Trustees Executors Limited

Fund Managers Otago Limited

NZ Mortgage Income Trust Group Investment Fund

AMENDED AND RESTATED TRUST DEED

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Parties

1. **Fund Managers Otago Limited**
   ('the manager')
2. **Trustees Executors Limited**
   ('the supervisor')

Background

A. The manager and the supervisor are parties to a trust deed dated 30 July 2001 (which was subsequently varied on 26 August 2003 and 2 August 2007 (**existing deed**) which established the NZ Mortgage Income Trust Group Investment Fund (**fund**).

B. Clause 253.2 of the existing deed provides that the supervisor may, with the concurrence of the manager at any time, make any alteration, modification, variation or addition to the provisions of the existing deed if in the opinion of the supervisor and manager the same is necessary or desirable for the more convenient, economical or advantageous working management or administration of the fund or for the purpose of complying with any relevant law or any exemption from any relevant law, or for safeguarding or enhancing the interests of the fund or investors and is not likely to become prejudicial to the interests of investors generally.

C. Under clause 17(1) of Schedule 4 of the Financial Markets Conduct Act 2013 (**FMCA**), a former enactment (as defined in the FMCA) will continue to apply to the fund during the transition period.

D. Under clause 19 of Schedule 4 of the Act, the transition period is the period commencing on 1 December 2014 and ending on the close of the day before the earlier of the following dates (**Effective Date**):

   a. the date the manager elects; or

   b. 1 December 2016.

E. The manager and supervisor wish to amend the existing deed by substituting this deed for the existing deed with effect from the Effective Date to:

   a. reflect the requirements of the FMCA, in order to allow the fund to become registered as a managed investment scheme under the FMCA; and

   b. make a number of other amendments that the supervisor and manager consider appropriate in connection with the fund becoming registered as a managed investment scheme under the FMCA.

F. The amendments recorded in this deed have been approved by the supervisor and it has confirmed that in its opinion the amendments recorded in this deed are necessary or desirable for the more convenient, economical or advantageous working management or administration of the fund or for the purpose of complying with the FMCA, or for safeguarding or enhancing the interests of the fund or investors and is not likely to become prejudicial to the interests of investors generally.

G. Accordingly the supervisor and manager have agreed to enter into this deed to amend and restate the existing deed.

Covenants

Amendment of the existing deed

1. The manager and the supervisor agree that, with effect from the Effective Date, the existing deed is amended so that each of the existing clauses in the existing deed are replaced by substituting them with the clauses of this deed.

Appointment of supervisor and manager and establishment of the fund

Establishment and commencement

2. At the request of the manager the supervisor established the NZ Mortgage Income Trust Group Investment Fund on 30 July 2001.

Supervisor

3. The supervisor has agreed to:

   3.1 hold the scheme property in trust for the relevant investors;

   3.2 act as trustee of the fund for and in the interests of those investors generally; and

   3.3 be the supervisor of the fund for the purposes of the FMCA and the Financial Markets Supervisors Act 2011,

   upon and subject to the terms and conditions contained or implied in this deed and the relevant issue terms.

Manager

4. The manager is the manager of the fund upon and subject to the terms and conditions contained or implied in this deed and to relevant law.

The fund

5. The fund shall consist of all scheme property for the time being held by the supervisor upon the trusts of this deed, excluding application moneys held pending investment in the fund, but including:

   5.1 investments

   5.2 the proceeds of sale or realisation of any investments of the fund pending distribution or reinvestment

   5.3 all additions or accretions (if any) to the fund which arise by way of dividend, interest, premium or distribution, which are otherwise received and for the time being are retained

   5.4 all income there from held pending distribution or reinvestment.

Foundation investment held on trust

6. The manager has vested the foundation investment in the supervisor and has directed the supervisor to hold that amount for the purposes of the fund upon trust for the manager upon and subject to the terms and conditions contained or implied in this deed. The supervisor has acknowledged receipt of the foundation investment and has agreed that it holds the same upon trust for the manager on the trusts of the fund.

No entitlement to a unit

7. The foundation investment for the fund shall not entitle the manager to any unit or fraction thereof, but only to the payment of an amount equal to the foundation investment without interest, after satisfaction of all valid claims of investors in the fund upon termination of the fund.

Sole undertaking

8. The sole undertaking of the fund shall be to invest and/or keep invested the fund in the manner and subject to the terms and provisions of this deed.

Legal ownership

9. The legal ownership of the scheme property shall be vested in the supervisor subject to any arrangements for custody of such scheme property on behalf of the supervisor as provided for in clause 161.

Units

Beneficial interest in fund

10. The beneficial interest in the fund shall be divided into units which shall each confer an interest in the fund.

Equal but not specific interests

11. Each unit shall confer an equal interest in the fund, but shall not confer any interest in any particular part of the fund, and no investor shall be entitled to require the transfer to the investor of any of the scheme property of the fund. Nor shall investors have any right to compel any partition, division or reinvestment of scheme property, other than as provided for in this deed.

No interference in management etc

12. Subject to the rights of investors created by this deed, or by relevant law, no investors shall be entitled to interfere with or question the exercise or non-exercise by the supervisor or the manager or of any of the trusts, powers, authorities or discretions conferred upon either of them by this deed or in respect of the fund or any part or parts thereof or to exercise any right, power or privilege in respect of any authorised investment or the fund itself.

Provisions benefit investors

13. Except where expressly provided in this deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind investors) contained in this deed, enure for the benefit of and bind each investors.

Fractional units

14. Fractions of a unit may be created and can exist under this deed and be denoted by figures up to 4 decimal places. A fractional unit will confer a proportional interest in the fund but will not confer any voting rights on the holder.

Supervisor's and manager's authority

15. Subject to compliance with their respective obligations under this deed and the terms of this deed, the manager and supervisor shall have sole and unrestricted rights and powers in dealing with the fund as provided in this deed and any relevant issue terms.

Issue of units

Manager may invite offers

16. Following the execution of this deed the manager may at any time and from time to time invite offers, subscriptions or applications for units in the fund subject to the terms and conditions contained in this deed and in accordance with all relevant law and otherwise in such manner and upon such terms and conditions (not being inconsistent with this deed) as the manager shall from time to time determine. There is no limit as to the number or amount of units that can be issued under this deed.

Compliance with legislation

17. The manager must not make a regulated offer of units unless:
    - 17.1 the scheme is registered under the FMCA;
    - 17.2 a product disclosure statement (**PDS**) has been prepared and lodged on the disclose register in respect to the fund; and
    - 17.3 register entries containing all information required by the FMCA have been uploaded on the disclose register in respect of the scheme and the fund.
18. The manager must use reasonable commercial endeavours to ensure that the disclosure documents for the scheme and each fund at all times comply with relevant law.
19. The manager shall provide to the supervisor, with reasonable notice, drafts of all proposed disclosure documents in respect of the scheme and fund so as to allow the supervisor to review and provide comments on the draft (which the supervisor will do in a timely manner, or if a reasonable timeframe for response has otherwise been agreed between the manager and supervisor, within that timeframe).
20. The manager must ensure that the scheme and the manager meet (and continue to meet) the initial and ongoing registration requirements applying to the scheme and the fund and the Manager (as manager of the scheme) under relevant law.

