

360 Capital Industrial Fund

5 January 2015

AMENDMENT TO PROPOSED OFF MARKET TAKEOVER OFFER TO ACQUIRE UNITS IN AUSTRALIAN INDUSTRIAL REIT

360 Capital Investment Management Limited (360 Capital) in its capacity as responsible entity of the 360 Capital Industrial Fund (ASX code: TIX) (Fund) hereby attaches amended conditions in respect of its proposed off market, all scrip takeover offer ("Offer") for all the units in the Australian Industrial REIT (ASX code: ANI) announced to the ASX on 19 December 2014.

The amendments primarily take account of units in TIX and ANI trading on an ex-distribution basis from 29 December 2014 in relation to estimated distributions for the period ending 31 December 2014.

Detailed information in relation to the Offer will be set out in the bidder's statement.

360 Capital expects to mail the bidder's statement to ANI Unitholders in the first two weeks of February 2015.

For more information, please contact:

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About 360 Capital Industrial Fund (ASX code TIX)

360 Capital Industrial Fund is an ASX-listed Fund focused on passive rent collecting from warehouse and logistics properties in Australia in the \$10.0 million plus range. The Fund has strong, defensive, income-focused investment fundamentals via a diversified \$526.6 million portfolio of 22 quality assets, a weighted average lease expiry of 5.8 years, occupancy of 99.4%, appropriate gearing of 44%, distributions tax deferred at approximately 40% to 50% and a forecast FY15 distribution of 20.0cpu. The Fund is externally managed by 360 Capital Group, a leading ASX-listed real estate investor and fund manager that operates under a transparent fee structure and is the largest unitholder in the Fund to ensure ongoing alignment of interests with Unitholders.

About 360 Capital Group (ASX code TGP)

360 Capital Group is an ASX-listed, property investment and funds management group concentrating on strategic investment and active investment management of property assets. The Group actively invests in direct property assets, property securities and various corporate real estate acquisitions within Australian real estate markets on a private equity basis. 360 Capital Group's 21 full time staff have significant property, funds and investment management experience. 360 Capital Group manages nine investment vehicles holding assets valued at approximately \$950 million on behalf of over 8,300 investors, has over \$134 million worth of co-investments across the 360 Capital Group platform.

Annexure

1. Proposed Offer condition

(a) Minimum Acceptance

At or before the end of the Offer Period, Bidder has a relevant interest (as defined in the Corporations Act 2001 (Cth) (**Corporations Act**)) in ANI Units which have attached to them votes representing at least 50.01% of the total number of votes attaching to all ANI Units on issue.

(b) Due diligence information

Before the end of the Offer Period, ANI (or its officers, employees or agents) does not provide any information relating to ANI which is not "generally available" (as defined in the Corporations Act) to a Third Party for the purposes of enabling that party to make a Competing Proposal (**Due Diligence Information**) without also promptly (in any event within 2 Business Days) providing that Due Diligence Information to Bidder and announcing to ASX any Inside Information which forms part of the Due Diligence Information.

(c) No material adverse change

Without limiting the operation of any other condition, between the Announcement Date and the end of the Offer Period, no matter, event, change, condition, circumstance, information or thing (**Change(s)**) occurs, is announced, becomes likely to occur or becomes known to Bidder which alone or in aggregate with any other Change, would result in and/or would reasonably be likely to result in:

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(i) the value of the consolidated net assets of ANI being reduced by at least \$5 million against what they would have reasonably have been expected to have been but for the Change(s), other than to the extent such reduction arises from transactions effected in the ordinary course of ANI's ordinary business; or

(ii) a material adverse effect on the business, assets, liabilities, financial position or performance, profitability or prospects of ANI.

(d) S&P / ASX 200

During the period between the Announcement Date and the end of the Offer Period, the S&P/ ASX 200 Index is not at any time 10% or more below its level as at the close of trading on the last trading day on ASX before the Announcement Date.

