seller an amount equal to the lesser of the Tax Payment Amount and the Tax Refund Amount less:

- (a) all costs incurred by any Buyer Group Member in obtaining that refund; and
- (b) if a refund includes interest on overpaid Tax or Duty, the amount of Tax or Duty payable on that interest by the recipient of the refund.

16. Tax Assessments

16.1 Notice

If after Completion the Buyer or any Target Entity receives or proposes to lodge any Tax Assessment which is reasonably likely to give rise to a Tax Claim the Buyer must as soon as

reasonably practicable give the Seller notice of the Tax Assessment (including a copy of each document received or proposed to be lodged in connection with the Tax Assessment).

16.2 Obligations after notice given

If the Buyer gives notice under clause 16.1:

- (a) the Buyer must give and must procure that the relevant Target Entity gives to the Seller all information and assistance that the Seller may reasonably require in relation to the Tax Assessment; and
- (b) the Buyer must not and must procure that the relevant Target Entity does not:
 - (i) in the case of a Tax Assessment received from a Tax Authority, engage in any discussion or negotiation with or confer with any Tax Authority concerning the Tax Assessment or make any admission of liability, agreement, settlement or compromise with any Tax Authority in respect of the Tax Assessment; or
 - (ii) in the case of a Tax Assessment proposed to be lodged with any Tax Authority, lodge that Tax Assessment,

without the prior written consent of the Seller which consent must not be unreasonably withheld or delayed.

16.3 Seller's response to notice

The Seller may within 40 Business Days after notice is given under clause 16.1 in relation to a Tax Assessment give notice to the Buyer requiring the Buyer to comply with the terms of clause 16.4 in relation to the Tax Assessment.

16.4 Effect of Seller's notice

If the Seller gives notice under clause 16.3 in relation to a Tax Assessment then:

- (a) the Buyer must allow and must procure that the relevant Target Entity allows the Seller to take over the conduct of all proceedings and negotiations in relation to the Tax Assessment and to settle or compromise the Tax Assessment with the prior written consent of the Buyer, which consent must not be unreasonably withheld or delayed and the Buyer must procure that the Target Entity appoints the Seller as its representative for this purpose;
- (b) the Buyer must procure that the relevant Target Entity:
 - (i) responds to the Tax Assessment in any manner as the Seller may request including by giving notice of objection to the Tax Assessment;
 - (ii) provides the Seller and its professional advisers with all access to the employees and records of the Target Entity as the Seller may reasonably require in connection with the Tax Assessment and permits the Seller to take copies of those records;
 - (iii) uses all reasonable endeavours (including the reimbursement of all out of pocket expenses) to procure that employees of the Target Entity provide all witness statements and other evidence as the Seller may reasonably require to avoid, dispute, settle or compromise the Tax Assessment; and

- (iv) takes all other action that the Seller may request to avoid, dispute, settle or compromise the Tax Assessment including instituting legal proceedings or seeking any administrative law remedy; and
- (c) the Seller indemnifies the Buyer against, and must pay to the Buyer on demand the amount of, any reasonable cost or expense incurred by the Buyer or the relevant Target Entity arising out of or in connection with any action taken by the Buyer or the Target Entity under this clause 16.4.

16.5 Buyer's rights to settle

If the Seller does not give notice under clause 16.3 then without limiting the Buyer's other rights under this agreement, the Buyer and the relevant Target Entity are entitled to settle, compromise or pay the Tax Assessment on any reasonable terms.

17. Tax returns and tax audits

17.1 Tax returns relating to periods ending before Completion

The Seller is responsible for preparing and lodging with the appropriate Tax Authority all returns required to be lodged in relation to the Tax or Duty affairs of each Trustee Target Entity in relation to any period ending on or before Completion that have not been prepared and lodged on or before Completion and the Seller must prepare and lodge all returns of this type as soon as reasonably practicable after Completion.

17.2 Assistance from Buyer

The Buyer must provide to the Seller at its own cost all information and assistance reasonably required by the Seller (including reasonable access to employees and records of the Company) in connection with the preparation of the returns referred to in clause 17.1.

17.3 Tax returns relating to periods ending after Completion

The Buyer is responsible for preparing and lodging with the appropriate Tax Authority all returns required to be lodged in relation to the Tax or Duty affairs of each Trustee Target Entity in relation to any period ending after Completion. Without limiting the provisions of clause 16, the Buyer must, in respect of all returns in relation to the period in which Completion occurs:

- (a) prepare all returns of this type with due care, skill and diligence and as soon as reasonably practicable after the end of the relevant period;
- (b) give to the Seller drafts of all returns of this type and any other documents to be provided to any Tax Authority in relation to those returns before submission to the relevant Tax Authority and permit the Seller a reasonable opportunity to comment on those documents;
- (c) lodge all returns of this type and other documents with the relevant Tax Authority as soon as practicable after receipt of the Seller's comments and reflecting all reasonable comments of the Seller in such returns or other documents (and in any event within any time period required by law) and provide a copy of the lodged returns or documents to the Seller; and
- (d) provide the Seller with copies of all correspondence with any Tax Authority in relation to all returns of this type after lodgement.

18. Confidentiality

18.1 No announcement or other disclosure of transaction

Except as permitted by clause 18.2:

- (a) the Seller must keep confidential, and must:
 - (i) procure that each Seller Group Member and each of their respective Representatives, keeps confidential; and
 - (ii) until Completion procure that each Trustee Target Entity and each of its Representatives, keeps confidential,

the existence of and the terms of this agreement and all negotiations between the parties in relation to the subject matter of this agreement; and
- (b) the Buyer must keep confidential, and must procure that each Buyer Group Member and each of their respective Representatives keeps confidential, the existence of and the terms of this agreement, all negotiations between the parties in relation to the subject matter of this agreement and all other information given to it under this agreement.

18.2 Permitted disclosure

Nothing in this agreement prevents a person from disclosing matters referred to in clause 18.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
 - (i) has not through any voluntary act or omission (other than the execution of this agreement) caused the disclosure obligation to arise; and
 - (ii) has before disclosure is made notified each other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given each other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (b) if disclosure is made by way of a written announcement the terms of which have been agreed in writing by the parties prior to the making of the announcement;
- (c) if disclosure is reasonably required to enable a party to perform its obligations under this agreement;
- (d) to any professional adviser of a party who has been retained to advise in relation to the Transaction or to the auditor of a party;
- (e) to any financier who has made a bona fide proposal to provide finance to a party in relation to the Transaction;
- (f) with the prior written approval of each party other than the party whose obligation it is to keep those matters confidential or procure that those matters are kept confidential;
- (g) where the matter has come into the public domain otherwise than as a result of a breach by any party of this agreement; or

- (h) any disclosure materials required in connection with the placement of ordinary shares in the Buyer by the Buyer to raise approximately \$60,000,000.00.

18.3 No use or disclosure of Confidential Information

The Seller must not at any time whether before or after Completion use or disclose to any person other than the Buyer and its Representatives any Confidential Information except if disclosure is required to be made by law or with the prior written approval of the Buyer.

19. Exclusivity

19.1 Relevant Competing Proposals

For the avoidance of doubt, during the Exclusivity Period, the Seller must not enter into, or agree to enter into, any agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Seller or both proposes or propose to undertake or give effect to an actual, proposed or potential Relevant Competing Proposal other than in accordance with this clause 19.

19.2 No shop and no talk

During the Exclusivity Period, the Seller must not, and must ensure that each of its Representatives does not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 19.2(a); or
- (b) **(no talk)** subject to clause 19.3:
 - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (iii) disclose or otherwise provide any non-public information about the business or affairs of a Seller Group Member or a Trustee Target Entity to a Third Party (other than a Regulatory Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of any Seller Group Member or a Trustee Target Entity); or
 - (iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 19.2(b).

19.3 Fiduciary exception

Clause 19.2(b) does not prohibit any action or inaction by the Seller or any of its Representatives in relation to an actual, proposed or potential Competing Proposal (including actual, proposed or potential Relevant Competing Proposal) if compliance with that clause would, in the opinion of the 360 Directors, (or where applicable the relevant Trustee Target Entity) formed in good faith after receiving written advice from its external legal advisers, constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of the Seller, provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 19.2(a).

19.4 Notification of approaches

- (a) During the Exclusivity Period, the Seller must as soon as reasonably practicable and in any event within the following 2 Business Days notify the Buyer in writing if it, or any of its Representatives, becomes aware of any:
 - (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (ii) proposal made to the Seller or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (iii) provision by the Seller or any of its Representatives of any non-public information concerning the business or operations of Seller or any Seller Group Member or any Trustee Target Entity to any Third Party (other than a Regulatory Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in paragraphs (i) to (iii) may only be taken by Seller if not proscribed by clause 19.2 or if permitted by clause 19.3.
- (b) A notification given under clause 19.4(a) must include:
 - (i) subject to any confidentiality condition, the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal; and
 - (ii) all material terms and conditions of the actual, proposed or potential Competing Proposal.

19.5 Matching right

- (a) Without limiting clause 19.2, and subject always to clause 19.1, during the Exclusivity Period, the Seller:
 - (i) must not enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Seller or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
 - (ii) must use its best endeavours to procure that none of the 360 Directors change any recommendation in favour of the Transaction to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Transaction),

unless:

- (iii) the 360 Directors, acting in good faith and in order to satisfy what the 360 Directors consider to be their statutory or fiduciary duties (having received written advice from its legal advisers), determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
 - (iv) the Seller has provided the Buyer with the material terms and conditions of the actual, proposed or potential Competing Proposal, including the price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (v) the Seller has given the Buyer at least 5 Business Days after the date of the provision of the information referred to in clause 19.5(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (vi) the Buyer has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 19.5(a)(v).
- (b) If the Buyer proposes to the Seller, or announces, amendments to the Transaction that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Buyer Counterproposal**) by the expiry of the 5 Business Day period in clause 19.5(a)(v), the Seller must procure that the Seller Board considers the Buyer Counterproposal and, if the Seller Board, acting reasonably and in good faith, determines that the Buyer Counterproposal would provide an equivalent or superior outcome for Seller Shareholders as a whole and / or the Seller compared with the Competing Proposal, taking into account all of the terms and conditions of the Buyer Counterproposal, then the Seller and the Buyer must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Buyer Counterproposal and to implement the Buyer Counterproposal, in each case as soon as reasonably practicable, and the Seller must use its best endeavours to procure that each of the directors of Seller continues to recommend the Transaction (as modified by the Buyer Counterproposal) to the Seller Shareholders.

19.6 Discussions

The Seller represents and warrants that, as at the date of this agreement, it is not involved in any discussions or negotiations relating to:

- (a) any actual, proposed or potential Competing Proposal; or
- (b) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Transaction.

19.7 Provision of information

During the Exclusivity Period, the Seller must as soon as possible provide the Buyer with:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any material non-public information about the business or affairs of the Seller, or any Trustee Target Entity or any other Seller Group Member disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not

previously been provided to the Buyer. For the avoidance of doubt, any such provision of information to a Third Party may only be undertaken if permitted by clause 19.3.

19.8 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 19 or any part of it:
 - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the 360 Directors or the Seller Board;
 - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,
 then, to that extent (and only to that extent) the Seller will not be obliged to comply with that provision of clause 19.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 19.8.

19.9 TIX and TOF

Despite any other provision of this agreement (including this clause 19) this clause does not restrict the activities of the Company in its capacity as responsible entity of TIX or TOF (or any action of its directors or officers in connection therewith) if a Competing Proposal or any Hostile Proposal arises after the date of this agreement and any act or admission taken by the Company in such capacity will have no implications under this clause but for the avoidance of doubt this will not release the Seller in connection with any actions taken by it in respect of any Competing Proposal or any Hostile Proposal.

20. Reimbursement Fee

20.1 Background to Reimbursement Fee

- (a) The Buyer and the Seller acknowledge that, if they enter into this agreement and the Transaction is subsequently not completed, the Buyer will incur significant costs, including those set out in clause 20.4.
- (b) In these circumstances, the Buyer has requested that provision be made for the payments outlined in clause 20.2, without which the Buyer would not have entered into this agreement.
- (c) The Seller's board believes, having taken advice from its legal advisors and financial advisors, that the completion of the Transaction will provide benefits to the Seller and that it is appropriate for the Seller to agree to the payments referred to in clause 20.2 in order to secure the Buyer's participation in the Transaction.

20.2 Reimbursement Fee triggers

The Seller must pay the Reimbursement Fee to the Buyer, without set-off or withholding, if:

- (a) **(Competing Proposal completes)** an actual, proposed or potential Competing Proposal of any kind is publicly announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 6 months of the date of such announcement, the Third Party or any Associate of that Third Party:

- (i) other than merely as a result of acquiring (either alone or in aggregate) a Relevant Interest in up to 50% of the shares in the Seller or units in 360 Capital Investment Trust, substantially completes a Competing Proposal of a kind referred to in any of paragraphs (b), (c) or (d) of the definition of Competing Proposal;
 - (ii) enters into an agreement, arrangement or understanding with the Seller, the Seller Board, any Subsidiary of the Seller or the board of any Subsidiary of the Seller (in each case, acting in any capacity) of the kind, or having the effect, referred to in paragraph (e) or (f) of the definition of Competing Proposal; or
 - (iii) without limiting clause 20.2(a)(i) or 20.2(a)(ii), acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the shares in the Seller or units in 360 Capital Investment Trust;
- (b) **(change of recommendation)** during the Exclusivity Period, any one or more of the 360 Directors:
 - (i) withdraws, adversely revises or makes an adverse recommendation in respect of the Transaction or their recommendation that the Seller Shareholders vote in favour of the Transaction (provided nothing in this clause requires a 360 Director to make a recommendation in favour of the subject matter of the TOF Unit Acquisition Condition); or
 - (ii) having given such support or having made such a recommendation, withdraws, adversely revises or adversely qualifies that support or recommendation for any reason;
 - (iii) having made no recommendation, makes an adverse recommendation in relation to the subject matter of the TOF Unit Acquisition Condition; or
 - (iv) recommends a Competing Proposal,

unless the Independent Expert concludes in the Independent Expert's Report (including in any update of, or revision, amendment or addendum to, that report) that the Transaction is not in the best interests of Seller Shareholders (except where either:

 - (v) that conclusion is due wholly or partly to the existence, announcement or publication of an actual, proposed or potential Competing Proposal; or
 - (vi) no 360 Director has withdrawn, adversely revised or adversely qualified his or her support of the Transaction or his or her recommendation that Seller Shareholders vote in favour of the Transaction within 2 Business Days after the date on which the Independent Expert's Report is received by the Seller); or
- (c) **(termination by the Buyer)** the Buyer is entitled to terminate this agreement pursuant to clause 21.1 and has given the appropriate termination notice to the Seller; or
- (d) **(recommendation of Competing Proposal)** during the Exclusivity Period any one of the 360 Directors recommends that the Seller Shareholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any shares in the Seller in which he or she has a Relevant Interest), an actual, proposed or potential Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period.

20.3 Timing of payment of Reimbursement Fee

- (a) A demand by the Buyer for payment of the Reimbursement Fee under clause 20.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of the Buyer into which the Seller is to pay the Reimbursement Fee.
- (b) The Seller must pay the Reimbursement Fee into the account nominated by the Buyer, without set-off or withholding, within 2 Business Days after receiving a demand for payment where the Buyer is entitled under clause 20.2 to the Reimbursement Fee.

20.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse the Buyer for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by the Buyer and the Buyer's employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:

- (e) the costs actually incurred by the Buyer will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.

20.5 Compliance with law

- (a) This clause 20 does not impose an obligation on the Seller to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court,

provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted.

- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 20.5(a).

20.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to the Buyer under clause 20.2 and is actually paid to the Buyer, the Buyer cannot make any claim against the Seller for payment of any subsequent Reimbursement Fee.

20.7 Other Claims

Where an amount becomes payable to the Buyer under clause 20.2 and is actually paid to the Buyer (or is payable, but no demand is made under clause 20.3), the Buyer cannot make any Claim (other than a Claim under this clause 20) against the Seller which relates to the event that gave rise to the right to make a demand under clause 20.3, except a Claim in relation to a breach of clause 19.

20.8 No Reimbursement Fee if Transaction completes

Despite anything to the contrary in this agreement, the Reimbursement Fee will not be payable to the Buyer if:

- (a) the Transaction completes, notwithstanding the occurrence of any event in clause 20.2;
- (b) merely by reason that the Transaction is not approved by Seller Shareholders;
- (c) merely by reason of one of more of the 360 Directors does not make a recommendation in respect of the subject matter of the TOF Unit Acquisition Condition; or
- (d) provided that the Seller has not materially breached this agreement, if the Seller is entitled to terminate this agreement in circumstances in which the Buyer is in material breach of it and has terminated this agreement,

and, if the Reimbursement Fee has already been paid it must be refunded by the Buyer.

20.9 TIX and TOF

Despite any other provision of this agreement (including this clause 20) this clause does not restrict the activities of the Company in its capacity as responsible entity of TIX or TOF (or any action of its directors or officers in connection therewith) if a Competing Proposal or any Hostile Proposal arises after the date of this agreement and any act or admission taken by the Company in such capacity will have no implications under this clause but for the avoidance of doubt this will not release the Seller in connection with any actions taken by it in respect of a Competing Proposal or any Hostile Proposal.

21. Termination

21.1 Termination by Buyer

The Buyer may terminate this agreement at any time before Completion:

- (a) in accordance with clause 2.5 or clause 6.6;

- (b) by notice to the Seller if:
 - (i) a breach of a Warranty set out in paragraphs 1.3, 2.1 or 3.4 of Schedule 1 has occurred;
 - (ii) during the Exclusivity Period the Australian financial services licence of the Company is suspended or terminated or a Seller Group Member receives a written notice of an intention to suspend or terminate the Australian financial services licence of the Company (and the Seller agrees to procure that any Seller Group Member receiving any such written notice will provide a copy of that notice to the Buyer within one Business Day of receipt) which suspension, termination or notice is not withdrawn or revoked prior to the Completion Date;
 - (iii) a breach of Warranty has occurred that is reasonably likely to result in the Buyer having a Claim in excess of \$5,000,000.

but is not entitled to terminate or rescind this agreement for any other reason.

21.2 Termination by Seller

The Seller may terminate this agreement at any time before Completion:

- (a) in accordance with clause 2.5 or clause 6.6; or
- (b) by notice to the Buyer if there is a breach by the Buyer of the Buyer Warranty set out in paragraph 1.3 of Schedule 2,

but is not entitled to terminate or rescind this agreement for any other reason.

21.3 Effect of termination

If this agreement is terminated then:

- (a) the provisions of this agreement will cease to have effect except for the provisions of clauses 1, 18.1 and 18.2, 20, this clause 21 and clauses 22 to 31 which will survive termination;
- (b) each party retains the rights it has against the others in respect of any breach of this agreement occurring before termination; and
- (c) the Buyer must return to the Seller all Confidential Information in relation to the Trustee Target Entities in its possession.

22. Payments

22.1 Direction

Any reference in this agreement to a payment to any party includes payment to another person at the direction of that party.

22.2 Method of payment

Payment of any amount due under this agreement by any party must be made by the paying party to the recipient party by:

- (a) electronic funds transfer to an account with an Australian bank specified by the recipient party to the paying party at least 3 Business Days before the due date for payment and confirmed by the paying party to the recipient party by notice;

- (b) unendorsed bank cheque drawn on an Australian bank or other immediately available funds; or
- (c) in any other manner reasonably required by the recipient party in writing.

22.3 No deduction

Any payment to be made under this agreement must be made free and clear of any set-off, deduction or withholding, except where that set-off, deduction or withholding is required or compelled by law.

22.4 Gross-up for withholdings

Any person who is required or compelled by law to make any deduction or withholding from any amount payable under this agreement must, to the extent permitted by law, pay to the payee an additional amount sufficient to ensure that the amount received by the payee equals the full amount that would have been received by the payee, if that deduction or withholding had not been required or compelled.

22.5 Default interest

If any party (**Payor**) fails to make a payment to any other party (**Payee**) under this agreement on or before the due date for payment, then, without limiting any other remedy of the Payee, the Payor must pay to the Payee on demand interest on the due amount calculated at the rate which is 3% above the Standard Rate, with interest to accrue from the due date to the day immediately before the actual date of payment, calculated daily on the basis of a 365 day year and capitalised monthly.

23. GST

23.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 23 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 23; and
- (c) unless expressly stated otherwise in this document, all amounts payable or consideration to be provided under this document are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 23.

A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts. A reference to the GST payable by an entity or the input tax credit entitlements of an entity includes any GST payable or input tax credit entitlements of the representative member of any GST Group to which that entity may belong.

23.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement or any other Transaction Document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax

credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

23.3 GST payable

If GST is payable in relation to a supply made under or in connection with this agreement or any other Transaction Document then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply or, if later, within 5 Business Days of the Supplier providing a valid tax invoice to the Recipient.

