

COVENANT TRUSTEE SERVICES LIMITED

GOODMAN (NZ) LIMITED

**GOODMAN PROPERTY TRUST -
UNIT TRUST DEED**

Consolidated with
amendments of 1 April 2005,
25 August 2005, 1 March
2006, 21 September 2006,
30 March 2007, 29 June
2007, 30 November 2007,
28 February 2008, 12 June
2008, 5 August 2014, 5
August 2014, 23 March 2016
and 16 November 2016

RUSSELL McVEAGH

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DEED dated 23 April 1999.

Consolidated with amendments of 1 April 2005, 25 August 2005, 1 March 2006, 21 September 2006, 30 March 2007, 29 June 2007, 30 November 2007, 28 February 2008, 12 June 2008, 5 August 2014, 5 August 2014 and 23 March 2016.

PARTIES

COVENANT TRUSTEE SERVICES LIMITED, a company incorporated in New Zealand ("**Supervisor**")

GOODMAN (NZ) LIMITED, a company incorporated in New Zealand ("**Manager**")

INTRODUCTION

- A The Manager manages a property unit trust known as "Goodman Property Trust".
- B The Supervisor acts as trustee and supervisor of the Trust for the benefit of the Unit Holders on the terms and conditions set out in this deed.
- C This deed records the terms and conditions under which the Trust is constituted and is to be administered.

BY THIS DEED the parties agree as follows:

SECTION 1: INTERPRETATION

1. INTERPRETATION

1.1 Definitions: In this deed unless the context requires otherwise:

"**Act**" means the Financial Markets Conduct Act 2013 and regulations made under that Act (including the Financial Markets Conduct Regulations 2014).

"**Assets**" means all the property, rights and assets of the Trust.

"**associate**" has the meaning given to that term in section 12 of the Act.

"**Auditor**" means the person or persons for the time being appointed as auditor of the Trust pursuant to this deed.

"**Authorised Investments**" means, subject to any express limitation in this deed and any supplemental deed, any cash, property (as defined in the Trustee Act 1956), securities, right (contractual or otherwise) or interest which satisfies the requirements of the Statement of Investment Policy and Objectives.

"**Base Fee**" means the fee calculated in accordance with clause 18.3.

"**Board**" means the board of Directors of the Manager.

"**Business Day**" means a day on which NZX is open for trading.

"**Derivative Transaction**" means an agreement which establishes rights and obligations to some underlying instrument, investment, currency, product, index, right or service.

"Distributable Amount" means the amount determined by the Manager as being the amount to be distributed for a Financial Year.

"Distribution Account" means the account to which amounts may be transferred pursuant to clause 16.2.

"Employee" includes an employee or officer of the Manager or any of the Subsidiaries of the Trust or the Manager, a labour only contractor, consultant, or consultant company who or which contracts with the Manager or any of the Subsidiaries of the Trust or the Manager, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

"Equity Security" means an Equity Security (as defined in the Listing Rules) of the Trust issued, or to be issued, by the Manager (as the context requires).

"Extraordinary Resolution" means a Resolution approved by Unit Holders holding Units with a combined value of no less than 75% of the value of the Units of the Trust held by those persons who are entitled to vote and vote on the question.

"Final Distributable Amount" means the Distributable Amount of the Trust in respect of a Financial Year less the sum of Interim Distributions in respect of that Financial Year under clause 16.3.

"Financial Statements" means the financial statements referred to in section 8 of this deed, which shall be prepared in accordance with that section, the Financial Reporting Act 2013, the Act, and any other relevant statutory requirements and shall be varied, augmented or limited as is considered necessary by the Manager.

"Financial Year" means a year ending on such date as the Manager nominates and the Supervisor agrees, or that part of such a year occurring at the commencement or termination of the Trust.

"FMA" means the Financial Markets Authority.

"GST" means goods and services tax chargeable in accordance with the Goods and Services Act 1985.

"Interim Distribution" means the amount or amounts determined by the Manager to be distributed under clause 16.3.

"Interim Distribution Period" means a period determined by the Manager and notified to the Supervisor commencing on the first day of, or during, a Financial Year and ending during, but not on the last day of, that Financial Year.

"Issue Price" means:

- (a) in the case of Units issued pursuant to clause 18.8, the issue price per Unit determined pursuant to that clause;
- (b) in the case of Units offered to existing Unit Holders (other than (if the Units are Quoted) Unit Holders resident outside of New Zealand who are excluded from the offer by the Manager to avoid a risk of breaching the laws of the relevant overseas country where such Unit Holders hold, in aggregate, no more than 2% of the Units then on issue) on a pro rata basis (including as part of a distribution reinvestment scheme) and Units taken up by an underwriter of such an offer, such amount as the Manager may decide, provided that where Unit Holders are excluded from the offer pursuant to this paragraph (b), the Issue

Price per Unit shall not be less than 95% of an amount determined by the Manager under paragraph (c)(ii) of this definition;

- (c) subject to the Listing Rules, if applicable, in all other cases, such amount as is approved by Unit Holders by Extraordinary Resolution, or an amount determined by the Manager as follows:

- (i) if the Units are not Quoted, $NAV + TC$;

where:

NAV = the Net Asset Value of the Trust calculated on the latest practical Business Day before Units are issued (where the Units are not Quoted) or on a date selected by the Manager which is no more than 30 Business Days before the date of issue (where the Units are Quoted), divided by the aggregate number of Units on issue on that date;

TC = the Manager's estimate of the total cost of acquiring the Assets (or such lesser amount, including zero, as the Manager determines), divided by the aggregate number of Units on issue on the date used to calculate the relevant NAV;

- (ii) if the Units are Quoted, an amount determined by the Manager which is not less than the lower of the amount calculated according to the formula above and an amount equal to the Market Value of a Unit plus TC.

"Liabilities" means all liabilities of the Trust (including liabilities accrued but not yet paid) and any provision which the Manager decides in consultation with the Auditor should be taken into account in determining the liabilities of the Trust.

"Listing Rules" means the official listing rules of NZX and any other rules of NZX which are applicable, except to the extent of any express written waiver or ruling from NZX.

"Group" means the group of companies of which the Manager is a member.

(a)

"Manager" means the manager of the Trust for the time being appointed under the provisions of this deed.

"Market Rate" means the average mid rate for bills of exchange which have a tenor of 90 days which is displayed on the "BKBM" page of the Reuters monitor system on the first day of the period for which the rate is to be determined, or if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am on that day, then the rate specified in good faith by the Manager as the average rate for bills of that tenor and offered by at least 4 leading financial institutions in New Zealand on that date (whether such bids and offers are displayed on the "BKBM" page or otherwise evidenced).

"Market Value of a Unit" means the amount ascertained by the Manager as the estimated market value of a Unit by reference to the weighted average of the prices for Units on the 5 trading days of the NZSX immediately preceding a date selected by the Manager which is no more than 30 Business Days before the date of issue.

"Minimum Parcel" means while the Trust is not Listed, such amount or amounts as the Manager may determine in respect of the Trust (with the approval of the Supervisor if

such amount is to exceed 1,000 Equity Securities) and while the Trust is Listed means the Minimum Holding (as defined in the Listing Rules).

"Net Accounting Income" means the net accounting income of the Trust, determined in accordance with generally accepted accounting practice:

- (a) plus any amount which the Manager transfers from a reserve or releases from undistributed income; and
- (b) less any amount which:
 - (i) the Manager transfers to a reserve or otherwise retains as undistributed income; or
 - (ii) the Manager applies against the recoupment of accumulated losses, and the Manager (in consultation with the Auditor) is to decide:
- (c) the classification of any item as being on income or capital account; and
- (d) the extent to which reserves or provisions need to be made.

"Net Asset Value" means such amount as is from time to time ascertained by the Manager using the following formula:

$$NAV = A - L$$

where:

- A = the Value of all Assets and any other amounts which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the total value of the Trust having due regard to generally accepted accounting practice as defined in the Financial Reporting Act 2013 in respect of the financial statements of the Trust;
- L = all Liabilities and any other amounts which, in the opinion of the Manager should be included in such aggregate for the purpose of making a fair and reasonable determination of the total net value of the Trust having due regard to generally accepted accounting practice as defined in the Financial Reporting Act 2013 in respect of the financial statements of the Trust, but, for the avoidance of doubt, does not include any amount included in TC in the definition of Issue Price or Repayment Price when NAV is being calculated to determine such prices.

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

"NZX" means NZX Limited and its successors and assigns, and as the context permits includes any duly authorised delegate of NZX (including the NZ Markets Disciplinary Tribunal).

"Ordinary Resolution" means a Resolution approved by a simple majority of the votes cast by those persons who are entitled to vote and vote on the question.

"Performance Fee" means the fee calculated in accordance with clauses 18.4 to 18.6.

"Prospectus" means the most recent prospectus, product disclosure statement or other offering document pursuant to which Units are offered.

"Quarter" means a period of 3 calendar months ending on 31 March, 30 June, 30 September and 31 December in each year, or that part of such a period occurring at the commencement or termination of the Trust.

"Quotation" means, in relation to a Class of Securities of the Trust, the right of Trading Participants to quote bids and offers for that Class of Securities on NZX, and "Quote" and "Quoted" have corresponding meanings.

"Record Date" means a time and date determined by the Manager for the purpose of determining the persons to whom an entitlement, right or obligation relating to a Unit shall apply.

"Redemption Notice" means a notice received by the Manager pursuant to clause 8.3.

"Register" means the register of Unit Holders maintained pursuant to clause 6.1.

"Registrar" means any person appointed by the Manager pursuant to clause 6.2.

"Related Person" means in relation to the Manager or the Supervisor, as the case may be:

- (a) a Related Body Corporate of the Manager or the Supervisor as defined in section 12(2) of the Act;
- (b) any director or shareholder of the Manager or the Supervisor;
- (c) a grandparent, parent, brother, sister, brother in law, sister in law, child, child's spouse, grandchild or grandchild's spouse of any director of the Manager or the Supervisor;
- (d) any person in which a person referred to in paragraph (b) or (c) above has a material financial interest; or
- (e) any unit trusts, group investments funds or similar schemes managed by the Manager, or by any Related Body Corporate of the Manager as defined in section 12(2) of the Act.

"Repayment Price" means the amount payable to a Unit Holder upon a redemption or a repurchase of a Unit, determined under clauses 8.1 or 8.7.

"Request Date" means the date on which the Manager receives the Redemption Notice.

"Required Majority" except where this deed, the law or the Listing Rules require otherwise, means a simple majority and in all other circumstances means the majority required by this deed, the law or the Listing Rules, as the case may be.

"Resolution" means:

- (a) a resolution passed by the Required Majority at a meeting of Unit Holders held in accordance with this deed; or
- (b) a resolution in writing signed by Unit Holders holding the Required Majority of the Units in the Trust.

"Security" means a Security (as defined in the Listing Rules) of the Trust issued, or to be issued, by the Manager (as the context requires).

"Special Resolution" means a resolution passed by a majority of 75% of Votes of holders of Equity Securities entitled to vote and voting.

"Statement of Investment Policy and Objectives" means the statement in relation to investment policies and other matters affecting the financial position in respect of the Trust adopted from time to time in accordance with clause 12.2.

"Subscription Amount" means in respect of an application for a Unit, the Issue Price less the Unpaid Amount.

"Suspension Notice" means a notice given by the Manager under clause 8.21.

"Tax" means all kinds of taxes, deductions, duties and charges imposed by a government or quasi government authority, together with interest and penalties.

"Tax Act" means the Income Tax Act 2007.

"Trust" means the trust constituted under this deed.

"Supervisor" means the trustee and supervisor of the Trust for the time being appointed under the provisions of this deed and, in respect of the Assets, includes any nominated company of the Supervisor.

"Unit" means subject to any rights, obligations and restrictions attaching to any particular Units or Class of Units, an undivided share in the beneficial interest in the Trust as provided in this deed.

"Unit Holder" means the person registered as the holder of a Unit (including persons jointly registered).

"Unpaid Amount" means in respect of a Unit, the amount of the Issue Price which has not been paid under this deed.

"Valuation Date" means a date at which the Manager calculates the Net Asset Value, or the Issue Price, as the case may be.

"Valuation Register" means the valuation register referred to in clause 13.1.

"Value" means in relation to an Asset of or to be acquired by a Trust, the value shown in the Valuation Register or if its value is not shown in the Valuation Register, the value determined in accordance with clause 13.

"Valuer" means an independent qualified valuer appointed by the Manager from a panel of valuers approved by the Supervisor.

"Working Day" has the same meaning in this deed as the term "working day" has in the Act.

1.2 **Construction:** In the construction of this deed, unless the context requires otherwise:

- (a) **Business Days:** anything required by this deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;
- (b) **Clauses and Schedules:** a reference to a clause or a schedule is to a clause or schedule of this deed, and a reference in a schedule to a clause is a reference to a clause in that schedule;
- (c) **Currency:** a reference to any monetary amount is to New Zealand currency;

- (d) **Defined Terms:** words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meaning given to them in this deed, or if not defined in this deed, have the meaning given to them in the Listing Rules (with such amendments as may be necessary so they are applicable to unit trusts, in lieu of companies);
- (e) **Documents:** a reference to any document, including this deed, includes a reference to that document as amended or replaced from time to time;
- (f) **Fees:** where this deed provides that any fees, expenses, or other amounts shall be payable to the Supervisor, the Manager, or any other person, the amounts payable shall be increased by the amounts of any GST or other Tax or duty payable in respect thereof;
- (g) **Headings:** headings appear as a matter of convenience and do not affect the construction of this deed;
- (h) **Negative Obligations:** a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;
- (i) **Parties:** a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assigns;
- (j) **Person:** a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (k) **Related Terms:** where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (l) **Schedule:** the schedule forms part of this deed;
- (m) **Singular, Plural and Gender:** the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (n) **Statutes and Regulations:** a reference to an enactment or any regulations or to the Listing Rules is a reference to that enactment or those regulations or to the Listing Rules as amended, or to any enactment or regulations or Listing Rules substituted for that enactment, those regulations, or those Listing Rules;
- (o) **Time:** a reference to time is to New Zealand time; and
- (p) **Writing:** a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 **Parties bound:** This deed binds the Supervisor, the Manager and the Unit Holders and any person claiming through any of them as if each of them had been a party to this deed.

1.4 **Exchange of Currencies:** Where, for the purposes of any provision of this deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency (or a non-New Zealand currency equivalent of a sum expressed in New Zealand currency) such sum shall, unless otherwise agreed in writing by the Supervisor either generally or in any particular case, be converted to New Zealand currency (or the non-New Zealand currency, as the case may be) on such basis as is from time to time acceptable to the Manager provided always that in so

determining a currency equivalent of any Asset or Liability, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency in respect of the Asset or Liability.

- 1.5 **Governing law:** This deed is governed by the laws of New Zealand.

SECTION 2: CONSTITUTION OF TRUST

2. CONSTITUTION OF TRUST

- 2.1 **Appointment of Supervisor:** The Supervisor is appointed supervisor of the Trust and agrees to act in respect of the Trust as supervisor for the Unit Holders, and to hold the Assets as the exclusive property of the Trust in trust solely for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed and the Act.
- 2.2 **Appointment of Manager:** The Manager is appointed manager of the Trust (the Supervisor's approval to such appointment having been received), and the Manager agrees to act as the manager upon and subject to the terms and conditions expressed or implied in this deed and the Act, and to observe and perform its obligations under this deed and the Act.
- 2.3 **Name:** The Trust shall be known as the 'Goodman Property Trust'. Notwithstanding any name given to the Trust pursuant to this deed, the Manager may, subject to compliance with all legal and regulatory requirements, change the name of the Trust by written notice to the Supervisor.
- 2.4 **Units:** The beneficial interests in the Trust shall be divided into Units. Each Unit shall be of equal value and shall confer an equal interest in the Trust, subject to any rights, obligations and restrictions attaching to any particular Units or Class of Units. No Unit shall confer any interest in any particular part of the Trust or in any Asset.
- 2.5 **Rights not attaching to Units:** Subject to the Unit Holders' rights created by this deed and the Act, no Unit Holder shall be entitled to:
- (a) require the transfer to him or her of any of the Assets; or
 - (b) interfere with or question the exercise or non-exercise by the Supervisor or the Manager of the rights and powers of the Supervisor and the Manager in their dealings with the Trust or the Assets or any part thereof; or
 - (c) by virtue of holding Units, attend meetings whether of Unit Holders or otherwise or vote or take part in or consent to any action concerning any property or corporation in which the Trust holds an interest.
- 2.6 **Classes of Units:** Different Classes of Units may be issued with such rights, obligations and restrictions attaching to the Units of such Classes as the Manager determines and notifies to the Supervisor. Any such issue is subject to, and must be in accordance with, the Act and, if relevant, the Listing Rules.

3. LISTING RULES

- 3.1 **Clause 3 prevails:** This clause 3 prevails over all other provisions of this deed.
- 3.2 **Quotation:** Whilst any Units of a Class of Units are Quoted the provisions of the Schedule shall apply.

3.3 **Quotation:** The Manager may not request of NZX that:

- (a) NZX cancel the listing of the Trust on the NZSX; or
- (b) any Units of a Class of Units that are Quoted, cease to be Quoted,

unless such request has been approved by:

- (c) Unit holders (excluding the Manager, any Associated Person of the Manager and any other person specified by the NZX) by an Extraordinary Resolution; or
- (d) the Supervisor.

3.4 **Provisions of the Act to apply:** This deed has no effect to the extent that it contravenes, or is inconsistent with, the Act or any term implied into this deed by the Act (with the exception of the provisions in Schedule 11 of the Financial Markets Conduct Regulations 2014, in respect of which clause 24.41 governs inconsistencies between those provisions and this deed).

SECTION 3: ISSUE OF UNITS

4. OFFER OF UNITS

4.1 **Offer of Units:** The Manager may from time to time do either or both of the following:

- (a) invite applications from any person or persons to subscribe for or purchase Units; or
- (b) offer Units to any person or persons for subscription or purchase;

in either case in compliance with all applicable requirements of the Act, the Listing Rules and all other applicable legislation, for the Issue Price and on the terms and conditions contained in this deed and such other terms and conditions (not being inconsistent with this deed) as are determined by the Manager from time to time.

4.2 **Form of application:** An applicant for Units must complete any form of application required by the Manager or by law. The form must be accompanied by payment in a manner approved by the Manager.

4.3 **Manager may refuse application:** The Manager may in its absolute discretion accept or refuse an application for Units in whole or in part without reason.

4.4 **Minimum Parcel:** Without limiting clause 4.3, the Manager may refuse any application for Units which is less than a Minimum Parcel.

5. ISSUE OF UNITS

5.1 **Manager's power to issue:** Subject to the Listing Rules, if applicable, the Manager may issue Units at any time, to any person, and in any number it thinks fit.

5.2 **Units issued must be whole:** Fractions of a Unit may not be issued. Subject to clause 7.4, where any calculation under this deed would result in the issue of a fraction of one Unit, the number of Units to be issued is to be rounded downwards to the nearest whole Unit. Any excess application or other moneys become an Asset.

5.3 **Issue price:** Each Unit shall be issued for an amount in value equal to the Issue Price, or where the Issue Price is to be partly paid, the Subscription Amount. Payment shall be in cash, or at the Manager's discretion, may in any particular case be made in whole or in part by the transfer of:

- (a) Authorised Investments of a kind able to be vested in the Supervisor in accordance with clause 5.4 equal in value to the aggregate Issue Price or, where the Issue Price is to be partly paid, the aggregate Subscription Amount, for the Units to be issued; or
- (b) a combination of both cash and Authorised Investments, as approved by the Manager, equal in value to the aggregate Issue Price or, where the Issue Price is to be partly paid, the aggregate Subscription Amount, for the Units to be issued.

5.4 **Non-cash payment:** If the Manager accepts payment in property rather than cash, the Manager must obtain:

- (a) an effective transfer to the Supervisor of title to the property, confirmed in a manner approved by the Supervisor; and
- (b) if the Supervisor so requires, a valuation by a Valuer of the property.

The Manager may deduct from the value of the property, before the number of Units to be issued is calculated, any costs incurred, or to be incurred, in valuing and transferring the property.

5.5 **Brokerage:** The Manager may pay, as an expense of the Trust, brokerage and/or trail commission on the issue of Units at a rate set by the Manager.

5.6 **Issue date:** Units are taken to be issued when:

- (a) the Manager accepts the application; or
- (b) the consideration against which Units are to be issued is transferred to the Supervisor,

whichever happens later. Units issued against consideration paid other than in cleared funds or by the transfer of property are void if the money is not subsequently cleared.

SECTION 4: REGISTER, JOINT UNIT HOLDERS AND SALE OF SMALL PARCELS

6. REGISTER

6.1 **Register to be Maintained:** The Manager shall keep and maintain or cause to be kept and maintained in respect of the Trust an up-to-date register of Unit Holders. The Register shall be kept in New Zealand in electronic form or in such other form that the Manager and the Supervisor may agree from time to time.

6.2 **Appointment of Registrar:** The Manager may appoint a registrar to maintain the Register at the expense of the Trust.