(e) Change of control consent

Before the end of the Offer Period, every person who, as a result of the making of the Offer, the acquisition of ANI Units by Bidder, the change in control or delisting of ANI if the Offer is successful, is or will be entitled, or states an intention to exercise or asserts any right, under any provision of any contract or understanding to which ANI is a party or is bound, to (in all cases whether absolutely or contingently):

(i) terminate, vary the terms of or accelerate the performance of obligations under a Material Contract;

(ii) acquire or require the disposal of any interest in or alter the terms of investment in any one or more companies, businesses, trusts, assets, units or shares held by ANI with a value of more than A\$10 million in aggregate; or

- (iii) without limiting (i), require the repayment, immediately or earlier than the repayment date would otherwise have been, of any monies borrowed or raised by, or any other monetary obligations of ANI,

provides to ANI and to Bidder in writing a binding, irrevocable and unconditional waiver or release of that right.

(f) *ANI statement regarding change of control consents*

The target's statement issued by ANI in respect of the Offer as required by the Corporations Act contains a statement which either:

- (i) if there is any such contract or understanding referred to in paragraph (e) above, sets out the details of that contract or understanding, the relevant rights or clauses and the impact of such rights or clauses on ANI's annual earnings before interest, tax depreciation and amortisation and ANI's consolidated assets and liabilities; or
- (ii) if there is no such contract or understanding, confirms that fact.

(g) *Other regulatory approvals*

Before the end of the Offer Period, all applicable regulatory waiting periods (including any extensions) have expired or otherwise been terminated in respect of the Offer or any matter arising from the proposed acquisition by Bidder of ANI Units under the Offer and Bidder has obtained on an unconditional basis all approvals, licences, authorisations, authorities, consents, permissions, clearances, grants, confirmations, orders, exemptions, waivers or rulings (together, **Approvals**) required by law or by any Authority as are necessary:

- (i) to permit the Offer to be lawfully made to and accepted by holders of ANI Units;
- (ii) as a result of the Offer, as a result of the acquisition of ANI Units by Bidder under the Offer or to permit completion of the Offer;
- (iii) for the continued operation of ANI's business and ownership of ANI's assets on substantially the same terms as at the Announcement Date;
- (iv) to ensure there is no right or power to require the divestiture by Bidder of any ANI Units or material assets, or the divestiture of any material assets of ANI,

and all such Approvals remain in full force and effect as at the end of the Offer Period, provided that this condition shall not apply to Approvals that are only required as a result of the Bidder not availing itself of paragraph 4(c) of ASIC Class Order 13/521 in respect of members of ANI who are foreign.

(h) *No regulatory action*

Before the end of the Offer Period:

- (i) there is not in effect any preliminary or final decision, order or decree issued by an Authority; and
- (ii) no application is made to any Authority (other than by Bidder), or action or investigation is announced, threatened or commenced by an Authority in consequence of or in connection with the Offer,

which:

- (iii) other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act, restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer, the acquisition of ANI Units under the Offer or any transaction contemplated by the Bidder's Statement (including the implementation of the Bidder's intentions expressed in the Bidder's Statement), the Offer or the rights of the Bidder in respect of ANI or ANI Units, or requires the divestiture by the Bidder of any interest in ANI Units or material assets, or the divestiture of any material assets of ANI; or
- (iv) amends, prejudices or otherwise affects any existing rights (as at the Announcement Date) of, or imposes any obligation on, Bidder in respect of ANI Units or any debt instruments, mortgages or charges relating to any unit granted over ANI Units.

(i) *Conduct of ANI's Business*

Other than as specifically disclosed by ANI to ASX prior to the Announcement Date or approved by Bidder by written notice to ANI, ANI does not between the Announcement Date and the end of the Offer Period:

- (i) enter into or vary any agreement with Fife Capital Funds Limited or a Related Entity of Fife Capital Funds Limited;
- (ii) enter into any agreement to acquire or dispose of an asset or a company, trust or other vehicle containing an asset having a value in aggregate in excess of \$10 million;
- (iii) enter into, or materially amend, any agreement, joint venture, asset or profit share, partnership or commitment which would require capital expenditure or liability, or the foregoing of revenue, by ANI (or bring forward the time of that requirement) of an amount, or one or more related amounts which are in aggregate, more than A\$0.5 million;
- (iv) incur or increase any financial indebtedness (excluding any drawing or redrawing on existing facilities) or issues any indebtedness or debt units for an amount of more than A\$5 million in aggregate;
- (v) enter into, amend, terminate or waive or otherwise forego rights under any Material Contract;
- (vi) make any changes to its constitution or other constituent documents or convene a meeting to consider a resolution to make such a change;
- (vii) pass any resolution of its members;
- (viii) do any of the following:
 - A. have the trust terminated;
 - B. effect or facilitate the resettlement of the property of the trust;
 - C. have a trustee or responsible entity which ceases to be the trustee or responsible entity of that trust or registered managed investment scheme;
 - D. have a resolution passed by its unitholders or members to remove or replace its trustee or responsible entity; or

- E. have a meeting convened to consider a resolution for the removal, retirement or replacement of its trustee or responsible entity;
- F. have any application made in any court for the appointment of a temporary responsible entity in accordance with the Corporations Act;
- (ix) have any claim or claims made or threatened against it, or litigation, arbitration proceedings, prosecution or other legal proceedings commenced against it, involving more than A\$2 million in aggregate;
- (x) waive or compromise any claim or right otherwise than in the ordinary course of business;
- (xi) create, or agree to create, any mortgage, charge, lien or other encumbrance over any of its assets, other than liens in the ordinary and usual course of business;
- (xii) be deregistered as a registered managed investment scheme or otherwise dissolved;
- (xiii) enter into any corporate transaction which would or would be likely to involve a material change in the manner in which it conducts its business or the nature (including balance sheet classification), extent or value of its assets or liabilities; or
- (xiv) resolve, agree, offer, commit or announce an intention to do any of the things referred to in paragraphs (i) to (xiii) above.
- (j) *Restrictions on Distributions*

Between the Announcement Date and the end of the Offer Period, ANI does not announce, make, declare or pay any dividend or other form of distribution of profits or capital (whether in cash or in specie), other than a cash dividend or distribution not exceeding 17.2 cents per annum per fully paid ANI Unit (and a corresponding amount per partly paid ANI Unit which reflects the amount paid up on those units).
- (k) *No prescribed occurrences*

Between the Announcement Date and the end of the Offer Period, no Prescribed Occurrence occurs.
- (l) *Bidder Trading Price*

The 2 trading day VWAP of Bidder Units in the ordinary course of trading on the ASX ending on the business day before that which is 5 business days prior to the date of the takeover bid is not less than \$2, 376 per unit.
- (m) *Merger Implementation Agreement*

ANI and 360 CIML do not enter into a merger implementation deed in connection with a trust scheme pursuant to which 360 CIML will acquire all of the units in ANI on terms which are no less favourable in all material respects to those proposed in relation to the Offer.

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2. Definitions

Unless the context requires otherwise, capitalised terms used in this Annexure have the meaning set out below.

Announcement Date means 19 December 2014.

ACCC means the Australian Competition and Consumer Commission.

ANI means Australian Industrial REIT including any of its Subsidiaries or Controlled Entities and, where the context requires Fife Capital Funds Limited as responsible entity of Australian Industrial REIT.

ANI Unit means a fully paid unit in ANI.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited or the Australian Securities Exchange operated by ASX Limited (as the context requires).

ATO means the Australian Taxation Office.

Authority means:

- (a) ASX, ACCC, ASIC, the Takeovers Panel and the ATO;
- (b) a government or governmental, semi-governmental or judicial entity, whether foreign, federal, state, territorial or local;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (d) any regulatory organisation established under statute.

Bidder means 360 Capital Investment Management Limited (360CIML) as responsible entity of 360 Capital Industrial Fund (ASX: TIX) or 360 Capital Industrial Fund, as the case requires.

Bidder's Statement means the bidder's statement (as well as any supplementary bidder's statement) issued by Bidder in connection with the Offer as required by the Corporations Act.