23.4 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this agreement or any other Transaction Document varies from the additional amount paid by the Recipient under clause 23.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 23.3. Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as practicable after becoming aware of the adjustment event.

24. Notices

24.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to the Seller:

Attention: Mr Tony Pitt

Address: Level 8, 56 Pitt Street, Sydney NSW 2000

Email: tony.pitt@360capital.com.au
 - (ii) if to the Buyer:

Attention: Mr John McBain

Address: Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060

Email: john.mcbain@centuria.com.au
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with clause 24.1(c).

24.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 24, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

25. Restraint

- (a) During the Listed Restricted Period, subject to clause 25(e), the Seller must not engage or be involved or interested in, and must procure that no other Related Entity of it engages or is involved or interested in either directly or indirectly and whether as a partner, joint venturer, licensor, financier, shareholder or, employee of or consultant of any entity or otherwise actions which would, or a proposal which would if completed, be reasonably likely to have a material adverse effect on the Buyer's or a Related Entity of the Buyer's right or ability to manage or continue as responsible entity or trustee of a listed fund or trust or a listed Fund or a Sub-Trust of a listed Fund including the matters set out in clause 25(c).
- (b) During the Unlisted Restricted Period, subject to clause 25(e), the Seller must not engage or be involved or interested in, and must procure that no other Related Entity of it engages or is involved or interested in either directly or indirectly and whether as a partner, joint venturer, licensor, financier, shareholder or, employee of or consultant of any entity or otherwise actions which would, or a proposal which would if completed, be reasonably likely to have a material adverse effect on the Buyer's or a Related Entity of the Buyer's right or ability to manage or continue as responsible entity or trustee of an unlisted fund or trust or an unlisted Fund or a Sub-Trust of an unlisted Fund including the matters set out in clause 25(c).
- (c) The actions restricted under clauses 25(a) and 25(b) include:
 - (i) convening a unitholder meeting to consider a resolution to change the responsible entity, trustee or manager of the relevant fund or trust;

- (ii) consenting to be a manager, trustee or responsible of the relevant fund or trust;
 - (iii) agreeing to assume or assuming a management or trustee role in relation to the relevant fund or trust;
 - (iv) making any public comment (including no making any disparaging statement in the media or otherwise) in relation to the management of the relevant fund or in relation to the Buyer Group;
 - (v) communicating with clients of the relevant funds or trusts in relation to the management of the relevant fund or in relation to the Buyer Group; and
 - (vi) acquiring units in a Fund after Completion.
- (d) During the Listed Restricted Period, the Buyer must not engage or be involved or interested in, and must procure that no other Related Entity of it engages or is involved or interested in either directly or indirectly and whether as a partner, joint venturer, licensor, financier, shareholder or, employee of or consultant any entity or otherwise, actions which would, or a proposal which would if completed, be reasonably likely to have a material adverse effect on the Seller's or a Related Entity of the Seller's right or ability to manage or continue as responsible entity of TOT or any other fund or trust of which the Seller or Related Entity acts as trustee, responsible entity or manager.
- (e) The Seller will cease to be bound by this clause 25 five Business Days after the Seller gives notice to the Buyer that a Loan Event of Default has occurred provided that the event of default giving rise to that Loan Event of Default:
- (i) is not capable of remedy; or
 - (ii) is capable of remedy but is not remedied within five Business Days after the Buyer's receipt of the Seller's notice that a Loan Event of Default has occurred.
- (f) The Seller acknowledges that all the prohibitions and restrictions contained in clauses 25(a) to 25(c) inclusive are reasonable in the circumstances and necessary to protect the goodwill of the Business as at the Completion Date. If any part of an undertaking in this clause 25 is unenforceable it may be severed without affecting the remaining enforceability of that undertakings.
- (g) In this clause 25, **Listed Restricted Period** means the period from Completion up to the expiration of:
- (i) 18 months from the Completion Date;
 - (ii) one year from the Completion Date; and
 - (iii) 6 months from the Completion Date,
- and **Unlisted Restricted Period** means the period from Completion up to the expiration of:
- (iv) the term of the call option deed referred to in the definition of Transaction Documents;
 - (v) 18 months from the Completion Date;
 - (vi) one year from the Completion Date; and

(vii) 6 months from the Completion Date.

26. Guarantee

- (a) This clause 26 applies notwithstanding any other provision of this agreement.
- (b) The Guarantor irrevocably and unconditionally guarantees to the Seller the satisfaction (and due and punctual performance of and compliance with) and payment in full of, the Obligations.
- (c) If the Buyer (for any reason) does not pay or satisfy any Obligation in full on the due date, the Guarantor will immediately on demand by the Seller satisfy or pay that Obligation in full.
- (d) The Guarantor as a separate, additional and primary liability irrevocably and unconditionally agrees to indemnify the Seller and keep the Seller indemnified, against any Cost, loss, damage, claim, demand or action suffered by the Seller arising from:
 - (i) any failure by the Buyer to satisfy the Obligations; or
 - (ii) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Buyer for any reason, whether or not the Seller knew or ought to have known of that reason.
- (e) Any reference in this clause 26 to the obligations or liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this clause 26.
- (f) The use of the expression **Guarantor** in this agreement in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier.
- (g) The provisions of this clause 26 which preserve the liability of a party as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this clause 26.
- (h) Each obligation of the Guarantor under this clause 26 constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this clause 26, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.
- (i) The liability of the Guarantor under this clause 26:
 - (i) is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between the Buyer and the Seller; and
 - (ii) will not be affected by any act, omission, matter or thing which, but for this clause 26(i)(ii), might release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this agreement) including any of the following:
 - A. **(event of insolvency)** the occurrence before, on or at any time after, the date of this agreement of any event of insolvency in relation to the Buyer;
 - B. **(invalidity etc)** this agreement or any payment or other act,

the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;

- C. **(time or concession)** the Seller granting time, waiver or other concession to, or making any composition, arrangement or compromise with the Buyer (including to or with the Buyer in respect of the liability of the Guarantor) or any other person;
 - D. **(forbearance)** the Seller not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of this agreement or any Obligation;
 - E. **(repudiation)** the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Seller or any other Obligor of this agreement or any Obligation;
 - F. **(variation)** any variation to this agreement or any Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages the Buyer;
 - G. **(release)** the full, partial or conditional release or discharge by the Seller or by operation of law of the Buyer from this agreement or any Obligation;
 - H. **(loss of Encumbrance)** the failure to obtain or perfect any Encumbrance or the loss or impairment of any Encumbrance by operation of law or otherwise;
 - I. **(transfer)** the transfer, assignment or novation by the Seller or the Buyer of all or any of its rights or obligations under this agreement;
 - J. **(non execution etc)** any person, whether named as a party or not, does not execute this agreement or the execution of this agreement by any person is invalid, forged or irregular in any way; or
 - K. **(disclosure)** any failure by the Seller to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Seller relating to or affecting the Buyer at any time before or during the currency of this agreement, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Seller was under a duty to disclose that fact, circumstance, event or thing to any Obligor.
- (j) The guarantee and indemnity from the Guarantor under this clause 26 is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any other provision this agreement or any other Power of the Seller.
- (k) The Guarantor has no right or entitlement to consent to or be made aware of any event referred to in clause 26(i)(ii), any transaction between the Seller and the Buyer or any particulars concerning any obligation or liability that forms part of the Obligations.

- (l) The Seller is not under an obligation to marshal or appropriate in favour of the Guarantor, or to exercise, apply, transfer or recover in favour of the Guarantor, any security or any funds or assets which the Seller holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Seller determines in its absolute discretion.
- (m) The Seller may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this clause 26 and which the Seller may, at its discretion, appropriate in reduction of the Guarantor's liability under this clause 26 at such time determined by it.
- (n) The Guarantor's liability under this agreement will not be reduced or avoided by any defence, set-off or counterclaim available to the Buyer against the Seller.
- (o) The Guarantor may not:
 - (i) **(no proceedings)** institute any proceedings against the Buyer or make or join in making any application to any court for an administration, winding up, receivership or other similar order to be made in relation to the Buyer;
 - (ii) **(no demand)** unless instructed to do so by the Seller, take any action, make any demand for, lodge any proof of debt or similar claim or accept any money in part or complete satisfaction of, any liability on any account of the Buyer other than for a liability arising out of the supply of goods and services by the Guarantor to the Buyer in the ordinary course of the Guarantor's ordinary business and on arm's length terms;
 - (iii) **(no Encumbrance)** create or permit to exist any Encumbrance as security for any obligation which it owes to the Buyer or obtain the benefit of any Encumbrance for any obligation which the Buyer owes to it; or
 - (iv) **(no set-off)** unless instructed to do so by the Seller, set-off any money owing by the Guarantor against any liability owing to the Guarantor by the Buyer or permit the Buyer to set-off any money owing by the Buyer against any liability owing to the Buyer by the Guarantor.
- (p) The Guarantor irrevocably appoints the Seller as its attorney to prove in the insolvency of the Buyer for all money to which the Guarantor may be entitled from that the Buyer up to an amount which does not exceed the amount which may be payable by the Guarantor under this agreement. The Guarantor acknowledges that the Seller may, subject to the terms of this agreement, retain any money which the Seller may receive from any proof on account of the Guarantor's liability under this agreement.
- (q) The Guarantor agrees that the Seller is not required to make any claim or demand on the Buyer, or to enforce this agreement or any other Power against the Buyer, before making any demand or claim on the Guarantor.
- (r) The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of the Buyer and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have.
- (s) Without limiting clause 26(r), the Buyer may not seek the transfer to it of any security under any right of subrogation.
- (t) The guarantee and indemnity in this clause 26 is a continuing obligation of the Guarantor notwithstanding any termination by the Guarantor, settlement of account,

intervening payment, express or implied revocation or any other matter or thing. The Seller will continue to be entitled to the benefit of the guarantee and indemnity from the Guarantor under this clause 26 as regards the satisfaction of all the Obligations after that termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

27. Limitation of liability

- (a) This clause 27 applies notwithstanding any other provision of this agreement.
- (b) The Responsible Entity enters into this agreement only in its capacity as responsible entity of Centuria Capital Fund and in no other capacity. Any liability arising under or in connection with this agreement in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Centuria Capital Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 27 extend to all liabilities of the Responsible Entity in any way connected with this agreement.
- (d) No other party to this agreement may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 27 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Centuria Capital Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Centuria Capital Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Centuria Capital Fund.
- (f) In this clause 27, **Responsible Entity** means Centuria Funds Management Limited.

28. TOF management rights

28.1 Reimbursement of Defence Costs

If a TOF Acquisition Proposal is announced or made public prior to the date that is 12 months after the Completion Date and:

- (a) a Buyer Group Member incurs Defence Costs, then the Seller must, subject to the Buyer providing written notice to the Seller setting out reasonable evidence of the Defence Costs incurred, reimburse the relevant Buyer Group Member for 50% of those Defence Costs within 10 Business Days of receiving written notice from the Buyer; or
- (b) if the Defence Costs referred to in paragraph (d)(ii) of the definition of Defence Costs constitute a loan or the provision of other financial accommodation by a Buyer Group Member, then the Seller must make a loan or provide other financial accommodation on the same terms and on an equal ranking and in equal amounts as the loan made by, or the financial accommodation provided by, a Buyer Group Member,

provided that the aggregate of such reimbursements and loan or financial accommodation amounts do not exceed \$3,575,000.

28.2 Reduction of Purchase Price

Any payment, application of funds or reimbursement by the Seller under clause 28.1 will be treated as a reduction of the Purchase Price.

28.3 Obligation to make further payments

For the avoidance of doubt should a Scheme Proposal be completed which involves another fund or other entity managed or administered by a Buyer Group Member, the Seller will have no obligation to make any further payments under this clause in respect of any costs incurred after the completion of the Scheme Proposal.

29. Entire agreement

To the extent permitted by law, this agreement comprises the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

30. General

30.1 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

30.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party.

30.3 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

30.4 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses and the Seller must pay any costs and expenses of each Trustee Target Entity in connection with:

- (a) negotiating, preparing, executing and performing each Transaction Document; and
- (b) any subsequent consent, agreement, approval, waiver or amendment relating to each Transaction Document.

30.5 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

30.6 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

30.7 No merger

A party's rights and obligations do not merge on completion of any transaction under this agreement.

30.8 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

30.9 Stamp duties

The Buyer:

- (a) must pay all stamp duties and other Duties, together with any related fees, penalties, fines, interest or statutory charges, and similar Taxes in respect of this agreement, the performance of this agreement and each transaction effected or contemplated by or made under this agreement; and
- (b) indemnifies the Seller against, and must pay to the Seller on demand the amount of, any Indemnified Loss suffered or incurred by the Seller arising out of or in connection with any delay or failure to comply with clause 30.9(a).

30.10 Operation of indemnities

Without limiting any other provision of this agreement, the parties agree that:

- (a) each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

30.11 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

31. Governing law and jurisdiction

This agreement is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 31.

Schedule 1 Warranties

1. The Seller

1.1 Capacity and authorisation

- (a) The Seller is a company properly incorporated and validly existing under the laws of Australia, and has taken all corporate actions and obtained all shareholder and Regulatory Authority authorisations necessary to enable it to execute and deliver this agreement and perform its obligations and procure that other Seller Group Members procure their obligations under this agreement.
- (b) The execution, delivery and performance by the Seller of this agreement complies with its constitution and does not constitute a breach of any law or obligation, or, subject to obtaining the Noteholder Consents and the Third Party Consents, cause or result in a default under any agreement or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement.

1.2 Valid obligations

This agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Seller and is enforceable against the Seller in accordance with its terms.

1.3 Solvency

None of the following events has occurred in relation to the Seller or the Target Entities:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of it or any of its assets or anyone else is appointed who (whether or not as agent for it) is in possession, or has control, of any of its assets for the purpose of enforcing an Encumbrance;
- (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of it;
- (c) other than in respect of the Notes, it proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
- (d) it is declared or taken under any applicable law to be insolvent or the its board of directors resolves that it is, or is likely to become at some future time, insolvent.

2. Shares and share capital

2.1 Ownership of the Shares

As at the date of this agreement and as at Completion, 360CPL is the legal owner of the Shares and the Seller is the beneficial owner of the Shares and as at Completion there is no Encumbrance or other third party right over any of the Shares.

2.2 Share capital

- (a) The Shares constitute the whole of the issued share capital of the Company and are fully paid up.

- (b) No person has any right to require the issue of any shares or other securities in any Target Entity including under any convertible security and no Target Entity is under an obligation to issue, and no person has the right to call for the issue or transfer of, any shares or other securities in it at any time.
- (c) No voting agreements or arrangements exist with respect to any Target Entity's shares.

2.3 No Encumbrances or other arrangements

- (a) As at Completion, there are no Encumbrances over the shares of the Target Entities or the Assets other than the Permitted Encumbrances.
- (b) At Completion the Buyer will acquire the full legal and beneficial ownership of the Shares free and clear of all Encumbrances, subject to registration of the Buyer in the register of shareholders.
- (c) For each Target Entity:
 - (i) at Completion all of its shares are free and clear of all Encumbrances (other than Permitted Encumbrances);
 - (ii) its shares can be sold and transferred free of any competing rights, including pre-emptive rights or rights of first refusal;
 - (iii) its shares have been validly issued, are fully paid and no money is owing in respect of them.

3. Corporate matters

3.1 Incorporation

Each Target Entity is a company properly incorporated and validly existing under the laws of Australia and has the legal right and full corporate power to own its assets and to carry on its business as conducted at the date of this agreement.

3.2 Constitution

A true and complete copy of the constitution of each Target Entity has been disclosed to the Buyer before the date of this agreement.

3.3 Group Structure and Target Entities

- (a) The structure diagrams for the Target Entities and the Sub-Trusts set out in Schedule 6 is accurate and complete as at Completion and, except where indicated, shareholdings are beneficially held and wholly owned.
- (b) Other than as disclosed in the structure diagrams in Schedule 6 no Target Entity has any legal or beneficial right in any shares or other securities in any company, any units in any unit trust or any other ownership interests in any other entity.
- (c) Other than as disclosed in the structure diagrams in Schedule 6 as at Completion neither 360 Capital Institutional Investment Pty Ltd ACN 118 020 527 nor ACN 062 671 872 Pty Ltd ACN 062 671 872 is a trustee of any trust.
- (d) As far as the Seller is aware, all of the Sub-Trusts for which either 360 Capital Institutional Investment Pty Ltd ACN 118 020 527 or ACN 062 671 872 Pty Ltd ACN 062 671 872 is the trustee are dormant other than:

- (i) BIPT Preston No. 1 Sub Trust;
- (ii) BIPT Marple Ave Holding Trust;
- (iii) BIPT Marple Ave Sub Trust;
- (iv) BIF Noble Park Holding Trust;
- (v) BIF Noble Park Sub Trust;
- (vi) BIF Scrivener Street Holding Trust;
- (vii) BIF Scrivener Street Sub Trust;
- (viii) AIR Somerton Trust;
- (ix) AIR Wetherill Park Trust;
- (x) AIR Glendenning Trust;
- (xi) AIR Ingleburn Trust;
- (xii) AIR Ingleburn 2 Trust;
- (xiii) AIR Ingleburn 3 Trust;
- (xiv) AIR Eastern Creek Trust;
- (xv) AIR Enfield Trust;
- (xvi) AIR Erskine Park Trust;
- (xvii) AIR Glendenning 2 Trust;
- (xviii) AIR Bibra Lake Trust;
- (xix) AIR Dandenong South Trust;
- (xx) AIR Henderson Trust;
- (xxi) AIR Thomastown Trust;
- (xxii) AIR Tullamarine Trust;
- (xxiii) 360 Capital Diversified Property Industrial Holding Trust;
- (xxiv) 360 Capital Diversified Property Office Holding Trust;
- (xxv) 360 Capital Diversified Property Office Holding Trust 2;
- (e) 360 Capital Institutional Investment Pty Ltd ACN 118 020 527 and ACN 062 671 872 Pty Ltd ACN 062 671 872 have no actual or contingent liabilities in their personal capacity.
- (f) The list of property assets in Schedule 8 contains accurate and complete particulars of all real property assets of the Funds (including real property assets held in wholly owned Sub-Trusts).

3.4 Solvency

None of the following events has occurred in relation to the any Target Entity, Fund or Sub-Trust:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Trustee Target Entity or any of its assets or anyone else is appointed who (whether or not as agent for the Trustee Target Entity is in possession, or has control, of any of the Trustee Target Entity's assets for the purpose of enforcing an Encumbrance;
- (b) an application is made to court on reasonable grounds or a resolution is passed or an order is made for the winding up or dissolution of the Target Entity, Fund or Sub-Trust;
- (c) the Trustee Target Entity proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
- (d) the Target Entity, Fund or Sub-Trust is declared or taken under any applicable law to be insolvent or the board of directors of the Trustee Target Entity resolves that it is, or is likely to become at some future time, insolvent.

3.5 Books and records

- (a) Since the Acquisition Date, all Records of each Target Entity have been properly maintained, do not reflect any material inaccuracies or material discrepancies and are in the possession or control of the Target Entity and as far as the Seller is aware, each Trustee Target Entity has properly maintained books and records of each Fund and Sub-Trust.
- (b) No Trustee Target Entity has received notice of any application or intended application for the rectification of its register of members or any other register that it is required by law to maintain.

3.6 Powers of attorney

No Target Entity has granted any power of attorney or similar authority that is still in force.

3.7 Assets

- (a) The Target Entities own, or have the right to use (and will have the right to use after Completion on terms no less favourable to the Target Entities than the terms applicable as at the date of this agreement), all of the Assets.
- (b) None of the assets secured by any Permitted Encumbrance are assets of a Target Entity owned in its personal capacity.

4. Conduct of business

4.1 Compliance

- (a) As far as the Seller is aware, each Trustee Target Entity has complied since the Acquisition Date with applicable laws in all material respects in relation to the conduct and operation of the Business.
- (b) As at the date of this agreement, no Trustee Target Entity has received any notice in writing alleging that it is or may be in breach of any applicable law or regulation or

any order, judgment or award of any court, tribunal or Regulatory Authority which would have a material adverse effect on the financial position of the Target Entity.

4.2 Licences and consents

- (a) As far as the Seller is aware:
 - (i) each Trustee Target Entity has obtained all Authorisations necessary to enable the Target Entity to conduct the Business in the locations and in the manner in which it is conducted and has paid all fees due in relation to them; and
 - (ii) all Authorisations have been complied with in all material respects by the relevant Trustee Target Entity.
- (b) No Target Entity has received any notice in writing alleging that it is or may be in breach of the terms of any Authorisation.

4.3 Customers and suppliers

- (a) So far as the Seller is aware, as at the date of this agreement no suppliers or customers of any Trustee Target Entity which are material to the Business have threatened to, or are likely to, stop doing business or reduce its business with a Trustee Target Entity in a material respect or have threatened to or are likely to require the adoption of terms of business which are less favourable to the Trustee Target Entity than the current terms.
- (b) So far as the Seller is aware, as at the date of this agreement no Trustee Target Entity is the subject of any current, threatened or anticipated customer or client complaint which may have a material adverse effect upon the Business.