6.3 **Content of Register:** There shall be entered in the Register:

- (a) the names and addresses of the Unit Holders;

- (b) the number of Units of each Class and the numbers of the certificates (if any) issued to each Unit Holder;
 - (c) the date on which the name of every person was entered in the Register as a Unit Holder;
 - (d) the date on which any person ceased to be a Unit Holder; and
 - (e) any other particulars required by the Act or that the Manager or the Supervisor may consider desirable to include.
- 6.4 **Right to Inspect the Register:** A person shall have the right to inspect the Register in accordance with the Act provided the Register is not closed pursuant to clause 6.8.
- 6.5 **Audit of Register:** The Manager shall cause the Register to be audited annually by the Auditor and as otherwise required by the Act.
- 6.6 **Register deemed to be accurate:** The Supervisor and the Manager (provided in the case of the Manager that the Manager has exercised reasonable care in appointing a Registrar):
- (a) shall be entitled to rely absolutely on the Register as being correct; and
 - (b) shall not be required to enquire into the authenticity of the Register; and
 - (c) shall not incur any liability or responsibility on account of any mistake in the Register.
- 6.7 **Unit Holders to notify changes:** Any change of name or address of any Unit Holder shall be notified by the Unit Holder in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the Register or cause the Register to be altered accordingly.
- 6.8 **Closure of Register:** Subject to any applicable laws, the Manager may from time to time close the Register for such period or periods as the Manager may determine, provided that the Register shall not be closed for a period exceeding 30 days in aggregate in each year.
- 6.9 **No Equities to be Registered:** Neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in the Register as the Unit Holder, and accordingly no notice of any trust, charge, pledge or equity shall be entered upon the Register.
- 6.10 **Inspection by Supervisor and Manager:** The Supervisor and the Manager may inspect the Register at any time.
7. **JOINT UNIT HOLDERS, SALE OF SMALL PARCELS, CONSOLIDATION AND DIVISION**
- 7.1 **Joint Unit Holders:** Where two or more persons are registered as the Unit Holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- (a) the Manager shall not be bound to register more than two persons (unless they are trustees, executors, or administrators of a deceased Unit Holder) as the Unit Holders of any Unit;
- (b) the joint Unit Holders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (c) on the death of any one of such joint Unit Holders, the survivor or survivors of them shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- (d) any one of such joint Unit Holders may give effectual receipts for any distribution payable to such joint Unit Holders;
- (e) only the person whose name stands first in the Register as one of the joint Unit Holders shall be entitled to delivery of any certificate relating to such Unit or to receive notices from the Manager or Supervisor, and any notice given to such person shall be deemed notice to all the joint Unit Holders; and
- (f) at any meeting of Unit Holders any one of such joint Unit Holders may vote either personally or by duly appointed and authorised representative or any attorney or proxy in respect of such Unit as if he or she were solely entitled thereto, provided that if more than one of such joint Unit Holders is present personally or by duly authorised representative or attorney or proxy then such one of those joint Unit Holders so present whose name stands first in the Register in respect of the Unit shall alone be entitled to vote as a Unit Holder of the Unit.

7.2 Sale by Manager of Small Parcels: The Manager may sell or compulsorily redeem the Securities of any holder registered with less than the Minimum Parcel prescribed from time to time. Any such disposition shall be conducted as follows:

- (a) the Security holder shall be given not less than 3 months' prior written notice of the intention to dispose of or redeem the Securities;
- (b) if the Security holder has not, on the expiry of that notice, already redeemed or sold the Securities, or increased its holding so it is no longer less than a Minimum Parcel, the Manager may cause the Units:
 - (i) if the Securities are Quoted, to be offered through the NZSX, and sold at the market price prevailing at the time of the offer;
 - (ii) if the Securities are not Quoted, to be transferred to applicants for Securities or redeemed in accordance with clause 8;
- (c) promptly after the sale, the Manager shall transfer to the Security holder the proceeds of the sale or redemption after deduction of any reasonable expenses of conducting the sale or effecting the redemption.

The Manager and the Supervisor shall have no liability for loss on any sale or redemption made pursuant to this clause.

7.3 Consolidation or Subdivision of Units: The Manager may at any time, by notice in writing to the Unit Holders, cause the Units in existence at the date of that notice to be consolidated or subdivided. Each such notice shall specify:

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

7.4 **Effect of Consolidation or Subdivision:** As from the Operative Date, each Unit Holder shall be deemed to hold a number of Units equivalent to the number held by him or her before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, at the option of the Manager in each case, fractions may be dealt with by rounding upwards or downwards to the nearest whole number. The Manager shall make such arrangements as it deems appropriate, following a consolidation or subdivision, for the cancellation of existing certificates for the Units (if any) and, if the Trust issues certificates, the issue of new certificates.

SECTION 5: REDEMPTION, REPURCHASE, TRANSFER AND TRANSMISSION OF UNITS

8. REDEMPTION OR REPURCHASE OF UNITS

8.1 **Redemption and Repurchase of Units:** Subject to the Listing Rules, the Manager may, but shall not be under any obligation to, repurchase Units or cause the Supervisor to redeem Units. For so long as the Units are Quoted, it is intended that any repurchase or redemption of Units shall be limited to discrete transactions or series of transactions within defined timeframes in accordance with the Listing Rules. Where the Manager repurchases or causes the redemption of Units while such Units are Quoted, the Repayment Price shall be set by the Manager but shall not exceed the amount specified in clause 8.6 unless approved by an Extraordinary Resolution of Unit Holders, and clauses 8.10, 8.11, 8.13 to 8.20 shall apply accordingly, and clauses 8.2 to 8.9, 8.12 and 8.21 shall not apply. If the Units are not Quoted, and the Manager elects (at its sole discretion) to permit redemption or repurchase of Units, clauses 8.2 to 8.21 shall apply.

8.2 **Number of Units Less than a Minimum Parcel:** Where the Manager receives a Redemption Notice, the Manager may in its sole discretion:

- (a) Unless the Redemption Notice relates to all the Units held by a requesting Unit Holder, refuse to repurchase or cause to be redeemed the Units to which the Redemption Notice relates in any case where the repurchase or redemption of less than a Minimum Parcel is requested; and
- (b) If the number of Units held by the requesting Unit Holder (after excluding the number of Units to which the Redemption Notice relates) is less than a Minimum Parcel, repurchase or cause to be redeemed the balance of Units held by that Unit Holder as if the request relates to all the Units held by that Unit Holder.

8.3 **Permitted Redemptions to be exercised by notice to Manager:** Where a Unit Holder wishes to redeem Units the Unit Holder shall give the Manager a Redemption Notice (in such form and with such notice period as may be prescribed by the Manager from time to time) specifying the number of Units to be redeemed or repurchased or, with the Manager's approval, the amount of the proceeds which the Unit Holder wishes to receive from the redemption or repurchase, and accompanied by the certificate (if any) relating to those Units. A Redemption Notice shall be irrevocable unless the Manager agrees otherwise.

8.4 **Manager may redeem or repurchase:** The Manager may within a reasonable time after the next Valuation Date following the Request Date, at the election of the Manager, either:

- (a) cause the number (or value) of Units held by the Unit Holder referred to in the Redemption Notice to be redeemed by the Supervisor out of the Assets; or
- (b) repurchase the number (or value) of Units held by the Unit Holder referred to in the Redemption Notice out of its own funds.

8.5 **Amount Payable:** Upon the repurchase or redemption of a Unit, the amount payable to the Unit Holder shall be the Repayment Price of the Unit less any Unpaid Amount and less any other deductions permitted under this deed. That amount shall be paid to the Unit Holder within 30 Business Days of the Request Date or on such earlier date as the Manager may elect.

8.6 **Repayment Price:** The Repayment Price of a Unit shall be the amount calculated by the Manager in accordance with the following formula:

NAV - TC

where:

NAV = the Net Asset Value of the Trust calculated on the latest practical Business Day before the date of repurchase or redemption (where the Units are not Quoted) or on a date selected by the Manager which is no more than 30 Business Days before the date of repurchase or redemption (where the Units are Quoted), divided by the aggregate number of Units on issue;

TC = the Manager's estimate of the total cost of selling the Assets (or such lesser amount, including zero, as the Manager determines), divided by the aggregate number of Units on issue.

8.7 **Fractions of Cents:** If the formula in clause 8.6 results in the aggregate Repayment Price for all the Units being redeemed or repurchased by a Unit Holder including a fraction of a one half cent or more, the aggregate Repayment Price for all such Units may be adjusted, at the option of the Manager, to the nearest cent above the aggregate Repayment Price so calculated, and if the formula results in the aggregate Repayment Price including a fraction of less than one half cent the aggregate Repurchase Price for all such Units may be adjusted, at the option of the Manager, to the nearest cent below the price so calculated.

8.8 **Order:** Unless the Manager decides otherwise, the first Units issued to a Unit Holder are the first redeemed or repurchased.

8.9 **Delay if Consideration Not Otherwise Received:** Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not repurchase or cause redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

8.10 **Manager entitled to Units on Repurchase:** Upon repurchase of any Units by the Manager, the Manager shall be entitled to the benefit of the Units and may at any time thereafter resell or redeem such Units subject to the terms of this deed.

8.11 **Manager to Notify Supervisor of Election to Redeem:** Where the Manager elects to cause the Units specified in a Redemption Notice to be redeemed, the Manager shall,

within 10 Business Days of the Request Date, advise the Supervisor of that election and of the amount to be paid to the Unit Holder and of the date for such payment.

- 8.12 **Manager to use reasonable endeavours to ensure sufficient cash for Redemptions:** The Manager shall use all reasonable endeavours to ensure that a sufficient amount of the Assets are available in cash to enable any payment for a redemption to be made.
- 8.13 **Cancellation of Units:** Where Units are redeemed, upon payment of the Repayment Price to the Unit Holder, the number of Units so redeemed shall be cancelled as at the date of redemption and such Units shall not thereafter be re-issued, but this shall not restrict the rights of the Manager to create additional and/or to issue further Units in the Trust.
- 8.14 **Supervisor to Redeem Manager's Units:** The Manager may at any time request the Supervisor to redeem Units which have been or are to be repurchased by the Manager and the Supervisor shall as soon as practically possible redeem those Units and pay to the Manager the Repayment Price of the Units. If the application for redemption is made before the Manager pays the Repayment Price to the Unit Holder, the Supervisor may pay the Repayment Price directly to the Unit Holder. Any amount that is required to be paid under this clause shall be paid from cash and, if there is insufficient cash, then the amount or the balance (as the case may be) shall be paid upon the realisation of Assets or at such other time as the Supervisor has in respect of the Trust sufficient cash to meet the obligations under this clause.
- 8.15 **Manager's Statement on Redemption Request:** If, at the date the Manager applies to the Supervisor for redemption, there is likely to be insufficient cash in the Trust to enable the Supervisor to redeem any Units in respect of which the Manager has applied to the Supervisor for redemption, then the Manager shall furnish to the Supervisor a statement in writing:
- (a) certifying that there is insufficient cash in the Trust for such purpose;
 - (b) specifying the amount of cash required to meet such redemption;
 - (c) certifying that it is either necessary to sell Assets (and, if so, recommending the Assets to be sold) or alternatively recommending that borrowings be made; and
 - (d) advising as to the Net Asset Value of the Trust and the total of all costs and other disbursements and expenses incurred or expected to be incurred by the Supervisor and the Manager in the sale by the Supervisor of all Assets recommended to be sold or in the borrowing to be made (as the case may be).
- 8.16 **Entry on Register:** On repurchase or redemption of Units, the Manager shall make an appropriate entry in the Register in respect of the number of Units which have been repurchased or redeemed and on redemption shall produce to the Supervisor such evidence of payment as shall from time to time be required by the Supervisor.
- 8.17 **Sums owed to Manager or Supervisor:** The Supervisor must deduct from the Repayment Price payable to a Unit Holder any unpaid moneys due by the Unit Holder to the Manager, if the Manager requests, and may deduct such moneys if due to the Supervisor. The Manager, if paying the Repayment Price, may make such deductions from the Repayment Price. The Manager at its discretion shall further be entitled to deduct an amount assessed by the Manager as the value of imputation credits (as defined in the Tax Act) attached to any redemption amount which is in excess of the Unit Holder's pro rata share of the Trust's imputation credit account. In the event of any such

deduction being made, the same shall form part of the Trust. The total amount to be paid to the Unit Holder shall be rounded downwards to the nearest cent.

- 8.18 **Transfer of Assets:** The Manager may direct the Supervisor to transfer Assets to a Unit Holder, or with the Supervisor's consent to hold Assets on trust solely for a Unit Holder on such terms as the Supervisor requires, rather than pay cash on the redemption of Units. These Assets must be of equal value to the Repayment Price less any deductions permitted by this deed (based on a valuation done by a Valuer within one month before the date of the proposed transfer), provided that the amount of any costs paid by or on behalf of the Unit Holder relating to the transfer may be deducted from such value. The costs of the valuation will be an expense of the Trust.
- 8.19 **Payment in cash:** For any proceeds of redemption or repurchase paid in cash, payment in accordance with the Unit Holder's instructions or, in the absence of any instructions, by cheque posted to the address of the Unit Holder specified in the Register shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation.
- 8.20 **Payment other than in cash:** For proceeds of redemption or repurchase paid by transferring Assets, payment by transferring such Assets into the name of or to the order of the Unit Holder shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation.
- 8.21 **Suspension of Repayment:** Notwithstanding the foregoing, if for any good reason reasonably determined by the Manager, the Manager shall form the opinion that it is not desirable, or would be prejudicial to the interests of Unit Holders as a whole, for the Manager to repurchase or the Supervisor to redeem Units, then the Manager may give notice to that effect to any Unit Holder who gives or has given a Redemption Notice. A Suspension Notice shall have the effect of suspending the operation of all Redemption Notices relating to the Trust until:
- (a) the Manager gives to the Unit Holders who gave those Redemption Notices notice to the effect that the Suspension Notice is cancelled; or
 - (b) such date as is approved by a Resolution of Unit Holders,

whichever is the earlier. Where a Suspension Notice has been given pursuant to this clause 8.21 and not cancelled within 14 days of such Suspension Notice, the Manager shall notify all Unit Holders of the giving of such Suspension Notice. Where a Suspension Notice has not been cancelled within 6 months after the last notice to Unit Holders has been given pursuant to this clause 8.21, the Manager shall notify all Unit Holders of the continuance of such Suspension Notice's effect.

9. TRANSFER OF UNITS

- 9.1 **Instrument of Transfer:** Subject to any contrary provisions of this deed as may be applicable, any Unit Holder may transfer all or any of the Units held by him or her by instrument in writing as follows:
- (a) any Units disposed of by an "authorised transaction" within the meaning of the Act may be transferred by an instrument of transfer complying with the provisions of that Act;
 - (b) every instrument of transfer not falling within the provisions of clause 9.1(a) shall be in such form as the Manager may approve from time to time and shall be signed by the transferor and the transferee.

- 9.2 **Registration of Transfer:** The instrument of transfer with any stamp duty or other duties payable thereon having been paid shall be delivered to the Manager or, if the Manager has appointed a Registrar, the Registrar for registration. Subject to clause 9.3, the Manager will promptly cause the transfer to be registered in the Register.
- 9.3 **Manager may decline to Register Transfers:** Subject to the Listing Rules, if applicable, the Manager may decline to register any transfer if:
- (a) registration of the transfer, together with the registration of any further transfer or transfers then held by the Manager and awaiting registration, would result in less than a Minimum Parcel of Securities standing in the name of the transferee; or
 - (b) the Manager, in its capacity as manager of the Trust, has a lien on any of the Securities; or
 - (c) the instrument of transfer is not accompanied by such evidence as the Manager may reasonably require to show the right of the transferor to make the transfer.
- 9.4 **Manager to Return Unregistered Transfers:** All instruments of transfer which are registered may be retained by the Manager but any instrument of transfer which the Manager declines to register shall be returned promptly to the person lodging the same.
- 9.5 **Suspension of Registration:** Subject to any relevant legal requirements or the Listing Rules, if applicable, registration of transfers may be suspended at such times and for such period or periods (not exceeding in the whole 30 days in any year) as the Manager may from time to time determine.

10. TRANSMISSION OF UNITS

- 10.1 **Persons Recognised by the Manager:** The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) and in the case of the death of one or more of several joint Unit Holders the survivor or survivors of such joint Unit Holders shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders.
- 10.2 **Claimants to Prove Entitlement:** Any person becoming entitled to any Units in consequence of the death or bankruptcy of any Unit Holder may, upon producing such evidence as the Manager shall think sufficient to establish that person's entitlement to such Units, be registered as the Unit Holder of such Units or, subject to the provisions as to transfer contained in clauses 9.1 to 9.5, may transfer such Units.
- 10.3 **Entitlement on Transfer or Transmission of Units:** Upon the registration of any transfer or transmission of Units from any person, the benefit of the Units (including the rights to any bonus units or income) shall be deemed to be transferred to the Unit Holder into whose name the Units shall be registered.

SECTION 6: PARTLY PAID UNITS AND FORFEITURE

11. PARTLY PAID UNITS AND FORFEITURE

11.1 Partly Paid Units:

- (a) The Unpaid Amount on any Units shall be paid by the Unit Holder on the date fixed by or in accordance with the terms of issue of those Units.
- (b) Subject to the rights, obligations and restrictions attaching to any Units or Classes of Units, the Manager may call on a Unit Holder to pay all or any part of the Unpaid Amount of the Issue Price of their Units to the Supervisor at any time, provided the time for payment of any called amount shall be on or after any date fixed for the payment of such unpaid amount.
- (c) If an amount called or otherwise due for payment in respect of the Issue Price of a Unit is not paid on the due date for payment, the Unit Holder from whom the amount is due shall pay interest on the amount at a rate (determined at 3 monthly intervals commencing on the date the Unpaid Amount becomes payable) for each 3 monthly period at the Market Rate plus 2% per annum, such interest to be calculated on and accrue on the daily amount outstanding from the date the amount becomes payable to the date of payment, forfeiture of the Units pursuant to clause 11.3, or sale of the Units pursuant to clause 11.6(c), whichever is earlier.
- (d) The joint Unit Holders of a Unit are jointly and severally liable to pay all Unpaid Amounts in respect of that Unit, together with any interest that has accrued under clause 11.1(c) on those Unpaid Amounts.

11.2 Forfeiture of Units: If a Unit Holder fails to pay any Unpaid Amount on the date set for payment of such Unpaid Amount or pay any such Unpaid Amount when validly called on a Unit under clause 11.1, the Manager may, at any time during such time as the Unpaid Amount remains unpaid, give notice to that Unit Holder requiring payment of any Unpaid Amount together with any interest which may have accrued. The notice must nominate a date (not earlier than the expiration of 14 days from the date of service of the notice) by which the payment must be made, and must include a statement to the effect that if the payment is not made by the nominated date the relevant Units will be liable to be forfeited.

11.3 Date of forfeiture: If the notice in clause 11.2 is not complied with by the Unit Holder by the nominated date, any Unit in respect of which the notice has been given may, at any time thereafter before the required payment has been made, be forfeited from the date that the Manager notifies the Supervisor. Such forfeiture shall include any entitlement to income accrued in respect of the forfeited Unit and not paid before the forfeiture, but the Unpaid Amount shall be reduced by the amount of such income.

11.4 Forfeited Units may be disposed of: Subject to this deed, a forfeited Unit may be sold or otherwise disposed of by the Manager.

11.5 Cancellation of forfeiture: At any time before a sale or disposition pursuant to clause 11.4, forfeiture may be cancelled on such terms as the Manager thinks fit and must be cancelled where the Unit Holder pays to the Manager the full amount owing in respect of such Units.

11.6 Lien on Units:

- (a) The Manager has a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others) and upon the

proceeds of sale of the Unit, and all distributions made or payable in respect of the Unit (and all Units acquired with those distributions under a distribution reinvestment scheme), for:

- (i) any unpaid calls or instalments owing in respect of such Unit and any interest payable on such amounts; and
 - (ii) for such amounts (if any) as the Supervisor or the Manager may be called upon to pay under any statute or legislative enactment in respect of Units of a deceased or other Unit Holder, whether the period for the payment shall have actually arrived or not.
- (b) Unless otherwise determined by the Manager, the registration of a transfer of Units shall not operate as a waiver of the Manager's lien, if any, on such Units.
- (c) The Manager may sell, in such manner as it thinks fit, any Units on which it has a lien. No sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the Unit Holder, or the persons entitled thereto by reason of the death or bankruptcy of the Unit Holder.
- (d) The Manager may, as concerns any Units on which it has a lien, revoke the participation of those Units in any distribution reinvestment scheme.

11.7 Sale procedure: For giving effect to any such sale after forfeiture, or for enforcing a lien, the Manager may, as attorney of the relevant Unit Holder, execute a transfer of any Unit in favour of the purchaser of the Unit and the Unit Holder authorises the Manager and appoints the Manager as its attorney to do so. As soon as practicable after the transfer is executed, the transferee must be registered as the Unit Holder and will not be bound to see to the application of the proceeds of sale nor will the transferee's title to the Unit be affected by any irregularity or invalidity in the proceeds in relation to the forfeiture or sale of the Units. The Unit Holder shall be liable to reimburse the Manager, on demand, for all costs and expenses incidental to the forfeiture and/or sale.

11.8 Proceeds of sale: The proceeds of sale of any forfeited Unit, or of Units sold for the purpose of enforcing a lien, shall be applied first towards the payment of all costs and expenses incidental to the forfeiture and/or sale, secondly toward the payment of any interest, thirdly on account of the amount in respect of which the notice referred to in clause 11.2 or clause 11.6(c) (as the case may be) was given and fourthly in payment of the balance (if any) remaining to the Unit Holder whose Units have been sold (or their legal personal representatives or assigns).

11.9 Remaining liability of Unit Holder: A Unit Holder whose Units have been forfeited or sold for the purpose of enforcing a lien, shall cease to be a Unit Holder from the date when a notice in relation to the relevant Units is given to the Supervisor under clause 11.3 or the date the Units are sold pursuant to clause 11.6(c) (whichever is applicable) but shall, notwithstanding such forfeiture or sale, remain liable to pay all money which, at the date of the forfeiture or sale, was payable by such Unit Holder in respect of the Units. Such liability will cease if and when the Manager receives payment in full of all such money. Any Unit sold in accordance with clause 11.4 or 11.6 will:

- (a) be credited as paid up to the sum of the amount paid up on the Unit on the day of the sale and the amount of the Unpaid Amount becoming payable on or before the day of the sale; and

- (b) continue to be subject to a liability to pay any further amount equal to the Unpaid Amount (if any) in accordance with this deed, such that the transferee of the Unit shall be liable to pay that amount.