Minimum investment

21. The minimum initial investment in the fund shall be such amount as stipulated in any relevant issue terms, which amount shall not be less than the minimum value of units and the minimum transaction value at the relevant time. Further investments may be made from time to time, subject to the relevant issue terms and applicable minimum transaction values.

Contribution fee

22. The manager shall be entitled to charge a contribution fee of up to 5% of application moneys. Subject to relevant law, the manager shall also be entitled to charge

investors any other fees it determines to charge with the prior written consent of the supervisor and to deduct such fee from the application monies. The manager shall be entitled at any time to waive the whole or any part of the contribution fee or any other fees. All such fees must be disclosed in the PDS.

Application for units

Application procedure

23. Every person wishing to apply for units in the fund shall:

23.1 complete and lodge with the manager an application in writing or by electronic communication in such form or to such specification (including such evidence as to identify the applicant, or in the case of a corporate or trustee application such evidence as to the identity of the directors, shareholders, trustees and beneficiaries (as the case may be) to enable the manager to comply with its obligations under the AML/CFT Act) as is from time to time prescribed by the manager. An initial application shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the manager may from time to time prescribe; and

23.2 forward or credit to the manager the application monies in respect of the units applied for.

Standing application

24. At the option of the applicant, an application may be designated as a standing application for an amount per month (or such other period as the manager shall determine or permit) and may include an authorisation to the manager to initiate direct debits from a bank account nominated by the applicant for relevant application amounts to be credited to the manager. Standing applications shall be deemed to have been received prior to the prescribed time on the business day on which they are directed to take effect. If any day specified pursuant to a standing application is not a business day, the standing application shall be deemed to have directed the next occurring business day as the day on which the application in question is to take effect.

Deemed subscription

25. Applications for units:

25.1 if received by the manager prior to the prescribed time on any business day, shall be treated as a subscription for units to be issued from the fund on the business day the application was received;

25.2 if received by the manager after the prescribed time on any business day, shall be deemed to have been received at the commencement of the next business day; or

25.3 if received by the manager at a time when the applicant is not already an investor, shall be deemed for the purposes of the fund to have been received by the manager at the commencement of the next business day following their actual receipt.

an application shall not be treated as having been received by the manager until the manager has actually received notice of its lodgement, in accordance with procedures prescribed by the manager from time to time, subject to the issue terms.

Agency agreement

26. The manager shall require that an agency agreement be entered into by the applicant, on such terms and conditions as the manager may from time to time prescribe, as a condition of acceptance of an application. A disclosure document may embody some or all of the agency agreement terms that are entered into as a condition of any application for units, without requiring separate documentation.

Manager to act for investors

27. The manager shall act and shall be authorised to act as agent for an investor in respect of a subscription for units on such terms and conditions agreed between the manager and the investor in the agency agreement.

Manager's discretion

28. The manager may refuse to accept in whole or in part any application and the manager shall not be required to give any reason or ground for such refusal.

Refunds

29. The manager shall as soon as practicable and, in any event, no later than one month after the obligation to repay arises, refund application moneys received in respect of a rejected application.

Registration and issue of units

30. The registrar, upon notification from the manager of the acceptance of an application and the issue of units, shall enter the name of the investor and such other details required by clause 111 on the appropriate register or, where the investor is already on the register, cause the register to be altered accordingly.

Minimum value of units

31. The minimum value of units shall be the minimum value stipulated in the relevant issue terms and described in the PDS. The manager may from time to time alter the minimum value of units.

Minimum number of units

32. The minimum number of units that may be held by an investor in the fund at any time shall be the number specified in the relevant issue terms and described in the PDS. The manager may, from time to time, alter the minimum number of units that may be held by an investor in the fund at any time.

Manager may redeem

33. The manager may automatically redeem all units held by an investor in the event that an investor fails to hold the minimum value of units or the minimum number of units prescribed by the manager pursuant to clauses 31 and 32 from time to time.

Issue price and issue of units

Issue price

34. Each unit shall be issued at the unit value applicable to the business day that last precedes the business day on which the application for units is received (or is deemed to be received under clause 25, as the case may be) by the manager.

Creation of units

35. The supervisor grants the manager the power to create units upon acceptance of an application.

Issue of units

36. The manager shall issue to, or to the order of, an investor the appropriate number of units against receipt of the consideration for those units by the manager based on the criteria established under clause 37.

Number of units

37. The number of units issued pursuant to an application shall be that number of units (rounded down if necessary to 4 decimal places) that have an aggregate unit value equal to the application monies, less any contribution fee, based on the unit value applicable in accordance with clause 34.

Application monies subject to trusts

38. The manager must hold any application money paid to it in trust in accordance with the requirements of the FMCA.

39. All application moneys received in payment of the issue price for units pursuant to clause 34 shall become subject to the trusts created by this deed in respect of the fund immediately upon issue of units in respect of those moneys.

Cessation of issue of units

Manager may determine

40. The manager may at any time or times by notice in writing given to the investors determine that no further units shall be issued pursuant to this deed after a date specified in the notice either for any specified period or until this deed is terminated. The manager shall immediately notify the supervisor of such suspension or recommencement. In such event the manager will not after the date specified in the notice issue any further units under this deed for the specified period or until this deed is terminated whichever situation applies.

Redemption of units

Withdrawal notice

41. If any investor shall desire to withdraw from the trust, he shall give notice in writing to that effect to the manager (withdrawal notice), in the manner specified in clause 269. Such withdrawal notice shall specify the amount of money the investor wishes to withdraw or the number of units in respect of which the investor desires to effect withdrawal, shall be accompanied by such evidence as the investor's title to the units and identity as the manager may reasonably require, shall be in such form (if any) as

may be prescribed by the manager from time to time, and shall not be able to be revoked by the investor by whom it has been given.

Effective date of withdrawal notice

42. Subject to clause 52, a withdrawal notice received by the manager:

    42.1 prior to the prescribed time on a business day shall be effective on that business day

    42.2 after the prescribed time on a business day shall be effective on the next business day

    42.3 if it is a regular withdrawal notice, shall be effective on each business day on which it is directed to take effect, as if received by the manager in respect of each withdrawal of units to which it relates prior to the prescribed time on the business day on which that withdrawal was directed to take effect. If any day specified pursuant to a withdrawal notice is not a business day, the regular withdrawal notice shall be deemed to have directed the next occurring business day as the day on which the withdrawal in question is to take effect.