5. Accounts

- (a) The Last Accounts give a true and fair view of the financial position of the Target Entities as at 30 June 2016 and their performance for the financial period ended on 30 June 2016.
- (b) The Last Accounts have been prepared:
 - (i) in accordance with the Accounting Standards;
 - (ii) in accordance with the requirements of the Corporations Act and any other applicable laws;
 - (iii) in the manner described in the notes to them; and
 - (iv) on a consistent basis with the equivalent accounts for the previous accounting period.
- (c) Since 30 June 2016, the Business has been conducted by the Target Entities in all respects in the ordinary and usual course of business and in a proper and efficient manner, other than for the Transaction or as otherwise disclosed in the Due Diligence Materials.

6. Assets, liabilities and financing arrangements

6.1 Assets

- (a) As far as the Seller is aware, all Assets used in the Business at the date of this agreement are owned by the Target Entities or used by the Target Entities under an equipment lease, operating lease, hire purchase agreement, licence or similar arrangement to which a Target Entity is party.
- (b) No Target Entity owns any intellectual property. No third party has in the last three years prior to Completion claimed that a Target Entity, or the conduct of the Business, infringes any third party's rights.

6.2 Debts owing to the Company

As far as the Seller is aware, no debt is owing to any Target Entity other than trade debts incurred in the ordinary course of business other than as set out in the Due Diligence Materials.

6.3 Borrowings

- (a) As far as the Seller is aware:
 - (i) no Trustee Target Entity owes any borrowings or other indebtedness under any bank facility or other arrangement providing financial accommodation of any description other than borrowings from third parties on arm's length terms details of which are set out in the Due Diligence Materials; and
 - (ii) as at the date of this agreement, there is no existing or unremedied breach of, or any event of default, cancellation event, prepayment event or similar event under, any bank facility or other arrangement providing financial accommodation of any description and, subject to obtaining the Third Party Consents and the Noteholder Consents, the Transaction will not trigger any such breach, event of default, cancellation event, prepayment event or similar event.
- (b) As at the date of this agreement, no Trustee Target Entity has received any demand or notice in writing requiring the repayment of any borrowings which are repayable on demand or requiring any borrowings to be repaid before their due date for any reason.
- (c) As at the date of this agreement, no legal or enforcement action has been taken, or demand has been made, by any party to enforce any security or other arrangement against any Trustee Target Entity.

6.4 No deed of cross guarantee

No Target Entity is a party to a deed of cross guarantee for the purposes of ASIC CO 98/1418 or Instrument 2016/785 including by having signed a deed of assumption to such a deed.

7. Fund warranties

7.1 Fund operation

- (a) As far as the Seller is aware, the Fund has been properly established and registered as a managed investment scheme with ASIC in accordance with Chapter

5C of the Corporations Act and since the Acquisition Date has been operated in all material respects in accordance with:

- (i) its constitution;
 - (ii) its compliance plan;
 - (iii) its product disclosure statement or, where a product disclosure statement is not required, information memorandum or other document offering interests in the Fund;
 - (iv) all applicable internal policies and procedures; and
 - (v) all applicable laws, regulations and policy of ASIC.
- (b) As far as the Seller is aware, the Sub-Trust has been properly established and has been operated in all material respects in accordance with:
- (i) its constitution;
 - (ii) all applicable internal policies and procedures; and
 - (iii) all applicable laws, regulations and policy.
- (c) The Fund has not been wound up or deregistered and, so far as the Seller is aware, as at the date of this agreement no steps have been taken to wind up or deregister the Fund.
- (d) The Sub-Trust has not been wound up and so far as the Seller is aware, as at the date of this agreement no steps have been taken to wind up the Sub-Trust.
- (e) So far as the Seller is aware, no circumstance has occurred giving rise to an existing or potential loss by the Company of any right of indemnity it has as the responsible entity, trustee, custodian or nominee of the Fund under the constitution of the Fund.
- (f) So far as the Seller is aware, no circumstance has occurred giving rise to an existing or potential loss by any Trustee Target Entity of any right of indemnity it has as the responsible entity, trustee, custodian or nominee of the Sub-Trust or as trustee of any other trust under the constitution of the Sub-Trust or the other trust (as applicable).
- (g) So far as the Seller is aware, as at the date of this agreement no circumstance has occurred or is proposed in relation to the Fund, that will, or would reasonably be likely to, give rise to the Company ceasing to occupy the position of responsible entity of the Fund.
- (h) So far as the Seller is aware, as at the date of this agreement no circumstance has occurred or is proposed in relation to the Sub-Trust, that will, or would reasonably be likely to, give rise to a Trustee Target Entity ceasing to occupy the position of trustee of the Sub-Trust.
- (i) So far as the Seller is aware, the Company, as responsible entity of TIX and TOF, has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, other than in relation to the Transaction and at the date of this agreement there is no material information being withheld from public disclosure as permitted by ASX Listing Rule 3.1A.

7.2 Responsible Entity

- (a) As far as the Seller is aware, the Company:

- (i) as at the date of this agreement is the responsible entity of the Fund and is not on notice that, and does not have reason to suspect that, any unitholder in the Fund will seek to remove the Company as responsible entity of the Fund;
 - (ii) has complied in all material respects with all of the conditions of its Australian financial services licence and there is no matter which may result in its licence being suspended, cancelled, refused, altered, not renewed, or revoked;
 - (iii) has conducted sufficient due diligence in relation to any product disclosure statements issued in respect of any Fund to avail itself of defences under Corporations Act in the event any such product disclosure statement is held to be defective;
 - (iv) has not entered into transactions with a Related Party other than on arm's length terms or as otherwise approved by securityholders of the Fund;
 - (v) has complied with the requirements of Chapter 5C and Part 7 of the Corporations Act in all material respects;
 - (vi) has not received any notice from a Regulatory Authority in the last three years, including any notice requiring a modification of the Australian financial services licence, and has not received any notice requiring a modification of the constitution of the Fund, compliance plan or disclosure documents which has not been complied with;
 - (vii) is entitled to its remuneration and to be indemnified from the assets of the Fund and no circumstance has occurred giving rise to an existing or potential reduction (including to nil) of its right of indemnity or its entitlement to remuneration;
 - (viii) has paid all Duty in relation to the Sub-Trust's trust deed and any amendment of it;
 - (ix) has included a trustee limitation of liability clause in all of its contracts, other than contracts which it entered to in its personal capacity, to the effect that its liability is limited to the amount that the Company is actually indemnified out of the assets of the Fund except in the case of fraud, negligence, breach of trust or otherwise failed to act properly;
 - (x) or the Seller, has disclosed copies of each contract material to the Fund to the Buyer in the Due Diligence Materials and other than the EWIC Agreements and other than as disclosed, is not party in its capacity as responsible entity or trustee of a Fund to any contract or commitment with any Related Party (other than a Trustee Target Entity) and which will have any force or effect after Completion;
 - (xi) is not in default under any contract material to the Fund, or would be in default but for the requirements of notice or lapse of time;
 - (xii) as at the date of this agreement has not received any notice in writing alleging that it is in breach of any contract material to the Fund; and
 - (xiii) as at the date of this agreement has not received from or given to any party to any contract material to the Fund any notice in writing terminating or purporting to or advising of an intention to terminate that contract.
- (b) As far as the Seller is aware, the Target Entity who is the trustee of the Sub-Trust:

- (i) as at the date of this agreement is the trustee of the Sub-Trust and there is no reason to believe or suspect that any unitholder in the Sub-Trust may seek to remove the Target Entity as trustee of the Sub-Trust;
- (ii) has not entered into transactions with a Related Party other than on arm's length terms;
- (iii) is entitled to remuneration it is receiving and to be indemnified from the assets of the Sub-Trust and no circumstance has occurred giving rise to an existing or potential reduction (including to nil) of its right of indemnity or its entitlement to remuneration;
- (iv) has paid all Duty in relation to the Sub-Trust's trust deed and any amendment of it;
- (v) has included a trustee limitation of liability clause in all of its contracts, other than contracts which it entered to in its personal capacity, to the effect that its liability is limited to the amount that the Target Entity is actually indemnified out of the assets of the Sub-Trust except in the case of fraud, negligence, breach of trust or otherwise failed to act properly;
- (vi) or the Seller, has disclosed copies of each contract material to the Sub-Trust to the Buyer in the Due Diligence Materials;
- (vii) other than the EWIC Agreements and other than as disclosed, is not party in its capacity as trustee of a Sub-Trust to any contract or commitment:
 - A. that was entered into outside the ordinary course of business or is not on arm's length terms; or
 - B. with any Related Party and which will have any force or effect after Completion;
- (viii) is not in material default under any Sub-Trust contract or in default of any contract material to the Sub-Trust, or would be in default but for the requirements of notice or lapse of time;
- (ix) has not received any notice in writing alleging that it is in breach of any contract material to the Sub-Trust; and
- (x) has not received from or given to any party to any contract material to the Sub-Trust any notice in writing terminating or purporting to or advising of an intention to terminate that contract.

7.3 Issue of units in the Fund

As far as the Seller is aware:

- (a) each product disclosure statement, information memorandum or other document offering units, securities or other interests in the Fund has complied in all respects with all laws and has been complete, accurate and not misleading in all material respects;
- (b) the Company has complied with the Corporations Act in respect of its activities as responsible entity including in relation to all issues of units, securities or other interests in the Fund in all material respects and, where required under the Corporations Act, a product disclosure statement has been issued which complies with all legal requirements in all material respects; and

- (c) at the time of issue, no customer information brochure, financial services guide, statement of advice, investment statement, taxation outline, advertisement or other marketing material, or other offering document, supplemental or associated document (**Document**) issued or provided by the Company, would involve the Company in conduct which is misleading or deceptive or likely to mislead or deceive and each such Document otherwise complies in all material respects, at the time of issue with all applicable laws.

7.4 Books and records

As far as the Seller is aware, since the Acquisition Date all statutory registers, accounting records and other books and records of the Fund and the Sub-Trust have been properly maintained, do not reflect any material inaccuracies or material discrepancies and are in the possession or control of a Trustee Target Entity.

7.5 Fund Accounts

- (a) As far as the Seller is aware, the Fund Accounts have been prepared:
 - (i) in accordance with the applicable Accounting Standards;
 - (ii) in accordance with the requirements of the Corporations Act and any other applicable laws;
 - (iii) in the manner described in the notes to them; and
 - (iv) on a consistent basis with the equivalent accounts for the previous accounting period.
- (b) As far as the Seller is aware, the Fund Accounts show a true and fair view of the financial position of the Fund as at the date of the Fund Accounts and of its performance for the financial period ended on that date.
- (c) Since the date of the Fund Accounts, the business of the Fund has been conducted in all respects in the ordinary and usual course of business and in a proper and efficient manner, other than for the Transaction or as otherwise disclosed in the Due Diligence Materials.

7.6 Fund Compliance

In relation to the Fund:

- (a) the compliance auditor has consented to act as auditor of the Fund's compliance plan and such appointment has been notified to ASIC;
- (b) the Company has not received any notice under the Corporations Act that the compliance auditor has reasonable grounds to believe a contravention of the Corporations Act has occurred; and
- (c) so far as the Seller is aware, the compliance plan of the Fund complies in all respects with the Corporations Act and with ASIC's policy requirements and the Company has complied with its obligations and duties under the compliance plan in all material respects.

7.7 Fund Returns and assessments

As far as the Seller is aware, the Company has since the Acquisition Date and prior to Completion lodged (and retained copies of) all returns and other documents relating to the Tax or Duty matters affecting the Fund required to be lodged with any Tax Authority (where the due date for such returns and documents falls on or before Completion) and:

- (a) all information contained in those documents was complete and accurate in all respects and not misleading or deceptive; and
- (b) no dispute exists in relation to any of those documents and, so far as the Seller is aware, no circumstances exist which might give rise to such a dispute.

7.8 Fund Withholding tax

As far as the Seller is aware, since the Acquisition Date any obligation on the Fund or Trustee Target Entity under any law relating to Tax to withhold amounts has been complied with and amounts accounted for to the proper Tax Authority.

7.9 No Fund Tax audit

So far as the Seller is aware, other than a GST review with respect to TIX, there is no pending or threatened Tax audit relating to the Fund and there are no circumstances which may give rise to any Tax audit.

7.10 Stamping

- (a) So far as the Seller is aware, since the Acquisition Date all contracts and other documents and transactions entered into by a Trustee Target Entity that are required to be stamped (including each trust deed of a Fund or Sub-Trust) have been duly stamped and all Duty has been duly paid.
- (b) As far as the Seller is aware, since the Acquisition Date all documents required to be created by a Trustee Target Entity under a law relating to Duty or a Tax of a similar nature, have been created and have had Duty or other Taxes of a similar nature paid in full in accordance with all applicable laws.

7.11 Tax Rulings

The Company has not made any income tax private binding ruling requests, objections or amended assessments with respect to the Fund's lodged income tax returns, other than as disclosed in the Due Diligence Materials.

7.12 No disputes

There are no disputes between the Company and any Tax Authority in relation to the Tax or Duty matters relating to the Fund.

7.13 Fund Taxes

So far as the Seller is aware, the Trustee Target Entities have no liability to unpaid Taxes and Duties in respect of a Fund or Sub-Trust, and all Taxes and Duties due and payable by the Trustee Target Entities have been paid or otherwise extinguished and there are no such payments outstanding as at Completion.

7.14 Default income clauses

Each Fund's constitution or Sub-Trust's trust deed contains a default income distribution clause to ensure that unitholders of the respective trusts are presently entitled to the income of the respective trust each year should the relevant responsible entity or trustee not determine an income amount for the relevant year.

7.15 No Trading Trust

So far as the Seller is aware, since the Acquisition Date no Funds is or has ever been:

- (a) considered a public trading trust within the definition in Division 6C of the Income Tax Assessment Act 1936.
- (b) a corporate unit trust within the definition in Division 6B of the Income Tax Assessment Act 1936

7.16 Managed Investment Trust

The Fund is a managed investment scheme and a Managed Investment Trust as defined in Subdivision 12-H of the Taxation Administration Act 1953.

8. Contracts

8.1 Material contracts

Copies of each Material Contract in relation to a Target Entity have been disclosed to the Buyer in the Due Diligence Materials.

8.2 Unusual and related party contracts

Other than the EWIC Agreements and other than as disclosed, no Target Entity is party to any contract or commitment with any Seller Group Member and which will have any force or effect after Completion.

8.3 Breach or default

- (a) So far as the Seller is aware, no Target Entity is in default, or would be in default but for the requirements of notice or lapse of time under any Material Contract.
- (b) So far as the Seller is aware, no Target Entity has received any notice in writing alleging that it is in breach of any contract referred to in Warranty 8.1.

8.4 Termination

No Target Entity has received from or given to any party to any contract referred to in Warranty 8.1, any notice in writing terminating or purporting to or advising of an intention to terminate that contract.

9. Employees

9.1 Employees and entitlements

Details of the name of each employee, and each person who has agreed to become an employee, of the Target Entities as at the date of this agreement together with details of:

- (a) each of their remuneration, bonuses and other incentives payable to them;
- (b) the accrued annual leave, long service leave and personal/carer's leave entitlements of each of them; and
- (c) all Modern Awards which cover any of them,

have been disclosed to the Buyer in the Due Diligence Materials.

9.2 No increases promised

Except as disclosed, no Seller Group Member has given any commitment (whether legally binding or not) to increase or supplement the wages, salaries, annual leave and leave loading, long service leave, sick leave or any other remuneration, compensation or benefits of any Transferring Employee beyond the amounts and entitlements listed in the Due Diligence Materials.

9.3 Service agreements

Copies of each service or consultancy agreement entered into between the Target Entities and any employee or consultant of the Target Entities as at the date of this agreement whose total remuneration or consultancy fee exceeds \$200,000 per annum have been disclosed to the Buyer in the Due Diligence Materials. For the avoidance of doubt, this warranty does not relate to the EWIC Agreements.

9.4 No offers

No Target Entity has made any offer of work or any appointment of an individual (or any company controlled by an individual as a senior executive, or as an independent contractor) for a term of 12 months or more or for payment of \$200,000 or more per annum, that remains capable of acceptance or that cannot be terminated without penalty on less than 3 months' notice.

9.5 Performance based payments

Except in relation to entitlements disclosed under paragraph 9.1 or 9.2 above and to the extent of Employee participation in the Seller Group Members employee share plan, no Target Entity is a party to any arrangement under which any employee of a Target Entity may be entitled to receive any bonus or other payment (whether contractual or discretionary) that is calculated by reference to the performance of a Target Entity, the performance of that employee or any combination of these.

9.6 Enterprise Agreements and Transitional Instruments

The Target Entities are not covered by any Enterprise Agreement or Transitional Instrument and are not a party to or bound by any other registered or unregistered agreement with any group of employees of the Target Entities or any trade union.

9.7 Disputes

No Target Entity is involved in any material industrial dispute with any group of its employees or any trade union. The Seller has no knowledge of any circumstance that will, or would reasonably be likely to, give rise to any industrial dispute referred to in the warranty in this clause 9.7.

9.8 Superannuation

The Target Entities have made all superannuation contributions required to avoid any liability for a superannuation guarantee charge under the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992.

10. Legal proceedings

10.1 Litigation

No Trustee Target Entity is a claimant or defendant in, and has not in the preceding 3 years been a party to, any litigation, arbitration or mediation proceedings which would have a

material adverse effect on the financial position of the Target Entity or a Fund or a Sub-Trust (**Material Proceedings**) and, as far as the Seller is aware, no Trustee Target Entity has received any notice in writing threatening any Material Proceedings and there are no disputes that will, or would reasonably be likely to, give rise to any Material Proceedings.

10.2 Investigations and prosecutions

As far as the Seller is aware, no Trustee Target Entity has received any notice in writing relating to, and has not in the preceding 3 years been a party to, any unresolved investigation or prosecution of a Trustee Target Entity commenced by any Regulatory Authority.

11. Insurance

11.1 Coverage

- (a) Complete and accurate particulars of all insurance policies and cover notes taken out relating to the Target Entities that are current as at the date of this agreement (**Insurances**) have been disclosed to the Buyer in the Due Diligence Materials.
- (b) As far as the Seller is aware, Insurance is currently in full force and effect and all applicable premiums have been paid.
- (c) As far as the Seller is aware, each Target Entity has effected all insurances required by law to be effected by it, subject to deductibles

11.2 Claims

As at the date of this agreement, there is no claim outstanding under any policy of insurance held by or for the benefit of any Target Entity.

12. Tax

12.1 Membership of Consolidated Group

Each Target Entity is a member of the Seller Consolidated Group and since 2 October 2013 no Target Entity has been a member of any other tax consolidated group.

12.2 Payments

All Tax and Tax Funding Liabilities that have become due and payable by any Target Entity, or by the Seller as head company of the Sellers Consolidated Group, have been paid or otherwise extinguished and there are no such payments outstanding as at Completion.

12.3 Withholding

All amounts required by any law or regulation relating to Tax to be withheld by a Target Entity at source have been correctly withheld and accounted for to the proper Tax Authority.

12.4 Returns and assessments

- (a) As at Completion each Target Entity has complied with its obligation to lodge any returns and other documents relating to Tax or Duty required to be lodged with any Tax Authority and has no outstanding lodgement obligations and:
 - (i) all information contained in those documents was complete and accurate in all material respects and not misleading or deceptive; and

- (ii) no dispute exists in relation to any of those documents and, as far as the Seller is aware, no circumstances exists which might give rise to a dispute of this type.
- (b) As at Completion the Seller as head company of the Seller Consolidated Group of which the Target Entities are each a member has no outstanding lodgement obligations in respect of all returns and other documents relating to Tax required to be lodged with any Tax Authority.

12.5 Records

As far as the Seller is aware, since the Acquisition Date each Target Entity has retained copies of all returns and other documents lodged with any Tax Authority including a copy of the consolidated tax returns relating to the Seller Consolidated Group and information necessary to interpret the details contained in the consolidated tax returns to the extent that the information relates to transactions or events that relate to the Target Entity.

12.6 Tax Sharing Agreement

Each Target Entity is party to the Tax Sharing Agreement of the Seller Tax Consolidated Group and the Tax Sharing Agreement is valid in accordance with any guidance published by a Tax Authority.

12.7 GST

- (a) The Company is a member of the 360 GST Group of which 360CPL is the representative member.
- (b) The 360 GST Group of which the Company is a member has paid or accounted for all GST on supplies made by that entity and has accounted to that entity for all input tax credits and decreasing adjustments for creditable acquisitions and creditable importations of that entity.
- (c) As far as the Seller is aware, each Target Entity is not a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where the Target Entity has no express entitlement to increase the consideration payable under the document, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that the Target Entity retains the amount that would have retained but for the imposition of GST.