SECTION 7: INVESTMENTS AND VALUATIONS

12. INVESTMENT

- 12.1 **Investment Procedure:** The Assets shall from time to time be invested by the Manager in Authorised Investments.
- 12.2 **Investment policy:** The Statement of Investment Policy and Objectives shall provide for the matters set out in the Act. The Manager may vary those policies from time to time in consultation with the Supervisor. If the variation is material to Unit Holders, the Manager shall give at least 20 Business Days' prior notice to NZX for public release if the Trust is Listed or, if the Trust is not Listed, to Unit Holders directly.
- 12.3 **Supervisor's role:** Subject to its duties as trustee and supervisor, the Supervisor must give effect to the Manager's directions in relation to the investment of the Assets. The Supervisor must not acquire or dispose of any Asset except as directed by the Manager until the Trust terminates.
- 12.4 **Manager's Power of Investment:** Subject to section 160 of the Act and to this clause 12, the Manager shall have absolute discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets from time to time.
- 12.5 **Interested Party Transactions:** Notwithstanding any other provision of this deed:
 - (a) no sale or disposal of any Assets shall be made to the Manager or any Related Person of the Manager unless the Supervisor is satisfied the sale or disposal is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Statement of Investment Policy and Objectives; and
 - (b) no purchase or acquisition of any Assets shall be made from the Manager or any Related Person of the Manager unless the Supervisor is satisfied the purchase or acquisition is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Statement of Investment Policy and Objectives; and
 - (c) the Supervisor shall not be required to consider any transaction described in clauses 12.5(a) and 12.5(b) until such time as the Manager has certified to the Supervisor that in the Manager's opinion the transaction is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Statement of Investment Policy and Objectives. It shall be the responsibility of the Manager to advise the Supervisor before such transaction that any such sale, disposal, purchase or acquisition involves the Manager or any Related Person of the Manager; and
 - (d) without prejudice to clauses 12.5(a) to 12.5(c), transactions involving a related party benefit (as that term is defined in the Act) may only be entered into as permitted by the Act.
- 12.6 **Bonus Assets:** Any shares or other property received by way of bonus or in lieu of or in satisfaction (in whole or in part) of a dividend in respect of any Asset or from amalgamation or reconstruction of any corporation in which part of the Trust is invested

may either be retained as part of the Trust, or sold, with the proceeds remaining part of the Trust, or retained as to part and sold as to the balance.

- 12.7 **Costs:** All costs, Taxes, and legal fees and other fees, disbursements and expenses incurred by the Supervisor or the Manager in connection with the investigation of, negotiation for and acquisition of any Asset, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Asset shall be payable by the Trust.
- 12.8 **Investment Record:** The Manager shall keep a record of all investments of the Trust, which record shall state in respect of each investment:
- (a) the nature of the investment;
 - (b) the date of acquisition thereof by the Trust;
 - (c) the cost thereof;
 - (d) the date of maturity thereof (if any);
 - (e) particulars of the security thereof (if applicable);
 - (f) such particulars as to the Value thereof as the Supervisor and the Manager from time to time agree;
 - (g) any other information that the Supervisor and the Manager regard as desirable in respect of the investments comprising the Trust.

The record shall be available for inspection by the Supervisor without charge at any time on any Business Day. The Manager will provide a copy of the investment record to the Supervisor on request, but no more regularly than on a monthly basis.

- 12.9 **Voting Rights of Investment:**
- (a) Subject to the provisions of this deed, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.
 - (b) Subject to the provisions of this deed, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney referred to in clause 12.9(a) shall be liable or responsible for any vote cast or not cast.

13. VALUATIONS

- 13.1 **Valuation Register:** The Manager shall maintain a Valuation Register for the Trust in which the Manager shall record the Value determined in accordance with this clause 13 of all Assets which are for the time being included in the Trust.
- 13.2 **Periodic Valuations:**
- (a) The Manager shall be entitled to value all or any of the Assets at any time or times on any Business Day.

- (b) If the Supervisor so requires, the Manager will have any Asset valued in accordance with clause 13.3.
- (c) The Manager shall value each Asset (other than a property) on any Business Day on which the Repayment Price is calculated pursuant to clause 8.6, or on which the Issue Price is determined under paragraph (c) of the definition of Issue Price, or at such times or within such other period as the Supervisor and the Manager shall from time to time agree in respect of that Asset.
- (d) The Manager shall value each property held by the Trust or by a company all of the shares of which are held by the Trust, as often as is required by generally accepted accounting practice and applicable financial reporting standards.

13.3 Basis for Valuation: Subject to clause 13.5, the Value of each Asset shall be:

- (a) in the case of a property, the value determined by a Valuer;
- (b) in the case of cash, its face value;
- (c) in the case of securities listed on any stock exchange, the latest sale price of the Asset on that stock exchange at the time of valuation, except if such price is:
 - (i) above the latest seller quotation, in which case that quotation shall be adopted; or
 - (ii) below the latest buyer quotation, in which case that quotation shall be adopted,

provided that if there shall have been no such sale in the five Business Days ending with the date on which the assessment of the Value of the Asset is made, or if either the Manager or the Supervisor shall form the view that such last sale price or quotation is not an accurate measure of the Value of such Asset, the Value thereof shall be the fair market value determined by the Manager following receipt of advice from a Valuer; or

- (d) in the case of debt securities, other than listed debt securities or cash, a value determined using such methodology as the Manager reasonably thinks fit; or
- (e) in the case of any other Authorised Investment, the amount agreed upon between the Manager and the Supervisor as the estimated market value after taking account of the most recent material sales, valuation, and other information that the Manager and the Supervisor consider to be appropriate or, failing such agreement, the fair market value determined by a Valuer.

13.4 Value of Dual Listed Stocks: Where any Asset is quoted on more than one stock exchange, its value may be determined by reference to the prices and quotations of the stock exchange which is considered by the Manager to be most appropriate.

13.5 Net Asset Value to be Ascertained: The Manager may ascertain the Net Asset Value of the Trust on any Business Day and shall ascertain the Net Asset Value of the Trust at least once every 12 months.

13.6 Manager's Decision is Final: Subject to clause 13.7, the Net Asset Value of the Trust ascertained by the Manager in accordance with this deed is final and binding on all persons including without limitation the Manager, the Supervisor and any applicant or subscriber for, or purchaser of Units, and all Unit Holders.

- 13.7 **Valuation on a Consistent Basis:** The Manager shall ascertain the Net Asset Value of the Trust and the Value of the Assets on a consistently applied basis accepted as being appropriate by the Supervisor. The Manager shall however be entitled at any time or times to alter that basis and the application, provided the Manager first gives notice to the Supervisor of the alterations proposed by the Manager.

SECTION 8: FINANCIAL STATEMENTS AND THE AUDITOR

14. RECORDS AND FINANCIAL STATEMENTS

- 14.1 **Records:** The Manager shall keep such accounting records as correctly record and explain the transactions and the financial position of the Trust. The Supervisor shall from time to time upon request furnish the Manager with any information necessary for this purpose. The Manager shall keep at its office in Auckland or such other place approved by the Supervisor, proper books of account that will enable the Financial Statements of the Trust to be prepared and conveniently and properly audited in accordance with this deed.
- 14.2 **Full Year Financial Statements:** As soon as practicable after the end of each Financial Year for the Trust (and in any event within three months), the Manager shall prepare or procure the preparation of the Financial Statements for the Trust for that Financial Year.
- 14.3 **Half Year Financial Statements:** As soon as practicable, and at least within three months after the end of each half year (which is not the end of a Financial Year) for the Trust, the Manager shall prepare or procure the preparation of interim Financial Statements for the Trust as at, and in respect of, the period ending on the date which is the last day of that half year.
- 14.4 **Financial Statements to Comply with Legislation:** The Financial Statements shall comply with the Financial Reporting Act 2013, the Act, and all other relevant statutory requirements.
- 14.5 **Annual Financial Statements to Supervisor and Unit Holders:** When the Financial Statements referred to in clause 14.2 have been prepared and audited, the Manager shall forward a copy of such Financial Statements promptly to the Supervisor and every Unit Holder for the time being. This clause is subject to clause 28.7.
- 14.6 **Half Yearly Financial Statements to Supervisor and Unit Holders:** When the Financial Statements referred to in clause 14.3 have been prepared, the Manager shall forward a copy of such Financial Statements promptly to the Supervisor and every Unit Holder for the time being. This clause is subject to clause 28.7.
- 14.7 **Audit:** The Manager shall ensure that the annual Financial Statements prepared in accordance with clause 14.2 for the Trust are audited and reported on by the Auditor in accordance with the Act, and that a copy of the Financial Statements and the Auditor's report thereon is forwarded promptly following the issue of the Financial Statements and the Auditor's report to the Supervisor and every Unit Holder of the Trust for the time being. This clause is subject to clause 28.7.
- 14.8 **Consolidated Financial Statements:** Subject to the requirements of the Financial Reporting Act 2013, the Act, and all other relevant statutory requirements, references in this deed to "Financial Statements for the Trust" (or similar), are references to the consolidated financial statements of the Trust.

15. THE AUDITOR

- 15.1 **Appointment:** As soon as practicable after the date of execution of this deed the Manager shall, after consultation with the Supervisor, appoint an auditor or auditors for the Trust, who shall be a licensed auditor or registered audit firm (as those terms are defined in the Act). Nothing in this clause 15.1 will require the Supervisor to appoint or reappoint an auditor merely as the result of an amendment or restatement of this deed where an auditor or auditors have already been appointed for the Trust and where such auditor or auditors are a licensed auditor or a registered audit firm (as those terms are defined in the Act).
- 15.2 **Auditor may act for others:** The Auditor may also be auditor of the Supervisor, the Manager, or any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or employee (or the partner of an officer or employee) of the Manager or of the Supervisor.
- 15.3 **Auditor's Remuneration:** The remuneration of the Auditor shall be fixed by the Manager, and shall be paid out of the Trust.
- 15.4 **Retirement or Removal of Auditor:** The Auditor may at any time be removed from office by the Manager or by an Extraordinary Resolution of Unit Holders. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.
- 15.5 **Vacancy in Office of Auditor:** Any vacancy in the office of Auditor occurring under clause 15.4 shall be filled by the Manager (after consultation with the Supervisor) appointing an auditor qualified for appointment in terms of clause 15.1.
- 15.6 **Information to Auditor:** The Supervisor and the Manager shall give to the Auditor of the Trust such information as the Auditor reasonably requires for the performance of its duties with respect to the Trust.

SECTION 9: INCOME AND DISTRIBUTIONS TO UNIT HOLDERS

16. INCOME AND DISTRIBUTIONS TO UNIT HOLDERS

- 16.1 **Distributable Amount:** The Manager shall specify its policy relating to distributions to Unit Holders in the first Prospectus for the Trust, but may vary that policy from time to time. The Distributable Amount shall be determined in accordance with the Manager's policy specified for the time being under this clause.
- 16.2 **Entitlement to Final Distributable Amount:** Unless otherwise agreed by the Manager and the Supervisor, and subject to the rights, restrictions and obligations attaching to any particular Units or Classes of Units:
- (a) The Final Distributable Amount is to be transferred to a Distribution Account as soon as practicable after the Record Date and ceases to be an Asset when it is transferred into the Distribution Account;
 - (b) Unit Holders registered in the Register at the relevant Record Date are presently entitled to the Final Distributable Amount;
 - (c) Payments must be made out of the Distribution Account as soon as practicable after the Record Date; and
 - (d) Subject to the rights, restrictions and obligations attaching to any particular Unit or Classes of Units, the Final Distributable Amount must be distributed to Unit Holders pro rata according to the number of Units they hold as at the Record

Date, provided that (subject to the rights, restrictions and obligations attaching to any particular Unit or Classes of Units) for this purpose a Unit which is partly paid shall be treated as that proportion of a whole Unit as the amount paid up bears to the Issue Price for that Unit or shall be treated in such other manner as the Manager determines and the Supervisor agrees.

- 16.3 **Interim distributions:** The Manager may determine to make interim distributions out of Net Accounting Income accruing during any Interim Distribution Period. If the Manager determines to make an Interim Distribution, the total amount to be distributed in respect of an Interim Distribution Period is to be transferred to the Distribution Account, or, if the Manager cannot determine such amount, the Manager's estimate of the amount is to be transferred to a reserve and then to a Distribution Account for distribution when the amount is determinable. These transfers will be made as soon as practicable after the Record Date. An amount will cease to be an Asset when it is transferred into the Distribution Account. Subject to the rights, obligations and restrictions attaching to any particular Units or Classes of Units, the amount of an Interim Distribution to which a Unit Holder will be presently entitled, and which will be distributed to that Unit Holder, will be determined on a pro rata basis according to the number of Units held as at the Record Date for the relevant Interim Distribution Period, provided that (subject to the rights, restrictions and obligations attaching to any particular Unit or Classes of Units) for this purpose a Unit which is partly paid shall be treated as that proportion of a whole Unit as the amount paid up bears to the Issue Price for that Unit or shall be treated in such other manner as the Manager determines and the Supervisor agrees.
- 16.4 **Distributions:** Subject to the rights, obligations and restrictions attaching to any Units or Classes of Units, the Manager may at any time direct the Supervisor to distribute any amount of capital or income to Unit Holders pro rata according to the number of Units held as at a time decided by the Manager. The distribution may be in cash or in specie or by way of bonus Units and any such bonus Units are to rank with existing Units for the purposes of distributions of income and capital as determined by the Manager.
- 16.5 **Distribution Reinvestment:** A Unit Holder may elect to reinvest some or all of any distribution by acquiring Units in the Trust, if the Manager approves. In those cases, the Manager is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at the then applicable Issue Price. If the Manager approves distribution reinvestment, the procedure for reinvestment of distributions is to be determined by the Manager and notified to Unit Holders from time to time.
- 16.6 **Bonus issues in lieu of Distributions:** If the Manager decides to offer bonus issues of Units in lieu of distributions, a Unit Holder may elect this option in respect of all or some of its distributions from the Trust on the terms offered by the Manager. In those cases, the Supervisor shall issue Units in accordance with the terms of the offer and while the Units are Quoted, the Listing Rules.
- 16.7 **Payment:** The Manager must prepare or arrange for the preparation of distribution cheques or arrange for distributions to be paid.
- 16.8 **Transfers:** Entitlements to distributions in the Distribution Account when a transfer or transmission of Units is registered remain credited to the transferor.
- 16.9 **Classes:** The rights of a Unit Holder under this clause 16 are subject to the rights, obligations and restrictions attaching to the Units which they hold.
- 16.10 **Deduction of Tax payable by a Unit Holder:** The Supervisor or the Manager may deduct from any amounts payable to a Unit Holder any Tax paid or payable on behalf of or in respect of that Unit Holder. All amounts deducted shall be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or

reimbursing the Supervisor or the Manager for the payment thereof or in the payment of the Tax to the person or authority entitled thereto (as the circumstances may require).

- 16.11 **Indemnity for Tax:** Every Unit Holder shall indemnify the Supervisor and the Manager in respect of any Tax paid or payable by the Supervisor or the Manager on behalf of or in respect of the Unit Holder.
- 16.12 **Distributions to holders of Securities outside New Zealand:** Notwithstanding any other provision of this deed, the Manager may pay such supplementary distributions to holders of Securities resident outside New Zealand as may be provided for by Part LE of the Tax Act.

SECTION 10: THE MANAGER

17. MANAGER'S POWERS

- 17.1 **General Powers:** Subject to the provisions of the Act and this deed, the Manager shall manage and administer the Trust for the benefit of Unit Holders generally with full and complete power of management. In particular, the Manager shall, subject to the provisions of this deed, take all steps which in its discretion it considers are necessary or desirable in relation to the Trust, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Assets. Subject to the provisions of this deed and the power vested in the Supervisor to settle all transactions of the Trust set out in clause 20, the Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full and absolute power to do the following in relation to the Trust:
- (a) make all investment decisions in relation to the Trust;
 - (b) manage the Assets on a day to day basis;
 - (c) determine the terms of all sales, purchases or other dealings with Assets, and all contracts, rights and other matters relating to such Assets or Liabilities;
 - (d) subject to compliance with the Statement of Investment Policy and Objectives and this deed, acquire and sell Assets for cash or upon terms;
 - (e) subject to compliance with the Statement of Investment Policy and Objectives, lease all or any part of any Assets on such terms as it thinks fit;
 - (f) attend and vote at meetings of companies or unit trusts in which the Trust holds shares or units;
 - (g) subject to compliance with Statement of Investment Policy and Objectives, lend money;
 - (h) subject to compliance with the Statement of Investment Policy and Objectives, borrow money unsecured or secured subject to the conditions contained in clause 20.4;
 - (i) subject to compliance with the Statement of Investment Policy and Objectives, instruct persons to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
 - (j) make and carry out any takeover proposal, offer or invitation;

- (k) subject to compliance with the Statement of Investment Policy and Objectives, guarantee the performance of any person in relation to any agreement, contract, undertaking or promise, provided such guarantee is in the reasonable opinion of the Manager in the interests of the Trust, and secure any such guarantee by mortgage, charge or other encumbrance over the whole or any part of the Trust;
- (l) subject to compliance with the Statement of Investment Policy and Objectives, create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any Assets for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (m) initiate or agree to the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets;
- (n) initiate or agree to any one or more of the following:
 - (i) the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets;
 - (ii) the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - (iii) the amalgamation or merger of any corporation with any other corporation;
 - (iv) the sale or other disposition of all or any part of the property or undertaking of any corporation;
- (o) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
- (p) acquire and accept for the Trust any equity of redemption;
- (q) participate in the rights and obligations (including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement) relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- (r) subject to compliance with the Statement of Investment Policy and Objectives, enter into, perform and enforce agreements;
- (s) underwrite offers of securities out of the Assets;
- (t) enter into arrangements with NZX or any other stock exchange in relation to listing or quotation of the Trust or the Units as the case may be on that exchange;
- (u) participate in joint ventures in relation to properties and property developments; and
- (v) without limiting any other provision of this deed, enter into any interest rate swap, option, forward rate agreement, futures contract or other Derivative Transaction in relation to the financial risk management of the Trust, its Assets and Liabilities.

17.2 **Bank all cash:** Cash received by the Manager or the Supervisor for the account of the Trust shall be banked to the credit of, and held in, the appropriate bank account of the Trust, pending the investment or other application of the money standing to the credit of that bank account in accordance with and subject to the provisions of this deed. The bank account shall be at all times held in the name of the Supervisor and operated only by such authorised persons, and in accordance with such directions, as the Supervisor and the Manager may agree from time to time.

17.3 **Power to Delegate:** The Manager may, with the prior approval of the Supervisor (such approval not to be unreasonably withheld), delegate to its officers and employees or any of them, or to any Related Person of the Manager or any of the officers and employees of such Related Person, or any other person or persons, all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this deed and any things required by this deed to be done by the Manager may be done by its delegate on its behalf. Without in any way affecting the generality of the foregoing the Manager may in carrying out and performing the duties and obligations on its part contained in this deed:

- (a) by power of attorney or other authorisation appoint any person to be attorney or agent or sub-delegate of the Manager, for such purposes, and with such powers, authorities and discretions, as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Manager of documents bearing facsimile signatures of the Manager, or of the attorney or agent, either with or without proper manuscript signatures of its officers thereon, provided that the Manager in any such power of attorney or other authorisation, and the attorney or agent or sub-delegate by the terms of any such sub-delegation, may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as they may think fit;
- (b) appoint or employ by writing or otherwise any person to be sub-agent for the Manager as the Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit,

provided that the Manager shall at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

17.4 **Appoint agents:** The Manager may appoint and engage any investment and/or property manager, valuer, barrister, solicitor, accountant, stock and share broker, and any such other person or persons as may be necessary, usual or desirable for the purpose of exercising its powers and performing its obligations under this deed (which person or persons may be a Related Person of the Manager) and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Manager subject to its right of reimbursement pursuant to clause 18.11.

17.5 **Covenants by Manager:** The Manager covenants with the Supervisor and with the intent that the benefit of these covenants shall inure not only to the Supervisor but to the Unit Holders of the Trust:

- (a) The Manager will use reasonable endeavours to ensure that the operation of the Trust is carried on and conducted in a proper and efficient manner and that the Assets are properly managed and supervised.
- (b) As the Supervisor may from time to time require, the Manager will:

- (i) make available to the Supervisor for inspection all the accounting and other records of the Manager relating to the Trust held by the Manager;
 - (ii) provide the Supervisor with copies of the Financial Statements in accordance with clauses 14.5 and 14.6;
 - (iii) provide the Supervisor with copies of any notices sent by the Manager to Unit Holders; and
 - (iv) give to the Supervisor such information as the Supervisor may reasonably require with respect to the Trust.
- (c) The Manager shall provide the Supervisor with (or procure the provision of) such information, reports, records and certificates in such form and at such times as the Manager and the Supervisor agree in writing from time to time (such agreement not to be unreasonably withheld) and as otherwise required by the Act.
- (d) The Manager will convene meetings of Unit Holders in accordance with the provisions of section 13 of this deed.
- (e) The Manager will pay all money belonging to the Trust, received by the Manager, into the Trust's bank account.
- (f) The Manager shall not commit the Trust to any transaction involving, or valued at, more than 10% of the value of the Assets without first obtaining the Supervisor's written approval (such approval not to be unreasonably withheld or delayed, having regard always to the Supervisor's duty to act in the interests of Unit Holders generally).
- (g) The Manager shall obtain the Supervisor's approval (such approval not to be unreasonably withheld or delayed) of all prospectuses and investment statements, prior to their distribution.