Manager to redeem

43. Subject to clause 52, the manager shall redeem units specified in a withdrawal notice within 90 business days of the manager receiving the withdrawal notice.

Payment of withdrawal amounts

44. Upon any redemption of units pursuant to clause 43, the manager shall pay the withdrawal amount to the relevant investor. The withdrawal amount payable to the investor shall be the unit value of the units in question on the date of withdrawal, less any fee the Manager may charge under clauses 46 to 48,. The income entitlement on those units to the date of withdrawal shall be payable in accordance with clause 76.

45. The manager may, in order to satisfy its obligation in whole or in part under clause 44, agree with any investor who has issued a withdrawal notice to transfer authorised investments to such investor. The aggregate market value of the authorised investments transferred must not exceed the withdrawal amount.

Deduction of withdrawal fees

46. If an investor shall give a withdrawal notice in respect of a unit which was originally subscribed for less than 1 year before the giving of that withdrawal notice, then the manager shall be entitled to charge and be paid by that investor a withdrawal fee equal to 2% of the withdrawal amount in respect of that unit.

47. If an investor shall give a withdrawal notice in respect of a unit which was originally subscribed for more than 1 year but less than 2 years before the giving of that withdrawal notice, then the manager shall be entitled to charge and be paid by that investor a withdrawal fee equal to 1% of the withdrawal amount in respect of that unit.

48. The manager shall be entitled to deduct and withhold such fees from the amount paid to that investor under clauses 43.

Minimum value of units

49. No withdrawal notice shall be given in respect of less than the minimum transaction value, and except where all units held by an investor are to be redeemed, no withdrawal notice shall be given if the effect of the withdrawal would be that the investor who gave the same would hold less than the minimum value of units. The manager may at any time at its discretion waive the requirements of this clause, either generally or in a particular case or cases.

Method or redemption of funds

50. In connection with redemption of units under clause 43 the manager shall direct the supervisor to pay the withdrawal amount in respect of the units to be redeemed from the fund's bank account to the withdrawing investor. If there are insufficient monies in the fund's bank account to meet withdrawals, the manager shall direct the supervisor to realise investments of the fund to provide the withdrawal amount in respect of the units to be redeemed, and the proceeds of such realisation shall be held for the purposes of the fund.

Cancellation of units redeemed

51. Units redeemed pursuant to clause 43 shall cease to exist and shall be deemed to be cancelled. The registrar shall make an appropriate entry on the register in respect of such cancellation.

Withdrawal suspension notice

52. If by reason of:

    52.1 the suspension of trading on any exchange (whether generally or in respect of any specific investment)

    52.2 financial, political or economic conditions applying in respect of any financial market

    52.3 the nature of any investment

    52.4 the occurrence or existence of any other circumstance or event relating to the fund or generally

    the units specified in the withdrawal notice cannot be redeemed, then the manager may give notice to that effect to the supervisor and all investors. A withdrawal suspension notice shall have the effect of suspending the operation of all withdrawal notices given until such time as the manager gives to all investors notice to the effect that the withdrawal suspension notice is cancelled.

Cancellation of withdrawal suspension notices

53. The manager shall give notice of cancellation of a withdrawal suspension notice not later than 90 days after the date upon which that withdrawal suspension notice is given, or may by further notice to the investors extend the operation of a withdrawal suspension notice beyond that period of 90 days. Unless extended in accordance with the provisions hereof, a withdrawal suspension notice shall be deemed to be automatically cancelled upon the expiration of that initial 90 day period. All withdrawal notices suspended under a withdrawal suspension notice shall be deemed

to have been received on the next business day following cancellation of the withdrawal suspension notice.

Redemption by instalments

54. Notwithstanding anything contained in this deed if:

54.1 a withdrawal notice shall be received or a series of withdrawal notices received in respect of the same holding of units within a period of 3 months that relate to more in total than 5% of the number of units on issue at the time of the request or last request, and

54.2 the manager, in consultation with the supervisor, determines that it is in the general interest of all investors to defer immediate redemption of the total units requested

then such units may be redeemed by instalments over a period approved by the supervisor or in total at the expiration of a period approved by the supervisor and in any such case the withdrawal amount shall be calculated at the business day or respective business days on which such units are redeemed.

Order of redemption

55. If an investor gives a withdrawal notice which requires redemption of less than all of the units held by the investor, and the investor does not specify particular units to be redeemed the units which are first redeemed by that investor shall be deemed to be those of the units held by that investor which are earliest subscribed or purchased.

Payment by direct credit

56. For any proceeds of redemptions payable from the fund (including any accrued income payable), payment shall be made by direct credit to the investor after set off of any amount owed to the manager or supervisor. The payment of the amounts payable under this clause shall constitute valid payment of such amounts in accordance with this deed and shall discharge the manager and the supervisor from such payment obligation.

Joint holders of units

57. Where 2 or more persons are registered as the holders of any unit (joint holders) they shall be deemed to hold the same as joint tenants with the benefit of survivorship subject to the following provisions:

57.1 the registrar shall not be bound to register more than 2 persons as the holders of any unit

57.2 the joint holders of any unit shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the unit

57.3 on the death of a joint holder, the survivor or survivors shall be the only person or persons recognised by the supervisor as having any title to such unit, but the supervisor may require such evidence of death as it thinks fit

57.4 any one of such joint holders may give withdrawal notices, execute a transfer of units or give effectual receipts for any withdrawal amount or distribution payable to such joint holders

57.5 a notice from the registrar given to any one of the joint holders shall be deemed notice to all the joint holders

57.6 at any meeting of investors any one and only one of such joint holders may vote either personally or by duly authorised representative or by attorney or proxy in respect of such unit

57.7 only the person whose name stands first in the register as one of the joint holders of any unit may require delivery of any statement relating to the unit or be entitled to receive notices, payment or other communications from the manager or the supervisor. Any statement, notice or other communication given to such person shall be deemed to have been given to all the joint holders

57.8 any one of the joint holders may give a receipt for any payment made in respect of a unit. Payment to the joint holders may be paid, to all or any of such registered holders. The payment to and/or receipt of any from such registered holders shall constitute a valid discharge to the supervisor for the proceeds so paid

57.9 in any postal ballot of investors any one of the joint holders may vote personally or by attorney in respect of the unit as if that joint holder were solely entitled thereto. If more than one joint holder returns a ballot paper, the ballot paper belonging to the joint holder whose name stands first in the register in respect of the unit shall alone be counted as the vote of the holder of the unit.

Transfer and transmission of units

Units not transferable

58. Except as provided in clauses 59 and 60, units are not transferable, without the written consent of the manager and then subject to such terms and conditions as the manager may in its discretion impose.

Transmission of units

59. The executors and administrators of a deceased investor (not being a joint holder) shall be the only persons recognised by the manager as having any title or interest in the units held by such investors.