12.8 Stamping

- (a) As far as the Seller is aware, all documents and transactions entered into by a Target Entity that are required to be stamped by a Target Entity have been duly stamped.
- (b) As far as the Seller is aware, all documents required to be created by a Target Entity under a law relating to Duty or a Tax of a similar nature, have been created and have had Duty or other Taxes of a similar nature paid in full in accordance with all applicable laws.

13. Disclosure

13.1 Due Diligence Materials

As far as the Seller is aware, the information contained in the Due Diligence Materials is not, when considered as a whole, misleading or deceptive. For the purposes of this Warranty 13.1, the Due Diligence Materials do not include:

- (a) any financial statements;
- (b) any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking after the date of this agreement; and
- (c) any information, document, representation, statement, view or opinion to the extent that the same was not prepared, made or expressed by a Seller Group Member or its Representatives.

13.2 Due Diligence Materials

As at the date of this agreement, the Seller is not aware of any materially adverse information relating to the Shares, the Assets, the Trustee Target Entities or the Business that has not been made available in the Due Diligence Materials provided that this warranty 13.2 does not extend to information relating to the assets or liabilities of a Fund or Sub-Trust (except to the extent that such information would be materially adverse to a purchaser of the Target Entities).

Schedule 2 Buyer Warranties

1. The Buyer

1.1 Capacity and authorisation

- (a) The Buyer is a company properly incorporated and validly existing under the laws of Australia, and has taken all corporate actions and obtained all shareholder and Regulatory Authority authorisations necessary to enable it to execute and deliver this agreement and perform its obligations under this agreement.
- (b) The execution, delivery and performance by the Seller of this agreement complies with its constitution and does not constitute a breach of any law or obligation, or cause or result in a default under any agreement or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement.

1.2 Valid obligations

This agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Buyer and is enforceable against the Buyer in accordance with its terms.

1.3 Solvency

None of the following events has occurred in relation to the Buyer:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Buyer or any of its assets or anyone else is appointed who (whether or not as agent for the Buyer) is in possession, or has control, of any of the Buyer's assets for the purpose of enforcing an Encumbrance;
- (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the Buyer;
- (c) the Buyer proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
- (d) the Buyer stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or the Buyer's board of directors resolves that it is, or is likely to become at some future time, insolvent.

Schedule 3 Base Balance Sheet and Completion Balance Sheet principles

Part 1 - Base Balance Sheet (inclusive of pro forma adjustments)

Base Balance Sheet

	\$
Assets	
Current Assets	
Cash at bank and in Term deposit	8,724,511
Receivables	
Management & custodian fees receivable	
360 Capital Industrial Fund	1,305,963
360 Capital Office Fund	86,490
360 Capital Total Return Fund	16,909
360 Capital Retail Fund No.1	29,775
360 Capital Havelock House Property Trust	10,637
360 Capital 111 St Georges Terrace Property Trust	48,968
360 Capital 441 Murray Street Property Trust	10,497
360 Capital Office Fund distribution accrued	-
Other receivables	
Exit Fees receivable	
111 SGT	77,500
441 Murray	550,000
Havelock	653,750
Subiaco	233,750
Inter-companies receivable	
360 Capital Group Limited	-
Non Current assets	
Investment - 360 Capital Office Fund	-
Management Rights	-
Liabilities	
Current Liabilities	
Deferred taxes - asset / (liability)	-
Provision for Income Tax	-
Net GST payable	-
Other creditors	
Payable to 360 Capital of Subiaco Exit fee	(233,750)
Net Assets	
Amount	11,515,000
Less:	
Exits fees illiquid assets	(1,515,000)
Adjusted NTA for AFSL purposes	10,000,000

Part 2 - Specific principles and policies to be applied in preparation of Completion Balance Sheet

Item	Specific Principle
Cash at Completion	Seller to ensure the cash balance at Completion is sufficient to enable the Company to satisfy licencing requirements at Completion
Intercompany receivables/ payables	Seller to extinguish any intercompany balances prior to Completion
Management & custodian fees accrued and receivable up to Completion for all funds	Management & custodian fees receivable to Completion should include any unpaid invoices receivable and any fees accrued on a daily basis from previous billing period, up to and including the date of Completion
Exit fees receivable accrued up to Completion for all funds except Subiaco Fund	Exit fees receivable at Completion to be based on amounts calculated in Fund management accounts at 30 November 2016 on a measurement basis consistent with Fund audited accounts at 30 June 2016
Exit fees accrued up to Completion for Subiaco Fund	Buyer receive Exit fees accrued for Subiaco Fund at Completion based on amounts calculated in Fund management accounts at 30 November 2016 on a measurement basis consistent with Fund audited accounts at 30 June 2016, net of liability to pay Seller on wind up of Subiaco Fund, final receivable and payable may be adjusted at time of wind up of the Subiaco Fund
Accounts payable expenses up to Completion	Seller to pay all supplier invoices and liabilities relating to the period up to Completion
GST receivable/payable	GST receivable/payable to be extinguished by Seller as exit from GST Group
Income tax payable	Any income tax liability to be calculated for period prior to settlement be paid by Company as exit from Tax Consolidated Group prior to Completion
Deferred taxes - asset / (liability)	Deferred tax balances to be written off by seller prior to Completion
Management Rights	Intangible management rights written off by seller prior to Completion, and excluded from calculation of Actual Net Asset Amount at Completion
Investment - 360 Capital Office Fund	Investment in TOF sold to Buyer at Completion, and excluded from calculation of Actual Net Asset Amount at Completion
TOF distribution receivable	To the extent the quarterly distribution relation to Company's investment in TOF is outstanding at Completion, the distribution receivable will be included in the Actual Net Asset Amount

Schedule 4 TOT Investment Management Agreement

TOT Management Agreement

360 Capital FM Limited

Manager

360 Capital Investment Management Limited

Principal

Clayton Utz
Lawyers
Level 15 1 Bligh Street Sydney NSW 2000 Australia
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Our reference 15387/15435

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Management Agreement dated

Parties **360 Capital FM Limited ACN 090 664 396** of Level 8, 56 Pitt Street, Sydney NSW 2000 (**Manager**)

360 Capital Investment Management Limited ACN 133 363 185 in its capacity as responsible entity of 360 Capital Total Return Passive Fund ARSN 602 304 432 and 360 Capital Total Return Active Fund ARSN 602 303 613 of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (**Principal**)

Background

- A. The Principal wishes to engage the Manager to perform the Services.
- B. The Manager agrees to perform the Services on the terms set out in this agreement.

Operative provisions

1. Interpretation

1.1 Definitions

The following definitions apply in this agreement.

Asset Acquisition Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Asset Disposal Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Assets means the all assets of the Fund.

Associate has the meaning given in the Corporations Act.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, and including any condition attaching to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Claim means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commencement Date means the date of execution of this agreement.

Confidential Information means any information disclosed by a party to this agreement or by any related body corporate of that party to the other party before or after the date of this agreement in relation to the Fund, but excludes information that:

- (a) was in the public domain at the date of this agreement;
- (b) became part of the public domain after the date of this agreement otherwise than as a result of a breach of this agreement; or
- (c) was in the possession of the receiving party (other than as a result of or in connection with the carrying out of the Services under this Agreement) at the time of disclosure by the disclosing party.

Constitution means the constitution of each stapled entity comprising the Fund as amended from time to time.

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

Fund means the stapled entity comprising 360 Capital Total Return Passive Fund ARSN 602 304 432 and 360 Capital Total Return Active Fund ARSN 602 303 613.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Liability means a duty, liability or obligation affecting the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Loss means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Management Fees means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Member means a person whose name is entered in the register of members as the holder of a unit or units in the Fund.

Out of Pocket Expenses means all costs, charges and expenses properly incurred by the Manager and paid for or payable out of the Manager's own funds in connection with the provision of the Services (which for the avoidance of doubt includes costs incurred in engaging agents, contractors, experts, advisers and other external service providers, including lawyers, accountants and managing agents, in connection with the provision of the Services but does not include costs incurred in engaging delegates) but excluding all in-house administration costs of the Manager in the nature of rent for Manager's premises, computer charges, salaries, overheads and like expenses.

Performance Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Personnel means the officers, employees, and agents of the Manager.

Related body corporate has the meaning given in the Corporations Act.

Services means the taking of all steps necessary to manage the Fund and its assets as if the Manager were the "Trustee" of the Fund for the purposes of the Constitution and as if the Manager had all of the rights, powers and responsibilities of the "Trustee" pursuant to the Constitution.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), jointly, as applicable.

Term means the period specified in clause 10.1.

1.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) Words defined in the GST Law have the same meaning in clauses 1.2(h) and (i), and 7.
 - (h) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
 - (i) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

1.3 Limitation of liability

This clause 1.3 applies notwithstanding any other provision of this agreement.

- (a) The Principal enters into this agreement only in its capacity as responsible entity of the Fund and in no other capacity. Any liability arising under or in connection with this agreement can be enforced against the Principal only to the extent to which it can be satisfied out of the property of the Fund out of which the Principal is actually indemnified for the liability.
- (b) The limitations on the Principal's liability contained in this clause 1.3 extend to all liabilities of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this agreement.
- (c) No other party to this agreement may claim against the personal assets of the Principal or against the Principal in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Principal or prove in any liquidation, administration or arrangement of or affecting the Principal.
- (d) The provisions of this clause 1.3 shall not apply to any obligation or liability of the Principal to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the

Principal's indemnification out of the assets of the Fund as a result of the Principal's failure to properly perform or exercise any of its powers or duties in relation to the Fund.

2. Services

2.1 Manager to provide the Services

The Manager must provide or procure the provision of the Services continuously during the Term.

2.2 Non-exclusive engagement

The parties acknowledge and agree that the Manager is not obliged by this agreement to provide management services or transaction services exclusively to the Principal and may provide management, transaction or other services to other related or third parties, including competitors of the Principal (**third party**) at its sole discretion.

2.3 Performance by Manager group

The Manager must ensure that any of its employees, agents and contractors and any of its related bodies corporate and their employees, agents and contractors (whether or not they are Personnel) which perform obligations imposed on the Manager by this agreement, do so in accordance with this agreement. In consideration of performing their obligations each of those persons is to have the benefit of any provision of this agreement conferring on the Manager a release, indemnity or limitation of liability and the Manager enters that provision on its own behalf, and as agent of and trustee for each of those persons.

3. How Services are to be provided

3.1 Personnel

In providing the Services, the Manager may use such of its Personnel (who may include a related body corporate of the Manager) as it reasonably considers are able to properly provide the Services.

3.2 Delegation

- (a) Without limiting clause 3.5, the Manager may delegate the performance of the Services with the prior written consent of the Principal, such consent not to be unreasonably withheld.
- (b) The Manager must ensure that all delegates engaged by it perform the delegated Services in accordance with, and to the level of performance required by, this agreement.
- (c) The Manager remains subject to all duties and obligations provided for by this agreement in respect of the performance of any Services which are performed by any delegate, or their respective employees or agents, on the Manager's behalf.
- (d) The Manager will be liable to the Principal for the acts and omissions of its delegates and their respective employees and agents as if they were the acts and omissions of the Manager.
- (e) The Manager must pay any delegate directly for providing Services on its behalf and the Manager acknowledges and agrees that the Principal is not obliged to make

any payment whatsoever to any delegate or any delegate's representative, agents or employees.

3.3 Access

The Principal must, where the Manager reasonably considers it appropriate in order to properly provide the Services, ensure that the Manager has adequate access to all materials, information and facilities reasonably required to enable provision of the Services.

3.4 Standard of performance

The Manager must provide the Services:

- (a) in accordance with applicable law;
- (b) to generally accepted standards for reputable providers of fund management services similar to the Services;
- (c) with due care, diligence and skill; and
- (d) in a manner that is consistent with the Constitution.

3.5 Appointment of external service providers

In performing the Services, the Manager may engage agents, contractors, experts, advisers and other external service providers, including lawyers, accountants and managing agents, and the prior written consent of the Principal is not required for the engagement of such advisors, agents and service providers.

3.6 Reports

- (a) The Manager must, on request from the Principal, provide such reports and information as the Principal may reasonably require, and must take reasonable steps to ensure that those reports are complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Manager.
- (b) The Manager will also provide, upon request by the Principal, additional information which is complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Manager, as to the making of, and return on, the investments in the Fund and as is necessary to enable the Responsible Entity to assess the capability of the Manager to manage the investments of the Fund, and otherwise to comply with applicable law.

4. Manager's status

4.1 Independent contractor

The Manager is engaged as an independent contractor. Unless otherwise stated in this agreement, nothing in this agreement constitutes the Manager an employee, agent, partner or joint venturer of the Principal.

4.2 Responsibility for employee benefits

The Manager is responsible for all outgoings payable to or in respect of its Personnel including:

- (a) remuneration and benefits, including superannuation contributions (if applicable), annual leave, sick leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;
- (b) imposts or levies imposed by law, such as work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges; and
- (c) payments upon termination of service (including on redundancy).

5. Charges and payment

5.1 Charges

The Principal must pay for the Services in accordance with Schedule 1.

5.2 Invoicing

The Manager may issue invoices to the Principal for the Services in accordance with Schedule 1.

5.3 Payment

The Principal must pay the Manager in accordance with Schedule 1 and within 5 Business Days after receipt of an invoice issued in accordance with Schedule 1.

6. Default interest

6.1 The Principal must pay interest

The Principal must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate equal to the sum of Australia and New Zealand Banking Group Limited's "Indicator Interest Rate" for that day and 3% per annum.

6.2 Accrual and calculation of interest

Interest under this clause:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and of a 365 day year.

7. GST

7.1 GST payable

If a party (**supplier**) is liable to pay GST on any supply under or in connection with this agreement, the party liable to provide the consideration for that supply (**recipient**) must pay to the supplier an additional amount equal to that GST and at the same time as it must provide the consideration otherwise payable for that supply.

7.2 Invoice

The supplier must issue a tax invoice (or an adjustment note) to the recipient for any supply for which the supplier may recover GST from the recipient under this agreement, and must include in the tax invoice (or adjustment note) the particulars required by the GST Law.

7.3 Adjustments

The Manager must promptly create an adjustment note for, or apply to the Commissioner for, a refund of, and refund to the Principal any overpayment by the recipient for GST, but the Manager need not refund to the Principal any amount for GST paid to the Commissioner of Taxation unless the Manager is entitled to a refund or credit of that amount.

7.4 Claims and Indemnities

- (a) If a party has a claim under or in connection with this agreement for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party is entitled to an input tax credit).
- (b) If a party has a claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

8. Warranties

8.1 Warranties of the Principal

The Principal represents and warrants that:

- (a) **(status of company)** it is a company limited by shares under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this agreement and to perform its obligations under this agreement;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this agreement and the performance of its obligations under this agreement;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this agreement and to perform its obligations under this agreement;
 - (ii) ensure that this agreement is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject;

- (e) **(no contravention)** neither its execution of this agreement nor the performance of its obligations under this agreement, does or will contravene:
 - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) any Authorisation;
 - (iii) any undertaking or instrument binding on it or any of its property;
 - (iv) its constitution;
- (f) **(no Insolvency Event)** it is not affected by an Insolvency Event;
- (g) **(no dispute or litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or, to the knowledge of any of its officers after due inquiry threatened which, if adversely decided, would in its opinion, have a material adverse effect on it; and
in relation to the Fund:
- (h) **(status as responsible entity)** it is the sole responsible entity of the Fund, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional responsible entity of the Fund.

8.2 Warranties of Manager

The Manager warrants and represents to the Principal:

- (a) **(status)** it is a company limited by shares established under the *Corporations Act 2001(Cth)*;
- (b) **(power)** it has full legal capacity and power to:
 - (i) carry on its business; and
 - (ii) enter into this agreement;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this agreement and its carrying out the duties and obligations that this agreement contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this agreement and to carry out the duties and obligations that this agreement contemplates including the provision of the Services;
 - (ii) ensure that this agreement is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,
 and it is complying with any conditions to which any such Authorisations is subject;
- (e) **(documents effective)** this agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent

limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;

- (f) **(no contravention)** neither its execution of this agreement nor the carrying out by it of the duties and obligations that this agreement contemplates, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution;
- (g) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a material adverse effect on its ability to perform its obligations under this agreement; and
- (h) **(performance of obligations):**
 - (i) that it has and will at all times during the term of this agreement use all reasonable endeavours to ensure that it has the skill, facilities, capacity and staff necessary to properly perform the duties and obligations under this agreement in a professional and timely manner; and
 - (ii) that it will use all reasonable endeavours to ensure that sufficient competent investment management staff experienced in asset management will have charge at all times of the conduct of, and will maintain close supervision of the management of the Fund and its investment portfolio.

8.3 Inaccurate warranty

If a warranty given by a party to this agreement under this clause 8 ceases to be accurate, that party must immediately advise the other party in writing.

9. Liabilities and indemnities

9.1 Disclaimer of implied warranties

Except for the express warranties set out in this agreement and except to the extent that applicable law provides otherwise, the Manager disclaims all warranties. To the maximum extent permitted by applicable law, all conditions and warranties that would be implied (by statute, general law, custom or otherwise) are expressly excluded.

9.2 Implied warranties and conditions

If any condition or warranty is implied into this agreement under the *Competition and Consumer Act 2010* (Cth) or under any equivalent legislation, and cannot be excluded, the liability of the Manager for breach of the condition or warranty is limited to one or more of the following, at the option of the Manager:

- (a) the supplying of the services again; or

- (b) the payment of the cost of having the services supplied again.

9.3 Manager's indemnity

- (a) The Manager acknowledges that each Fund will be operated by the Manager as if it were the "Trustee" under each Constitution and the Manager is to be liable as if it were the "Trustee" under each Constitution.
- (b) The Manager indemnifies the Principal and its agents (for the purposes of this clause 9.3, each an "**Indemnified Person**") against any losses or liabilities incurred or suffered by the Indemnified Person, arising out of or in connection with, and any costs, charges and expenses incurred in connection with:
 - (i) the performance (or breach) by the Manager of this agreement; or
 - (ii) the operation of the Fund by the Manager,during the term of this agreement, except to the extent that the loss, liability, cost, charge or expense is caused by the negligence, fraud or dishonesty of the Principal or the Principal's employees or (other than the Manager) the Principal's agents.
- (c) If the Manager appoints an agent, the Manager is liable under this clause 9.3 for the acts or omissions of its agent as if those acts or omissions were acts or omissions of the Manager.

9.4 Release from and indemnity against Claims

No claim shall be made by the Manager against the Principal (or the Fund) for any Claim, Liability or Loss to the extent that such Claim, Liability or Loss arises as a result of, or is contributed to by, (whether solely or otherwise) the negligence, misconduct or bad faith of the Manager in providing the Services.

10. Term

10.1 Term

The term of this agreement is from the Commencement Date to the earlier of:

- (a) the date the Manager is appointed as responsible entity of the Fund;
- (b) the date which is 12 months after the date of this agreement; and
- (c) the date this agreement is terminated in accordance with this clause 10, (Term).

10.2 Termination by the Principal

The Principal may terminate this agreement immediately at any time:

- (a) upon an Insolvency Event occurring in relation to the Manager;
- (b) if the Manager has committed a material breach of a material provision of this agreement which has not been remedied within 20 Business Days of the Principal requiring such remediation; or
- (c) if an ordinary resolution is passed by members of the Fund to remove the Manager.

10.3 Termination by the Manager

The Manager may terminate this agreement immediately at any time:

- (a) if the Principal is removed as trustee of the Fund;
- (b) if the Principal has committed a material breach of a material provision of this agreement which has not been remedied within 20 Business Days of the Manager requiring such remediation; or
- (c) upon an Insolvency Event occurring in relation to the Principal.

10.4 Claims, rights and obligations

Ending of the Term or termination of this agreement does not affect:

- (a) any Claim either party may have against the other in respect of anything done or required to be done before the end of the Term, or before termination; or
- (b) rights or obligations under the following clauses:
 - 1 Interpretation
 - 4 Manager's status
 - 5 Charges and payment
 - 6 Default interest
 - 7 GST
 - 9 Liabilities and indemnities
 - 11 Confidentiality
 - 12 Notices
 - 12.1 Amendment and assignment
 - 14 General

11. Confidentiality

11.1 Confidential Information

Subject to clause 11.3, neither party may, without the other party's permission or where necessary to perform the Services or operate or manage the Fund in accordance with the terms of the Constitution:

- (a) use any Confidential Information;
- (b) disclose any Confidential Information to anyone else; or
- (c) make copies of materials incorporating any Confidential Information.

11.2 Terms of this agreement

Subject to clause 11.3, neither party may, without the consent of the other party, disclose the terms of this agreement to any other person.

11.3 Exceptions

A party may disclose or use information, which it would otherwise be prevented from disclosing or using under clause 11.1 or 11.2, where required to do so by law or by the rules of a stock exchange but, as far as practicable, must notify the other party in advance of its intention to do so and take such steps as the other party reasonably requires to protect the confidentiality of the information.