17.6 **Manager's Report:** The Manager shall as soon as practicable (but not being later than 3 months) after the end of each Financial Year of the Trust, provide to the Supervisor and all Unit Holders, a report reviewing the operation of the Trust during the Financial Year then ended. This clause is subject to clause 28.7.

18. FEES AND EXPENSES - MANAGER

18.1 **Manager's Fees:** Without limiting clause 18.7, the Manager shall be entitled to a management fee to be paid from the Assets comprising the aggregate of:

- (a) the Base Fee (calculated in accordance with clause 18.3), plus GST; and
- (b) the Performance Fee (calculated in accordance with clauses 18.4 to 18.6), plus GST.

18.2 **Payment:**

- (a) Subject to clause 18.3:
 - (i) For the period from 1 April 2014 up to and including 31 March 2019, the Base Fee shall be accrued in equal monthly instalments in arrears. The Base Fee payable for the first six months of each Financial Year shall be paid to the Manager within two months of the release to NZX of the half-year interim Financial Statements of the Trust with respect to those six months, and the Base Fee payable for the second six months of each Financial Year shall be paid to the Manager within two months of the release to NZX of the Financial Statements of the Trust with respect to that Financial Year.
 - (ii) For all other periods, the Base Fee shall be paid in equal monthly instalments in arrears.
- (b) The Performance Fee shall be calculated and paid yearly in arrears.

18.3 **Base fee:**

- (a) The Base Fee for a Financial Year shall be calculated by reference to the book value of the Relevant Assets in the Trust's audited statement of financial position for the prior Financial Year, with such book value being deemed to be adjusted from time to time in accordance with clauses 18.3(b) and 18.3(c). "Relevant Assets" means all Assets of the Trust, other than cash and trade debtors.
- (b) Where, during a Financial Year, the Manager makes any capital expenditure on a Relevant Asset forming part of the Assets, or acquires a Relevant Asset, the Base Fee for that part of the Financial Year subsequent to the capital expenditure or the acquisition of the Relevant Asset (as the case may be) shall:
 - (i) in the case of any capital expenditure, be increased with effect from (and including) the day in which the expenditure is incurred by adding the amount of the expenditure to the book value of the Relevant Assets for the purposes of clause 18.3(a); and
 - (ii) in the case of an acquisition of a Relevant Asset, be increased with effect from (and including) the day in which the acquisition occurs by adding the acquisition price of the Relevant Asset to the book value of the Relevant Assets for the purposes of clause 18.3(a).
- (c) Where, during a Financial Year, the Manager disposes of a Relevant Asset, the Base Fee for that part of the Financial Year subsequent to the disposal of the Relevant Asset shall be decreased with effect from (and including) the day in which the disposition occurs by reducing the book value of the Relevant Assets for the purposes of clause 18.3(a) by the book value of the Relevant Asset sold.
- (d) The Base Fee shall be calculated as follows:
 - (i) if the book value of the Relevant Assets (such value being calculated in accordance with clause 18.3(a)) is less than, or equal to, \$500 million, 0.50% per annum of such value; and

(ii) if the book value of the Relevant Assets (such value being calculated in accordance with clause 18.3(a)) is greater than \$500 million, the aggregate of:

(aa) \$2.5 million; and

(bb) 0.40% per annum of the amount by which such value exceeds \$500 million,

less, in each case, a rebate determined in accordance with clause 18.3(e).

(e) The rebate referred to in clause 18.3(d) shall be X% per annum of Development Land Value where:

"Development Land Value" means:

(i) For the first month after the balance date of the Financial Statements of the Trust for a Financial Year, the amount recorded in those Financial Statements as the value of "Development Land".

(ii) For the first month after the balance date of the interim half-year Financial Statements of the Trust, the amount recorded in those Financial Statements as the value of "Development Land".

(iii) For each other month, the amount that the Manager (acting reasonably) considers would have been given to "Development Land" in Financial Statements of the Trust if they had been prepared as at the last day of the prior month.

"X%" means, with respect to the Base Fee to be accrued or paid for a month, the percentage that the Base Fee per annum determined for that month under clause 18.3(d), prior to the deduction of the rebate, represents of the book value of the Relevant Assets (such value being the value used in the calculation in accordance with clause 18.3(a) of that Base Fee).

(f) If, in accordance with clauses 18.3(a) to 18.3(e), the Base Fee to be accrued or paid for a month cannot be determined pending the completion of any Financial Statements, the Trust shall accrue or pay, as the case may be, a Base Fee for that month equal to the last Base Fee for a month determined in accordance with clauses 18.3(a) to 18.3(e). On the Financial Statements being completed and the Base Fee for that month being determined, the Manager shall make any necessary adjustments to the accounting records of the Trust to reflect the actual Base Fee, and (if the Base Fee is then being paid in monthly instalments pursuant to clause 18.8(b)) the Manager shall be paid by, or shall refund to, the Trust the necessary adjusting amount to reflect the actual Base Fee.

(g) The Base Fee shall be adjusted on such occasions during the Financial Year as is necessary to comply with the provisions of clauses 18.3(b) and 18.3(c). If such an adjustment is made in any month, the Base Fee shall be calculated for that month by reference to the weighted average book value of the Relevant Assets (determined in accordance with clause 18.3(a)) in that month.

(h) The amendments made to clauses 18.2, 18.3, 18.7 and 18.8, as approved by Unit Holders at a meeting on 5 August 2014, shall be deemed to come into effect on 1 April 2014, such that the Base Fee for each Financial Year thereafter shall (subject to those clauses) be calculated, and paid, in accordance with clauses 18.2, 18.3, 18.7, and 18.8, as amended.

18.4 Performance Fee:

- (a) The Performance Fee shall be calculated as follows:
 - (i) If Unit Holders' Returns in the relevant Financial Year are less than or equal to the Threshold, the Performance Fee for that Financial Year shall be \$0, and any Deficit shall be applied in the manner specified in clause 18.6(a).
 - (ii) Subject to clause 18.4(a)(iv), if Unit Holders' Returns in the relevant Financial Year are greater than the Threshold but less than or equal to the Cap, the Performance Fee for that Financial Year is 10% of the amount by which Unit Holders' Returns are greater than the Threshold multiplied by the weighted average number of Units on issue during the Financial Year.
 - (iii) Subject to clause 18.4(a)(iv), if Unit Holders' Returns in the relevant Financial Year are greater than the Cap, the Performance Fee for that Financial Year is 10% of the amount by which Unit Holders' Returns exceed the Threshold, up to and including the Cap, multiplied by the weighted average number of Units on issue during the Financial Year, and the Excess shall be applied in the manner specified in clause 18.6(a).
 - (iv) Notwithstanding clause 18.4(a)(ii) and clause 18.4(a)(iii), if Unit Holders' Returns in the relevant Financial Year are less than zero:
 - (aa) clause 18.4(a)(ii) and clause 18.4(a)(iii) shall have no application to that Financial Year;
 - (bb) no Performance Fee shall be payable with respect to that Financial Year; and
 - (cc) an Excess for that Financial Year shall be determined as if the Cap for that Financial Year were the Threshold, and that Excess shall be applied in the manner specified in clause 18.6(a).
- (b) For the purposes of this clause 18.4 and clauses 18.5, 18.6, 18.7 and 18.8:
 - (i) "**Benchmark Index**" means a gross accumulation index created from entities listed on the NZSX that have a principal focus on investment in real property, excluding the Trust, in a form consistent with the terms of the explanatory memorandum sent by the Manager to Unit Holders concerning the Performance Fee dated 13 November 2007, as calculated by a suitably qualified and experienced person appointed by the Manager and approved by the Supervisor. The Benchmark Index shall commence at 100 on the first Business Day of the relevant Financial Year.
 - (ii) "**Cap**" means, subject to clause 18.4(a)(iv) and in respect of any Financial Year, an amount calculated at the rate of the aggregate of the Target Return and 5% per annum on the opening Unit price for that Financial Year (calculated in accordance with clause 18.4(c)) and expressed as a monetary amount.
 - (iii) "**Deficit**" means, where Unit Holders' Returns for the relevant Financial Year are less than the Threshold, the difference, expressed

as a monetary amount, between the Threshold and the actual Unit Holders' Returns for that Financial Year.

- (iv) **"Distribution"** means, in respect of any Financial Year, the aggregate distributions per Unit declared by the Manager for, and relating to, that Financial Year, plus the aggregate imputation credits per Unit attached to those distributions.
 - (v) **"Excess"** means, subject to clause 18.4(a)(iv) and where Unit Holders' Returns for the relevant Financial Year are greater than the Cap, the difference, expressed as a monetary amount, between the Unit Holders' Returns in the relevant Financial Year and the Cap.
 - (vi) **"Net Balance"** means, at the end of each Financial Year, the amount for that Financial Year determined in accordance with clause 18.6(a).
 - (vii) **"Target Return"** means, in respect of any Financial Year, the return represented by the change in the Benchmark Index between the first Business Day of the Financial Year and the final Business Day of the Financial Year, as calculated by a suitably qualified and experienced person appointed by the Manager and approved by the Supervisor, expressed as a percentage.
 - (viii) **"Threshold"** means, in respect of any Financial Year, an amount calculated as the Target Return per annum on the opening Unit price for that Financial Year (calculated in accordance with clause 18.4(c)) and expressed as a monetary amount.
 - (ix) **"Unit Holders' Returns"** means, in the relevant Financial Year, the Distribution for that Financial Year, plus or minus (as the case may be) the change in Unit price of the Units of the Trust over the relevant Financial Year (calculated in accordance with clause 18.4(c)) and plus or minus any Net Balance applied pursuant to clause 18.6(b).
- (c) For the purposes of calculating the opening price of Units and any change in the price of Units in this clause 18.4:
- (i) the opening Unit price (subject to adjustment under clause 18.5 for a rights issue or a reorganisation of issued capital) for the relevant Financial Year shall be the weighted average of the prices at which Units were sold through the NZSX during the last five trading days of the previous Financial Year; and
 - (ii) the closing price of Units during the relevant Financial Year shall be the weighted average of the prices at which Units were sold through the NZSX during the last five trading days of the relevant Financial Year,
- or, if no sales occurred during the relevant period, the weighted average of the prices at which Units were sold through the NZSX on the last trading day on which sales occurred prior to that period.
- (d) The amendments made to clauses 18.4 to 18.8, as approved by Unit Holders at a meeting on 30 November 2007, shall be deemed to come into effect on 1 April 2007, such that the Performance Fee for each Financial Year thereafter shall be calculated in accordance with clause 18.4 to clause 18.8, as amended.

18.5 Rights Issue adjustment:

- (a) Where there has been a rights issue during the relevant Financial Year, the opening price (for the purposes of clause 18.4(c)) shall be calculated as follows:

$$\frac{(P \times p) + (R_1 \times r_1)}{p + r_1}$$

where:

P = the opening price of Units on issue at the start of the relevant Financial Year (calculated in accordance with clause 18.4(c));

p = the number of Units on issue at the start of the relevant Financial Year;

R₁ = rights issue price; and

r₁ = number of Units taken up under the rights issue.

- (b) In the event of a reorganisation of the issued capital of the Trust (other than a rights issue but including, although not limited to, a subdivision, consolidation or cancellation of Units) during the relevant Financial Year, the opening price shall be adjusted by the Manager to fairly reflect the effect of the reorganisation on the price of the Units. The Manager shall ensure that the method of calculation is approved by a suitably qualified independent chartered accountant as being fair and reasonable in the circumstances.

18.6 Deficits, Excesses and Net Balance:

- (a) As at 1 April 2007, the Net Balance is deemed to be zero. At the end of each following Financial Year:
- (i) First, if any amount of the Net Balance at the end of the prior Financial Year is applied:
 - (aa) in accordance with clause 18.6(b)(i), that amount shall be subtracted from the Net Balance; and
 - (bb) in accordance with clause 18.6(b)(ii), that amount shall be added to the Net Balance.
 - (ii) After any adjustment pursuant to clause 18.6(a)(i), if there is a Deficit for that Financial Year, an amount equal to that Deficit multiplied by the weighted average number of Units on issue during the Financial Year shall be subtracted from the Net Balance.
 - (iii) After any adjustment pursuant to clause 18.6(a)(i), if there is an Excess for that Financial Year, an amount equal to that Excess multiplied by the weighted average number of Units on issue during the Financial Year shall be added to the Net Balance.
- (b) To determine Unit Holders' Returns for a Financial Year:
- (i) If the Net Balance at the end of the prior Financial Year is positive, it shall be divided by the weighted average number of Units on issue during the Financial Year, and that amount shall then be applied (as

an addition) to determine Unit Holders' Returns in the relevant Financial Year, but only to the extent of the Cap.

- (ii) If the Net Balance at the end of the prior Financial Year is negative, it shall be divided by the weighted average number of Units on issue during the Financial Year, and that amount shall then be applied (as a subtraction) to determine Unit Holders' Returns in the relevant Financial Year, but only to the extent that Unit Holders' Returns would otherwise be greater than the Threshold.

18.7 Cessation of Trust or management: On termination of the Trust, or if the Manager ceases to hold office as manager of the Trust for any reason, the Manager shall be paid out of the Assets:

- (a) all fees under this section 18 which have accrued prior to the date of termination or cessation (as the case may be), within 14 days of that date;
- (b) a proportion of the Base Fee instalment accrued or payable for the month in which the date of termination or cessation (as the case may be) falls, equal to the proportion that the number of days in that month prior to (and including) that date bears to the total number of days in that month, within 14 days of the end of that month. Any person becoming the manager of the Trust in that month shall be entitled to the balance of the Base Fee instalment;
- (c) an amount equal to the Performance Fee that would be payable under clauses 18.4 to 18.6 for the period between the expiry of the prior Financial Year and the date of termination or cessation (as the case may be), calculated as if that period was a Financial Year, and provided that:
 - (i) notwithstanding anything in clause 18.6, any Net Balance at the end of the prior Financial Year shall be applied in accordance with clause 18.6(b)(i) or clause 18.6(b)(ii) (as the case may be), without restriction by the Threshold or Cap, to determine Unit Holders' Returns in that period;
 - (ii) notwithstanding anything in clause 18.4(b), for the purposes of this clause 18.7 the "**Threshold**" means, for that period, an amount calculated at the Target Return per annum on the opening Unit price for that period (calculated in accordance with clause 18.4(c)) and expressed as a monetary amount;
 - (iii) if Unit Holders' Returns in that period are greater than the Cap, the Performance Fee for that period shall be determined in accordance with clause 18.4(a)(iii), except that it shall not be limited by reference to the Cap, provided that no Performance Fee shall be payable if Unit Holders' Returns in that period are less than zero; and
 - (iv) no Performance Fee shall be payable for the Financial Year in which the termination or cessation occurs to any person becoming the manager of the Trust in that period. At the commencement of the following Financial Year, the Net Balance shall be deemed to be zero.

18.8 Obligation to subscribe for Units:

- (a) On receipt of payment of any Base Fee, the Manager shall immediately thereafter subscribe (or cause a person nominated by the Manager to subscribe) for, and shall issue to itself or such person, a number of Units (rounded down to the nearest whole number of Units) determined as follows:

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

where "P" is the higher of:

- (i) the weighted average trading price of the Units on the NZSX over the five Business Days preceding the date of receipt of payment of the Base Fee; and
- (ii) the Net Asset Value per Unit on the day immediately preceding the date of receipt of payment of the Base Fee,

provided that if the Units are not Quoted, or if no sale occurred on any day referenced in paragraph (i), "P" shall be the amount specified in paragraph (ii).

The Manager or other person to whom the Units are issued shall immediately pay an amount equal to the Base Fee to the Supervisor as payment for the issue of such Units.

(b) Clause 18.8(a) shall have no application:

- (i) to any Base Fee or other amount paid in accordance with clause 18.7;
- (ii) if the issue of any Units pursuant to that clause would breach the Listing Rules;
- (iii) if the Manager, having taken legal advice from a firm experienced in matters of this nature, determines that it would be, or would likely be, a breach of any law to issue any Units pursuant to that clause;
- (iv) if a majority of the Independent Directors (as defined in the Listing Rules) of the Manager determines that the issue of Units pursuant to clause 18.8(a) is not in the best interests of the Trust;
- (v) to the extent that the issue of Units pursuant to clause 18.8(a), assuming any issue of Units expected to be made under clause 18.8(c) (or otherwise expected to be made to any member of the group of companies, trusts and other entities of which the Manager is a member) had been made, would cause the Manager or that group to hold 25% or more of the total Units, or, where the Manager or that group already holds 25% or more of the total Units, would cause the Manager or that group to hold a higher percentage of the total Units;
or
- (vi) to any Base Fee paid with respect to any period after 31 March 2019.

(c) On receipt of payment of any Performance Fee, the Manager shall immediately thereafter subscribe (or cause a person nominated by the Manager to subscribe) for, and shall issue to itself or such person, a number of Units (rounded down to the nearest whole number of Units) determined as follows:

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

where "P" is the higher of:

- (i) the weighted average trading price of the Units on the NZSX over the five Business Days preceding the date of receipt of payment of the Performance Fee; and
- (ii) the Net Asset Value per Unit on the day immediately preceding the date of receipt of payment of the Performance Fee,

provided that if the Units are not Quoted, or if no sale occurred on any day referenced in paragraph (i), "P" shall be the amount specified in paragraph (ii).

The Manager or other person to whom the Units are issued shall immediately pay an amount equal to the Performance Fee to the Supervisor as payment for the issue of such Units. Units issued under this clause shall be issued after the final record date for any distribution made to Unit Holders for, and relating to, that Financial Year.

(d) Clause 18.8(c) shall have no application:

- (i) to any Performance Fee or other amount paid in accordance with clause 18.7;
- (ii) if the issue of any Units pursuant to that clause would breach the Listing Rules;
- (iii) if the Manager, having taken legal advice from a firm experienced in matters of this nature, determines that it would be, or would likely be, a breach of any law to issue any Units pursuant to that clause; or
- (iv) if a majority of the Independent Directors of the Manager determine that the issue of Units pursuant to clause 18.8(c) is not in the best interests of the Trust.

18.9 Other fees:

- (a) The Manager may, with the Supervisor's approval (such approval not to be unreasonably withheld or delayed), employ other members of the Group in accordance with this deed to provide services, including the services described in sub-clause (b) below, but not any services which are ordinarily expected to be performed by the Manager itself. These providers will be paid a reasonable fee for their services by the Trust. Such services shall be on normal commercial terms, or terms as favourable to the Trust as normal commercial terms.
- (b) Instead of contracting other parties to do so, the Manager may, with the Supervisor's approval (such approval not to be unreasonably withheld or delayed), itself provide services in relation to engineering, repairs, maintenance, leasing, sales and acquisitions, property development, project management, building design and registry management. The Manager is entitled to reasonable fees for these services, if it provides them itself, in addition to its fees for managing the Trust. Such services shall be on normal commercial terms, or terms as favourable to the Trust as normal commercial terms.

18.10 **Amendment:** Clauses 18.1 to 18.15 shall not be amended without the agreement of the Manager.

18.11 **Reimbursement of Expenses:** In addition to its fees the Manager is entitled to be reimbursed out of the Trust for the following items of expenditure in relation to the Trust:

- (a) all costs, charges and disbursements incurred in connection with the acquisition, development, registration, custody, ownership, leasing of tenancies, disposal of or other dealing with an Asset including legal costs, stamp duties, valuation fees, search and enquiry fees, brokerage, commission, registration fees and other outgoings of and in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement, refurbishment, redevelopment or other dealing with or disposition of an Asset;
- (b) the costs of convening and holding any meetings of Unit Holders;
- (c) duty on cheques issued to Unit Holders and stamp duty (if any) in respect of the repurchase, redemption and sale of Units;
- (d) the reasonable remuneration and expenses of the Auditor in relation to the Trust;
- (e) the reasonable remuneration and expenses of the Valuer and any real estate agent;
- (f) reasonable property development fees and expenses;
- (g) reasonable acquisition, sales and leasing commissions;
- (h) any liability of the Manager or its directors under the Act, or repayment of subscription amounts pursuant to the Act;
- (i) reasonable building design fees;
- (j) all Taxes or any amount in bona fide reimbursement of any such Taxes properly charged to the Supervisor or Manager (whether by any taxing authority or any other person) in connection with the operation of the Trust on account of the Manager, the Supervisor, any Unit Holder or otherwise (excluding any Taxes levied on the Manager or the Supervisor in its personal capacity);
- (k) all mailing and postage costs in respect of all certificates, cheques, Financial Statements, distribution statements, notices and other documents posted to all or any Unit Holders or other persons in relation to the Trust in accordance with the provisions of this deed;
- (l) the costs of preparation of this deed or any amendments, including the fees of solicitors and other advisors in relation thereto;
- (m) costs for the services identified in clause 18.9(b) where those services are provided by persons other than the Manager;
- (n) the reasonable costs of investigating proposals for the Trust;
- (o) the following costs, charges and expenses incurred by the Manager (or by the Supervisor after consultation with the Manager):
 - (i) fees and expenses of any solicitor, barrister, chartered accountant, computer expert or other professional adviser or other expert from time to time employed in relation to the Trust;
 - (ii) all costs, charges and expenses incurred in relation to the preparation, registration and distribution of any prospectus or investment statement issued by the Manager and any offer and issue

of Units (including, without limitation, expenses and brokerage) in relation to the Trust and the preparation, registration (if requisite) and distribution of any periodical or other report or document required by law or this deed to be prepared in respect of the Trust;

- (iii) expenses in connection with the keeping of accounting records and the Register; and
- (iv) all other costs, charges and expenses incurred in connection with the ordinary administration of the Trust excluding any internal administration expenses of the Manager or the Supervisor.
- (p) all amounts payable in relation to listing the Trust or quotation of the Units on the NZSX or any other stock exchange upon which the Trust is listed;
- (q) any other expenditure properly and reasonably incurred by the Manager in connection with carrying on its duties under this deed in relation to the Trust; and
- (r) such other amounts for which, pursuant to any other provision of this deed, the Manager is properly entitled to be reimbursed.