Transfer by operation of law

60. Any person having authority to administer the estate of a mentally disordered person and any person becoming entitled to any units in consequence of the death, insolvency, bankruptcy or liquidation of any investor may upon producing such evidence of capacity, identity or of title as the manager shall think sufficient be registered as the holder of such units by the registrar. This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

Income distributions

Income allocation

61. Notwithstanding, and without prejudice to clause 62, the manager, on behalf of and with the approval of the supervisor, may on a periodic basis (which may be daily) agree with the supervisor to determine the unit income and, in respect of each investor, the unit days per investor in order to determine the income entitlement and allocate that income entitlement to each investor. However, the manager has no obligation to distribute that income entitlement except if the date is a distribution date, in which case the provisions of clause 63 apply. For the sake of clarity, the income entitlements of the investor for such allocation may be rounded down but any balance of the allocation amount for that income allocation period arising as a consequence of any calculation of the income entitlement attributable to a unit or the rounding down of the income entitlements of an investor shall be retained and carried forward to the next periodic allocation day (which for clarity, may be the next day).

Determination of income

62. On the distribution date, the manager, with the approval of the supervisor, shall determine the income of the fund for the distribution period ending on that day.

63. In determining income of the fund for any period the manager shall take into account all income due and receivable and all costs charges and expenses due or accrued including without limiting the generality of the foregoing:

63.1 all fees costs and disbursements payable to the manager and to the supervisor

63.2 all costs and expenses incurred in respect of investments

63.3 all costs and disbursements incurred in connection with this deed or in connection with the fund or the administration of the fund and chargeable against income

63.4 due allowance for prepayments, doubtful debts and bad debts

63.5 any taxes or duties paid or payable by or in respect of the fund

63.6 the reasonable fees and expenses of the auditor in connection with the audit of the fund

63.7 if the manager (with the consent of the supervisor) so determines:

63.7.1 contribution to reserve funds

63.7.2 realised and unrealised capital gains received by the trust which the manager reasonably determines are income

63.7.3 all depreciation of investments (if the manager determines such should be charged against income) of an amount determined by the manager

63.8 such other provisions as the manager with the consent of the supervisor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the fund for that period.

Supervisor's decision is final

64. If any question shall arise as to whether any money or property constitutes income or capital or whether any expense is chargeable against income such question shall be determined by the manager with the approval of the supervisor who shall do so by construing this deed and having regard to general commercial practice and generally accepted accounting principles. Such determination, in the absence of manifest error, shall be conclusive and binding upon all investors.

Treatment of income

65. The manager, on behalf of the supervisor, shall ensure that all income received by or accrued to the trust is entered into the income account. The income account may be debited for:

65.1 crediting the reserve fund account

65.2 paying or making provision for any liabilities of the fund

65.3 allocating income to, or making distributions to, investors.

65.4 any other reasons required for the proper administration of the fund.

Determination of unit income and income entitlements

66. On each distribution date the manager shall determine the unit day income and, in respect of each investor, the unit days per investor and the income entitlement, provided that if the manager has allocated unitholder income entitlements during the distribution period in accordance with clause 61, distributions to unitholders on each distribution date shall be determined in accordance with such allocations.

Determination of distribution amount

67. As soon as practicable after the end of every distribution period the distribution amount shall be distributed to investors in accordance with their income entitlements determined in accordance with clause 69. The income entitlements of an investor for a distribution period may be rounded down to not less than the nearest whole dollar.

Allocation of entitlements

68. During the continuance of the fund and subject to the terms of this deed the manager will allocate to each investor the net income attributable to that investor after the deduction of withholding tax, if any. When that income has been allocated to the investor, that income will form an asset of the investor. Prior to allocation of the income to the investors, the manager, acting as the investor's agent (pursuant to the appointment as agent on the application form completed by each investor investing in the fund) will deduct from the investor's income any fees payable to the manager pursuant to the issue terms. The manager will then distribute the income entitlements.

Units issued in lieu of entitlements

69. Investors may elect to have their income entitlements distributed to them by the issue of additional units by making a written request to that effect to the manager. Any such request must be submitted to the manager not less than 30 days prior to the expiration of the relevant distribution period. Such a request may be varied or

terminated by notice in writing to the manager at any time other than within that period of 30 days before the end of the relevant distribution period.

70. Where an investor requests their income entitlement is distributed to them by the issue of additional units, and the manager at its sole discretion agrees, the manager may at any time apply and capitalise the whole or part of that investor's income entitlements towards paying up in full new units to be issued and distributed as fully paid units.

71. At the discretion of the manager, a unit issued in lieu of income entitlements following the end of the last day of a distribution period may entitle its holder to participate in the distribution for the next distribution period in full irrespective of the number of days it has been on issue during the relevant distribution period.

Payment of entitlement

72. Each distribution shall be made within 60 days after the last day of the distribution period to which it relates.

Income Entitlements less than minimum amount

73. In any case where an investor has not elected to receive an income entitlement by the issue of units and the income entitlement payable to such investor amounts to less than $25.00 then the manager may in its discretion allocate to the relevant investor the number of additional units that equate to such investor's income entitlement. Such additional units will be issued in accordance with clause 34.

Various types of income

74. The manager is entitled in its discretion subject to the approval of the supervisor to specify in respect of each distribution the extent to which (allowing for reasonable approximation) the income entitlements of an investor participating in that distribution consist or are deemed to consist of various types of income comprised therein.

Form of payment

75. Any monies payable by the supervisor or by the manager to an investor under the provisions of this deed may be credited to any bank account nominated by the investor.

Income entitlements in respect of redeemed units

76. Income entitlements determined in accordance with clause 66 in respect of the units withdrawn for the period from the previous distribution date to the date of withdrawal will be distributed by direct credit at the conclusion of the distribution period during which the units were withdrawn.

Payments from the fund

Method of payment of expenses

77. Expenses of the fund, including amounts to be provided for anticipated expenses, may be charged against the income of the fund and deducted accordingly, on such terms as the manager and supervisor may determine.

Payment of expenses by other person

78. The supervisor, the manager or, with the consent of the supervisor, any other person may meet some or all of the expenses of the fund, and any expenses paid by them shall be recoverable as a debt from the fund.

Separate identification of administration costs

79. Any fee or charge or remuneration or reimbursement payable in respect of the administration of the fund, shall be identified separately from any other costs in respect of the fund.