12. Notices

12.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to the Manager:

Attention: Mr Tony Pitt

Address: Level 8, 56 Pitt Street, Sydney NSW 2000

Email: tony.pitt@360capital.com.au
 - (ii) if to the Principal:

Attention: Mr John McBain

Address: Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060

Email: john.mcbain@centuria.com.au
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with clause 12.1(c).

12.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 12, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

13. Amendment and assignment

13.1 Amendment

This agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

13.2 Assignment

A party may only dispose of, declare a trust over or otherwise create an interest in its rights under this agreement with the prior written consent of the other party.

14. General

14.1 Governing law

- (a) This agreement is governed by the law in force in New South Wales.
- (b) Each party submits to the non exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

14.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this agreement.

14.3 Giving effect to this agreement

Each party must do anything (including execute any agreement), and must ensure that its employees and agents do anything (including execute any agreement), that the other party may reasonably require to give full effect to this agreement.

14.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.5 Operation of this agreement

- (a) This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

14.6 Operation of indemnities

- (a) Each indemnity in this agreement survives the expiry or termination of this agreement.
- (b) A party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

14.7 Consents

Where this agreement contemplates that the party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this agreement expressly contemplates otherwise.

14.8 Counterparts

This agreement may be executed in counterparts.

14.9 Attorneys

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Schedule 1 - Charges and Payment

(Clause 5)

1. Fees for provision of Services

The Principal must pay the Manager the following fees:

- (a) a Management Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in clause 23.2 of the Constitution as that Constitution exists as at the date of this agreement;
- (b) a Performance Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in clause 23.3 of the Constitution as that Constitution exists as at the date of this agreement;
- (c) an Asset Acquisition Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in clause 23.4 of the Constitution as that Constitution exists as at the date of this agreement; and
- (d) an Asset Disposal Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in clause 23.5 of the Constitution as that Constitution exists as at the date of this agreement.

The Principal and the Manager agree that at all times while the Principal is the responsible entity of the Fund and the Manager is the manager of the Fund, at no stage will the amount charged by the Manager exceed the amount of the Principal's entitlement to fees as set out in clause 23 of the Constitution.

The Principal hereby agrees to pay or pass through the fees it receives and is entitled to receive pursuant to clause 23 of the Constitution as is necessary to give effect to this paragraph.

The Principal hereby agrees to use all reasonable endeavours to ensure clause 23 of the Constitution is not amended during the Term to reduce the fees payable under clause 23 of the Constitution provided that this clause does not restrict the Principal from convening a general meeting under section 252B of the Corporations Act or if required under the Constitution, in response to the request of members of the Fund.

2. Recovery of direct and indirect costs

In addition to the fees under paragraph 1 above, the Principal must pay the Manager an amount equal to the following direct and indirect costs properly and reasonably incurred by the Manager in providing the Services:

- (a) all Out of Pocket Expenses apart from expenses of delegates incurred by the Manager in the course of or arising out performance of this agreement; and
- (b) all expenses of delegates incurred by the Manager with the prior approval of the Principal in the course of or arising out performance of this agreement,

on a full indemnity basis to the extent that the Principal would have been entitled to be indemnified out of the Fund for those costs if those costs were incurred by the Principal.

In addition, to the extent that any of the above expenses are paid to the Principal under the Constitution, the Manager hereby agrees to waive its entitlement under this paragraph 2 to such expenses paid to the Principal.

3. Gross up for Tax (except GST)

Amounts payable by the Manager will be grossed up as appropriate, or additional amounts paid by the Principal, to ensure that the Manager is fully indemnified in respect of any Tax (other than an amount of GST for which the Manager is indemnified under clause 7 of this agreement) payable in relation to the Services, materials supplied or amounts payable by the Principal.

4. **Invoicing**

The Manager may invoice the costs referred to in paragraph 1 of this schedule at or after the end of the month in which they are incurred. Where costs are not attributable to a particular month, the Manager may apportion them in a reasonable manner and invoice the appropriate portion at such times as it reasonably determines.

Signed as an agreement.

Executed by 360 Capital Investment Management Limited as responsible entity of 360 Capital Total Return Passive Fund and 360 Capital Total Return Active Fund by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by 360 Capital FM Limited by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 5 Subiaco Investment Management Agreement

Subiaco Management Agreement

360 Capital FM Limited

Manager

360 Capital Investment Management Limited

Principal

Clayton Utz
Lawyers
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Our reference 15387/15435

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Subiaco Management Agreement dated

Parties **360 Capital FM Limited ACN 090 664 396** of Level 8, 56 Pitt Street, Sydney NSW 2000 (**Manager**)

360 Capital Investment Management Limited ACN 133 363 185 in its capacity as responsible entity of 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (**Principal**)

Background

- A. The Principal wishes to engage the Manager to perform the Services.
- B. The Manager agrees to perform the Services on the terms set out in this agreement.

Operative provisions

1. Interpretation

1.1 Definitions

The following definitions apply in this agreement.

Assets means the all assets of the Fund.

Associate has the meaning given in the Corporations Act.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, and including any condition attaching to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Claim means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commencement Date means the date of execution of this agreement.

Confidential Information means any information disclosed by a party to this agreement or by any related body corporate of that party to the other party before or after the date of this agreement in relation to the Fund, but excludes information that:

- (a) was in the public domain at the date of this agreement;
- (b) became part of the public domain after the date of this agreement otherwise than as a result of a breach of this agreement; or

- (c) was in the possession of the receiving party (other than as a result of or in connection with the carrying out of the Services under this Agreement) at the time of disclosure by the disclosing party.

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

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

Exit Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Fund means the 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in A New Tax System (*Goods and Services Tax*) Act 1999 (Cth).

Initial Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Leasing Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Liability means a duty, liability or obligation affecting the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Loss means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Management Fee means the fees payable to the Manager under Schedule 1 and in accordance with this agreement.

Member means a person whose name is entered in the register of members as the holder of a unit or units in the Fund.

Out of Pocket Expenses means all costs, charges and expenses properly incurred by the Manager and paid for or payable out of the Manager's own funds in connection with the provision of the Services (which for the avoidance of doubt includes costs incurred in engaging agents, contractors, experts, advisers and other external service providers, including lawyers, accountants and managing agents, in connection with the provision of the Services but does not include costs incurred in engaging delegates) but excluding all in-house administration costs of the Manager in the nature of rent for Manager's premises, computer charges, salaries, overheads and like expenses.

Personnel means the officers, employees, and agents of the Manager.

Related body corporate has the meaning given in the Corporations Act.

Services means the taking of all steps necessary to manage the Fund and its assets as if the Manager were the "Trustee" of the Fund for the purposes of the Constitution and as if the Manager had all of the rights, powers and responsibilities of the "Trustee" pursuant to the Constitution.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), jointly, as applicable.

Term means the period specified in clause 10.1.

1.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) Words defined in the GST Law have the same meaning in clauses 1.2(h) and (i), and 7.
- (h) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (i) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

1.3 Limitation of liability

This clause 1.3 applies notwithstanding any other provision of this agreement.

- (a) The Principal enters into this agreement only in its capacity as responsible entity of the Fund and in no other capacity. Any liability arising under or in connection with this agreement can be enforced against the Principal only to the extent to which it can be satisfied out of the property of the Fund out of which the Principal is actually indemnified for the liability.
- (b) The limitations on the Principal's liability contained in this clause 1.3 extend to all liabilities of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this agreement.
- (c) No other party to this agreement may claim against the personal assets of the Principal or against the Principal in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Principal or prove in any liquidation, administration or arrangement of or affecting the Principal.
- (d) The provisions of this clause 1.3 shall not apply to any obligation or liability of the Principal to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Principal's indemnification out of the assets of the Fund as a result of the Principal's failure to properly perform or exercise any of its powers or duties in relation to the Fund.

2. Services

2.1 Manager to provide the Services

The Manager must provide or procure the provision of the Services continuously during the Term.

2.2 Non-exclusive engagement

The parties acknowledge and agree that the Manager is not obliged by this agreement to provide management services or transaction services exclusively to the Principal and may provide management, transaction or other services to other related or third parties, including competitors of the Principal (**third party**) at its sole discretion.

2.3 Performance by Manager group

The Manager must ensure that any of its employees, agents and contractors and any of its related bodies corporate and their employees, agents and contractors (whether or not they are Personnel) which perform obligations imposed on the Manager by this agreement, do so in accordance with this agreement. In consideration of performing their obligations each of those persons is to have the benefit of any provision of this agreement conferring on the Manager a release, indemnity or limitation of liability and the Manager enters that provision on its own behalf, and as agent of and trustee for each of those persons.

3. How Services are to be provided

3.1 Personnel

In providing the Services, the Manager may use such of its Personnel (who may include a related body corporate of the Manager) as it reasonably considers are able to properly provide the Services.

3.2 Delegation

- (a) Without limiting clause 3.5, the Manager may delegate the performance of the Services with the prior written consent of the Principal, such consent not to be unreasonably withheld.
- (b) The Manager must ensure that all delegates engaged by it perform the delegated Services in accordance with, and to the level of performance required by, this agreement.
- (c) The Manager remains subject to all duties and obligations provided for by this agreement in respect of the performance of any Services which are performed by any delegate, or their respective employees or agents, on the Manager's behalf.
- (d) The Manager will be liable to the Principal for the acts and omissions of its delegates and their respective employees and agents as if they were the acts and omissions of the Manager.
- (e) The Manager must pay any delegate directly for providing Services on its behalf and the Manager acknowledges and agrees that the Principal is not obliged to make any payment whatsoever to any delegate or any delegate's representative, agents or employees.

3.3 Access

The Principal must, where the Manager reasonably considers it appropriate in order to properly provide the Services, ensure that the Manager has adequate access to all materials, information and facilities reasonably required to enable provision of the Services.

3.4 Standard of performance

The Manager must provide the Services:

- (a) in accordance with applicable law;
- (b) to generally accepted standards for reputable providers of fund management services similar to the Services;
- (c) with due care, diligence and skill; and
- (d) in a manner that is consistent with the Constitution.

3.5 Appointment of external service providers

In performing the Services, the Manager may engage agents, contractors, experts, advisers and other external service providers, including lawyers, accountants and managing agents, and the prior written consent of the Principal is not required for the engagement of such advisors, agents and service providers.

3.6 Reports

- (a) The Manager must, on request from the Principal, provide such reports and information as the Principal may reasonably require, and must take reasonable steps to ensure that those reports are complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Manager.
- (b) The Manager will also provide, upon request by the Principal, additional information which is complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Manager, as to the making of, and return on, the investments in the Fund and as is necessary to enable the Responsible Entity to assess the capability of the Manager to manage the investments of the Fund, and otherwise to comply with applicable law.

4. Manager's status

4.1 Independent contractor

The Manager is engaged as an independent contractor. Unless otherwise stated in this agreement, nothing in this agreement constitutes the Manager an employee, agent, partner or joint venturer of the Principal.

4.2 Responsibility for employee benefits

The Manager is responsible for all outgoings payable to or in respect of its Personnel including:

- (a) remuneration and benefits, including superannuation contributions (if applicable), annual leave, sick leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;

- (b) imposts or levies imposed by law, such as work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges; and
- (c) payments upon termination of service (including on redundancy).

5. Charges and payment

5.1 Charges

The Principal must pay for the Services in accordance with Schedule 1.

5.2 Invoicing

The Manager may issue invoices to the Principal for the Services in accordance with Schedule 1.

5.3 Payment

The Principal must pay the Manager in accordance with Schedule 1 and within 5 Business Days after receipt of an invoice issued in accordance with Schedule 1.

6. Default interest

6.1 The Principal must pay interest

The Principal must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate equal to the sum of Australia and New Zealand Banking Group Limited's "Indicator Interest Rate" for that day and 3% per annum.

6.2 Accrual and calculation of interest

Interest under this clause:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and of a 365 day year.

7. GST

7.1 GST payable

If a party (**supplier**) is liable to pay GST on any supply under or in connection with this agreement, the party liable to provide the consideration for that supply (**recipient**) must pay to the supplier an additional amount equal to that GST and at the same time as it must provide the consideration otherwise payable for that supply.

7.2 Invoice

The supplier must issue a tax invoice (or an adjustment note) to the recipient for any supply for which the supplier may recover GST from the recipient under this agreement, and must include in the tax invoice (or adjustment note) the particulars required by the GST Law.

7.3 Adjustments

The Manager must promptly create an adjustment note for, or apply to the Commissioner for, a refund of, and refund to the Principal any overpayment by the recipient for GST, but the Manager need not refund to the Principal any amount for GST paid to the Commissioner of Taxation unless the Manager is entitled to a refund or credit of that amount.

7.4 Claims and Indemnities

- (a) If a party has a claim under or in connection with this agreement for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party is entitled to an input tax credit).
- (b) If a party has a claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

8. Warranties

8.1 Warranties of the Principal

The Principal represents and warrants that:

- (a) **(status of company)** it is a company limited by shares under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this agreement and to perform its obligations under this agreement;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this agreement and the performance of its obligations under this agreement;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this agreement and to perform its obligations under this agreement;
 - (ii) ensure that this agreement is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(no contravention)** neither its execution of this agreement nor the performance of its obligations under this agreement, does or will contravene:
 - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;

- (ii) any Authorisation;
 - (iii) any undertaking or instrument binding on it or any of its property;
 - (iv) its constitution;
- (f) **(no Insolvency Event)** it is not affected by an Insolvency Event;
- (g) **(no dispute or litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or, to the knowledge of any of its officers after due inquiry threatened which, if adversely decided, would in its opinion, have a material adverse effect on it; and
in relation to the Fund:
- (h) **(status as responsible entity)** it is the sole responsible entity of the Fund, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional responsible entity of the Fund.

8.2 Warranties of Manager

The Manager warrants and represents to the Principal:

- (a) **(status)** it is a company limited by shares established under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) carry on its business; and
 - (ii) enter into this agreement;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this agreement and its carrying out the duties and obligations that this agreement contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this agreement and to carry out the duties and obligations that this agreement contemplates including the provision of the Services;
 - (ii) ensure that this agreement is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,
 and it is complying with any conditions to which any such Authorisations is subject;
- (e) **(documents effective)** this agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(no contravention)** neither its execution of this agreement nor the carrying out by it of the duties and obligations that this agreement contemplates, does or will:

- (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
- (ii) contravene any Authorisation;
- (iii) contravene any undertaking or instrument binding on it or any of its property; or
- (iv) contravene its constitution;
- (g) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a material adverse effect on its ability to perform its obligations under this agreement; and
- (h) **(performance of obligations):**
 - (i) that it has and will at all times during the term of this agreement use all reasonable endeavours to ensure that it has the skill, facilities, capacity and staff necessary to properly perform the duties and obligations under this agreement in a professional and timely manner; and
 - (ii) that it will use all reasonable endeavours to ensure that sufficient competent investment management staff experienced in asset management will have charge at all times of the conduct of, and will maintain close supervision of the management of the Fund and its investment portfolio.

8.3 Inaccurate warranty

If a warranty given by a party to this agreement under this clause 8 ceases to be accurate, that party must immediately advise the other party in writing.

9. Liabilities and indemnities

9.1 Disclaimer of implied warranties

Except for the express warranties set out in this agreement and except to the extent that applicable law provides otherwise, the Manager disclaims all warranties. To the maximum extent permitted by applicable law, all conditions and warranties that would be implied (by statute, general law, custom or otherwise) are expressly excluded.

9.2 Implied warranties and conditions

If any condition or warranty is implied into this agreement under the *Competition and Consumer Act 2010 (Cth)* or under any equivalent legislation, and cannot be excluded, the liability of the Manager for breach of the condition or warranty is limited to one or more of the following, at the option of the Manager:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

9.3 Manager's indemnity

- (a) The Manager acknowledges that each Fund will be operated by the Manager as if it were the "Trustee" under each Constitution and the Manager is to be liable as if it were the "Trustee" under each Constitution.
- (b) The Manager indemnifies the Principal and its agents (for the purposes of this clause 9.3, each an **Indemnified Person**) against any losses or liabilities incurred or suffered by the Indemnified Person, arising out of or in connection with, and any costs, charges and expenses incurred in connection with:
 - (i) the performance (or breach) by the Manager of this agreement; or
 - (ii) the operation of the Fund by the Manager,during the term of this agreement, except to the extent that the loss, liability, cost, charge or expense is caused by the negligence, fraud or dishonesty of the Principal or the Principal's employees or (other than the Manager) the Principal's agents.
- (c) If the Manager appoints an agent, the Manager is liable under this clause 9.3 for the acts or omissions of its agent as if those acts or omissions were acts or omissions of the Manager.

9.4 Release from and indemnity against Claims

No claim shall be made by the Manager against the Principal (or the Fund) for any Claim, Liability or Loss to the extent that such Claim, Liability or Loss arises as a result of, or is contributed to by, (whether solely or otherwise) the negligence, misconduct or bad faith of the Manager in providing the Services.

10. Term

10.1 Term

The term of this agreement is from the Commencement Date to the earlier of:

- (a) the date the Manager is appointed as responsible entity of the Fund;
- (b) the date which is 12 months after the date of this agreement; and
- (c) the date this agreement is terminated in accordance with this clause 10, (Term).

10.2 Termination by the Principal

- (a) The Principal may terminate this agreement immediately at any time:
 - (i) upon an Insolvency Event occurring in relation to the Manager;
 - (ii) if the Manager has committed a material breach of a material provision of this agreement which has not been remedied within 20 Business Days of the Principal requiring such remediation; or
 - (iii) if an ordinary resolution is passed by members of the Fund to remove the Manager.

10.3 Termination by the Manager

The Manager may terminate this agreement immediately at any time:

- (a) if the Principal is removed as trustee of the Fund;
- (b) if the Principal has committed a material breach of a material provision of this agreement which has not been remedied within 30 Business Days of the Manager requiring such remediation; or
- (c) upon an Insolvency Event occurring in relation to the Principal.

10.4 Claims, rights and obligations

Ending of the Term or termination of this agreement does not affect:

- (a) any Claim either party may have against the other in respect of anything done or required to be done before the end of the Term, or before termination; or
- (b) rights or obligations under the following clauses:
 - 1 Interpretation
 - 4 Manager's status
 - 5 Charges and payment
 - 6 Default interest
 - 7 GST
 - 9 Liabilities and indemnities
 - 11 Confidentiality
 - 12 Notices
 - 12.1 Amendment and assignment
 - 14 General

11. Confidentiality

11.1 Confidential Information

Subject to clause 11.3, neither party may, without the other party's permission or where necessary to perform the Services or operate or manage the Fund in accordance with the terms of the Constitution:

- (a) use any Confidential Information;
- (b) disclose any Confidential Information to anyone else; or
- (c) make copies of materials incorporating any Confidential Information.

11.2 Terms of this agreement

Subject to clause 11.3, neither party may, without the consent of the other party, disclose the terms of this agreement to any other person.

11.3 Exceptions

A party may disclose or use information, which it would otherwise be prevented from disclosing or using under clause 11.1 or 11.2, where required to do so by law or by the rules of a stock exchange but, as far as practicable, must notify the other party in advance of its intention to do so and take such steps as the other party reasonably requires to protect the confidentiality of the information.

12. Notices

12.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to the Manager:

Attention: Mr Tony Pitt

Address: Level 8, 56 Pitt Street, Sydney NSW 2000

Email: tony.pitt@360capital.com.au
 - (ii) if to the Principal:

Attention: Mr John McBain

Address: Suite 39.01, Level 39, 100 Miller Street, North Sydney NSW 2060

Email: john.mcbain@centuria.com.au
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with clause 12.1(c).

12.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 12, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

13. Amendment and assignment

13.1 Amendment

This agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

13.2 Assignment

A party may only dispose of, declare a trust over or otherwise create an interest in its rights under this agreement with the prior written consent of the other party.

14. General

14.1 Governing law

- (a) This agreement is governed by the law in force in New South Wales.
- (b) Each party submits to the non exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

14.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this agreement.

14.3 Giving effect to this agreement

Each party must do anything (including execute any agreement), and must ensure that its employees and agents do anything (including execute any agreement), that the other party may reasonably require to give full effect to this agreement.

14.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.5 Operation of this agreement

- (a) This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

14.6 Operation of indemnities

- (a) Each indemnity in this agreement survives the expiry or termination of this agreement.
- (b) A party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

14.7 Consents

Where this agreement contemplates that the party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this agreement expressly contemplates otherwise.

14.8 Counterparts

This agreement may be executed in counterparts.

14.9 Attorneys

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Schedule 1 - Charges and Payment

(Clause 5)

1. Fees for provision of Services

The Principal must pay the Manager the following fees:

- (a) an Initial Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in paragraph 2, Schedule 2 of the Constitution as that Constitution exists as at the date of this agreement;
- (b) a Management Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in paragraph 3, Schedule 2 of the Constitution as that Constitution exists as at the date of this agreement;
- (c) a Leasing Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in paragraph 4, Schedule 2 of the Constitution as that Constitution exists as at the date of this agreement; and
- (d) an Exit Fee, in an amount and at the times, and otherwise as calculated in the manner, set out in paragraph 5, Schedule 2 of the Constitution as that Constitution exists as at the date of this agreement.