18.12 Supervisor to Assist Management: Subject to this deed, the Supervisor is empowered to advance or otherwise make available to the Manager out of the Trust, or to authorise the Manager to retain out of the Trust, such amount as the Supervisor from time to time considers to be reasonable and proper in order to enable the Manager to perform and carry out its powers and obligations with regard to the management of the Trust. Any such amount shall be on account only of costs, charges and expenses that are, or will become, reimbursable to the Manager, or are or will be owing in respect of Assets. The Manager shall, whenever so required by the Supervisor, furnish to the Supervisor such evidence as the Supervisor may require as to the utilisation of any such amounts and the purpose for which the same have been or are intended to be applied by the Manager.

18.13 Auditor's Certificate: The Supervisor may request and accept as satisfactory evidence of the amounts properly payable to the Manager under the provisions of this clause 18, a certificate of the Auditor. Any amounts which may be overpaid or over provided to the Manager pending the furnishing of such certificate shall be repaid by the Manager to the Supervisor forthwith after the completion of such certificate.

18.14 Manager to Bear Other Outgoings: Except as otherwise specifically provided for in this deed, all costs, charges, expenses and outgoings incurred by the Manager in relation to the management and administration of the Trust shall be borne and paid by the Manager.

18.15 Waiver of Fees and Remuneration: The Manager may at any time and from time to time, by notifying the Supervisor, in its absolute discretion, waive payment of fees, remuneration or reimbursement due to it generally or in relation to any particular Unit Holder or potential Unit Holder.

19. REMOVAL AND RETIREMENT OF MANAGER

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

- (a) the Manager is removed from office by the High Court pursuant to section 209 of the Act on the application of the Supervisor, any Unit Holder, or the FMA; or

- (b) the Supervisor certifies pursuant to section 185(1)(a) of the Act that it is in the best interests of Unit Holders that the Manager should cease to hold office and directs (in writing) that the manager be removed; or
- (c) pursuant to section 185(1)(b) of the Act, Unit Holders so direct by means of an Extraordinary Resolution; or
- (d) the Manager is removed from office by the Supervisor on any of the grounds specified in clause 19.2.

If the Supervisor or any Unit Holder proposes to make an application of the nature referred to in clause 19.1(a), or the Supervisor is proposing to act in accordance with clause 19.1(b), the Supervisor or Unit Holder shall give 10 Business Days' notice to the Manager of the proposal (setting out, in reasonable detail, the rationale for the proposal), and shall reasonably consult in that period with the Manager as to the Supervisor's or Unit Holder's concerns, before making any such application or so acting, provided that the Supervisor shall be under no obligation to give such notice to, or consult with, the Manager (as the case may be) if the Supervisor, having regard to the interests of Unit Holders generally, considers that the circumstances are such that it is necessary for it to exercise its rights under sections 185(1)(a), 185(1)(b) or 209(1)(a) of the Act before the 10 Business Day period expires.

19.2 Removal of Manager from office by Supervisor: The Supervisor shall be entitled to remove the Manager if:

- (a) the Manager is in material breach of its obligations under this deed, and which breach has prejudiced or will prejudice Unit Holders;
- (b) the Manager fails, in a material manner or to a material extent, to carry out its duties to the reasonable satisfaction of the Supervisor; or
- (c) the Manager is wound up (except for the purposes of an amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager,

provided that the Supervisor shall not be so entitled to remove the Manager pursuant to either of clauses 19.2(a) or 19.2(b), unless the Supervisor has given 30 Business Days' prior notice to the Manager of the relevant breach or failure, and the Manager has failed in that period to remedy, or take reasonable steps to remedy, that breach or failure.

19.3 Manager to cease activities: If the Manager ceases to hold office in relation to the Trust pursuant to clauses 19.1 or 19.2 the Manager shall immediately desist from all activities related to the Trust.

19.4 Manager may retire: The Manager may retire in relation to the Trust at any time, without assigning any reason, upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the Trust pursuant to clause 19.5 and has executed the deed referred to in clause 19.6.

19.5 Supervisor to appoint a temporary Manager: Where there is a vacancy in the office of manager or the Manager for the Trust has retired, a temporary manager shall be appointed by the Supervisor in accordance with section 186(3) of the Act. A permanent Manager for the Trust shall be appointed by the Unit Holders in accordance with clause 24.37(g).

19.6 Provisions in relation to new Manager: A new or temporary Manager appointed in relation to the Trust shall forthwith upon such appointment execute a deed in such form

as the Supervisor may require whereby the new or temporary manager undertakes to the Supervisor and the Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the former Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new or temporary Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new or temporary Manager had been originally named as a party hereto.

- 19.7 **Manager's entitlements preserved:** Nothing in this clause 19 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this deed prior to the date of or arising on the Manager's retirement or removal from office.
- 19.8 **Settlement of amounts owing:** The Supervisor may settle with the Manager the amount of any sums payable by the Manager to the Supervisor or by the Supervisor to the Manager and may give to or accept from the Manager a discharge in respect thereof and any such settlement or discharge shall be conclusive and binding.
- 19.9 **Transfer of management to members of the Group:** Notwithstanding any other provision of this deed, the Manager may, upon giving written notice to the Supervisor, transfer its office of manager under this deed to any other member of the Group subject, at the request of the Supervisor, to any arrangements between the Supervisor and the Manager being assumed by the new manager.
- 19.10 **Retirement of Goodman (NZ) Limited:** Notwithstanding any other provision of this deed, if Goodman (NZ) Limited ceases for any reason, other than because of a transfer under clause 19.9, to be the Manager then (except to the extent that Goodman (NZ) Limited agrees otherwise in writing):
- (a) if on the date of such cessation the name of the Trust includes the expression "Goodman", from that date the name of the Trust shall be a name, without the expression "Goodman", set by the Manager; and
 - (b) the Supervisor and the Manager shall each ensure that, from the date of such cessation, the expression "Goodman" does not appear in any documents, publications, or advertisements relating to the Trust, and that all Registers and records are amended to record the change of name of the Manager.
- 19.11 **Benefit to the Group:** It is hereby declared, for the purposes of the Contracts (Privity) Act 1982, that clause 19.10 shall be enforceable by any member of the Group. However, the benefit extended to members of the Group is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this deed, without the consent of members of the Group, other than Goodman (NZ) Limited (the consent of which shall be required).
- 19.12 **Benefit to the Colonial Group:** Notwithstanding any other provision of this deed, unless Colonial First State Investments (NZ) Limited agrees otherwise in writing, the Supervisor and the Manager shall each ensure that the expression "Colonial" does not appear in any documents, publications, or advertisements relating to the Trust, and that all Registers and records have been amended to record the change of name of the Manager from Colonial First State Property (NZ) Limited to Macquarie Goodman (NZ) Limited. For the purposes of the Contracts (Privity) Act 1982, this clause 19.12 shall be enforceable by any member of the group of companies of which Colonial First State Investments (NZ) Limited is a member (referred to in this clause 19.12 as the "Colonial Group"). However, the benefit extended to members of the Colonial Group is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this deed, without the consent of

members of the Colonial Group, provided that the consent of Colonial First State Investments (NZ) Limited shall be required to any amendment to this clause 19.12.

SECTION 11: THE SUPERVISOR

20. SUPERVISOR'S POWERS

- 20.1 **General Powers:** Subject to the provisions of this deed and the Act and the powers, rights and discretions given to the Manager by the Act and this deed, the Supervisor shall have the rights and powers in respect of the Trust and over and in respect of the Assets which it could exercise if it were the absolute and beneficial owner of such Assets. Notwithstanding the preceding references to the provisions of this deed, the Supervisor shall have the power to settle and complete all transactions in respect of the Trust.
- 20.2 **Limited Investment Policy:** The Supervisor acknowledges and relies upon the intention of this deed that, unless the Manager in its absolute discretion decides otherwise, the only transactions intended to be entered into on behalf of the Trust are those which are consistent with the Statement of Investment Policy and Objectives, and the Supervisor is directed to act in accordance with this intention.
- 20.3 **Limitation on Investment Duty:** Accordingly, notwithstanding the provisions of the Trustee Act 1956, the Supervisor is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets irrespective of any belief or opinion or advice that the Manager or the Supervisor may hold or receive as to the prospects for the relevant Assets and the possibility of appreciation or depreciation on the value of the Units, to the intent that the benefit to be derived or derivable by Unit Holders and the investment risks they bear shall continue to reflect the limited investment policy set out in clause 20.2.
- 20.4 **Power to Borrow and give Guarantees:**
- (a) Subject to clauses 20.4(b) to 20.4(e), the Supervisor shall have the power to, and at the direction of the Manager if the Statement of Investment Policy and Objectives so allow shall, raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of the Trust, and give any guarantee or undertaking or security in relation to the repayment of money and interest, costs and other charges and expenses upon such terms and conditions in all respects as the Manager may think fit, and in particular but without limiting the generality of the terms of this clause by becoming a party to a bill of exchange or by charging or mortgaging all or any of the Assets; provided that the aggregate of total borrowings made by the Supervisor together with any amounts guaranteed (not being amounts included in total borrowings) shall not exceed 50% of the aggregate Value of the Assets.
 - (b) All borrowings, raising of money, charging of Assets, guarantees or other similar transactions entered into or undertaken pursuant to this clause 20.4 in relation to the Trust ("Security Transactions") shall be entered into or made only where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Unit Holders or for the purposes of conducting the investment or management or other operations of the Trust pursuant to this deed including the repayment or redemption of any Units from time to time and the Supervisor or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.

- (c) The Manager shall determine and give notice to the Supervisor of the amounts, name of the lender, and other terms and conditions of all borrowing, credit accommodation, or finance to be undertaken by the Trust and all guarantees and securities to be entered into. The Supervisor shall subject to clause 20.4(e) enter into and execute all loan documents, guarantees and securities and will take all other steps necessary to give effect to any such borrowing, credit accommodation, or finance or the giving of such guarantees and securities.
- (d) The Manager shall not take any action which causes the borrowing limitation in clause 20.4(a) to be exceeded.
- (e) There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clause 20.4(a) or clause 20.4(c) or to complete any documents, guarantees or securities unless the Supervisor is satisfied that the Supervisor's liability is restricted to the Assets.
- (f) No person lending or advancing money to the Supervisor in respect of the Trust or completing documents, or guarantees or securities in respect thereof shall be concerned to enquire as to whether or not the limitations set out in clause 20.4(a) have been observed.

20.5 **Appointment of Advisors:** In addition to any right under the Act and without in any way affecting the generality of the foregoing, the Supervisor in carrying out and performing the duties on its part as owner of the Assets may appoint, engage, employ and contract any Valuer, barrister, solicitor, accountant, stockbroker, and such other person or persons as may be necessary usual or desirable for the purpose of assisting it in exercising its powers and performing its obligations under this deed and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Supervisor or Manager from the Trust. Any person appointed by the Supervisor pursuant to this clause shall be appointed following consultation with the Manager.

20.6 **Custodian:** The Supervisor shall be entitled in accordance with the Act to nominate a custodian in respect of the Trust in which shall be vested the Assets.

20.7 **Covenants by Supervisor:** The Supervisor covenants with the Manager in relation to the Trust and with the intent that the benefit of this covenant shall inure not only to the Manager but also to the Unit Holders:

- (a) The Supervisor will act continuously as Supervisor until the Trust is terminated as herein provided or it has retired or been removed as Supervisor in the manner herein provided.
- (b) Subject to the terms of this deed, the Supervisor shall use all reasonable endeavours to ensure the Assets are kept safely and shall hold them as trustee for the Unit Holders upon the terms of this deed.
- (c) Except as directed by the Manager or otherwise provided in this deed, the Supervisor shall not sell, mortgage, charge or part with possession of (or permit any nominee of the Supervisor so to do) any of the Assets.
- (d) The Supervisor shall without delay forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets.

- (e) The Supervisor will institute, prosecute, defend and compromise all such legal and arbitral proceedings related to its duties and obligations as Supervisor, and refer all such matters to arbitration and submit to arbitration, as the Manager may request in writing and in such places and jurisdictions as the Manager may so request.
- (f) Subject to the terms of this deed and the Act, the Supervisor shall execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Supervisor under this deed, to enable the Manager or any person nominated by the Manager to exercise the powers of management or other rights of the Manager in relation to this deed.

Provided that the Supervisor shall be entitled to require, prior to acting in any circumstances where in the Supervisor's view it is reasonable to do so, evidence satisfactory to it that it will be indemnified from the Assets for any costs or expenses incurred as a consequence of so acting and shall not be liable or responsible for any losses arising from its failure to act in such circumstances.

- 20.8 **Supervisor's Indemnity:** Should the Supervisor purchase or otherwise acquire or sell or otherwise dispose of any Asset in relation to which there is a liability, the Supervisor will have a right of indemnity out of the Trust in respect of the liability except to the extent that such liability may be attributable to the Supervisor's own negligence or wilful act or default.

21. FEES AND EXPENSES - SUPERVISOR

- 21.1 **Supervisor's Fees:** The Supervisor shall be entitled to receive and retain for its own use and benefit out of the Trust, by way of remuneration for its services as Supervisor, such fees as may be agreed upon in writing between the Supervisor and the Manager.

- 21.2 **Reimbursement of Expenses:** In addition to its fee referred to in clause 21.1, the Supervisor is authorised to pay out of the Trust or reimburse itself from the Trust for the following items of expenditure incurred by the Trust that may from time to time be met by the Supervisor from its own funds:

- (a) the remuneration of the Auditor and any reasonable expenses from the Auditor sustained in the course of the performance of the duties of the Auditor;
- (b) all mailing and postage costs from time to time incurred in sending documents to Unit Holders in conformity with any requirement of this deed and the Act and all cheque duty from time to time properly payable upon cheques in relation to the Trust;
- (c) all disbursements properly incurred in connection with the acquisition, development, registration, custody, ownership, disposal of or other dealing with an Asset including legal costs, stamp duties, valuation fees, search and enquiry fees, brokerage, commission, registration fees and other outgoings of and in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement, refurbishment, redevelopment or other dealing with or disposition of an Asset;
- (d) all Taxes or any amount in bona fide reimbursement of any such Taxes properly charged to the Supervisor or Manager (whether by any taxing authority or any other person) in connection with the operation of the Trust on account of the Manager, the Supervisor, any Unit Holder or otherwise (excluding any Taxes levied on the Manager or the Supervisor in its personal capacity);

- (e) fees paid or becoming payable for valuations of the Assets carried out in conformity with any provision of this deed;
- (f) such other fees, charges and amounts as have been paid or as are payable to any person appointed or engaged by the Supervisor pursuant to a provision of this deed authorising such appointment or engagement to the extent that such fees, charges and amounts would be payable or reimbursable to the Supervisor under any other provision of this clause or under any other provision of this deed if the services performed by the person so appointed or engaged had been carried out directly by the Supervisor;
- (g) all costs and disbursements incurred in relation to the convening and holding of meetings of Unit Holders;
- (h) all amounts payable in relation to listing the Trust and quotation of the Units on the NZSX or any other stock exchange upon which the Trust is listed;
- (i) any other expenditure properly and reasonably incurred by the Supervisor in connection with its acting as Supervisor under this deed; and
- (j) such other amounts for which, pursuant to any other provision of this deed, the Supervisor is properly entitled to be reimbursed.

22. REMOVAL AND RETIREMENT OF SUPERVISOR

- 22.1 **Removal of Supervisor:** The Supervisor may be removed from office as supervisor pursuant to section 193 of the Act.
- 22.2 **Retirement of Supervisor:** The Supervisor may retire as trustee and supervisor of the Trust at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do subject to the due appointment of a new Supervisor, the transfer to such new Supervisor of all of the Assets and any other requirement in the Act.
- 22.3 **Appointment of a New Supervisor:** The power of appointing a new trustee and supervisor of the Trust (in place of a Supervisor which has retired pursuant to clause 22.2 or been removed from office pursuant to clause 22.1) shall be vested in the Manager and, where provided by relevant legislation, the Financial Markets Authority. No person shall be appointed as a new Supervisor unless that new Supervisor is licensed (as that term is defined in the Act) and that licence covers the supervision of the Trust.
- 22.4 **Failure to Appoint Supervisor:** If the office of supervisor becomes vacant for any reason, and a new supervisor has not been appointed within two months of such vacancy occurring (including under the provisions of the Financial Markets Supervisors Act 2011), the Trust shall be wound up.

SECTION 12: PROVISIONS RELATING TO SUPERVISOR AND MANAGER

23. INDEMNITY AND RESPONSIBILITIES

- 23.1 **Indemnity:** The Supervisor and the Manager shall each be indemnified out of the Trust, to the extent permitted by the Act, from and against:

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

Unit Holders may by Extraordinary Resolution release the Supervisor or Manager or both, from any liability, and indemnify the Supervisor or Manager or both from and against any liability, either with respect to specific acts or omissions or on the Supervisor or Manager ceasing to act.

- 23.2 **Lien:** The Supervisor and the Manager shall have a lien on and may use any, or any part of, any Asset for the time being in the hands or coming into the hands of the Supervisor or the Manager for the indemnity referred to in clause 23.1 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets under this deed.
- 23.3 **Reliance of Manager and Supervisor:** Neither the Supervisor nor the Manager shall incur any liability in respect of any action taken or thing suffered by the Supervisor or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Supervisor or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.
- 23.4 **Prohibited Performance:** Neither the Supervisor nor the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law, or ordinance, rule, regulation, or by-law made pursuant thereto, or of any decree, order or judgment of any competent court, the Supervisor or the Manager shall be hindered, prevented or forbidden from so doing or performing.
- 23.5 **Tax Payments in Good Faith:** Neither the Supervisor nor the Manager shall be liable to account to any Unit Holder or otherwise for any payments made by the Supervisor or the Manager in good faith to any fiscal authority for Taxes upon the Trust or in respect of Unit Holders or upon any Unit certificates or with respect to any transaction under this deed notwithstanding that any such payment need not have been made.
- 23.6 **Supervisor Relying on Advice:** The Supervisor may act on the opinion or advice of, or a certificate or any information obtained from, any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Supervisor shall not be responsible for any loss occasioned by so acting so long as the Supervisor has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, telex, facsimile transmission, telegram or cable or other electronic means and the Supervisor shall not be liable for acting thereon although the same may contain some error or may not be authentic.
- 23.7 **Manager Relying on Advice:** The Manager may act on the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, telex, facsimile transmission, telegram or cable or other electronic means and

the Manager shall not be liable for acting thereon although the same may contain some error or may not be authentic.

23.8 **Communication between Manager and Supervisor:** Whenever pursuant to any provision of this deed any certificate, notice, instruction or other communication is to be given by the Manager to the Supervisor, or the Supervisor to the Manager, the Supervisor or the Manager, as the case may be, may accept as sufficient evidence thereof a document signed on behalf of the Manager or Supervisor by any one of their directors or by any other person or persons duly authorised by the Manager or Supervisor or any other form of communication as agreed.

23.9 **Discretion of Supervisor:** The Supervisor shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or with gross negligence, by act or omission, the Supervisor shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

23.10 **Discretion of Manager:** The Manager shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or negligently by act or omission, the Manager shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

23.11 **No Conflicts of Interest for Supervisor or Manager:** Nothing in this deed or any rule of law shall prevent the Supervisor, or any Related Person of the Supervisor, or any shareholder, director, officer, or employee of the Supervisor or any Related Person of the Supervisor, or the Manager, or any Related Person of the Manager, or any shareholder, director, officer, or employee of the Manager or any Related Person of the Manager, from:

- (a) subscribing for, purchasing, holding, dealing in, or disposing of Units; or
- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for, or entering into any sale or purchase, financial, banking, agency, or other transaction with, either or both of the Supervisor or Manager (whether in respect of the Trust or otherwise) or with any Unit Holder or any person whatsoever; or
- (c) being interested in any such contract, transaction or otherwise; or
- (d) acting as trustee or supervisor or manager of any other unit trust or investment fund; or
- (e) holding any Asset jointly with the Trust;

and none of them shall be in any way liable to account either to any other of them, the Trust, or to the Unit Holders or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees) made or derived thereby or in connection therewith.

23.12 **Limitation on Payments to Unit Holders:** Except in respect of any fraud or wilful default on the part of the Supervisor or the Manager, in no event shall the Supervisor or the Manager, as the case may be, be bound to make any payment to Unit Holders of the Trust except out of funds held by it for that purpose under the provisions of this deed.