Bidder Units means the fully paid units of 360 Capital Industrial Fund (ASX:TIX).

Business Day means any day which is a Business Day within the meaning given by the official listing rules of the Australian Securities Exchange operated by ASX Limited.

Competing Proposal means a transaction or arrangement which is proposed by a Third Party pursuant to which a Third Party will, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) acquire a Relevant Interest in any ANI Units, as a result of which the Third Party will have a Relevant Interest in 20% or more of the ANI Units or voting power of more than 20% of ANI;
- (b) otherwise acquire control of ANI within the meaning of section 50AA of the Corporations Act; or
- (c) directly or indirectly acquire, merge with, or acquire (or have the right to so merge with or acquire) a significant economic interest in ANI or all or a significant part of the assets or business of ANI, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, or other synthetic merger or any other transaction or arrangement,

where, for the avoidance of doubt, assets of ANI which have a book value (as recorded in ANI's statement of financial position as at 30 June 2014) of more than A\$20 million in aggregate will be taken to be a "significant part" of the assets of ANI for the purposes of this definition.

Controlled Entity means any trust or other entity controlled by ANI and/or in respect of which ANI has directly or indirectly an economic interest of at least 50%.

Inside Information has the meaning given in section 1042A of the Corporations Act as that meaning applies to ANI Units.

Material Contract means any agreement, contract or other arrangement or instrument to which ANI is a party or any of its respective assets may be bound or subject to, and which:

- (a) imposes obligations or liabilities on any party of at least A\$500,000 per annum or A\$2 million over the life of the agreement, contract or other arrangement;
- (b) relates to, concerns, or is connected with, the management of ANI; or
- (c) is otherwise material in the context of the businesses, assets or properties of ANI (which for the avoidance of doubt is taken to include any agreement, contract or other arrangement under which ANI borrows or raises funds from any source or otherwise incurs financial indebtedness from a financial institution).

Offer has the meaning set out in the announcement.

Offer Period means the offer period under the Offer.

Prescribed Occurrence means any of the following events:

- (a) ANI converts all or any of the ANI Units into a larger or smaller number of ANI Units;
- (b) ANI resolves to reduce its capital in any way or reclassifies, combines, splits, redeems or repurchases directly or indirectly any units;
- (c) ANI:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 2570(1) of the Corporations Act;
- (d) ANI issues ANI Units or other units, or grants an option over ANI Units or other units, or agrees to make such an issue or grant such an option;
- (e) ANI issues, or agrees to issue, convertible notes or convertible units;
- (f) ANI disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) ANI charges, or agrees to charge the whole, or a substantial part, of its business or property;
- (h) ANI resolves to be wound up;
- (i) a liquidator or provisional liquidator of ANI is appointed;
- (j) a court makes an order for the winding up of ANI;

- (k) an administrator of ANI is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) ANI executes a deed of company arrangement; or
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of ANI.

Related Entity has the meaning given to that term in the Corporations Act.

Relevant Interest has the meaning in section 9 of the Corporations Act.

Subsidiary has the meaning given to that term in the Corporations Act, provided that:

- (a) an entity will also be deemed to be a Subsidiary of a body corporate if it is controlled (within the meaning of that term provided by Pt 1.2, Div 6 of the Corporations Act) by that body corporate; and
- (b) a trust may be a Subsidiary (for the purposes of which a unit or other beneficial interest will be deemed to be a share in the capital of a body corporate) and a body corporate or a trust may be a Subsidiary of a trust.

Third Party means any of the following:

- (a) a person other than Bidder or its respective associates; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which neither Bidder, nor any of its respective associates participate.

VWAP means the volume weighted average price.

3. **Interpretation**

For the purposes of this Annexure, a reference to ANI acting or agreeing to act in a particular way is taken to include a reference, in relation to Australian Industrial REIT, to either Fife Capital Funds Limited, in its capacity as responsible entity of the Australian Industrial REIT, or (if applicable) the holders of units in the Australian Industrial REIT, acting or agreeing to act in that way.