The Principal and the Manager agree that at all times while the Principal is the responsible entity of the Fund and the Manager is the manager of the Fund, at no stage will the amount charged by the Manager exceed the amount of the Principal's entitlement to fees as set out in Schedule 2 of the Constitution.

The Principal hereby agrees to pay or pass through the fees it receives and is entitled to receive pursuant to Schedule 2 of the Constitution as is necessary to give effect to this paragraph.

The Principal hereby agrees to use all reasonable endeavours to ensure Schedule 2 of the Constitution is not amended during the Term to reduce the fees payable under Schedule 2 of the Constitution provided that this clause does not restrict the Principal from convening a general meeting under section 252B of the Corporations Act or if required under the Constitution, in response to the request of members of the Fund.

2. Recovery of direct and indirect costs

In addition to the fees under paragraph 1 above, the Principal must pay the Manager an amount equal to the following direct and indirect costs properly and reasonably incurred by the Manager in providing the Services:

- (a) all Out of Pocket Expenses apart from expenses of delegates incurred by the Manager in the course of or arising out performance of this agreement; and
- (b) all expenses of delegates incurred by the Manager with the prior approval of the Principal in the course of or arising out performance of this agreement,

on a full indemnity basis to the extent that the Principal would have been entitled to be indemnified out of the Fund for those costs if those costs were incurred by the Principal.

In addition, to the extent that any of the above expenses are paid to the Principal under the Constitution, the Manager hereby agrees to waive its entitlement under this paragraph 2 to such expenses paid to the Principal.

3. Gross up for Tax (except GST)

Amounts payable by the Manager will be grossed up as appropriate, or additional amounts paid by the Principal, to ensure that the Manager is fully indemnified in respect of any Tax (other than an amount of GST for which the Manager is indemnified under clause 7 of this agreement) payable in relation to the Services, materials supplied or amounts payable by the Principal.

4. Invoicing

The Manager may invoice the costs referred to in paragraph 1 of this schedule at or after the end of the month in which they are incurred. Where costs are not attributable to a particular month, the Manager may apportion them in a reasonable manner and invoice the appropriate portion at such times as it reasonably determines.

Signed as an agreement.

Executed by 360 Capital Investment Management Limited as responsible entity of 360 Capital Subiaco Square Shopping Centre Property Trust ARSN 094 189 732 by or in the presence of:

Signature of Director

Name of Director in full

Executed by 360 Capital FM Limited by or in the presence of:

Signature of Director

Name of Director in full

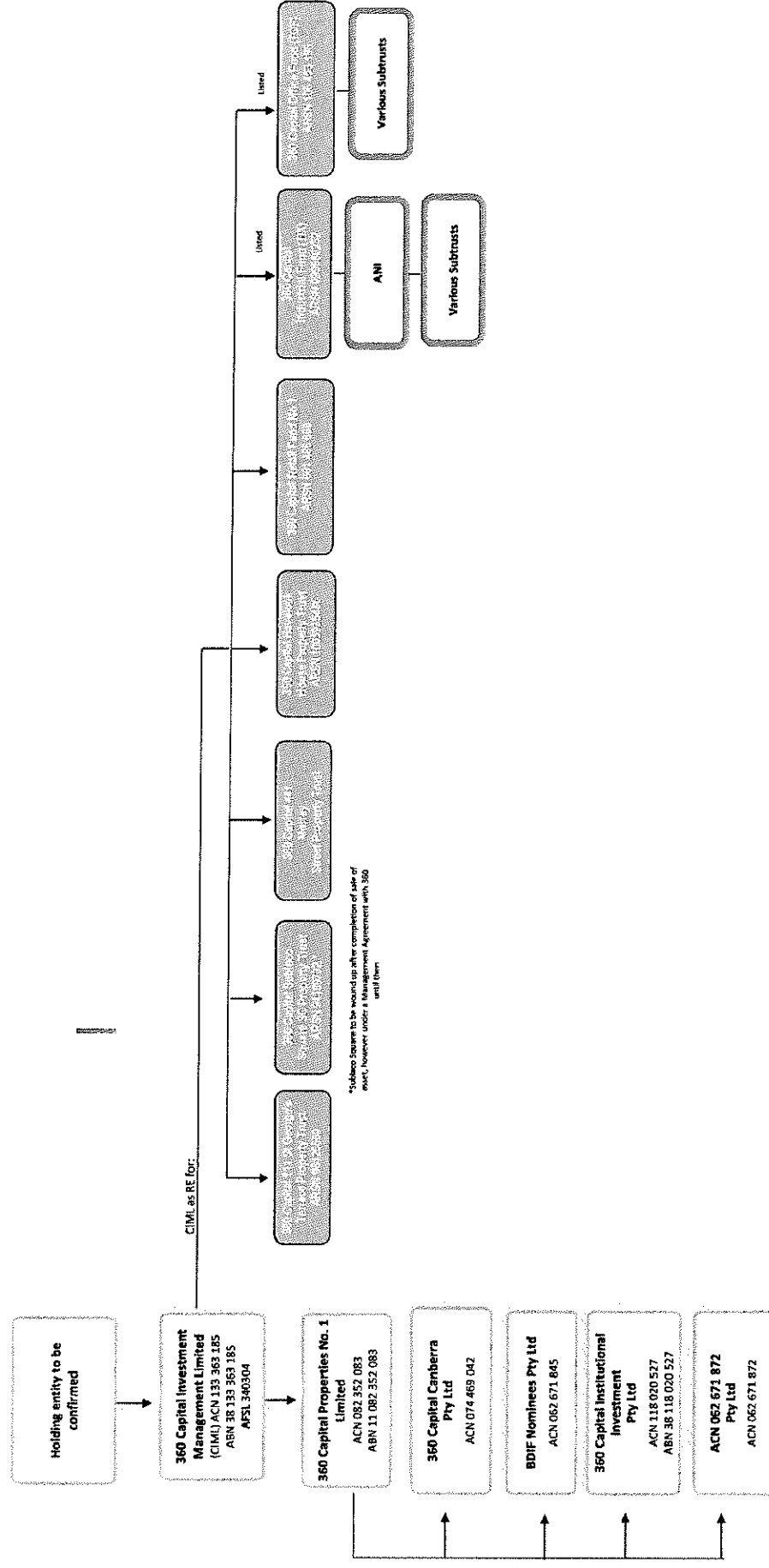
Signature of Secretary/other Director

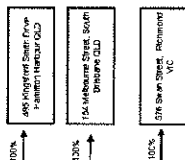
Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 6 Group structure diagram, Target Entities, Funds and Sub-Trusts structure diagrams



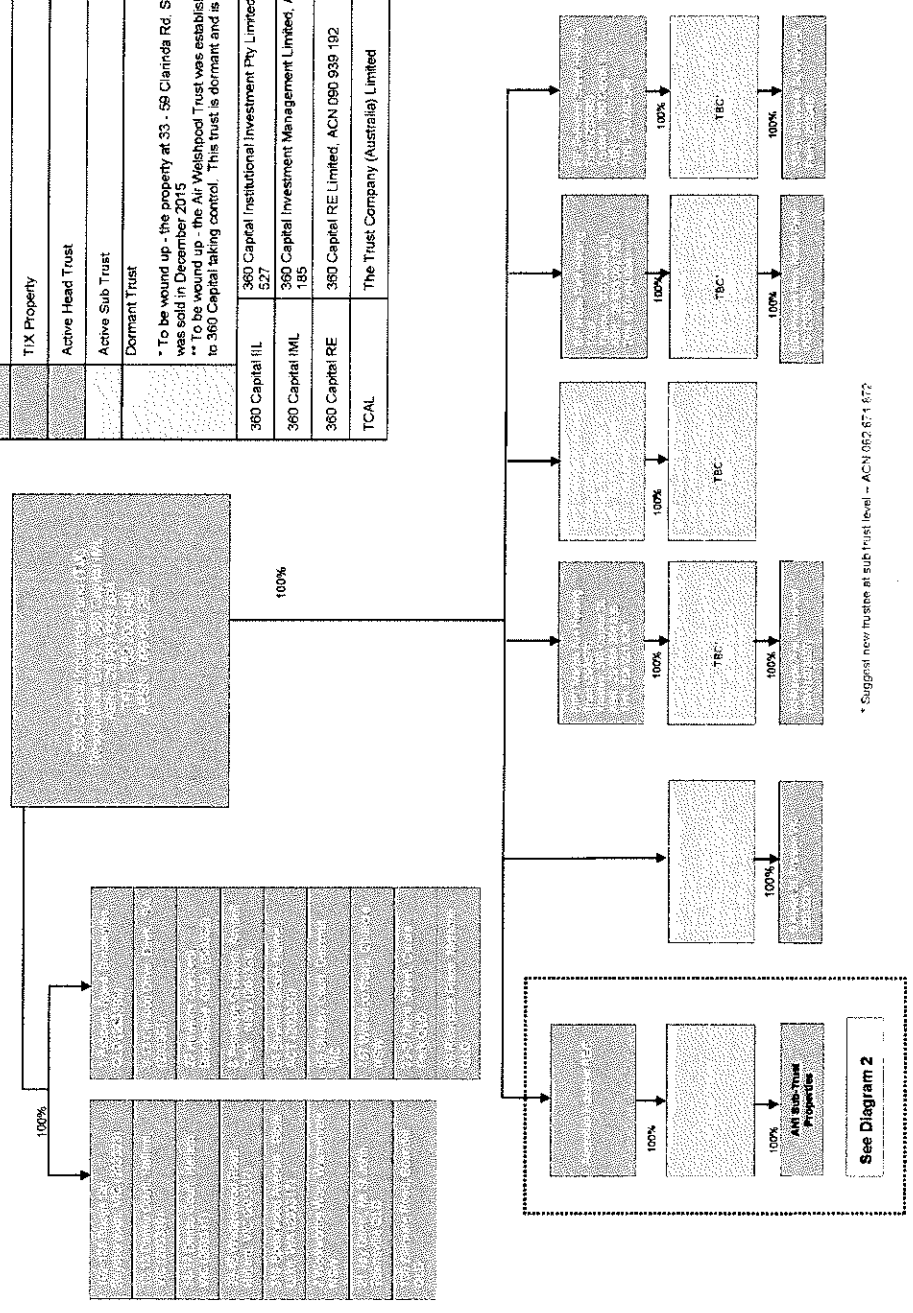


All subjects are female
subject CFE to be replaced
with ACK 062 671 372

Diagram 1 - Overview of 360 Capital Industrial Fund (TIX) Structure without ANI Detail

360 Capital Industrial Fund (TIX)
ARSN 099 680 252

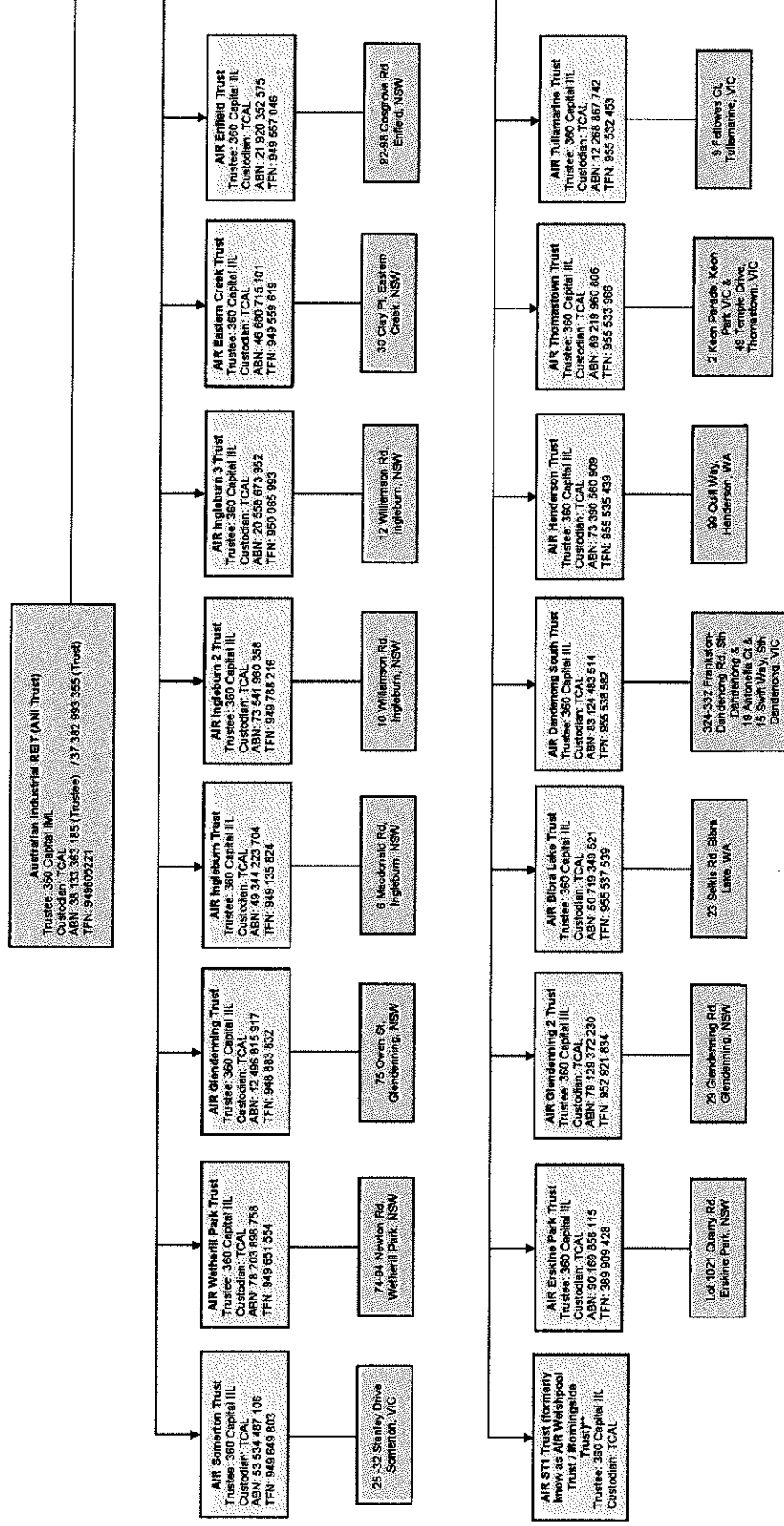
Key	
	ANI Property
	TIX Property
	Active Head Trust
	Active Sub Trust
	Dormant Trust
* To be wound up - the property at 33 - 59 Clarend Rd, South Oakley, VIC was sold in December 2015	
** To be wound up - the Air Weirpool Trust was established by ANI prior to 360 Capital taking control. This trust is dormant and is to be wound up	
	360 Capital Institutional Investment Pty Limited, ACN 118 020 527
	360 Capital Investment Management Limited, ACN 133 363 185
	360 Capital RE Limited, ACN 090 939 192
	The Trust Company (Australia) Limited



Anticipated Structure Diagram - post Certificate Transaction

Diagram 2 - Overview of Australian Industrial REIT (ANI) Structure following it being brought within TIX

Australian Industrial REIT (ANI)



Anticipated structure diagram – post Centuria transaction

Schedule 7 List of Assets

The Records

Schedule 8 Property assets

Entity	Property
TOF	154 Melbourne Street
TOF	483 Kingsford Smith Drive
TOF	576 Swan Street Richmond
TIX	60 Marple Ave, Villawood
TIX	8 Penelope Cres, Arndell Park
TIX	37-51 Scrivener St, Warwick Farm
TIX	457 Waterloo Road, Chullora
TIX	2 Woolworths Way, Warnervale
TIX	54 Sawmill Circuit, Hume
TIX	22 Hawkins Crescent, Bundamba
TIX	1 Ashburn Road, Bundamba
TIX	33-37 Mica St, Carole Park
TIX	69 Rivergate Pl, Murarrie
TIX	136 Zillmere Rd, Boondall
TIX	Lot 69, Jay St, Mount St John (Townsville)
TIX	12-13 Dansu Ct, Hallam
TIX	14-17 Dansu Ct, Hallam
TIX	39-45 Wedgewood Rd, Hallam
TIX	6 Albert St, Preston
TIX	102-128 Bridge Rd, Keysborough
TIX	500 Princes Hwy, Noble Park
TIX	69 Studley Court, Derrimut
TIX	9-13 Caribou Drive, Direk
TIX	310 Spearwood Ave, Bibra Lake
TIX	92-98 Cosgrove Road, Enfield NSW
TIX	10 Williamson Road, Ingleburn NSW
TIX	29 Glendenning Road, Glendenning NSW
TIX	12 Williamson Road, Ingleburn NSW
TIX	74-94 Newton Road, Wetherill Park NSW
TIX	6 Macdonald Road, Ingleburn NSW
TIX	30 Clay Place, Eastern Creek NSW
TIX	52-74 Quarry Road, Erskine Park NSW
TIX	75 Owen Street, Glendenning NSW
TIX	24-32 Stanley Drive, Somerton VIC
TIX	324-332 Frankston-Dandenong Road, Dandenong South VIC

TIX	49 Temple Drive, Thomastown VIC
TIX	2 Keon Parade, Keon Park VIC
TIX	9 Fellowes Court, Tullamarine VIC
TIX	23 Selkis Road, Bibra Lake WA
TIX	99 Quill Way, Henderson WA
111StG	111 St George's Terrace, Perth
Havelock	21 Havelock St, West Perth
441	441 Murray St, Perth
RF1	Windsor Marketplace
RF1	Rockhampton City Centre Plaza

TIX	37
111StG	1
Havelock	1
Subiaco	0
441	1
RF1	2
TOF	3
Total	45

Signed as an agreement.

Executed by **360 Capital Group Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by **Centuria Capital Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by **Centuria Funds Management Limited in its capacity as responsible entity of the Centuria Capital Fund** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Annexure "C"

This is Annexure "C" of 34 pages referred to in the Form 603 (Notice of initial substantial holder), signed by me and dated 25 November 2016.

A handwritten signature in black ink, appearing to read 'James Lonie', written over a dotted line.

James Lonie
Company Secretary

Execution version

Unit sale deed - TOF

360 Capital Investment Management Limited in its capacities as trustee of
each Vendor Trust
Vendor

360 Capital FM Limited
Incoming Trustee

360 Capital Group Limited
360 Capital

Centuria Investment Holdings Pty Limited
CC2OF

Moelis Australia Advisory Pty. Ltd.
Moelis

Centuria Property Funds Limited in its capacity as trustee of Centuria
Capital No. 2 Office Fund
CMA

Centuria Capital Limited

Centuria Funds Management Limited in its capacity as responsible entity of
the Centuria Capital Fund

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Unit sale deed - TOF

Date

Parties

360 Capital Investment Management Limited ACN 133 363 185 in its capacities as trustee of each Vendor Trust as set out in Schedule 1 of Level 8, 56 Pitt Street, Sydney NSW 2000 (the Vendor);

360 Capital FM Limited ACN 090 664 396 of Level 8, 56 Pitt Street, Sydney NSW 2000 (Incoming Trustee);

360 Capital Group Limited ACN 113 569 136 of Level 8, 56 Pitt Street, Sydney NSW 2000 (360 Capital);

Centuria Investment Holdings Pty Limited ACN 116 455 862 in its capacity as trustee of Centuria Capital No. 2 Office Fund of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (CC2OF);

Moelis Australia Advisory Pty. Ltd. ACN 142 008 446 of Level 27, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000 (Moelis);

Centuria Property Funds Limited ACN 086 553 639 in its capacity as responsible entity of Centuria Metropolitan REIT No.1 ARSN 124 364 718 of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (CMA);

Centuria Capital Limited ACN 095 454 336 of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060, and

Centuria Funds Management Limited ACN 607 153 588 as responsible entity of Centuria Capital Fund of Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060 (each and both the Guarantor).

Recitals

- A. The Vendor is the legal owner of the Sale Units.
- B. The Vendor has agreed to sell and the Purchaser has agreed to purchase some or all of the Sale Units upon the terms and conditions contained in this document.
- C. 360 Capital has agreed to do all things to procure the Vendor fulfil its obligations under this document, and the Guarantor has agreed to guarantee the performance of CMA's and CC2OF's obligations under this document.

The parties agree

1. Definitions and interpretation

1.1 Definitions

In this document:

360CIML Vendor means 360 Capital Investment Management Limited ACN 133 363 185.

360 Obligations means all the liabilities and obligations of any 360 Obligor to the Purchaser under or by reason of this document and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;

- (c) arise from the making of any advance or loan on or before the date of this document or from any future advances or loans;
 - (d) are in existence before or come into existence on or after the date of this document;
 - (e) relate to the payment of money or the performance or omission of any act;
 - (f) sound in damages only;
 - (g) accrue as a result of any default of this document; or
 - (h) would exist but for an event of insolvency affecting any person,
- and irrespective of:
- (i) whether any 360 Obligor is liable or obligated solely, jointly or jointly and severally with another person;
 - (j) the circumstances in which the Purchaser comes to be owed each liability or obligation, including any assignment of any liability or obligation; or
 - (k) the capacity in which any 360 Obligor and the Purchaser comes to owe or to be owed that liability or obligation.