Reimbursement

80. The supervisor and manager shall be severally entitled to be reimbursed out of the fund for all expenses costs or liabilities incurred by either party in or about acting as supervisor or manager under this deed. Without prejudice to the generality of the foregoing the supervisor and manager shall be entitled to be indemnified out of the fund against:

80.1 any expense or liability which may be incurred by the supervisor or the manager (with the Supervisor's consent) in bringing or defending any action or suit in respect of the fund or the provisions of this deed

80.2 all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an authorised investment, including commission, bank charges and stamp duty

80.3 all income tax, capital gains tax, stamp duties, financial institutions duties and bank account debits, taxes or any other duty, tax or impost properly charged to or payable by the supervisor or manager (whether by any taxing authority or any other person) in connection with the fund

80.4 costs of postage in respect of all accounts, distribution statements, notices, reports and other documents posted to all or any investors

80.5 costs of convening and holding any meeting of investors

80.6 costs of preparing and printing accounts, distribution statements, and all other documents required to be prepared in connection with the fund, pursuant to this deed or any relevant law

80.7 all costs, charges and expenses of and incidental to the preparation and execution of this deed and any deeds supplemental thereto

80.8 fees and expenses of any solicitor, barrister, computer expert or other person from time to time employed by the supervisor or manager in the discharge of its duties and exercise of powers under this trust deed including (without limitation) any person to whom the supervisor or manager delegates all or any of its powers, authorities, functions and discretions pursuant to clauses 139 and 165

80.9 expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the register

80.10 all costs, charges and expenses incurred in the advertising and promotion of the fund including the preparation of any PDS

80.11 any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of units

80.12 the expenses of any custodian, agent or nominee company of the supervisor or the manager within or outside New Zealand

80.13 the fees and expenses of the auditor

80.14 any expenses incurred in respect of the administration of the fund.

Priority for remuneration

81. The supervisor and the manager may retain and pay in priority to any claim by investors:

81.1 reimbursements of expenses out of any moneys for the time being held in the fund whether in the nature of income or in the nature of capital

81.2 in respect of the supervisor, any indemnity to which it is entitled in accordance with this deed

81.3 in respect of the manager, any indemnity to which it is entitled in accordance with this deed.

Investments

Investment policy

82. The manager must ensure that there is a SIPO for the fund, and that the fund is invested in authorised investments in accordance with the SIPO.

83. The initial SIPO prepared by the manager must be approved by the supervisor before it is lodged on the disclose register.

84. The SIPO may be changed from time to time by the manager in accordance with the relevant law and with the consent of the supervisor. If the manager proposes to alter the SIPO in a manner which materially affects existing investors then the manager must, prior to effecting any such alteration, give at least 30 days' written notice to investors.

Duty of care

85. It is hereby expressed, as a contrary intention for the purposes of section 13D(1) of the Trustee Act 1956 only, that the duties imposed on the manager and the supervisor by sections 13B and 13C of that act shall not apply, except in respect of the formulation of the SIPO. In particular and subject to relevant law, the supervisor shall not, in carrying out its duties, be required to exercise any care, diligence or skill in respect of the investments of the fund, other than to monitor the manager's obligations in respect of the SIPO.

Directions of the manager

86. Subject to relevant law and to clause 88, the supervisor shall act on (or direct any custodian to act on) any direction or request by the manager to invest the fund in authorised investments in accordance with the SIPO.

87. The supervisor will, to the extent of the fund and subject to clause 86 give effect to such contractual transactions as it shall be directed in writing by the manager to effect, and will sign all documents and do all things necessary on its part to give effect to any such direction.

88. The supervisor must refuse to act (and must direct any custodian to refuse to act) on any direction of the manager to acquire or dispose of any scheme property if the supervisor considers the proposed acquisition or disposition is manifestly not in the best interest of investors or is in breach of this deed, any rule of law, or any enactment.

89. The supervisor (and any custodian) shall not be liable to investors or the manager for refusing to act (or directing any custodian to refuse to act on) on any direction given by the manager in respect of the acquisition or disposal of any scheme property.

90. If the supervisor refuses pursuant to clause 88 to act (or directs any custodian to refuse to act) on a direction of the manager, the supervisor must notify the manager and the FMA in writing of that fact and the supervisor's reasons for the refusal or the direction to refuse.

Investment discretion

91. Subject to clauses 82 to 87 the manager shall have the absolute and uncontrolled discretion as to and shall manage:

    91.1 the investment of any cash and bank deposits forming part of the fund

    91.2 the purchase, sale, transfer, exchange or alteration of any investments from time to time comprising part of the fund.

92. Subject to the SIPO the manager alone shall be entitled from time to time to cause to be effected any contractual transactions in relation to the fund which the manager considers are in the interests of the investors.

Holding of scheme property

93. Scheme property of the fund shall, as soon as reasonably practicable, be registered in the name of the supervisor and be held in safe custody by the supervisor or by a custodian or nominee appointed by the supervisor under clause 160 and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this deed.

Limit breaks

94. The manager must report to the supervisor any material limit break (within the meaning of section 167 of the FMCA) and take any other action prescribed by law or as agreed between the manager and the supervisor.

Manager to remedy

95. Without derogating from the manager's obligations under clause 82, any investment that does not comply with the SIPO shall be remedied by the manager to the satisfaction of the supervisor no later than 5 business days, or such longer period as the supervisor may permit, after non-compliance is discovered by the manager and reported to, or otherwise identified by, the supervisor.

Valuations

Calculations at valuation day

96. The manager shall calculate or shall cause to be calculated the fund value and the unit value as at each valuation day.

Fund value

97. Fund value means, at any valuation day, the residual value of the fund's assets other than net assets attributable to investors, after the deduction of all liabilities. The fund value at any valuation day is ascertained and fixed by the manager by adding:

97.1 the value of the cash and bank deposits forming part of the assets of the fund

97.2 interest receivable and accrued

97.3 the market value of all non-cash investments of the fund

97.4 and deducting:

97.5 undistributed income (including income allocated, but not distributed, to investors) of the fund

97.6 any amounts held in the reserve fund account.

97.7 liabilities of the fund (including accrued expenses).

98. Market value of any investment as at any valuation day means:

98.1 in respect of any investment which is a loan made upon the security of a mortgage or mortgage backed security, the lesser of:

98.1.1 the acquisition cost of the loan, excluding any amount paid in respect of accrued interest

98.1.2 the principal amounts outstanding under the loan as at the date the fund acquires an interest in the loan

98.1.3 the amount the manager reasonably determines to be the amount recoverable under the loan

98.2 In respect of any investment which is not a loan and which is listed on an exchange, the price quoted for the last sale of that investment on that exchange on or before that valuation day, provided however that if there shall have been no such sale in the 5 business days ending with that valuation day, the value thereof shall be the fair market value determined by a registered member of the exchange

98.3 In respect of investments not included in the paragraphs above, an amount agreed upon, or determined in a manner agreed upon between the manager and the supervisor, or failing such agreement the fair market value determined by a qualified adviser.

Unit value

99. Unit value is ascertained by dividing the fund value by the number of units on issue on that valuation day, rounded down if necessary to the nearest whole cent. The amount so ascertained shall apply in respect of every succeeding business day that

occurs prior to the next succeeding valuation day.