- 23.13 **Failure to Carry out Agreement:** Subject to the provisions of this deed neither the Supervisor nor the Manager will be liable for the failure of any person to carry out any agreement with the Trust.
- 23.14 **Validity of Signatures:** The Supervisor shall be entitled to assume the validity of any signature on any transfer, form of application or other instrument so long as the Supervisor has no reason to believe that such signature is not genuine.
- 23.15 **No Dealings With Instruments where unpaid charges:** The Manager and the Supervisor shall not be required to effect any transaction or dealing with any certificate, transfer or other instrument on behalf of, or for the benefit or at the request of, any Unit Holder unless such Unit Holder shall first have paid in cash or otherwise provided, to the Manager's and the Supervisor's satisfaction, for all duties, Taxes, governmental charges, brokerage, transfer fees registration fees and other charges (whether similar to the foregoing or not) whether in respect of the certificate, transfer or other instrument or otherwise (in this clause called collectively "**duties and charges**") which may have become, or may be payable, in respect of, or prior to, or upon the occasion of, such transaction or dealing, provided always that the Supervisor shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unit Holder and to retain the amount so paid out of any money or property to which such Unit Holder may be or become entitled hereunder. This clause shall not affect the obligations of the Supervisor or the Manager elsewhere contained in this deed relating to duties and other expenses in respect of the Assets.
- 23.16 **Legal Proceedings by Supervisor:** The Supervisor may bring legal proceedings:
- (a) to obtain or recover any money that is payable to the Supervisor or any Assets that are to be vested in the Supervisor in accordance with the provisions of this deed;
 - (b) for damages against any person arising out of any loss suffered by any Unit Holder or Unit Holders, or by the Supervisor or Manager on behalf of the Trust, which the Supervisor or the Manager considers is recoverable; or
 - (c) to secure compliance with the provisions of this deed and the terms of any Prospectus or other offering document relating to the Trust.
- 23.17 **Documents in Safe Deposit:** The Supervisor shall be at liberty to place this deed and all deeds and other documents relating to this deed in any safe deposit, safe or other receptacle selected by the Supervisor, or with any bank, lawyer or firm of lawyers believed by it to be of good repute, and the Supervisor shall not be responsible for or be required to insure against any loss incurred in connection with any such deposit.
- 23.18 **Resolutions of Unit Holders:** Neither the Supervisor nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Unit Holders in respect whereof minutes have been made and signed even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Unit Holders.
- 23.19 **Forged Certificates:** The Supervisor and the Manager shall not be liable to each other or any Unit Holder by reason of having accepted as valid or not having rejected any certificate purporting to be such and subsequently found to be forged or not authentic.
- 23.20 **Reliance by Manager and Supervisor:**
- (a) The Manager shall not be responsible for any loss arising as a result of any act or omission of the Supervisor except to the extent that such loss is caused by

the negligence or default of the Manager and the Supervisor shall not be responsible for any loss arising as a result of any act or omission of the Manager except to the extent that such loss is caused by the negligence or default of the Supervisor.

- (b) The Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Supervisor except to the extent that such loss is caused by the negligence or default of the Manager and the Supervisor shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager except to the extent that such loss is caused by the negligence or default of the Supervisor.

- 23.21 **Disclosure of Information:** Subject to the terms of this deed, neither the Manager nor the Supervisor shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Unit Holder confidential, financial or other information made available to it by the other in connection with this deed.
- 23.22 **Priority for Remuneration:** The Supervisor and the Manager may retain and pay in priority to any claim by Unit Holders their respective fees and reimbursement of expenditure out of any money for the time being held in the Trust whether in the nature of income or in the nature of capital.
- 23.23 **Limit on Supervisor's Responsibility:** The Supervisor shall not be responsible for any loss or damage resulting from any act, omission, neglect, mistake or default in relation to the Trust save to the extent that the loss or damage is caused by the Supervisor's failure to show the degree of care and diligence required by section 154 of the Act.

SECTION 13: MEETINGS

24. MEETINGS OF UNIT HOLDERS

- 24.1 **Manager shall convene annual meetings:** The Manager shall convene an annual meeting of Unit Holders to be held:
 - (a) not later than 6 months after each balance date (as that term is defined in the Act) of the Trust; and
 - (b) not later than 15 months after the previous annual meeting.
- 24.2 **Manager may convene meetings:** The Manager may at any time convene a meeting of Unit Holders.
- 24.3 **Unit Holders or Supervisor may request convening meetings:** On request in writing of the Supervisor, or of either one-twentieth in number of the Unit Holders, or of a Unit Holder or Unit Holders holding (at the date of the receipt by the Manager of the request) not less than one-twentieth of the Units then on issue, the Manager shall convene a meeting of Unit Holders. Any such request shall state the nature of the business to be conducted, the terms of any resolution to be proposed at the meeting, and include an explanatory note as to the reasons for the resolution (and the Manager shall include that description of the business, the resolution and the explanatory note in the notice issued for that meeting). The Manager shall include comments on any proposed business or resolution from either or both of the Manager or Supervisor in or with the notice issued for that meeting if either or both, as the case may be, wishes to make such comments.

- 24.4 **Period for convening meetings pursuant to clause 24.3:** The Manager shall convene any meeting requested pursuant to clause 24.3 for a date falling no later than 60 Business Days from the date of receipt of the request, provided that if an annual meeting pursuant to clause 24.1 is to be held within 90 Business Days of the date of receipt of that request, then the meeting pursuant to clause 24.3 may be held on the same day as that annual meeting or any date prior to it.
- 24.5 **Content and period of all notices of meeting:** Written notice specifying the time, date and place of the meeting and the nature of the business to be transacted at the meeting (in sufficient detail to enable a Unit Holder to form a reasoned judgment in relation to it), and containing such other information as the person convening the meeting may think fit, shall be sent to all Unit Holders at their last known address and to the Supervisor, every director of the Manager, the Manager, and the Auditor at least 15 Working Days' before the meeting.
- 24.6 **Entitlement to vote and receive notices of meeting:** A Unit Holder's entitlement to receive a notice of meeting under clause 24.5 and to vote at meetings must be determined by reference to the Unit Holder's holding as recorded in the register kept under clause 6.1 as at the close of the day immediately preceding the day on which the notice of meeting is sent under clause 24.5.
- 24.7 **Irregularity of notice:** Any irregularity in a notice of meeting is waived if:
- (a) all Unit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Unit Holders agree to the waiver; or
 - (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Unit Holders.
- 24.8 **Adjournment of meeting:** If a meeting of Unit Holders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.
- 24.9 **Additional content of notice where Special Resolution or Extraordinary Resolution to be proposed:** In a meeting at which a Special Resolution or Extraordinary Resolution is to be proposed, the notice of meeting must also specify the text of any Special Resolution or Extraordinary Resolution to be submitted to the meeting and must include any explanatory memorandum required by the Act.
- 24.10 **Meeting where Special Resolution or Extraordinary Resolution to be submitted:**
- (a) Where a Special Resolution or an Extraordinary Resolution is to be submitted to a meeting of Unit Holders, a draft of the proposed notice of the meeting, must be given to the Supervisor at least ten Working Days before the notice is given (or any lesser period approved by the Supervisor).
 - (b) The notice of meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution or Extraordinary Resolution (but only if the Supervisor has provided these comments in writing to the Manager at least five Working Days before the notice is given to Unit Holders (or any lesser period approved by the Manager)).
- 24.11 **Omission to give notice:** The accidental omission to give such notice to or the non-receipt of a notice of meeting by a Unit Holder shall not invalidate the meeting.

24.12 **Notice of right to appoint proxies:** In every notice of meeting there shall appear with reasonable prominence a statement that a Unit Holder is entitled to appoint a proxy and that a proxy need not also be a Unit Holder.

24.13 **Methods of holding meetings:** A meeting of Unit Holders may be held by Unit Holders:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) at the discretion of the Manager, and subject to any conditions imposed by the Manager, participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) at the discretion of the Manager, and subject to any conditions imposed by the Manager, by combination of both of the methods described in clauses 24.13(a) and 24.13(b).

Any Unit Holder (or their proxy, attorney or representative) who participates in a meeting in accordance with clauses 24.13(b) and 24.13(c) shall be deemed to be present at that meeting while so participating.

24.14 **Attendance at Meetings:** The Supervisor, the Manager and the Auditor and their duly appointed representatives may attend and address any meeting of Unit Holders (including any adjourned meeting).

24.15 **Quorum required:** No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business.

24.16 **Quorum where no Extraordinary Resolution to be proposed:** The quorum necessary for a meeting at which no Extraordinary Resolution is to be proposed is present if at least five Unit Holders or their proxies, attorneys or representatives are present or have cast votes in accordance with clause 24.13(b) and 24.13(c) who hold Units with a combined value of no less than 10% of the value of the Units held by those persons entitled to vote.

24.17 **Quorum where Extraordinary Resolution to be proposed:** The quorum necessary for a meeting at which an Extraordinary Resolution is to be proposed is present if Unit Holders or their proxies, attorneys or representatives are present or have cast votes in accordance with clause 24.13(b) and 24.13(c) who hold Units with a combined value of no less than 25% of the value of the Units held by those persons entitled to vote.

24.18 **No quorum:** If within thirty minutes from the time appointed for any meeting a quorum is not present the meeting shall:

- (a) if called pursuant to a request of Unit Holders, lapse;
- (b) otherwise if called for the purpose of passing an Ordinary Resolution, stand adjourned to the same day in the next week at the same time and the same place, and if at the adjourned meeting a quorum is not present within thirty minutes after the time appointed for the meeting, the Unit Holders or their proxies, attorneys or representatives present are a quorum;
- (c) otherwise if called for the purpose of passing an Extraordinary Resolution, the meeting is adjourned to the day that is ten Working Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if at the adjourned meeting a quorum is not present within thirty minutes after the time appointed for the

meeting, the Unit Holders or their proxies, attorneys or representatives present are a quorum.

- 24.19 **Chairman's discretion:** The chairman of a meeting at which a quorum is present may with the consent of the Unit Holders present and entitled to be at that meeting adjourn the meeting from time to time and from place to place.
- 24.20 **Chairman:** The chairperson of a meeting shall be appointed by the Supervisor or the Unit Holders present may choose one of their number to be chairperson of a meeting of Unit Holders if:
- (a) no chairperson has been appointed by the Supervisor;
 - (b) at the meeting, the chairperson appointed by the Supervisor is not present within 15 minutes of the time appointed for the start of the meeting; or
 - (c) there is no Supervisor.
- 24.21 **Method of deciding questions at meetings:** Other than procedural matters, every question submitted to a meeting shall be decided by poll.
- 24.22 **No chairman's casting vote:** In the case of an equality of votes the chairman of the meeting shall not have a casting vote in addition to the vote or votes (if any) to which he may be entitled as a Unit Holder or as a proxy.
- 24.23 **Voting Entitlements:** Subject to clause 7.1 and 7.2 of the Schedule, on vote by voice or show of hands every Unit Holder who is present in person or any person who is present and representing a Unit Holder as his or her proxy, attorney or representative shall have one vote and on a poll every such Unit Holder, proxy, attorney or representative shall have one vote for each Unit carrying the right to vote at that meeting of which he or she is the registered Unit Holder or in respect of which he or she has the authority to vote for the registered Unit Holder.
- 24.24 **Votes of joint Unit Holders:** In the case of joint Unit Holders of a Unit, the vote of the senior who tenders a vote whether in person or by proxy or by attorney shall be accepted to the exclusion of the vote of other joint Unit Holders and for this purpose seniority shall be determined by the order in which their names stand in the register.
- 24.25 **Votes of Corporations:** A corporation being a Unit Holder may vote by any officer or representative duly authorised in writing who shall be entitled to speak, demand a poll, vote, act as proxy or attorney and in all other respects exercise the rights of a Unit Holder and shall be reckoned as a Unit Holder for all purposes.
- 24.26 **Votes of Unit Holders with an unsound mind:** A Unit Holder of unsound mind or in respect of whom an order has been made by any court having jurisdiction in lunacy may vote by his manager, curator bonis or other person in the nature of a manager or curator bonis appointed by such court and such manager, curator bonis or other person may on a poll vote by proxy or as attorney.
- 24.27 **All votes valid if not challenged at the meeting:** No objection shall be raised to the qualification of any voter or vote except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his or her decision shall be final and conclusive.
- 24.28 **Votes by Proxy, Representative or Attorney:** On a vote by voice or a show of hands and on a poll votes may be given either personally or by proxy or by attorney and a

proxy, representative or an attorney shall have the same right of audience and to demand a poll as a Unit Holder appointing them.

24.29 **Chairman's declaration final:** In respect of a vote on a procedural matter at any meeting of Unit Holders, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

24.30 **Polls:**

- (a) A poll may be demanded in respect of a procedural matter by at least five Unit Holders entitled to vote on the proposed resolution or the holders of 5% of the Units on issue present in person or by proxy or by attorney entitled to vote on the proposed resolution;
- (b) A poll may be demanded either before or after any question is put to a show of hands;
- (c) Subject to clause 24.30(e), if at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the chairman of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded;
- (d) The demand for a poll may be withdrawn; and
- (e) Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

24.31 **Instrument of Proxy:** The instrument appointing a proxy or an attorney shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a corporation under the hand of an officer or attorney so authorised.

24.32 **Proxy need not be a Unit Holder:** Any person may act as a proxy or as an attorney whether or not he or she is a Unit Holder.

24.33 **Time for Manager to Receive Instrument:** The instrument appointing a proxy or an attorney and the power of attorney or other authority (if any) under which it is signed or a notorially certified copy of such power or authority shall be deposited with the Manager not less than two clear days before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy or attorney (as the case may be) shall not be treated as valid.

24.34 **Content of Instrument:** An instrument appointing a proxy may be in the following form or in any other form which the Manager shall approve:-

"I [] of [] being a Unit Holder in the Goodman Property Trust, hereby appoint [] of [] as my proxy to vote for me and on my behalf at the Meeting of Unit Holders of the Trust to be held on the [] day of [] and at any adjournment thereof.

This form is to be used *in favour of/against the resolution

Signed at [] by me this [] day of []

*Strike out whichever is not desired."

- 24.35 **Validity of Proxy's Vote:** A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.
- 24.36 **Unit Holders bound by Resolutions:** A Resolution passed by the Required Majority at a meeting of Unit Holders duly convened and held in accordance with this deed, and concerning matters reserved for decision or approval by resolution of Unit Holders under the deed, by law or under the Listing Rules, shall be binding upon all the relevant Unit Holders whether present or not present at such meeting and each of the Unit Holders and the Supervisor and the Manager shall be bound to give effect thereto accordingly. Any Resolution passed at a meeting of Unit Holders, whether that meeting was convened under clause 24.3 or otherwise, and whether the resolution was proposed under clause 25.1 or otherwise, which does not concern matters reserved for decision or approval by resolution of Unit Holders under this deed, by law or under the Listing Rules, shall not be binding on any person.
- 24.37 **Powers exercisable by Extraordinary Resolution of Unit Holders:** A meeting of Unit Holders shall have the following powers exercisable by Extraordinary Resolution:
- (a) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of Unit Holders howsoever such rights shall arise (other than in respect of an amendment to this deed pursuant to clause 27.1(f));
 - (b) subject to the Act, power to approve a transaction or series of transactions that provides for a related party benefit to be given, provided that the notice of meeting for the approval by Extraordinary Resolution in accordance with this clause contains an explanatory memorandum that contains the matters set out at clause 3 of Schedule 11 of the Financial Markets Conduct Regulations 2014;
 - (c) subject to clause 27.1(h), but without limiting the rights of the Manager and the Supervisor as otherwise permitted under clause 27, power to assent to any amendment to the provisions contained in this deed or any deed supplemental thereto in relation to the Trust or the conditions attaching to the Units and to authorise the Manager and the Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition (other than in respect of an amendment to this deed pursuant to clause 27.1(f));
 - (d) subject to the Act, power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this deed;
 - (e) subject to the Act, power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this deed in relation to the Trust;
 - (f) power to appoint a new trustee and supervisor in relation to the Trust if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new trustee and supervisor pursuant to clause 22.3;

- (g) power to appoint a new Manager, who must be licensed (as that term is defined in the Act) and whose licence covers management of the Trust, in relation to the Trust and who must be approved by the Supervisor:
 - (i) if a vacancy arises in the office of Manager and the Supervisor fails to appoint a temporary Manager pursuant to clause 19.5; or
 - (ii) where a temporary Manager is appointed by the Supervisor pursuant to clause 19.5 and the term of that temporary Manager's appointment expires; and
- (h) power to sanction the exchange of Units for, or the conversion of Units in the Trust into, units or notes or interests in any other unit trust or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Extraordinary Resolution; and
- (i) power to remove the Auditor pursuant to clause 15.4.

24.38 **Directions to Supervisor:** A meeting of Unit Holders shall have the power to give directions to the Supervisor in relation to the interests of those Unit Holders so long as:

- (a) such directions are consistent with the provisions of this deed and the Act; and
- (b) the directions are given by an Extraordinary Resolution,

provided that, where a court has made an order pursuant to section 210 of the Act directing the Supervisor not to comply with a direction of the Unit Holders, the Supervisor will not be required to comply with such a direction of the Unit Holders.

24.39 **Minutes of Meetings:** Minutes for all resolutions passed and proceedings held at every meeting of Unit Holders shall be made and duly entered in a book to be provided for that purpose by the Manager and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting (if any) of Unit Holders shall be conclusive evidence of the matters therein stated and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings to have been duly passed and held.

24.40 **Class Meetings:** The provisions of this clause 24 shall apply to meetings of a Class of Unit Holders, as if each Class of Units were a separate Trust.

24.41 **Inconsistency with Act:** This clause 24, and not Schedule 11 of the Financial Markets Conduct Regulations 2014, shall govern meetings of Unit Holders, except to the extent expressly prohibited by the Act (and, for the avoidance of doubt, the Financial Market Conduct Regulations 2014).

25. UNIT HOLDER PROPOSALS

25.1 **Unit Holders may propose matters to be raised at annual meeting:** A Unit Holder may give written notice to the Manager of a matter the Unit Holder proposes to raise for discussion or resolution at the next meeting of Unit Holders at which that Unit Holder is entitled to vote.

- 25.2 **Obligations of Manager to give notice of Unit Holder proposals:** If the written notice given under clause 25.1 is received by the Manager:
- (a) not less than 20 Working Days before the last day on which notice of the meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Trust, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
 - (b) not less than 5 Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting; or
 - (c) less than 5 Working Days before the last day on which notice of the meeting of Unit Holders is required to be given by the Manager, the Manager must, if practicable, and at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting.
- 25.3 **Obligations of Manager to include statements in support of Unit Holder proposals in notices:** If the Manager intends that Unit Holders may vote on a proposal given under clause 25.1 by proxy, the Manager must give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement of not more than 1,000 words prepared by the proposing Unit Holder in support of the proposal, together with the name and address of the proposing Unit Holder.
- 25.4 **Rights of Manager to exclude Unit Holder proposals and statements from notices:** The Manager is not required to include in or with a notice given by the Manager pursuant to clause 25.2:
- (a) any part of a statement prepared by a Unit Holder that the Manager considers to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (b) any part of a proposal or resolution prepared by a Unit Holder that the Manager considers to be defamatory (within the meaning of the Defamation Act 1992).
- 25.5 **Deposits to be made by Unit Holders to meet cost of proposals:** If the costs of giving notice of the Unit Holder proposal are required to be met by the proposing Unit Holder, the Unit Holder must, on giving notice to the Manager, deposit with the Manager or tender to the Manager a sum sufficient to meet those costs.

SECTION 14: MISCELLANEOUS

26. TERMINATION

- 26.1 **Term:** The Trust terminates on the earlier of:
- (a) the date appointed by the Manager by giving not less than three months' written notice to the Unit Holders and the Supervisor; or
 - (b) the date on which the Trust is terminated under this deed or by operation of law.

- 26.2 **Perpetuity period:** The perpetuity period of the Trust for the purposes of the Perpetuities Act 1964 is the period of 80 years from the day prior to the commencement of the Trust. Notwithstanding any other provision of this deed, no Equity Securities may be issued, repurchased by the Manager or redeemed after expiry of the perpetuity period, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law. For the avoidance of doubt, the reference to a perpetuity period in this clause, does not require that the Trust terminate on expiry of that period.
- 26.3 **Procedure:** On termination, the Supervisor must realise the Assets. This must be completed as soon as practicable after termination. The Supervisor may, however, postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unit Holders to do so, and will not be responsible for any consequent Unit Holder's loss.
- 26.4 **Final distribution:** Subject to the rights, obligations and restrictions attaching to any particular Units or Classes of Units, any net proceeds of realisation, after:
- (a) discharging or providing for any unpaid fees due to the Manager and the Supervisor and all Liabilities; and
 - (b) meeting the expenses (including anticipated expenses) of termination,
- must be distributed pro rata to Unit Holders according to the number of Units held. Any Unit which is partly paid at the date of distribution shall be treated as that proportion of a whole Unit as the amount paid up bears to the Issue Price for that Unit.
- 26.5 **Calls by the Supervisor:** If there is a deficiency in the Assets compared to the Liabilities, then (subject to the rights, obligations and restrictions attaching to Units or Classes of Units), the Supervisor may call on a Unit Holder to pay all or any part of the Unpaid Amount of their Units as the Supervisor calculates represents the amount of the deficiency divided amongst the Units which are partly paid and such amounts are to be applied by the Supervisor under clause 26.3.

27. AMENDMENTS

- 27.1 **Amendments by Supplemental Deed:** Subject to any requirements of law, the Supervisor and the Manager may, by deed supplemental to this deed amend, add to or revoke any provision of this deed or any such supplemental deed if the amendment, addition or revocation:
- (a) is in the opinion of the Supervisor and the Manager necessary or expedient to comply with the provisions of any statute, ordinance, regulation or by-law or any law made under the authority of any statute, regulation, by-law or ordinance or is the requirement of any competent statutory authority or the Listing Rules; or
 - (b) is in the opinion of the Supervisor and the Manager required by or in consequence of or consistent with any amendment to the Act or the Listing Rules and which the Supervisor is satisfied does not have a material adverse effect on the Unit Holders; or
 - (c) is in the opinion of the Supervisor made to correct a manifest error or is of a formal, technical or administrative nature only; or
 - (d) does not, to the satisfaction of the Supervisor, have a material adverse effect on the Unit Holders; or

- (e) will in the opinion of the Supervisor enable the provisions of this deed to be more conveniently or advantageously administered; or
 - (f) is approved by an Extraordinary Resolution of all Unit Holders or, as the case may be, an Extraordinary Resolution of each class of Unit Holders that is or may be adversely affected by the amendment, addition or revocation; or
 - (g) is otherwise expressly authorised by this deed or the Act,
- provided that:
- (h) for the avoidance of doubt, no amendment shall be made without the agreement of the Manager.