360 Obligors means each of 360CIML Vendor and 360 Capital.

Acquisition means the acquisition of all of the share capital in 360CIML Vendor by Centuria Capital Limited from 360 Capital pursuant to the Acquisition Agreement.

Acquisition Agreement means the share sale agreement between the Guarantor and 360 Capital in relation to the acquisition of all of the share capital in 360CIML Vendor dated [insert] 2016.

Agreed Distribution means 4.25 cents per Sale Unit acquired under this document:

- (a) multiplied by the number of days from the commencement of the Completion Quarter to (but excluding) the Completion Date;
- (b) divided by the number of days in the Completion Quarter; and
- (c) less the amount of the Pre Completion Distribution.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which the banks are open for business generally in Sydney.

Centuria means the Guarantor and Centuria Funds Management Limited ACN 607 153 588 as responsible entity of the Centuria Capital Fund.

CIT Vendor means 360CIML Vendor as trustee for 360 Capital Investment Trust.

Completion means completion of this document and the sale and purchase of the Sale Units in accordance with the terms of this document.

Completion Date means the time at which completion occurs under the Acquisition Agreement.

Completion Quarter means the calendar quarter in which Completion occurs.

Conditional Placement means a placement of stapled securities in Centuria by Centuria to raise approximately \$60,000,000.00.

Constitution means the constitution of the Trust as amended from time to time.

Cost means any cost, expense, charge, liability or disbursement.

Encumbrance has the meaning given in the Acquisition Agreement.

End Date has the meaning given in the Acquisition Agreement.

Guarantor means each and both of Centuria Capital Limited ACN 095 454 336 and Centuria Funds Management Limited ACN 607 153 588 as responsible entity of Centuria Capital Fund, jointly and severally.

Obligations means all the liabilities and obligations of any Obligor to the Vendor under or by reason of this document and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) arise from the making of any advance or loan on or before the date of this document or from any future advances or loans;
- (d) are in existence before or come into existence on or after the date of this document;
- (e) relate to the payment of money or the performance or omission of any act;
- (f) sound in damages only;
- (g) accrue as a result of any default of this document; or
- (h) would exist but for an event of insolvency affecting any person,

and irrespective of:

- (i) whether any Obligor is liable or obligated solely, jointly or jointly and severally with another person;
- (j) the circumstances in which the Vendor comes to be owed each liability or obligation, including any assignment of any liability or obligation; or
- (k) the capacity in which any Obligor and the Vendor comes to owe or to be owed that liability or obligation.

Obligors means each of CMA, CC2OF and the Guarantor.

Personal Purchaser Warranties means the warranties given by CC2OF in clauses 6.1(a), 6.1(d) and 6.3 and by CMA in clauses 7.1(a), 7.1(d) and 7.3.

Personal Vendor Warranties means the warranties given by the Vendor in clauses 6.1(a), 6.1(d), and clauses 6.2(d) to 6.2(l).

Placement Condition means the approval by shareholders of the Guarantor to the Conditional Placement.

Power means any right, power, authority, discretion, remedy or privilege.

Pre Completion Distribution has the meaning given to that term in clause 4.6(b).

Purchase Price means an amount per Sale Unit acquired under this document of \$2.25 plus the Agreed Distribution.

Purchaser means:

- (a) where both the TOF Unit Acquisition Condition and the Placement Condition are satisfied by the Completion Date: CC2OF and CMA; or
- (b) where the TOF Unit Acquisition Condition is satisfied but the Placement Condition is not satisfied by the Completion Date: Moelis and CMA,

and in all other cases no person is, and no persons are, specified as the Purchaser.

Regulatory Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Sale Units means, in respect of each Vendor Trust set out in column 1 of the table in Schedule 1, the number of fully paid ordinary units in the Trust set out next to the Vendor Trust's name in column 2 of that table, or the aggregate of those units, as the context requires.

TOF Unit Acquisition Condition has the meaning given to that term in the Acquisition Agreement.

Trust means 360 Capital Office Fund ARSN 106 453 196.

Vendor Group Member means the Vendor and each related entity of the Vendor.

Vendor Trusts means each of the trusts referred to in Schedule 1 and **Vendor Trust** means any of them, as the context requires.

1.2 Interpretation

In this document headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits each of them severally (in proportion to their obligations under this document) and not, for the avoidance of doubt, jointly;
- (b) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this document, and a reference to this document includes any schedule, exhibit or annexure to this document;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) all payments to be made under this document will be made by unendorsed bank cheque or other immediately available funds;
- (j) capitalised terms used in this document have the meaning given to them in the Acquisition Agreement;
- (k) the word "**includes**" in any form is not a word of limitation; and
- (l) a reference to "\$" or "**dollar**" or "**cents**" is to Australian currency.

1.3 Incoming Trustee

The Incoming Trustee agrees and undertakes that immediately upon its appointment as trustee of:

- (a) 360 Capital Investment Trust ARSN 104 552 598 becoming effective (**CIT Vendor Date**), the Incoming Trustee assumes all the outstanding rights, obligations and liabilities of CIT Vendor under this deed to the exclusion of 360CIML Vendor;
- (b) 360 Capital Diversified Property Fund becoming effective (**CDPF Vendor Date**), the Incoming Trustee assumes all the outstanding rights, obligations and liabilities of CDPF Vendor under this deed to the exclusion of 360CIML Vendor;
- (c) 360 Capital Diversified Property Office Sub Trust becoming effective (**CDPOST Vendor Date**), the Incoming Trustee assumes all the outstanding rights, obligations and liabilities of CDPOST Vendor under this deed to the exclusion of 360CIML Vendor;
- (d) 360 Capital Diversified Property Office Sub Trust 2 becoming effective (**CDPOST2 Vendor Date**), the Incoming Trustee assumes all the outstanding rights, obligations and liabilities of CDPOST2 Vendor under this deed to the exclusion of 360CIML Vendor; and
- (e) 360 Capital Diversified Property Office Sub Trust 3 becoming effective (**CDPOST3 Vendor Date**), the Incoming Trustee assumes all the outstanding rights, obligations and liabilities of CDPOST3 Vendor under this deed to the exclusion of 360CIML Vendor.

2. Sale and purchase

Subject to clauses 3 and 5, the Vendor agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Vendor, the Sale Units (or such number of the Sale Units as is specified in clause 5) for the Purchase Price free from all Encumbrances and together with all rights attaching to or accruing to the Sale Units after Completion.

3. Condition precedent and bank account

3.1 Condition precedent in Acquisition Agreement

The obligation of the Vendor to sell, and the obligation of the Purchaser to purchase, the Sale Units (or such number of the Sale Units as is specified in clause 5) is subject to the Vendor and the Purchaser being satisfied that each condition precedent in the Acquisition Agreement

has been satisfied or waived.

3.2 Bank account

At least 2 Business Days before Completion the Vendor must notify the Purchaser of the Vendor's bank account details for the payment of the Purchase Price.

3.3 Reasonable endeavours to satisfy Placement Condition

The Guarantor must use all reasonable endeavours to ensure that the Placement Condition is satisfied and the Conditional Placement occurs as soon as practicable after the date of this document and prior to the Completion Date. The Guarantor:

- (a) must not without the prior consent of 360 Capital (such consent not to be unreasonably withheld or delayed) take any action that will or is reasonably likely to hinder or prevent the satisfaction of the Placement Condition; and
- (b) must keep the Vendor informed of any fact, matter or circumstance of which it becomes aware that may result in the Placement Condition not being satisfied in accordance with the terms of this document.

4. Completion

4.1 Time and place for Completion

Completion will take place at the offices of Clayton Utz at Level 15, 1 Bligh Street, Sydney NSW 2000 on the Completion Date, or at such other place or time as agreed by the Vendor and Purchaser in writing.

4.2 Delivery of documents by Vendor

On Completion the Vendor will deliver to the relevant Purchasers:

- (a) duly executed transfers in relation to the transfer of all of the Sale Units in the form set out in Schedule 2 to this document. Each transfer form in respect of Sale Units held by the Vendor in its capacity as trustee of a Vendor Trust will relate to a Vendor Trust and will be signed by the Vendor in its capacity as trustee of that Vendor Trust;
- (b) if the Sale Units are certificated, the unit certificates for the Sale Units or an indemnity for any lost unit certificates for Sale Units; and
- (c) any other documents necessary to establish the Vendor's title to the Sale Units that are required by the trustee of the Trust in order to effect registration of the transfers of the Sale Units to the Purchaser.

4.3 Payment of Purchase Price

- (a) On Completion the Purchaser will pay the Purchase Price to the Vendor in respect of the Sale Units in cleared funds as directed by the Vendor.
- (b) The Purchaser and the Vendor agree that the payment to each Vendor Trust will be in proportion to the ratio that the number of Sale Units corresponding to the relevant Vendor Trust bears to the total number of Sale Units.

4.4 Completion simultaneous

The obligations of the parties under clauses 4.2 and 4.3 are interdependent and must be performed, as nearly as possible, simultaneously. If any obligation specified in clauses 4.2 and 4.3 is not performed on or before Completion then, without limiting any other rights of the

parties, Completion is taken not to have occurred and any document delivered, or payment made, under clauses 4.2 and 4.3 must be returned to the party that delivered it or paid it.

4.5 Appointment of proxy

- (a) From Completion until the Sale Units are registered in the name of the Purchaser, the Vendor must, in its capacities as trustee of each Vendor Trust:
 - (i) appoint the Purchaser as its sole proxy to attend unitholder meetings and exercise the votes attaching to the Sale Units;
 - (ii) not attend and vote at any unitholder meetings in respect of the Sale Units;
 - (iii) take all other actions in the capacity of a registered holder of the Sale Units as the Purchaser directs.
- (b) From Completion, the Vendor must account to the Purchaser for any amounts received by the Vendor in respect of any Sale Units as a result of a record date occurring after Completion and prior to the Sale Units being registered in the name of the Purchaser.
- (c) The Purchaser indemnifies the Vendor against all loss, liability, cost and expense relating to the implementation of any action taken in accordance with the proxy referred to above.

4.6 Distributions after Completion

- (a) If, after Completion, the Vendor receives a distribution from the Trust in relation to the Sale Units where the relevant record date falls after Completion (**Wrong Pocket Distribution**), the Vendor must notify the Purchaser. As soon as reasonably practicable following this notification:
 - (i) the Vendor must use its reasonable endeavours to transfer the Wrong Pocket Distribution to the Purchaser, or as the Purchaser directs, for nil consideration; and
 - (ii) in relation to such a transfer, the Purchaser will indemnify the Vendor for all its reasonable costs incurred in transferring the relevant Wrong Pocket Distribution.
- (b) At least 2 Business Days before Completion the Vendor must notify the Purchaser of the amount (if any) of any distribution received in relation to the Sale Units where the relevant record date occurs during the Completion Quarter but prior to Completion (**Pre Completion Distribution**).

5. Placement Condition and TOF Unit Acquisition Condition

- (a) Where the TOF Unit Acquisition Condition and the Placement Condition are satisfied by the Completion Date:
 - (i) the Purchasers are CC2OF and CMA;
 - (ii) CC2OF will acquire 14,648,622 Sale Units, representing 19.99% of the TOF units on issue; and
 - (iii) CMA will acquire 6,423,084 Sale Units, representing 8.76% of the TOF units on issue.
- (b) Where the TOF Unit Acquisition Condition is satisfied but the Placement Condition

is not satisfied by the Completion Date:

- (i) the Purchasers are Moelis and CMA;
 - (ii) subject to clause 5(e), Moelis will acquire 13,556,754 Sale Units, representing 18.5% of the TOF units on issue;
 - (iii) CMA will acquire 6,423,084 Sale Units, representing 8.76% of the TOF units on issue; and
 - (iv) the Vendor will continue to hold 1,099,749 Sale Units, representing 1.5% of the TOF units on issue.
- (c) Where the TOF Unit Acquisition Condition is not satisfied by the Completion Date or where both the TOF Unit Acquisition Condition and the Placement Condition are not satisfied by the Completion Date, there will be no purchase of Sale Units under this document and no person is specified as a "Purchaser".
- (d) This clause 5 prevails notwithstanding any other provision in this document and all other provisions in this document must be read to give effect to this clause 5.
- (e) If a Purchaser is Moelis, prior to Completion, Moelis may nominate one or more persons (including trusts or funds) (each a **Nominee**) to acquire the Sale Units it is obliged to acquire under clause 5(b)(ii) in which case Moelis must satisfy or ensure such Nominees satisfy Moelis' obligations under this document.

6. Warranties

6.1 General

Each party represents and warrants to each other party that:

- (a) it is a company properly incorporated and validly existing under the laws of Australia, and has taken all corporate actions and obtained all shareholder, unitholder and Regulatory Authority authorisations necessary to enable it to execute and deliver this document and perform its obligations and, in the case of 360 Capital, procure that other Vendor Group Members perform their obligations under this document;
- (b) this document constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms;
- (c) the execution, delivery and performance of this document by it does not violate any statute or law, or any document or agreement to which it is a party and which is binding on it or any of its assets; and
- (d) all consents, licences, approvals and authorisations required to be obtained by it in connection with the execution, delivery and performance of this document have been obtained and are valid and subsisting.

6.2 Vendor warranties

The Vendor and 360 Capital each represent and warrant to the Purchaser as at immediately before Completion that:

- (a) the Vendor is the legal owner of the Sale Units in its capacity as trustee of the Vendor Trusts in the proportions set out in Schedule 1 - Vendor;
- (b) the Sale Units will be transferred free of any Encumbrance;
- (c) the Sale Units are fully paid up;

- (d) each Vendor Trust is a validly subsisting trust;
- (e) no Vendor Trust has been terminated, nor is there any proposal or requirement to wind up, deregister, terminate, reconstitute or resettlement any Vendor Trust;
- (f) the Vendor is the sole trustee of each Vendor Trust;
- (g) the Vendor has the authority and capacity under the trust deed of each Vendor Trust (each a **Trust Deed**) to enter into, and perform its obligations under, this document as the trustee of each Vendor Trust;
- (h) there is no proposal to remove the Vendor as trustee of any Vendor Trust;
- (i) the Vendor is not in breach of any provision of any Trust Deed;
- (j) the Vendor holds all licences, permits, authorisations and consents that are necessary or desirable for it to enable it to conduct its business as trustee, and all such licences, permits, authorisations and consents are in full force and effect and are not liable to be revoked or not renewed;
- (k) in respect of each Vendor Trust, except where the Vendor has acted negligently, fraudulently or in breach of trust, the Vendor has been or is entitled to be indemnified in respect of any liability arising under or in connection with the proper performance of its rights and obligations under a document to which it is a party out of the assets of that Vendor Trust; and
- (l) in respect of each Vendor Trust, the Vendor is entitled to be indemnified out of the assets of the Vendor Trust in respect of any liability arising under or in connection with the proper performance by it of its rights and obligations under this document insofar as it relates to the Sale Units it holds in its capacity as trustee of that Vendor Trust.

6.3 CC2OF warranties

CC2OF warrants to each of the Vendor and 360 Capital as at immediately before Completion that:

- (a) it is the sole trustee of Centuria Capital No. 2 Office Fund (**Centuria Trust**);
- (b) it has the authority and capacity under the trust deed of the Centuria Trust as amended from time to time (**Centuria Trust Deed**) to enter into, and perform its obligations under, this document as the trustee of the Centuria Trust;
- (c) there is no proposal to remove it as trustee of the Centuria Trust;
- (d) it is not in breach of any provision of the Centuria Trust Deed;
- (e) it holds all licences, permits, authorisations and consents that are necessary or desirable for it to enable it to conduct its business as trustee, and all such licences, permits, authorisations and consents are in full force and effect and are not liable to be revoked or not renewed;
- (f) in respect of the Centuria Trust, except where it has acted negligently, fraudulently or in breach of trust, it has been or is entitled to be indemnified in respect of any liability arising under or in connection with the proper performance of its rights and obligations under a document to which it is a party out of the assets of the Centuria Trust; and
- (g) it is entitled to be indemnified out of the assets of the Centuria Trust in respect of any liability arising under or in connection with the proper performance by it of its rights and obligations under this document to acquire the Sale Units.

6.4 CMA warranties

CMA warrants to each of the Vendor and 360 Capital as at immediately before Completion that:

- (a) it is the sole trustee of Centuria Metropolitan REIT No.1 ARSN 124 364 718 (**CMA Trust**);
- (b) it has the authority and capacity under the trust deed of the CMA Trust as amended from time to time (**CMA Trust Deed**) to enter into, and perform its obligations under, this document as the trustee of the CMA Trust;
- (c) there is no proposal to remove it as trustee of the CMA Trust;
- (d) it is not in breach of any provision of the CMA Trust Deed;
- (e) it holds all licences, permits, authorisations and consents that are necessary or desirable for it to enable it to conduct its business as trustee, and all such licences, permits, authorisations and consents are in full force and effect and are not liable to be revoked or not renewed;
- (f) in respect of the CMA Trust, except where it has acted negligently, fraudulently or in breach of trust, it has been or is entitled to be indemnified in respect of any liability arising under or in connection with the proper performance of its rights and obligations under a document to which it is a party out of the assets of the CMA Trust; and
- (g) it is entitled to be indemnified out of the assets of the CMA Trust in respect of any liability arising under or in connection with the proper performance by it of its rights and obligations under this document to acquire the Sale Units.

7. Limitation of liability

7.1 360 Capital Investment Trust

- (a) This clause 7.1 applies notwithstanding any other provision of this document.
- (b) The Responsible Entity enters into this document in so far as it relates to the CIT Units only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 7.1 extend to all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document so far as it relates to the CIT Units, other than the Personal Vendor Warranties.
- (d) No other party to this document may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.1 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its

powers or duties in relation to the Fund.

(f) In this clause 7.1, the following definitions apply:

- (i) **Responsible Entity** means the CIT Vendor or, following the CIT Vendor Date, the Incoming Trustee;
- (ii) **Fund** means 360 Capital Investment Trust ARSN 104 552 598; and
- (iii) **CIT Units** means the Sale Units held by the Responsible Entity in its capacity as trustee of the Fund as set out in Schedule 1.

7.2 360 Capital Diversified Property Fund

- (a) This clause 7.2 applies notwithstanding any other provision of this document.
- (b) The Responsible Entity enters into this document in so far as it relates to the CDPF Units only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 7.2 extend to all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document so far as it relates to the CDPF Units, other than the Personal Vendor Warranties.
- (d) No other party to this document may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.2 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.2, the following definitions apply:
 - (i) **Responsible Entity** means the CDPF Vendor or, following the CPDF Vendor Date, the Incoming Trustee;
 - (ii) **Fund** means 360 Capital Diversified Property Fund; and
 - (iii) **CDPF Units** means the Sale Units held by the Responsible Entity in its capacity as trustee of the Fund as set out in Schedule 1.

7.3 360 Capital Diversified Property Office Sub Trust

- (a) This clause 7.3 applies notwithstanding any other provision of this document.
- (b) The Responsible Entity enters into this document in so far as it relates to the CDPOST Units only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible

Entity, having sought indemnification, is actually indemnified for the liability.

- (c) The limitations on the Responsible Entity's liability contained in this clause 7.3 extend to all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document so far as it relates to the CDPOST Units, other than the Personal Vendor Warranties.
- (d) No other party to this document may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.3 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.3, the following definitions apply:
 - (i) **Responsible Entity** means the CDPOST Vendor or, following the CDPOST Vendor Date, the Incoming Trustee;
 - (ii) **Fund** means 360 Capital Diversified Property Office Sub Trust; and
 - (iii) **CDPOST Units** means the Sale Units held by the Responsible Entity in its capacity as trustee of the Fund as set out in Schedule 1.

7.4 360 Capital Diversified Property Office Sub Trust 2

- (a) This clause 7.4 applies notwithstanding any other provision of this document.
- (b) The Responsible Entity enters into this document in so far as it relates to the CDPOST2 Units only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 7.4 extend to all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document so far as it relates to the CDPOST2 Units, other than the Personal Vendor Warranties.
- (d) No other party to this document may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.4 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Fund.

- (f) In this clause 7.4, the following definitions apply:
 - (i) **Responsible Entity** means CDPOST2 Vendor or, following the CDPOST2 Vendor Date, the Incoming Trustee;
 - (ii) **Fund** means 360 Capital Diversified Property Office Sub Trust 2; and
 - (iii) **CDPOST2 Units** means the Sale Units held by the Responsible Entity in its capacity as trustee of the Fund as set out in Schedule 1.