Valuation day

100. A valuation day is a business day whether periodical or otherwise, being no less frequently than once per month, specified by the manager as a day on which the market value of the investments of the fund is determined

101. If the manager becomes aware of a material change in the value of any aspect of scheme property on any day, or a material event likely to materially change the value of any aspect of scheme property on any day, then that day will be a valuation day and the manager, in consultation with the supervisor, will calculate the fund value and the unit value in the manner set out above.

Values to be determined at the valuation day

102. Whenever this deed requires the determination of the fund value or the unit value in the fund, such value shall be the value calculated under clause 96 as at the valuation day.

Pricing errors

103. The manager must report to the supervisor any material error in the calculation of the unit value, or material non-compliance with any methodology for valuing the fund or units set out in this deed or in notices issued by the FMA. The manager must correct such error or non-compliance and take any prescribed steps required by relevant law.

104. If, under relevant law, reimbursement and/or compensation is payable to an investor or a former investor, the manager must comply with its obligations under those requirements. However, the manager may, in consultation with the supervisor, choose not to pay any reimbursement or compensation to an investor or a former investor for an amount less than $25.00 (or such other amount as the manager and the supervisor may agree from time to time).

Valuation rules

105. For the purposes of clauses 96 and 102, if the supervisor has cause to believe that on the relevant valuation day that there may be a material discrepancy or potential error in the calculation of the fund value or unit value, the supervisor may calculate the fund value or unit value as the case may be, and that calculation shall be conclusive and binding upon all investors and former investors.

Recovery of under and overpayments

106. If any investor or former investors has been overpaid in respect of the redemption of units or has paid too little for issued units, by reason of error, including miscalculation, the manager shall not be deemed to have waived any remedies in respect thereof. Subject to relevant law, the manager may recover the amount overpaid by the fund or underpaid by the investor as a debt due to the fund, or to the supervisor or the manager, as the case may be.

Register

The register

107. The manager shall keep and maintain or cause to be kept and maintained a register of investors in respect of the fund.

108. The register may take the form of a computer file compiled in a manner determined by the manager.

109. The register shall be kept at the manager's office or such other place as the manager may nominate from time to time.

Appointment of registrar

110. The manager may from time to time with the approval of the supervisor appoint any other person acceptable to the manager, to keep and maintain the register upon such terms and conditions as the manager thinks fit.

Details to be entered in register

111. There shall be entered in the register:

111.1 the names and addresses of the investors, or in the case of joint investors the address of the investor first named in the register, of the fund

111.2 the number and type of units held by each investor

111.3 the date on which the name of every person was entered in the register as an investor

111.4 the number of, and dates on which units are issued, or transferred to or redeemed or transferred by, the investor

111.5 the date on which any person ceased to be an investor

111.6 any other particulars that the manager may consider necessary or desirable to include, or which are prescribed by law from time to time.

Audit of the register

112. The manager shall cause the register to be audited in accordance with relevant law.

Changes of name or address

113. Any change of name or address of any investor shall be notified by such investor in writing to the registrar with such verification as the manager may require and the registrar shall alter the register accordingly.

Inspection of register

114. Any person who serves on the manager written notice of their intention to inspect shall be entitled to inspect the register free of charge at any time between the hours of 9am and 5pm on every business day.

115. The supervisor and the manager may inspect the register at any time.

Copy of register

116. Any person may require a copy of, or an extract from, the register that is available for inspection under clause 114 to be sent to the person within 5 working days after the person has made a written request for the copy or extract to the manager and on

account of the prescribed fee (if any). The written request must include a statement of the person's reasons for the request (including the intended use of the copy or extract) unless it is a request for information about the person making the request.

117. The manager shall provide the supervisor with a copy of the register and all changes to the register as requested from time to time.

Reliance upon register

118. The supervisor and the manager shall be entitled:

118.1 to rely absolutely on the register as being correct

118.2 for all purposes to treat a person whom it believes to be the person entered on the register as the holder of any units as the legal and beneficial owner of those units notwithstanding any notice to the contrary

118.3 to effect transmissions, transfers, redemptions or other dealings of any nature with units on the basis of the information recorded in the register.

Evidence of entitlement

119. Notwithstanding clause 118, the manager shall be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with any units to require the production to the manager of evidence satisfactory to it that the person seeking to effect such dealing is the person named in the register as the holder of the units in question.

No notice of trust etc

120. Except as required by law 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 investor, and accordingly no notice of any trust (express, implied or constructive), charge, pledge or equity shall be entered upon the register.

Confirmation information and statements

121. The manager shall provide each investor:

121.1 Information on the issue, transfer or redemption of a unit as required by relevant law

121.2 At least once every 6 months, or at any time on request by an investor, or at any time on request of the investor, a statement setting out, in respect of the period commencing on the date the investor first purchased units or the date of the last statement sent to that investor (as the case may be) and ending on the date of the statement:

121.2.1 the number and the value of units purchased and redeemed

121.2.2 the amount of any income reinvested

121.2.3 the current unit value of units as at the date of the statement

121.2.4 such other matters as the manager or supervisor deems appropriate.

Rights on registration

122. Except as otherwise provided in this deed, only investors recorded in the register shall be entitled to exercise or enjoy the rights of investors.

Discharge of duty

123. Subject to clause 57.7 a receipt given by the investor in whose name a unit is registered shall be a valid and binding discharge to the manager and supervisor for any payment made in respect of such unit.

Record period

124. Entries on the register in respect of units shall be retained by the registrar for such period, being not shorter than 7 years from the date that the units or holdings ceased to be current, as the registrar may determine. After such period the registrar may (subject to any law and to provisions of this deed) destroy or allow the expunging of such entries.

Power of manager to obtain information as to beneficial ownership

Disclosure of interests

125. Subject to clauses 118 and 120 the manager may, by notice in writing to an investor, or to a person whom the manager considers may have a relevant interest in a unit, require the recipient, within 14 days after receiving the notice, to give to the manager in writing:

    125.1 full particulars of that recipient's relevant interest in specified units and of the circumstances by reason of which that interest is held

    125.2 so far as it lies within the recipient's knowledge:

        125.2.1 full particulars of the name and address of every other person (if any) who has a relevant interest in any of the units

        125.2.2 full particulars of each such interest and of the circumstances by reason of which the other person has that interest

        125.2.3 full particulars of the name and address of each person (if any) who has given relevant instructions in relation to any of the units, details of those relevant instructions, and the date or dates on which those relevant instructions were given.

Disclosure of relevant interests

126. Subject to clauses 118 and 120, any investor may at any time furnish to the manager a statement in writing setting out:

    126.1 particulars of any relevant interest that the investor or any other person has in any specified units and of the circumstances by reason of which that interest is held

    126.2 so far as it lies within the investor's knowledge:

        126.2.1 the name and address of every other person (if any) who has a relevant interest in any of the specified units

126.2.2 full particulars of each such interest, and of the circumstances by reason of which the other person has that interest

126.2.3 the name and address of any person who has given to any other person authoritative instructions relating to the acquisition or disposal of the specified units, or the exercise of voting or other rights attached to them, details of those instructions, and the date or dates on which they were given.