28. NOTICES TO UNIT HOLDERS

- 28.1 **Notice etc. may be given to registered address or by email:** Any notice, communication or information may be given by the Manager or the Supervisor to any Unit Holder personally, by leaving it at his or her address recorded in the relevant Register, or by sending it addressed to such Unit Holder at his or her recorded address by ordinary prepaid post or if such address is outside New Zealand by airmail prepaid post, or, if a Unit Holder has agreed to receive that notice, communication or information by email, by sending it to the email address nominated by the Unit Holder.
- 28.2 **Deemed Service:** Any notice, communication or information sent by post shall be deemed to have been served at the expiration of 24 hours after the envelope or wrapper containing the same is posted and in proving such service, it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Any notice, communication or information sent by email during a Business Day between 9am and 5pm will be deemed to have been served at the expiration of 24 hours after having been sent.
- 28.3 **Signature on Notices:** The signature to any notice to be given by the Manager or the Supervisor may be written or printed.
- 28.4 **Period of Notice:** Subject to the Act, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.
- 28.5 **Transferees bound by notices sent to the transferor:** Every person who, by operation of law, transfer, or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which, prior to his or her name and address being entered in the register in respect of such Units, shall have been duly given to the person from whom he or she derives his or her title to such Units.
- 28.6 **Notice to Deceased Persons:** Any notice or document delivered or sent by post, or left at the address recorded in the register or address for service of any Unit Holder or sent by email, in pursuance of the provisions of this deed (notwithstanding that such Unit Holder be then deceased and whether or not the Manager has notice of his or her death) shall be deemed to have been duly served in respect of any Units, whether held solely or jointly with any other person, by such Unit Holder, until some other person shall be registered in his or her stead as the Unit Holder or joint Unit Holder thereof, and such service shall for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators and all persons (if any) jointly interested with him or her in such Units.

- 28.7 **Sending of Information:** If and when permitted by the Act and the Listing Rules, information referred to in clauses 14.5, 14.6, 14.7 and 17.6 is not required to be sent to a Unit Holder, provided the information is available to Unit Holders in the manner prescribed by the Act or the Listing Rules, and subject to such other conditions as may be prescribed by the Act or Listing Rules.

29. NOTICE TO MANAGER AND SUPERVISOR

Any notice, communication or information required by this deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager shall be given in writing or such other manner as agreed to from time to time and addressed to the secretary or a director or other officer of the party to whom it is intended to be given at its current address or such other address as may from time to time be notified by such party to the other as the address for service of notices pursuant to this deed and shall be signed by a duly authorised officer on behalf of the party giving the same.

30. UNIT HOLDERS BOUND

This deed shall be binding on and inure for the benefit of the Unit Holders as if each such Unit Holder were a party hereto.

31. LIMITATION OF LIABILITY OF UNIT HOLDERS

Notwithstanding anything contained in this deed (but subject to clause 16.11) or any rule of law, no Unit Holder shall be or become personally liable in respect of any debt or liability of the Trust, and:

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

32. INSPECTION OF DEED

A copy of this deed together with copies of all deeds supplemental hereto (if any) shall at all times during usual business hours be made available by the Manager at the office of the Manager for inspection by Unit Holders.

33. MONEY PAYABLE TO UNIT HOLDERS

Any money payable by the Supervisor or by the Manager to a Unit Holder under the provisions of this deed may be paid by cheque that is crossed "not transferable" and is made payable to the Unit Holder and sent through the post to the address of the Unit Holder recorded in the Register, or, in the case of joint Unit Holders, is made payable to the joint Unit Holders and sent to their common recorded address or to the recorded address of that one of the joint Unit Holders who is first named on the Register, or, in any other case, is made payable as the Unit Holder or joint Unit Holders with the

approval of the Manager may from time to time specify, including a specification in writing to the Manager to pay money to an account (of a bank or financial institution) nominated by the Unit Holder or joint Unit Holders. Payment of every cheque, if fully presented and paid, will be a full satisfaction of the money payable and will be a good discharge to the Supervisor and to the Manager. Any payment made in any other manner in accordance with a Unit Holder's instructions shall be a full satisfaction of the money payable and will be a good discharge to the Supervisor and to the Manager.

34. UNCLAIMED PAYMENTS

If any payment made to any Unit Holder at his or her address recorded in the Register or in accordance with his or her payment instructions is returned or otherwise unclaimed, the amount thereof shall be retained by the Supervisor and held for such Unit Holder without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of this deed be part of the Trust. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager. After forfeiture of any amount pursuant to this clause, the person who would have been entitled to payment of such amount had it not been forfeited shall be entitled to payment from the Manager of any amount equal to such forfeited amount upon adducing sufficient evidence to satisfy the Manager that he or she would have been entitled to such amount had it not been forfeited.

35. SEVERANCE

35.1 Ability to read down clauses: If a provision of this deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

35.2 Severance of invalid clause: Notwithstanding clause 35.1 if a provision of this deed is still void or voidable or unenforceable or illegal:

(a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and

(b) in any other case, the whole provision is hereby severed,

and the remainder of this deed has full force and effect.

36. CONTRACTS (PRIVITY) ACT 1982

This deed shall take effect as a contract (as well as a deed) to the extent provided in this deed and shall be enforceable for the benefit of every Unit Holder from time to time except that, for the purposes of the proviso to section 4 of the Contracts (Privity) Act 1982, the benefit so extended to Unit Holders is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this deed without the consent of any Unit Holder, other than as so provided.

37. GOVERNING LAW

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

38. COUNTERPARTS

This deed may be executed in two counterpart copies both of which, when taken together, shall constitute one and the same instrument. The parties may execute this deed by signing either such counterpart copy.

EXECUTED as a deed.

SIGNED by **GOODMAN (NZ) LIMITED** by
his/her attorney in the presence of:

Signature of attorney

Anton Shead

Signature of witness

Name of witness

Occupation

City/town of residence

COVENANT TRUSTEE SERVICES
LIMITED by:

and witnessed by:

Signature of authorised signatory

Name of authorised signatory

Signature of witness

Name of witness

Occupation

City/town of residence

SCHEDULE APPLICABLE WHERE UNITS QUOTED

1 APPLICATION OF LISTING RULES

So long as the Units are Quoted, the provisions of this Schedule apply and form part of this deed. If there is any inconsistency between those provisions and other provisions of this deed, then the provisions of this Schedule shall prevail.

2 LISTING RULES - COMPLIANCE WITH NZX REQUIREMENTS

- 2.1 So long as the Trust is Listed, the Manager, the Supervisor in its capacity as trustee and supervisor of the Trust, and the Trust, shall comply with the Listing Rules where required of each of them as "Issuer" for the purposes of the Listing Rules. For the purposes of this clause 2.1 where necessary the Listing Rules shall be read as applying to the Trust with such amendments as may be necessary so they are applicable to unit trusts (in lieu of companies). In particular, references to the "Issuer" in the Listing Rules shall be read as references to the "Manager", the "Supervisor", the "Manager and/or the Supervisor in its capacity as trustee and supervisor of the Trust", a "Subsidiary of the Trust" and/or the "Trust", as appropriate. In determining the appropriateness of any particular reference, regard must be had to the purpose and intent of the Listing Rules, the fact that the Manager manages the Trust and the fact that the Supervisor's role is a passive one which involves monitoring the Manager's actions and acting upon the Manager's directions.
- 2.2 If NZX has granted a Ruling in relation to the Trust authorising any act or omission which in the absence of that Ruling would be in contravention of the Listing Rules or this deed, that act or omission shall, unless a contrary intention appears in this deed, be deemed to be authorised by the Listing Rules and by this deed.
- 2.3 If any provision in this deed is inconsistent with the Listing Rules, the Listing Rules prevail.
- 2.4 Failure to comply with the Listing Rules, or failure to comply with a clause in this deed corresponding with a provision of the Listing Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by or on behalf of, or affecting, the Trust, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or a clause in this deed corresponding with a provision of the Listing Rules, as the case may be, shall not be entitled to enforce that transaction or contract. This clause does not affect the rights of any holder of Securities against the Trust, the Supervisor, the Manager or the directors of the Manager arising from the failure to comply with the Listing Rules or a clause in this deed corresponding with a provision of the Listing Rules.

3 GOVERNANCE

- 3.1 **Composition of the Board:** The Manager shall ensure that:
- (a) The number of Directors of the Manager (disregarding any alternate Director) is no less than three, and no more than seven.
 - (b) At least two of the Directors of the Manager are ordinarily resident in New Zealand.

- (c) A majority of the Directors of the Manager are Independent Directors.

It shall not be a breach of clause 3.1(c) if, as a result of an Independent Director ceasing to be a Director of the Manager (through resignation or otherwise), there is no longer a majority of the Directors of the Manager who are Independent Directors, provided that:

- (d) The non-compliance with clause 3.1(c) continues for a period of no more than six months.
- (e) Throughout any period of non-compliance, the minimum number of Directors of the Manager who are Independent Directors is two.

3.2 Appointment of Independent Directors: The Manager shall ensure that, subject to clause 3.5, a person shall, and may only, be appointed as an Independent Director of the Manager where that appointment has been approved by an Ordinary Resolution, provided that:

- (a) Unless the shareholders of the Manager otherwise agree, there shall at no time be more than four Independent Directors of the Manager.
- (b) If, having regard to clause 3.2(a), there are at any annual meeting more persons approved for appointment as an Independent Director than there are vacancies on the Board for Independent Directors, then a number of those persons equal to the number of vacancies on the Board for Independent Directors, and determined according to which of them received the greatest number of votes in favour of their appointment, shall be the only persons treated as being approved under this clause.
- (c) A person may from time to time be appointed to the Board as an Independent Director without approval under this clause, provided that each Independent Director so appointed shall retire at the next annual meeting following that Director's appointment. Any Independent Director so retiring shall be eligible for re-appointment.

3.3 Nomination of Independent Directors: No person (other than an Independent Director of the Manager retiring at an annual meeting, and seeking re-appointment) shall be approved for appointment as an Independent Director of the Manager at an annual meeting of the Trust unless that person has been nominated by a Unit Holder entitled to attend and vote at the meeting by written notice to the Manager (accompanied by the consent in writing of that person to appointment as a Director). There shall be no restriction on the persons who may be so nominated, nor shall there be any precondition to such a nomination, other than compliance with time limits for nominations set by the Manager in accordance with this clause 3.3. The Manager shall make an announcement to the market of the closing date for Independent Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Independent Director nominations. Subject to clause 3.5, notice of every nomination of an Independent Director received by the Manager before the closing date for nominations shall be sent by the Manager to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.

3.4 Removal of Independent Directors: The Manager shall ensure that, except as provided in clause 3.5, an Independent Director of the Manager is removed from office, and is only removed from office, if that removal has been approved by an Ordinary Resolution.

3.5 Determination of Independent Directors: Notwithstanding clauses 3.2, 3.3 and 3.4, a person may be removed from office, or otherwise cease to hold office, as an

Independent Director, and a person is not required to be appointed as an Independent Director, if:

- (a) a majority of the existing Independent Directors (excluding the Independent Director who is the subject of the determination (if applicable)) determines that the appointment of that person as an Independent Director of the Manager, or the continuation of that Independent Director in office (as the case may be), may have an adverse affect on any licence, authorisation, or approval held, or required to be held, by the Manager, or determines that the person does not qualify (or no longer qualifies) as an Independent Director;
- (b) the person:
 - (i) dies, or is mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
 - (ii) is disqualified from being a Director pursuant to the Companies Act 1993;
 - (iii) is bankrupt or makes an arrangement or composition with his or her creditors generally;
 - (iv) has for more than three months been absent without approval of the Board from meetings of the Board held during that period; or
 - (v) resigns, or retires in accordance with the Trust Deed.

If it is determined that any person nominated for appointment under clause 3.3 will not be appointed in accordance with this clause, notice of that nomination need not be given under clause 3.3.

3.6 Rotation of Directors: The Manager shall ensure that, beginning at the annual meeting of Unit Holders in 2015, one third of the total number of Independent Directors of the Manager (or, if their number is not a multiple of three, then the nearest number to one third) shall retire from office at the annual meeting of the Trust in each year. The Independent Directors to retire shall be those Independent Directors who have been longest in office since their last appointment. If two or more Independent Directors were last appointed on the same day, the Independent Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Independent Director shall be eligible for re-appointment. An Independent Director appointed in accordance with clause 3.2(c) who is retiring at the annual meeting and seeking re-appointment is not treated as retiring under this clause, and shall be excluded from the number of Independent Directors upon which the calculation for the purposes of this clause is based.

3.7 Restriction of approval of several Independent Directors: A single resolution for the approval of two or more persons as Independent Directors of the Manager shall not be moved unless a separate resolution that it be so moved has first been passed by the Unit Holders without any vote being cast against it but nothing in this clause 3.7 prevents the approval of two or more Independent Directors by ballot or poll.

3.8 Other Directors: Nothing in clauses 3.2 to 3.7 shall limit or restrict, or otherwise apply to, Directors of the Manager, other than Independent Directors.

3.9 Nominations committee: The Manager shall:

- (a) establish a nominations committee; and

- (b) ensure that the nominations committee:
 - (i) is comprised solely of Directors of the Manager;
 - (ii) has at all times a minimum of three members; and
 - (iii) has at all times a majority of members who are Independent Directors.
- 3.10 **Responsibilities of nominations committee:** The responsibilities of the nominations committee shall include:
- (a) assisting the Board in planning the Board's composition;
 - (b) evaluating competencies required of prospective Directors of the Manager; and
 - (c) making Independent Director recommendations to the Board and Unit Holders.
- 3.11 **Termination:** Clauses 3.1(c) to 3.11 shall apply only for as long as Goodman (NZ) Limited (or any other member of the group of companies, trusts and other entities of which it is a member) holds office as manager of the Trust, and shall terminate (and be of no further force or effect) on Goodman (NZ) Limited (or any other member of that group) no longer being manager of the Trust (provided that, from the termination of clause 3.1(c), the minimum number of Independent Directors of the Manager shall be two).
- 3.12 **Board to confirm independence:** The Manager shall cause the Board to, in accordance with clause 3.13, identify which Directors of the Manager it has determined, in its view, to be Independent Directors.
- 3.13 **Timing of determination:** The Manager shall cause the Board to make a determination under clause 3.12:
- (a) no later than 10 Business Days following the appointment of a Director of the Manager, and the Manager shall, immediately after such a determination is made, announce to NZX for release to the market whether the Board has determined that the Director is an Independent Director; and
 - (b) prior to the publication of the Trust's annual report each year to enable compliance with Listing Rule 10.4.5(l).
- 3.14 **Manager to obtain necessary information:** The Manager is responsible for making the necessary arrangements to require its Directors to provide sufficient information to its Board for the Board to make the determinations under clause 3.12.
- 3.15 **Proceedings and powers of the Board:** The Manager shall ensure that the constitution of the Manager includes provisions having the same effect as the following provisions, and shall ensure compliance with those provisions:
- (a) The Directors of the Manager may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by the constitution of the Manager as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, calling a general meeting of the Trust, or as concerns any matter not being an act or decision of the Manager in its capacity as manager of the Trust, but for no other purpose.

- (b) In cases where two Directors of the Manager form a quorum, the chairperson of a meeting at which only two Directors are present shall not have a casting vote.
- (c) A Director of the Manager shall not vote on a Board resolution in respect of any matter concerning an act or decision by the Manager in its capacity as manager of the Trust in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter, provided that a Director of the Manager may vote in respect of, and be counted in the quorum for the purposes of, a matter in which he or she is interested:
 - (i) if that matter is one in respect of which, pursuant to an express provision of the Companies Act 1993, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Companies Act 1993; or
 - (ii) solely due to being a Director of the Manager.

For the purposes of this clause, "interested" has the meaning in section 139 of the Companies Act 1993, except that references to the "company" shall be read as references to the Trust.

4 TAKEOVERS

4.1 **Definitions:** In this clause 4 unless the context otherwise requires:

Acquisition Notice means a notice given pursuant to clause 4.5(a);

Affected Group means:

- (a) in respect of a Restricted Transfer effected otherwise than by trades matched through NZX's order matching market each of:
 - (i) the group comprised of persons who are not recipients (disregarding inadvertent non-receipt) of the offer or invitation which would implement the proposed Transfers;
 - (ii) if the Transfers are not of an equal proportion of all holdings which are offered for disposal, the groups comprised of Transferors whose Transfers represent substantially identical proportionate parts of the holdings offered by them; and
 - (iii) the group comprised of persons who are not members of the groups described in (i) and (ii) and who are not the Transferees and other persons whose Relevant Interests would be taken into account in determining whether the Transfer is a Restricted Transfer, but disregarding the proviso to the definition of Restricted Transfer;
- (b) in respect of a Restricted Transfer effected by trades matched through NZX's order matching market, the group comprised of those other than:
 - (i) the persons whose control of Votes would in aggregate determine whether the Transfer is a Restricted Transfer; and
 - (ii) Insiders;

Affected Securities means Securities in a given Class of Quoted Equity Securities in respect of which there is a Majority Holder and Remaining Holders;

Compulsory Acquisition Provisions means provisions in this Schedule complying with Listing Rules 4.8.1 to 4.8.6 inclusive;

Default by a holder of Equity Securities means non-compliance with the requirements of clause 4.2;

Defaulter means a person with a Relevant Interest in Quoted Equity Securities who has acquired that Relevant Interest in breach of the requirements of clause 4.2 (other than a breach committed by the Supervisor or Manager, or the Directors of either);

Defaulter's Securities means in relation to a Defaulter, Quoted Equity Securities in which the Defaulter has a Relevant Interest;

Differential Offer means an offer, or invitation to agree on Transfers which:

- (a) is made to some but not all holders of a Class of Equity Securities; or
- (b) entitle any person other than to the benefit of NZX, or to exercise, the rights and powers provided in Rule 2.3; or
- (c) would result in different prices or other terms applying among holders of the same Class of Equity Securities; or
- (d) would result in the Transfer of different proportions of those portions of holdings of Equity Securities of the same Class which are offered for disposal;

Enforcement Provisions means provisions in this Schedule complying with Listing Rules 4.7.1 to 4.7.7 inclusive and Listing Rule 4.9;

Expert means an independent, appropriately qualified person, who has previously been approved by NZX for the purposes of clause 4.5(c)(i) or 4.5(c)(iii) as the case may be;

Insider means:

- (a) the Manager or its Directors or Associated Persons of the Manager or its Directors;
- (b) persons who hold Material Information of the Trust which has not been disclosed to the market;

Majority Holder means a person or group of Associated Persons who acquires beneficial ownership of 90% or more of the Securities in a given Class of Quoted Equity Securities;

Notice means notice to the Manager and NZX in a manner complying with Listing Rule 10.2.3 for release to the market;

Notice and Pause Provisions has the meaning given in Listing Rule 4.5.1;

NZX includes any duly authorised delegate of NZX;

NZX Transaction means a transaction involving Transfers effected by trades matched through NZX's order matching market, which complies with the requirements of Listing Rule 4.5.5;

Relevant Group means each of the groups comprising:

- (a) holders of Securities who are Members of the Public; and
- (b) holders of Securities who are not Members of the Public;

in each Class of Quoted Equity Securities the rights of which are governed by this deed;

Remaining Holders means all holders of Securities in a given Class of Quoted Equity Securities, other than the Majority Holder;

Relevant Interest has the meaning given in the Financial Markets Conduct Act 2013;

Restricted Transfer means:

- (a) the Transfer which would result in the Votes, controlled by any person or group of persons who are Associated Persons of each other, in any Class of Quoted Equity Securities:
 - (i) exceeding 20% of the Votes attached to that Class; or
 - (ii) if the person or group of persons controls 20% or more of the Votes attached to that Class, increasing by more than 5% in any period of 12 months excluding increases as a result of Transfers pursuant to a Restricted Transfer notice previously given by the person or group of persons; together with
- (b) any other Transfer which is likely to be contemporaneous with, or subsequent to, the Transfer in sub-paragraph (a) of this definition and comprises with that Transfer part of a scheme or linked series of transactions;

provided that for the purposes of this definition acquisition of interests in Equity Securities may be disregarded:

- (c) where it is determined by NZX that the acquisition was involuntary and occasioned by the action of another party over which the acquiring party had no effective control or influence in the matter; or
- (d) where, and to the extent that, it is determined by NZX that the aggregation of holdings among Associated Persons would include holdings of persons who have no practical likelihood of acting in concert, or exercising Votes or otherwise acting in collusion, with each other or any common party;

provided also that this definition shall not apply:

- (e) where the Transfer is between two entities, one of which is directly or indirectly wholly owned beneficially by the other, or both of which are directly or indirectly wholly owned beneficially by the same entity; or
- (f) where the Transfer is in performance of the obligations of an underwriter pursuant to an underwriting agreement disclosed in an Offering Document, Prospectus or Register Entry an offering of the relevant Class of Quoted Equity Securities;

Right has the meaning given to it by Listing Rule 1.6;

Transfer in relation to an Equity Security includes sale of that Security, and the grant of rights or interests, whether conditional or not, which are intended to create for the

recipient benefits which are substantially equivalent to ownership of that Security (or of an interest in that Security). In particular, it includes:

- (a) a transaction whereby one party disposes of, alienates, or proposes to dispose of or alienate (temporarily or permanently), any interest or right of title to any Equity Security or in the Votes, dividends or income arising in respect of any Equity Security;
- (b) any agreement arrangement or understanding in respect of Equity Securities under which the Votes attaching to them may be exercised by a person other than the registered holder, alone or jointly with the registered holder, or with other persons acting in concert, other than by reason of a bona fide appointment of a proxy or other representative for voting purposes under which the appointment may be terminated at will, and the appointer is entitled, if the appointer so wishes, to direct the proxy as to the manner in which Votes are to be cast;
- (c) any transaction whereby the holder of the Equity Securities enters into a commitment (whether conditional or unconditional) to sell the Equity Securities, or to grant an option over them or any part thereof, or at any future time to grant any of the rights referred to above;
- (d) the creation of a charge or other security interest enforceable by a right of possession or a power of sale or other disposition which would fall within other parts of this definition of "Transfer", other than the creation of such an interest for bona fide financing purposes; or
- (e) any transaction, agreement or arrangement that has substantially the same effect as (a), (b), (c) or (d) above,

but excludes the issue, acquisition, or redemption of Equity Security by the Manager or Supervisor on behalf of the Trust in accordance with the Listing Rules.