7.5 360 Capital Diversified Property Office Sub Trust 3

- (a) This clause 7.5 applies notwithstanding any other provision of this document.
- (b) The Responsible Entity enters into this document in so far as it relates to the CDPOST3 Units only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 7.5 extend to all liabilities of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document so far as it relates to the CDPOST3 Units, other than the Personal Vendor Warranties.
- (d) No other party to this document may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.5 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.5, the following definitions apply:
 - (i) **Responsible Entity** means CDPOST3 Vendor or, following the CDPOST3 Vendor Date, the Incoming Trustee;
 - (ii) **Fund** means 360 Capital Diversified Property Office Sub Trust 3; and
 - (iii) **CDPOST3 Units** means the Sale Units held by the Responsible Entity in its capacity as trustee of the Fund as set out in Schedule 1.

7.6 CC2OF

- (a) This clause 7.6 applies notwithstanding any other provision of this document.
- (b) CC2OF enters into this document only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against CC2OF only to the extent to which it can be satisfied out of the property of the Fund out of which CC2OF, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on CC2OF's liability contained in this clause 7.6 extend to all

liabilities of CC2OF in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document, other than the Personal Purchaser Warranties.

- (d) No other party to this document may claim against the personal assets of CC2OF or against CC2OF in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to CC2OF or prove in any liquidation, administration or arrangement of or affecting CC2OF.
- (e) The provisions of this clause 7.6 shall not apply to any obligation or liability of CC2OF to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of CC2OF's indemnification out of the assets of the Fund as a result of CC2OF's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.6, **Fund** means Centuria Capital No. 2 Office Fund.

7.7 CMA

- (a) This clause 7.7 applies notwithstanding any other provision of this document.
- (b) CMA enters into this document only in its capacity as trustee of the Fund and in no other capacity. Any liability arising under or in connection with this document in relation to such matters can be enforced against CMA only to the extent to which it can be satisfied out of the property of the Fund out of which CMA, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on CMA's liability contained in this clause 7.7 extend to all liabilities of CMA in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document, other than the Personal Purchaser Warranties.
- (d) No other party to this document may claim against the personal assets of CMA or against CMA in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to CMA or prove in any liquidation, administration or arrangement of or affecting CMA.
- (e) The provisions of this clause 7.7 shall not apply to any obligation or liability of CMA to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of CMA's indemnification out of the assets of the Fund as a result of CMA's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.7, **Fund** means Centuria Metropolitan REIT No.1 ARSN 124 364 718.

7.8 Centuria Capital Fund

- (a) This clause 7.8 applies notwithstanding any other provision of this deed.
- (b) The Responsible Entity enters into this deed only in its capacity as responsible entity of the Fund and in no other capacity. Any liability arising under or in connection with this deed in relation to such matters can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of the property of the Fund out of which the Responsible Entity, having sought indemnification, is actually indemnified for the liability.
- (c) The limitations on the Responsible Entity's liability contained in this clause 7.8 extend to all liabilities of the Responsible Entity in any way connected with any

representation, warranty, conduct, omission, agreement or transaction under this deed, other than Personal Buyer Warranties.

- (d) No other party to this deed may claim against the personal assets of the Responsible Entity or against the Responsible Entity in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity.
- (e) The provisions of this clause 7.8 shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Fund or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Fund as a result of the Responsible Entity's failure to properly perform or exercise any of its powers or duties in relation to the Fund.
- (f) In this clause 7.8, the following definitions apply:
 - (i) **Responsible Entity** means Centuria Funds Management Limited ACN 607 153 588; and
 - (ii) **Fund** means Centuria Capital Fund.

8. Guarantee and indemnity

- (a) This clause 8 applies notwithstanding any other provision of this document.
- (b) The Guarantor irrevocably and unconditionally guarantees to the Vendor the satisfaction, due and punctual performance of, compliance with, and payment in full of, the Obligations.
- (c) If an Obligor (for any reason) does not pay or satisfy any Obligation in full on the due date, the Guarantor will immediately on demand by the Vendor satisfy or pay that Obligation in full.
- (d) The Guarantor as a separate, additional and primary liability irrevocably and unconditionally agrees to indemnify the Vendor and keep the Vendor indemnified, against any Cost, loss, damage, claim, demand or action suffered by the Vendor arising from:
 - (i) any failure by any Obligor to satisfy any of the Obligations; or
 - (ii) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from any Obligor for any reason, whether or not the Vendor knew or ought to have known of that reason.
- (e) Any reference in this clause 8 to the obligations or liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this clause 8.
- (f) The use of the expression **Guarantor** in this document in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier.
- (g) The provisions of this clause 8 which preserve the liability of a party as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this clause 8.
- (h) Each obligation of the Guarantor under this clause 8 constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this clause 8, any limitation on the liability

of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.

(i) The liability of the Guarantor under this clause 8:

(i) is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between any Obligor and the Vendor or amongst any 2 or more Obligors; and

(ii) will not be affected by any act, omission, matter or thing which, but for this clause 8(i)(ii), might release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this document) including any of the following:

- A. **(event of insolvency)** the occurrence before, on or at any time after, the date of this document of any event of insolvency in relation to any Obligor;
- B. **(invalidity etc)** this document or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- C. **(time or concession)** the Vendor granting time, waiver or other concession to, or making any composition, arrangement or compromise with any other Obligor (including to or with the Purchaser in respect of the liability of the Guarantor) or any other person;
- D. **(forbearance)** the Vendor not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of this document or any Obligation;
- E. **(repudiation)** the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Vendor or any other Obligor of this document or any Obligation;
- F. **(variation)** any variation to this document or any Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Obligor;
- G. **(release)** the full, partial or conditional release or discharge by the Vendor or by operation of law of any other Obligor from this document or any Obligation;
- H. **(loss of Encumbrance)** the failure to obtain or perfect any Encumbrance or the loss or impairment of any Encumbrance by operation of law or otherwise;
- I. **(limitation of liability)** the operation of clause 7 in respect of a Purchaser or a Purchaser ceasing to be trustee of a trust;
- J. **(transfer)** the transfer, assignment or novation by the Vendor or any Obligor of all or any of its rights or obligations under this document;

- K. (non execution etc) any person, whether named as a party or not, does not execute this document or the execution of this document by any person is invalid, forged or irregular in any way; or
 - L. (disclosure) any failure by the Vendor to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Vendor relating to or affecting any Obligor at any time before or during the currency of this document, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Vendor was under a duty to disclose that fact, circumstance, event or thing to any Obligor.
- (j) The guarantee and indemnity from the Guarantor under this clause 8 is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any other provision this document or any other Power of the Vendor.
 - (k) The Guarantor has no right or entitlement to consent to or be made aware of any event referred to in clause 8(i)(ii), any transaction between the Vendor and any Obligor or any particulars concerning any obligation or liability that forms part of the Obligations.
 - (l) The Vendor is not under an obligation to marshal or appropriate in favour of the Guarantor, or to exercise, apply, transfer or recover in favour of the Guarantor, any security or any funds or assets which the Vendor holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Vendor determines in its absolute discretion.
 - (m) The Vendor may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this clause 8 and which the Vendor may, at its discretion, appropriate in reduction of the Guarantor's liability under this clause 8 at such time determined by it.
 - (n) The Guarantor's liability under this document will not be reduced or avoided by any defence, set-off or counterclaim available to any other Obligor against the Vendor.
 - (o) The Guarantor may not:
 - (i) (no proceedings) institute any proceedings against any other Obligor or make or join in making any application to any court for an administration, winding up, receivership or other similar order to be made in relation to any other Obligor;
 - (ii) (no demand) unless instructed to do so by the Vendor, take any action, make any demand for, lodge any proof of debt or similar claim or accept any money in part or complete satisfaction of, any liability on any account of any other Obligor other than for a liability arising out of the supply of goods and services by the Guarantor to that Obligor in the ordinary course of the Guarantor's ordinary business and on arm's length terms;
 - (iii) (no Encumbrance) create or permit to exist any Encumbrance as security for any obligation which it owes to any other Obligor or obtain the benefit of any Encumbrance for any obligation which any other Obligor owes to it; or
 - (iv) (no set-off) unless instructed to do so by the Vendor, set-off any money owing by the Guarantor against any liability owing to the Guarantor by any other Obligor or permit any other Obligor to set-off any money owing by that Obligor against any liability owing to that Obligor by the

Guarantor.

- (p) The Guarantor irrevocably appoints the Vendor as its attorney to prove in the insolvency of any other Obligor for all money to which the Guarantor may be entitled from that other Obligor up to an amount which does not exceed the amount which may be payable by the Guarantor under this document. The Guarantor acknowledges that the Vendor may, subject to the terms of this document, retain any money which the Vendor may receive from any proof on account of the Guarantor's liability under this document.
- (q) The Guarantor agrees that the Vendor is not required to make any claim or demand on any other Obligor, or to enforce this document or any other Power against any other Obligor, before making any demand or claim on the Guarantor.
- (r) The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of any other Obligor and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have.
- (s) Without limiting clause 8(r), no Obligor may seek the transfer to it of any security under any right of subrogation.
- (t) The guarantee and indemnity in this clause 8 is a continuing obligation of the Guarantor notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing. The Vendor will continue to be entitled to the benefit of the guarantee and indemnity from the Guarantor under this clause 8 as regards the satisfaction of all the Obligations after that termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

9. 360 Capital Guarantee and indemnity

- (a) This clause 9 applies notwithstanding any other provision of this document.
- (b) 360 Capital irrevocably and unconditionally guarantees to each Purchaser the satisfaction (and due and punctual performance of and compliance with) and payment in full of, the 360 Obligations.
- (c) If any 360 Obligor (for any reason) does not pay or satisfy any 360 Obligation in full on the due date, 360 Capital will immediately on demand by the relevant Purchaser satisfy or pay that 360 Obligation in full.
- (d) 360 Capital as a separate, additional and primary liability irrevocably and unconditionally agrees to indemnify each Purchaser and keep each Purchaser indemnified, against any Cost, loss, damage, claim, demand or action suffered by the Purchaser arising from:
 - (i) any failure by any 360 Obligor to satisfy any of the 360 Obligations; or
 - (ii) any obligation or liability that would otherwise form part of the 360 Obligations being void, voidable or unenforceable against or irrecoverable from any 360 Obligor for any reason, whether or not the Purchaser knew or ought to have known of that reason.
- (e) Any reference in this clause 9 to the obligations or liabilities of 360 Capital will be construed as a reference to its obligations or liabilities, whether as a 360 Capital or an indemnifier or both, under this clause 9.
- (f) The use of the expression **guarantor** in this document in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier.

- (g) The provisions of this clause 9 which preserve the liability of a party as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this clause 9.
- (h) Each obligation of 360 Capital under this clause 9 constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this clause 9, any limitation on the liability of 360 Capital which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.
- (i) The liability of 360 Capital under this clause 9:
 - (i) is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between any 360 Obligor and any Purchaser; and
 - (ii) will not be affected by any act, omission, matter or thing which, but for this clause 9(i)(ii), might release 360 Capital from that liability or reduce the liability of 360 Capital (other than an express release of 360 Capital from all of its liabilities under this document) including any of the following:
 - A. **(event of insolvency)** the occurrence before, on or at any time after, the date of this document of any event of insolvency in relation to any 360 Obligor;
 - B. **(invalidity etc)** this document or any payment or other act, the making or doing of which would otherwise form part of the 360 Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
 - C. **(time or concession)** a Purchaser granting time, waiver or other concession to, or making any composition, arrangement or compromise with any 360 Obligor (including to or with the Purchaser in respect of the liability of 360 Capital) or any other person;
 - D. **(forbearance)** a not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of this document or any 360 Obligation;
 - E. **(repudiation)** the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by any Purchaser or any 360 Obligor of this document or any 360 Obligation;
 - F. **(variation)** any variation to this document or any 360 Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any 360 Obligor;
 - G. **(release)** the full, partial or conditional release or discharge by a Purchaser or by operation of law of any other 360 Obligor from this document or any 360 Obligation;
 - H. **(loss of Encumbrance)** the failure to obtain or perfect any Encumbrance or the loss or impairment of any Encumbrance by operation of law or otherwise;

- I. **(limitation of liability)** the operation of clause 7 in respect of a 360 Obligor or a 360 Obligor ceasing to be trustee of a trust;
 - J. **(transfer)** the transfer, assignment or novation by any Purchaser or any 360 Obligor of all or any of its rights or obligations under this document;
 - K. **(non execution etc)** any person, whether named as a party or not, does not execute this document or the execution of this document by any person is invalid, forged or irregular in any way; or
 - L. **(disclosure)** any failure by any Purchaser to disclose to 360 Capital any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Purchaser relating to or affecting any 360 Obligor at any time before or during the currency of this document, whether prejudicial or not to the rights and liabilities of 360 Capital and whether or not the Purchaser was under a duty to disclose that fact, circumstance, event or thing to any 360 Obligor.
- (j) The guarantee and indemnity from 360 Capital under this clause 8 is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any other provision this document or any other Power of any Purchaser.
 - (k) 360 Capital has no right or entitlement to consent to or be made aware of any event referred to in clause 8(i)(ii), any transaction between any Purchaser and any 360 Obligor or any particulars concerning any obligation or liability that forms part of the 360 Obligations.
 - (l) No Purchaser is under an obligation to marshal or appropriate in favour of 360 Capital, or to exercise, apply, transfer or recover in favour of 360 Capital, any security or any funds or assets which the Purchaser holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Purchaser determines in its absolute discretion.
 - (m) Each Purchaser may hold in a suspense account (without liability to pay interest) any money which it receives from 360 Capital, or which it receives on account of 360 Capital's liability under this clause 9 and which the Purchaser may, at its discretion, appropriate in reduction of 360 Capital's liability under this clause 9 at such time determined by it.
 - (n) 360 Capital's liability under this document will not be reduced or avoided by any defence, set-off or counterclaim available to any other 360 Obligor against any Purchaser.
 - (o) 360 Capital may not:
 - (i) **(no proceedings)** institute any proceedings against any other 360 Obligor or make or join in making any application to any court for an administration, winding up, receivership or other similar order to be made in relation to any other 360 Obligor;
 - (ii) **(no demand)** unless instructed to do so by a Purchaser, take any action, make any demand for, lodge any proof of debt or similar claim or accept any money in part or complete satisfaction of, any liability on any account of any other 360 Obligor other than for a liability arising out of the supply of goods and services by 360 Capital to that 360 Obligor in the ordinary course of 360 Capital's ordinary business and on arm's length terms;
 - (iii) **(no Encumbrance)** create or permit to exist any Encumbrance as

security for any obligation which it owes to any other 360 Obligor or obtain the benefit of any Encumbrance for any obligation which any other 360 Obligor owes to it; or

- (iv) **(no set-off)** unless instructed to do so by the Purchaser, set-off any money owing by 360 Capital against any liability owing to 360 Capital by any other 360 Obligor or permit any other 360 Obligor to set-off any money owing by that 360 Obligor against any liability owing to that 360 Obligor by 360 Capital.
- (p) 360 Capital irrevocably appoints each Purchaser as its attorney to prove in the insolvency of any other 360 Obligor for all money to which 360 Capital may be entitled from that other 360 Obligor up to an amount which does not exceed the amount which may be payable by 360 Capital under this document. 360 Capital acknowledges that each Purchaser may, subject to the terms of this document, retain any money which the Purchaser may receive from any proof on account of 360 Capital's liability under this document.
- (q) 360 Capital agrees that no Purchaser is required to make any claim or demand on any other 360 Obligor, or to enforce this document or any other Power against any other 360 Obligor, before making any demand or claim on 360 Capital.
- (r) 360 Capital may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of any other 360 Obligor and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have.
- (s) Without limiting clause 9(r), no 360 Obligor may seek the transfer to it of any security under any right of subrogation.
- (t) The guarantee and indemnity in this clause 9 is a continuing obligation of 360 Capital notwithstanding any termination by 360 Capital, settlement of account, intervening payment, express or implied revocation or any other matter or thing. Each Purchaser will continue to be entitled to the benefit of the guarantee and indemnity from 360 Capital under this clause 9 as regards the satisfaction of all the 360 Obligations after that termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to 360 Capital.

10. 360 Capital obligations

360 Capital must procure that the Vendor fulfils its obligations under this document.

11. Notices

11.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to the Vendor, the Incoming Trustee or 360 Capital:
 Attention: Mr Tony Pitt
 Address: Level 8, 56 Pitt Street, Sydney NSW 2000
 Email: tony.pitt@360capital.com.au
 - (ii) if to CC2OF, CMA or the Guarantor:
 Attention: Mr John McBain
 Address: Suite 39.01, Level 39, 100 Miller Street North Sydney NSW 2060
 Email: john.mcbain@centuria.com.au
 - (iii) if to Moelis:
 Attention: Julian Biggins, Managing Director
 Address: Level 27, Governor Phillip Tower, 1 Farrer Place, Sydney
 Email: julian.biggins@moelis.com
- With a copy to:**
- Peter Dixon, General Counsel
- Email: peter.dixon@moelis.com
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this document; and
 - (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with clause 11.1(c).

11.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the sixth working day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the tenth working day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 11, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a

working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

12. Termination

This document will terminate on the later of the End Date and 3 months from the date of this document if Completion has not occurred by that time.

13. General

13.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this document.

13.2 Amendment

This document may only be varied by a document signed by or on behalf of each of the parties.

13.3 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this document.
- (b) Any waiver or consent given by any party under this document will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this document will operate as a waiver of another breach of that term or of a breach of any other term of this document.

13.4 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this document without the prior written consent of each other party.

13.5 Counterparts

This document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this document, all of which together constitute one deed.

13.6 Stamp duties

- (a) The Purchaser will:
 - (i) pay all stamp duties and any related fines and penalties in respect of this document, the performance of this document and each transaction effected by or made under or pursuant to this document; and
 - (ii) indemnify the Vendor against any liability arising from failure to comply with clause 13.6(a)(i).
- (b) The Purchaser is authorised to make any application for and retain the proceeds of

any refund due in respect of any stamp duty paid under this clause.

13.7 Merger

No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

13.8 Entire agreement

To the extent permitted by law, in relation to the subject matter of this document, this document:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior written or other agreement between the parties.

13.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document.

13.10 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.

13.11 GST

Clause 23 (GST) of the Acquisition Agreement applies to this document mutatis mutandis.

14. Governing law and jurisdiction

This document is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this document and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 14.

Schedule 1 - Vendor

Vendor	Number of Units
360 Capital Investment Management Limited ACN 133 363 185 (360CIML Vendor)	2,500,000
360 Capital Investment Management Limited ACN 133 363 185 as trustee for the 360 Capital Investment Trust (CIT Vendor)	16,675,762
360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Fund (CDPF Vendor)	1,808,737
360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust (CDPOST Vendor)	18,926
360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 2 (CDPOST2 Vendor)	31,561
360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 3 (CDPOST3 Vendor)	36,720

Schedule 2 - Transfer of Units

STANDARD TRANSFER FORM		
For Non-Market Transactions Affix Stamp Duty Here		
FULL NAME OF CORPORATION (and ABN, ACN or ARBN if applicable)		
STATE OR TERRITORY WHERE CORPORATION IS TAKEN TO BE REGISTERED	Victoria	
DESCRIPTION OF SECURITIES	Class: Ordinary Units	
QUANTITY	Words: Figures:	
FULL NAME(S) OF TRANSFEROR(S) (SELLER(S))		
CONSIDERATION		Date of Purchase []
FULL NAME(S) OF TRANSFEREE(S) (BUYER(S))		
FULL ADDRESS OF TRANSFEREE(S) (BUYER(S))	Suite 39.01, Level 39, 100 Miller Street, North Sydney NSW 2060	
I/We the registered holder(s) and undersigned transferor(s)/seller(s) for the above consideration transfer to the transferee(s)/buyer(s) named above the securities as specified above standing in my/our name(s) in the books of the corporation named above, subject to the several conditions on which I/we held those securities at the time of signing and I/we the transferee(s)/buyer(s) named above agree to accept those securities on the same conditions.		
SIGNATURE OF TRANSFEROR(S) (SELLER(S))		
	Signature of Director	Signature of Director/Secretary
	Name	Name
DATE SIGNED	/ /	
SIGNATURE OF TRANSFEREE(S) (BUYER(S))		
	Signature of Director	Signature of Director/Secretary
	Name	Name
DATE SIGNED	/ /	

Signed as a deed.

Executed by 360 Capital Investment Management Limited ACN 133 363 185 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Investment Management Limited ACN 133 363 185 as trustee for the 360 Capital Investment Trust in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Fund in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 2 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Investment Management Limited ACN 133 363 185 as trustee of the 360 Capital Diversified Property Office Sub Trust 3 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital FM Limited ACN 090 664 396 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by 360 Capital Group Limited ACN 113 569 136 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Centuria Investment Holdings Pty Limited ACN 116 455 862 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Moelis Australia Advisory Pty Ltd ACN 142 008 446 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Centuria Property Funds Limited ACN 086 553 639 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Centuria Capital Limited ACN 095 454 336 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

**Executed by Centuria Funds Management
Limited in its capacity as responsible entity of
the Centuria Capital Fund** in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director