Register may contain relevant interests

127. Where the manager receives, pursuant to a notice given under clauses 125 and 126, information that a person other than the investor has a relevant interest in units, the registrar may enter, or cause to be entered, in a separate part of the appropriate register, in relation to the units, the name and address of each other person who the manager has been informed has a relevant interest in those units and particulars of that interest and of the circumstances by reason of which the person has the interest and the date of entry in the register.

Register may contain particulars of instructions

128. Where the manager receives information that a person other than the investor has given instructions in relation to any of the units as described in the third bullet point in clause 125.2, the registrar may enter or cause to be entered, in a separate part of the appropriate register in relation to such investor, particulars of that person and the instructions and the date of entry in the register.

Inspection of separate parts

129. Any separate part of a register kept pursuant to clauses 127 and 128 is open to inspection by the supervisor, manager and auditor, and to inspection by any investor of the entries relating to that investor.

Penalties

130. Where the manager is satisfied that an investor has failed to comply with any request made by the manager pursuant to clause 125, the manager may require, by notice in writing to such investor, the disposal in accordance with this deed of the units, or any part thereof (in clauses 130 and 131 referred to as the 'specified units') within such time as is specified in the notice. Any such investor shall have no right, remedy or claim upon the manager or supervisor in respect of the acquisition or disposal of the specified units, the issue of any notice, or in respect of any other matter.

Compulsory sale

131. If the requirements of the notice referred to in clause 130 are not complied with by the person to whom the notice is addressed within the time specified in the notice, the manager may purchase the specified units or cause the specified units to be sold or redeemed in such manner as the manager may determine.

Rights of manager to effect sale

132. The manager may:

132.1 appoint a person to execute as a transferor a transfer in respect of any units sold in accordance with the provisions of clause 131 and to receive and give a good discharge of the purchase money for those units

132.2 register the transfer.

Investor's right to proceeds

133. The purchase or redemption proceeds less the expenses of any sale made in accordance with the provision of clause 131 shall be paid to the investor whose units were sold or redeemed.

Manager not liable

134. Nothing in clauses 125 to 133 shall render the manager liable or responsible for issuing or not issuing any notice, or by reason of any person acquiring units in contravention of, or failing to comply with the obligations imposed by, those clauses.

Manager's powers and duties

The manager's functions

135. The manager is responsible for performing the following functions in respect of the fund:

135.1 offering units;

135.2 issuing units;

135.3 managing and investing the scheme property; and

135.4 administering the fund.

The manager's duties

136. The manager must:

136.1 act honestly in acting as manager;

136.2 in exercising any powers or performing any duties as manager:

136.2.1 act in the best interests of investors; and

136.2.2 treat the investors equitably; and

136.2.3 exercise the care, skill and diligence that a prudent person engaged in that profession would exercise in the same circumstances.

136.2.4 carry out its functions in accordance with this deed, the SIPO, and all other obligations of the manager; and

136.3 not make use of information acquired through being the manager in order to:

136.3.1 gain an improper advantage for itself or any other person; or

136.3.2 cause detriment to the investors; and

136.4 take all reasonable steps to ensure that a director or senior manager of the manager does not:

136.4.1 make use of the information acquired through being the director or senior manager of the Manager in order to:

136.4.1.1 gain an improper advantage for himself or herself or any other person; or

136.4.1.2 cause detriment to the investors; or

136.4.2 make improper use of the position as a director or senior manager of the Manager to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the investors.

137. The manager has the same duties and liability in the performance of its functions as manager as it would if it performed those functions as trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA).

General authority

138. Without limiting the powers conferred on the manager elsewhere in this deed, the manager may exercise in relation to the fund all powers and discretions reasonably necessary or desirable to perform the functions contemplated under this deed.

Manager's power to delegate

139. The manager may authorise any person or persons to act as its delegate (and in the case of a joint appointment, jointly and severally) to perform any act, or exercise any discretion within the manager's power. The authorisation must be written. The manager must comply with the requirements of relevant law where it contracts out all or some of its functions as manager of the fund. The manager may include provisions to protect and assist those dealing with the delegate in the authorisation as the manager thinks fit. The delegate may be a related party of the manager or the supervisor. The manager may appoint brokers or dealers appropriate for the purpose of carrying out transactions in relation to assets of the fund. The manager remains liable for the acts and omissions of the delegate.

Other powers of the manager

140. The manager shall have the power to prescribe and to change any form provided for or contemplated by this deed.

141. The manager shall be entitled to make any decision, designation or determination not contrary to this deed or any law which it may determine is necessary or desirable in interpreting, applying or administering this deed or in administering, managing or operating the fund.

142. Any prescription decision, designation or determination made under clauses 140 or 141 shall be conclusive and binding upon all affected persons.

Manager may deal

143. With the consent of the supervisor, the manager or any related party of the manager may purchase, hold, sell, invest in or otherwise deal with units and securities or other property of the same class and nature as any investment, whether on the manager's or

related party's own account, or for the account of another (whether as principal, representative or agent).

Covenants by manager

144. The manager covenants with the supervisor and with the intent that the benefit of these covenants shall enure not only to the supervisor but to the investors of the fund jointly and to each of them severally that in respect of the fund:

144.1 the manager will be a licensed manager

144.2 the manager will use its best endeavours and skill to ensure that the affairs of the fund are conducted in a proper and efficient manner

144.3 the manager must ensure that all money received by it on behalf of the fund is paid into the trust account operated by the supervisor or its nominee as soon as practicable but at the latest within 3 business days of receipt

144.4 the manager will account to the investors for all money that the manager receives on behalf of the fund

144.5 the manager will use its best endeavours to ensure that the scheme property is properly managed

144.6 the manager will provide the supervisor with a copy of all relevant certificates, notices and other documents the manager is required to provide to the supervisor under the FMCA and other relevant law, with respect to all matters relating to the fund, the manager, scheme property and management and administration of the fund

144.7 at the request in writing from the supervisor, the manager will make available to the supervisor for inspection all of the accounting and other records relating to the fund and give to the supervisor any information that the supervisor requires with respect to all matters relating to those records

144.8 the manager will permit the supervisor to inspect the manager's business premises upon 24 hours' written notice

144.9 the manager shall forward without delay to the supervisor copies of all notices, reports, circulars and other documents received by it relating to the supervisor and any custodian or nominee company used by the supervisor to hold scheme property

144.10 the manager will use due diligence and vigilance in the exercise and performance of its functions, powers and duties as a manager