Transferor and **Transferee** have corresponding meanings.

4.2 **Notice and Pause:**

- (a) Notice of Takeover: No Restricted Transfer of Quoted Equity Securities shall take place unless:
 - (i) A Notice is given, not later than the time specified in clause 4.2(b), containing the particulars specified in Listing Rule 4.5.2; and
 - (ii) A Notice of any change in, or addition to, the particulars notified under clause 4.2(a)(i) is given not later than the time specified in clause 4.2(c).
- (b) Time for Initial Notice: A Notice under clause 4.2(a)(i) must be given:
 - (i) If any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transfer; and
 - (ii) If no Transferee is an Insider, and subject to Listing Rule 4.5.5, at least three Business Days before the Transfer.
- (c) Time for Notice of Change: A Notice under clause 4.2(a)(ii) must be given:

- (i) If any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect in the case of a change to price or amount of consideration, and at least 15 Business Days before the change takes effect in the case of a change to any other particulars notified under clause 4.2(a)(i), including without limitation the nature of the consideration.
 - (ii) If no Transferee is an Insider, and subject to Listing Rule 4.5.5, at least one Business Day before the change takes effect, in the case of a change to price or amount of consideration, and at least three Business Days before the change takes effect in the case of a change to any other particulars notified under clause 4.2(a)(i), including without limitation the nature of the consideration.
- (d) **NZX Transactions:** If:
 - (i) a Restricted Transfer is effected solely by trades marked through NZX's order matching market;
 - (ii) no Transferee is an Insider; and
 - (iii) the conditions set out in Listing Rule 4.5.5 are satisfied,
 then the period of Notice referred to in clause 4.2(b)(ii) shall be one Business Day, and the periods of Notice referred to in clause 4.2(c)(ii) shall be two hours during which NZX is open for business, and one Business Day, respectively.
- (e) **Response Requirements:**
 - (i) If any Quoted Equity Securities are the subject of a Notice given under clause 4.2(a)(i) the Directors of the Manager must give a Notice, as soon as can be achieved, and before the expiry of the relevant Notice periods referred to in clauses 4.2(b) and (d), containing the particulars required by Listing Rule 4.5.6; and
 - (ii) If any Quoted Equity Securities are the subject of a Notice given under clause 4.2(a)(i) or any of the Directors of the Manager become aware that a Restricted Transfer proposal is more likely than not in the immediate future, the Directors of the Manager shall comply with Listing Rule 4.5.7.
- (f) **Appraisal Report:** If any Transferee under a Restricted Transfer is an Insider, the Directors of the Manager must (subject to clause 4.2(g)) forthwith upon a Notice being given under clause 4.2(a)(i) in respect of that Restricted Transfer or notice being given under clause 4.2(a)(ii) in respect of that Restricted Transfer where the change relates to a change in the nature of the consideration offered, commission an Appraisal Report in respect of that Restricted Transfer which complies with Listing Rule 4.5.8, and deal with that Appraisal Report in accordance with the requirements of that Listing Rule.
- (g) **Exceptions:** The requirement for an Appraisal Report under clause 4.2(f) shall not apply if:
 - (i) all Transferors consent to waive that requirement; or
 - (ii) a majority of those Directors of the Manager who are not involved as prospective Transferors (in relation to a proposal for a Differential Offer) or as Transferees, and are not Associated Persons of any such

Transferor or Transferee, certify that in their opinion the cost and difficulty of providing the Appraisal Report will outweigh the benefit, because prospective Transferors are not at an information disadvantage in relation to prospective Transferees and their Associated Persons or because the Appraisal Report would not materially remedy any such information prejudice.

- (h) **Restricted Transfer Status Report:** If a Restricted Transfer is not completed within three months of the notice required to be given under clause 4.2(a)(i), or any status report given under this clause 4.2(h) then, before continuing with the Restricted Transfer, a Notice must be given which includes the following information:
 - (i) when the Restricted Transfer is intended to be completed; and
 - (ii) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.
- (i) **Response to Restricted Transfer Status Report:** On receipt of the information provided under clause 4.2(h), the Directors of the Manager shall promptly advise NZX:
 - (i) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or the response initially provided under clause 4.2(e)(i); and
 - (ii) that the Manager is complying with Listing Rule 10.1.

4.3 **Enforcement of Takeover Provisions:**

- (a) **Consequence of Default:** Following a Default, the Manager may exercise the following powers in respect of all or any of the Defaulter's Securities:
 - (i) No Vote may be cast in respect of the Defaulter's Securities on a poll (and any Vote cast shall be disregarded) while the Default is unremedied; and
 - (ii) The Defaulter's Securities may be sold by the Manager in accordance with clause 4.3(b) but this power may not be exercised:
 - (A) Until one month after the Manager has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Securities, to the registered holder) of its intention to exercise this power; and
 - (B) If, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Securities to a person who is not a Defaulter.
- (b) **Sale Procedure:** If the power of sale specified in clause 4.3(a)(ii) is exercised:
 - (i) The Manager shall sell the Defaulter's Securities through NZX or in some other manner approved by NZX, and shall account to the holder of those Securities for the proceeds of sale after deduction of sale expenses; and

- (ii) The Manager shall be deemed to have been authorised to take all steps, and sign all documents, necessary to effect the sale of the Defaulter's Securities.
- (c) In the event of a Default:
 - (i) Neither the Manager nor its Directors shall be liable to a Defaulter or apparent Defaulter for or in connection with the exercise or purported exercise of the powers permitted by this clause 4.3;
 - (ii) The Manager shall have a lien on the Defaulter's Securities for, and deduct from the proceeds of sale pursuant to clause 4.3(b), any costs to the Manager of determining whether a person is a Defaulter and exercising powers permitted by this clause 4.3, and any amounts which the Manager may choose to pay to members of any Affected Group acting pursuant to clause 4.3(d) in reimbursement of expenses incurred by those members; and
 - (iii) If NZX makes a Ruling dealing with the matters dealt with by section 4 of the Listing Rules, or with provisions of this deed required or permitted by section 4, that Ruling shall be binding upon the Manager and the Supervisor and all holders of Securities, and shall take effect as if that Ruling were itself incorporated in this deed.
- (d) **Affected Group:** The Manager shall, if so directed by a resolution of an Affected Group (passed by a simple majority of Votes), exercise the power referred to in clause 4.3(a)(ii) if that power has become exercisable. The holders of 5% or more of the Securities of an Affected Group may by notice to the Manager require the Directors of the Manager to convene a meeting of the Affected Group for the purpose of considering such a resolution.
- (e) **Limitation of Remedies:** The sole remedy of the Manager, a holder of Securities, the Supervisor, a Director of the Manager or any other person in respect of a breach or alleged breach of section 4 of the Listing Rules, or of any provisions in this deed required or permitted by section 4, shall be to exercise, or require the Directors of the Manager to exercise, the powers referred to in clause 4.3(a). Without limiting the preceding sentence, no person shall be entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of the provisions referred to in that sentence. Nothing in this clause shall affect the remedies of a holder of Securities against the Manager, the Directors of the Manager or the Supervisor in respect of a breach of section 4 of the Listing Rules, or the provisions of this deed required or permitted by section 4, by the Manager, the Directors of the Manager or the Supervisor.
- (f) **Voting Restrictions:** The Manager shall use reasonable endeavours to ascertain for the purpose of clause 4.3(a)(i) whether any Securities are Defaulter's Securities and accordingly whether a holder of those Securities is entitled to vote. If any holder of Securities, or NZX, alleges that any Securities are Defaulter's Securities, the Manager shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any holder of Securities is or is not entitled to vote at that meeting pursuant to clause 4.3(a)(i) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 4.3(a)(i). This provision shall not prejudice any action which any person may have against the holder of any Securities by reason of that holder having cast a vote at any meeting in breach of clause 4.3(a)(i).

- (g) If a Defaulter holds its Relevant Interest in a parcel of Securities and other persons who are not Defaulters also hold Relevant Interests in the same Securities, the Manager may on request by the holder of the Securities:
 - (i) register as a separately identifiable parcel a proportion of the relevant Securities which is equal to the Defaulter's Relevant Interest; and
 - (ii) for so long as the Manager is reasonably satisfied as to the fairness of the determination of the relevant proportions (recognising the dissimilarities there may be among types of Relevant Interest) the Defaulter may be treated by the Manager as not having Relevant Interests in other parts of the separately identifiable parcel.
- (h) NZX (in this clause 4.3(h) an "Arbiter") may, for the purposes of making a Ruling as to whether any person is a Defaulter, give notice to any person who the Arbiter believes may be a Defaulter. That notice shall:
 - (i) set out in general terms the grounds on which the Arbiter believes that person to be a Defaulter; and
 - (ii) require that person, within a reasonable time specified in the notice, to produce evidence to rebut the Arbiter's belief that that person is a Defaulter.

If the person to whom the notice is given fails within the time specified in the notice to produce to the Arbiter evidence satisfactory to the Arbiter that that person is not a Defaulter, then the Arbiter shall be entitled to assume without further evidence that that person is a Defaulter, and to make a Ruling to that effect.

4.4 Procedure for certain meetings:

- (a) **Procedure for Meetings:** The following matters may only be dealt with by Special Resolution (or Extraordinary Resolution, if required by the Act) of each Relevant Group:
 - (i) The adoption of Minority Veto Provisions;
 - (ii) The modification of Notice and Pause Provisions in accordance with Listing Rule 4.4.2; and
 - (iii) Subsequent modifications to Minority Veto Provisions or Notice and Pause Provisions in accordance with Listing Rule 4.4.3.

For the purposes of voting by Relevant Groups for the purposes of this clause 4.4(a), one meeting may be held of holders of Securities constituting both Relevant Groups, so long as voting at the meeting for the purposes of this clause 4.4(a) is by way of poll, and proper arrangements are made to distinguish between the votes of members of the different Relevant Groups.

- (b) **Meeting on Request:** The Manager may at any time, and shall upon receipt of a request of the nature referred to in the next sentence, submit for the consideration of holders of Securities a change to the provisions of this deed to include or exclude Minority Veto Provisions, to modify the provisions of this deed in accordance with Listing Rule 4.4.2 or to cancel any such modification. A request to the Manager shall:

- (i) Be in writing, and be signed by or on behalf of the holders of Quoted Equity Securities carrying 5% or more of the Votes attaching to all Quoted Equity Securities of the Trust; and
 - (ii) Specify in general terms the change to this deed which is proposed.
- (c) **Procedure:** If the Manager wishes, or is required in accordance with clause 4.4(b), to submit for consideration a change to the provisions of this deed, the Manager shall without delay:
- (i) Cause draft amendments to the provisions of this deed to be prepared, and approved by NZX in accordance with Listing Rule 6.1; and
 - (ii) Cause those amendments to be submitted for the approval by Special Resolutions of the Relevant Groups, and by such other resolutions as may be necessary to effect an amendment to the provisions of this deed.

4.5 **Compulsory Acquisition Provisions:**

- (a) **Acquisition Notice:** A Majority Holder must, within 20 Business Days after becoming a Majority Holder, give an Acquisition Notice to the Remaining Holders, and at the same time to NZX and to the Manager, specifying:
- (i) That the Majority Holder has beneficial ownership of 90% or more of the Affected Securities; and
 - (ii) Either:
 - (A) That the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
 - (B) That any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
 - (iii) The consideration to be provided by the Majority Holder for Affected Securities.
- (b) **Obligation of Majority Holders:** Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (i) If the Acquisition Notice contains the statement in clause 4.5(a)(ii)(A), to acquire all Affected Securities held by the Remaining Holders; or
 - (ii) If the Acquisition Notice contains the statement in clause 4.5(a)(ii)(B), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- (c) **Consideration:** The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:

- (i) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Manager and NZX a report from an Expert confirming that that consideration is fair to the Remaining Holders, using the same criteria set out in clause 4.5(c)(v);
- (ii) If, within 10 Business Days after the date of the Acquisition Notice, the Manager receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the consideration shall be determined in accordance with clauses 4.5(c)(iii) and 4.5(c)(iv). If such objections are not received, the consideration shall be as specified in the Acquisition Notice;
- (iii) If objections of the nature referred to in clause 4.5(c)(ii) are received by the Manager, the Manager shall forthwith notify the Majority Holder and NZX of that fact, and the consideration shall be determined by an Expert (acting as an expert and not as an arbitrator). The Expert shall:
 - (A) Be appointed by those Directors of the Manager who are not involved as prospective Transferors (in relation to a proposal for a Differential Offer) or as Transferees and who are not Associated Persons of any such Transferors or Transferees (if any, otherwise by the Directors of the Manager) after approval by NZX;
 - (B) Be a different Expert from the one referred to in clause 4.5(c)(i); and
 - (C) Be directed to provide a decision within 20 Business Days after being appointed.
- (iv) If the consideration determined by the Expert appointed in accordance with clause 4.5(c)(iii):
 - (A) Is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of the Expert shall be borne by the Remaining Holders who made the objections referred to in clause 4.5(c)(ii) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash);
 - (B) Is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Majority Holder.
- (v) In arriving at an opinion, for the purposes of clauses 4.5(c)(i) and 4.5(c)(iii), the Expert shall be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Trust as a whole and the rights and obligations attached to those Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining

Holders, the Majority Holder, their respective holdings in the Trust or the relative extent of those holdings.

- (d) **Time for Payment:** The Majority Holder shall pay or provide consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder or, if the consideration requires to be determined pursuant to clause 4.5(c), within 2 Business Days after consideration is to be determined.
- (e) **Holders Not Located:** If any Remaining Holder of Affected Securities which are to be acquired cannot be located by the Majority Holder, the Majority Holder shall pay or provide the consideration due to that Remaining Holder to the Manager. The Manager shall hold that consideration upon trust for that holder for a period of at least five years from the date of its receipt by the Manager. If that consideration is not claimed by that holder within that period, the Manager shall return it to the Majority Holder.
- (f) **Procedure:** Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 4.5(d) and 4.5(e), the Manager shall execute transfers on behalf of the Remaining Holders of those Securities in favour of the Majority Holder or its nominee, and shall take all other steps necessary to transfer those Affected Securities to the Majority Holder or its nominee. If the Manager fails to execute any such transfer, the Majority Holder may do so.
- (g) **Default Consequences:** If a Majority Holder fails to give an Acquisition Notice when required to do so by this clause 4.5, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this clause 4.5, fails to do so, then the provisions of clauses 4.3(a) to 4.4 shall apply with the following modifications:
 - (i) The Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;
 - (ii) The failure to comply with this clause 4.5 shall be deemed to be a Default; and
 - (iii) The Remaining Holders shall be deemed to be an Affected Group.

4.6 **Holding by Bare Trustee:**

- (a) **Bare trustee:** For all purposes of this clause 4, and notwithstanding anything in this clause 4:
 - (i) the Transfer of Quoted Equity Securities, or of any interest in Quoted Equity Securities, to a bare trustee shall be deemed to be a Transfer to the person or persons for whom that bare trustee holds those Securities or that interest as trustee (the "**Beneficial Owners**");
 - (ii) Quoted Equity Securities, or any interest in Quoted Equity Securities, held by a bare trustee shall be deemed to be held by the Beneficial Owners; and
 - (iii) a trustee may be a bare trustee notwithstanding that that trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.
- (b) **Specific issues:** Without limiting clause 4.6(a):

- (i) a bare trustee and a Beneficial Owner shall not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;
 - (ii) a bare trustee of Quoted Equity Securities shall not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Quoted Equity Securities; and
 - (iii) a Beneficial Owner of Quoted Equity Securities shall not have a Relevant Interest in the Quoted Equity Securities of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.
- (c) **Separate registration of Defaulter's Securities:** In the event of a Default, if any Quoted Equity Securities held by a person as bare trustee on behalf of different Beneficial Owners include any Defaulter's Securities:
- (i) the bare trustee shall, on request by the Manager or NZX, provide to the Manager and NZX details of the Beneficial Owners of those Defaulter's Securities; and
 - (ii) the Manager may at any time, and shall upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Securities are separately designated in the register recording those Quoted Equity Securities.

5 NOTICES

- 5.1 **Service of notices outside New Zealand:** If a holder of a Quoted Security has no registered address within New Zealand and has not given to the Manager or the Registrar an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that person at such address and shall be deemed to have been received by that person 24 hours after the time of posting.

6 MODIFICATIONS OF RIGHTS OF SECURITY HOLDERS

- 6.1 **Procedure:** The provisions of sections 116 and 117 of the Companies Act 1993 shall be deemed to apply to the Trust and the Manager shall, before taking action affecting the rights attached to any Equity Securities (excluding those Equity Securities to which Listing Rule 8.3.2 applies), comply with the provisions of sections 116 and 117 of the Companies Act 1993 on the basis that:
- (a) references in those sections to "shares" are deemed to include references to all Equity Securities of the Trust, and references to "holders of shares" and "shareholders" are deemed to be references to holders of Securities;
 - (b) references in those sections to the "company" shall be deemed to be references to the Trust, or, where the context requires, to the Manager and references to pre-emption rights under section 45 of the Companies Act 1993 shall be deemed to be deleted from section 117 of the Companies Act 1993;
 - (c) the reference in section 117 to a "special resolution" is deemed to be a reference to a Special Resolution; and

- (d) the references in section 117 to the "constitution" are deemed to be references to this deed or any other document which governs the rights attaching to those Equity Securities as the case may require,

but the provisions of section 118 of the Companies Act 1993 shall not apply to any Equity Securities.

6.2 Exceptions:

- (a) For the purposes of clause 6.1, the issue of further Equity Securities which rank equally with any existing Equity Securities, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Equity Securities.
- (b) Clause 6.1 shall have no application to any amendment to this deed made pursuant to clause 27.1, other than clause 27.1(f).

7 VOTING RESTRICTIONS

- 7.1 **Partially paid Securities:** Each Security which is not fully paid shall carry only a fraction of the vote which would be exercisable if the Security were fully paid, equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Security bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).

- 7.2 **Voting restrictions:** Notwithstanding anything to the contrary in this deed or the Listing Rules, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of any such resolution shall be cast on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a person.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under Listing Rule 7.3.1	Subject to clause 7.3: (a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or (b) If the resolution does not specify the persons to whom it is proposed to issue Units, the Manager and any Director of the Manager who is not excluded by the terms of the resolution from participation in the issue.
Resolution under Listing Rule 7.3.1 to approve a Rights issue of Equity Securities which is not Renounceable	The Manager and any Director of the Manager.
Resolution under Listing Rule 7.3.5(c)	Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution.
Resolution under Listing Rule 7.5	Any person whose effective control of the Trust would be materially increased.
Resolution under Listing Rule 8.4	Any person who is intended to benefit from the reduction, deferral, or cancellation, unless the reduction, deferral, or cancellation benefits all holders of Equity Securities on the same basis.

Resolution under Listing Rule 9.2.1	Any person referred to in Listing Rule 9.2.3 who is a party or beneficiary (in terms of Listing Rule 9.2.1(a) or (b)) to or of the transactions the subject of the resolution.
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- 7.3 **Exception:** On a resolution under Listing Rule 7.3.1, a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 7.4 **Proxies or representatives:** Clause 7.2 shall not prevent a person disqualified from Voting under that clause, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 7.5 **Deadline for challenge:** Without prejudice to any remedy (other than those which take legal effect against the Trust) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of clause 7.2, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that clause. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to clause 7.2, which has been supplied by the Manager to NZX or to any holder of Securities on request pursuant to Listing Rule 9.3.4 shall be disregarded by the Manager and the chairperson of the relevant meeting if it is notified to the Manager later than one full Business Day before the time fixed for commencement of the meeting.

8 OTHER PROVISIONS REQUIRED BY THE LISTING RULES

- 8.1 **Right to Transfer:** Subject to the provisions of any legislation, and to clause 9.3 of this deed and Listing Rule 11.1.5, any restriction in this deed on the right of a holder of a Quoted Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Quoted Securities, shall not apply for so long as the Trust is Listed.
- 8.2 **Supervisor's right to appoint Valuer:** The Supervisor shall be entitled at any time to appoint an independent valuer to value, at the expense of the Trust, the Assets.
- 8.3 **No deduction from income:** No deduction from the income of the Trust shall be made by the Manager or the Supervisor unless specifically provided for in this deed.
- 8.4 **Vacancy in office of Supervisor:** If the office of the Supervisor becomes vacant, and a new trustee and supervisor is not appointed within two months of the vacancy occurring, the Trust shall be wound up.
- 8.5 **Changes in Manager:** Any change in the Manager, or in the terms of appointment of the Manager, shall be subject to the approval of the Supervisor.
- 8.6 **Registration of separate parcels:** A holder of Securities or a transferee may request the Manager to register the Securities held by that person in two or more separately identifiable parcels. Where the Manager agrees to such a request, the Manager may, so far as it considers convenient, communicate with the holder of those Securities, pay distributions or interest and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.
- 8.7 **Meetings of an interest group, Affected Group or Relevant Group:** A meeting of the holders of Quoted Equity Securities in an interest group, or an Affected Group or a

Relevant Group may be called by the Manager at any time, and shall be called on the written request of holders of Quoted Equity Securities carrying together not less than 5% of the Votes. All the provisions of this deed relating to meetings of Unit Holders apply, with all necessary modifications, to a meeting of an interest group, an Affected Group or a Relevant Group, except that:

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