144.11 the manager will not pay out, invest or apply any money belonging to the fund for any purpose that is not directed by, or authorised in this deed

144.12 the manager will provide to the supervisor on request such information or access to such employees and board members of, and service providers to, the manager as the supervisor reasonably requires for the performance of its functions under this deed

144.13 If the supervisor engages an expert under clause 165, then:

144.13.1 the manager will provide reasonable assistance to the expert

144.13.2 the manager will pay the reasonable fees and expenses of the expert, and

144.13.3 subject to clauses 170 to 179, the Manager is entitled to be indemnified for those fees and expenses out of the fund

144.14 the manager will notify the supervisor as soon as practicable of a serious financial problem. The manager will provide the supervisor with information relevant to the matter and advise the supervisor of the steps (if any) that the manager intends to take in respect of the matter

144.15 the manager will notify the supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of investors or on the reputation of the manager or its licence under the FMCA. Following such notification, the manager will permit the supervisor to appoint one or more persons to receive notice of and attend meetings of the manager, including board meetings, investment committee meetings and other administrative meetings, to the extent that such meetings relate to any such issue or circumstance

Manager's statutory duty

145. Nothing in this deed shall limit the manager's duty of care, skill and diligence under the FMCA in carrying out its duties under this deed or shall prevent or restrict any determination as to whether there has been a breach of that duty of care, skill and diligence or shall affect the operation of the provisions of any statute prescribing the circumstances under which the manager may obtain relief from a breach of that duty of care, skill and diligence.

Borrowing powers

Borrowing powers

146. Subject to clauses 147, 148 and 149 the supervisor has power if so directed by the manager to:

146.1 borrow money from any person for liquidity purposes

146.2 for the purpose of such borrowing, enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such borrowing

146.3 mortgage, charge, pledge or otherwise create a security interest over all or any of the investments forming part of the fund as security for any moneys borrowed.

Manager to borrow in good faith

147. The manager shall not direct the supervisor to borrow any money unless the manager in good faith determines that the transaction is necessary or desirable in the general interest of the investors or is necessary or desirable for the purpose of conducting the

investment or management or other operation of the fund including repayment or redemption of any units from time to time. Any lender may rely upon a certificate given by the manager as to any determination made by the manager under this clause.

Limitation on borrowings

148. The aggregate of the principal moneys borrowed and outstanding in respect of the fund or secured against the investments of the fund may not exceed 25% of the fund value.

Conditions of borrowing

149. There is no obligation upon the supervisor to complete any loan or security documents unless the supervisor is satisfied that:

149.1 the supervisor's liability is restricted to the investments from time to time comprising the fund

149.2 any loan security or other obligations binding on the supervisor does not impose any unreasonable obligation upon the supervisor

149.3 there will be compliance with the SIPO

149.4 doing so is not contrary to the provisions of this deed, and would not otherwise result in a breach by the supervisor of any obligations imposed on it by any relevant law.

Third parties need not enquire

150. No person from whom the supervisor has or intends to borrow in respect of the fund needs to enquire as to whether or not the limitations set out in clause 149 have been observed or complied with.

Supervisor's powers and duties

Supervisor's functions

151. The supervisor has the following functions in respect of the fund:

151.1 acting on behalf of investors in relation to:

151.1.1 the manager

151.1.2 any matter connected to this deed or the terms of any regulated offer of units;

151.1.3 any contravention or alleged contravention of the manager's obligations, this deed, the PDS or the SIPO;

151.1.4 any contravention or alleged contravention of this deed, the PDS or the SIPO

151.2 supervising:

151.2.1 the performance by the manager of its functions and obligations;

151.2.2 the financial position of the manager and the fund to ascertain that they are adequate

151.3 holding the scheme property, or ensuring that the scheme property is held, in accordance with relevant law; and

151.4 performing or exercising any other functions, powers, and duties conferred or imposed on the supervisor by relevant law or this deed.

Supervisor's duties

152. The supervisor shall have only those duties which are expressly provided for in this deed or necessarily implied by law.

153. The supervisor must:

153.1 act honestly in acting as trustee and supervisor of the fund

153.2 in exercising its powers and performing its duties as supervisor, act in the best interests of the investors

153.3 exercise reasonable diligence in carrying out its functions as supervisor

153.4 in exercising its powers and performing its duties as supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances

153.5 do all things it has the power to do to cause any contravention under clause 151.1 to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on investors)

153.6 act in accordance with any direction given by special resolution that is not inconsistent with any enactment, rule of law, or this deed in relation to any matter connected with the supervisor's functions under the FMCA.

Specific powers and authorities

154. Subject only to the express limitations contained in this deed and subject to the written direction lawfully given by the manager to the contrary and in addition to any powers conferred by any other provision of this deed, the supervisor, without any action or consent by the investors, shall have and may exercise, at any time and from time to time, the following powers which may or may not be exercised by it in its sole judgment and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

154.1 to incur and pay any charges or expenses, which charges or expenses are, in the opinion of the supervisor, necessary or incidental to or desirable for the carrying out of any of the purposes of the fund or conducting the undertaking of the fund including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the supervisor in connection with the fund or the investments or upon or against the investments

154.2 to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any securities, issued or created by any person, forming part of the investments of the fund, to the same extent that an individual might subject to this deed

154.3 to engage or employ any persons as agents, representatives, employees or independent contractors (including, without limitation, administration managers, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities, and to pay compensation to such persons who are engaged or employed for services in as many capacities as such persons may be so engaged or employed

154.4 to collect, sue for and receive all sums of money coming due to the fund, and to engage, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the fund, to enter into agreements therefore, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof

154.5 to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the fund

154.6 to cause legal title to any of the investments to be held by and/or in the name of the supervisor, or, except as prohibited by law, by and/or in the name of any other person, on such terms, in such manner, with such powers in such person, as the supervisor may determine, and with or without disclosure that the fund, an investor or the supervisor are interested therein provided, however, that should legal title to any of the investments be held by and/or in the name of any person other than the supervisor or the custodian, the supervisor shall require such person to execute an agreement acknowledging that legal title to such investments is held in trust for the supervisor

154.7 in consultation with the manager to determine conclusively the allocation to capital, income or other appropriate accounts, of all receipts, expenses, disbursements and property of the fund

154.8 to apply to the Court for an order under section 208 of the FMCA if it believes that any of the provisions in section 207 of the FMCA apply

154.9 to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the undertaking of the fund or to carry out the provisions of this deed.

and the manager may exercise all or any of such powers on behalf of the supervisor, except where the exercise of such powers is by law required to be exercisable by the supervisor exclusively.

Duty to act on direction

155. Subject to this deed and to relevant law, the supervisor shall act on the direction or request of the manager with respect to any action or question concerning the fund and/or investments as provided in this deed.

Supervisor's power over investments

156. The supervisor, subject only to the specific limitations contained in this deed and subject to any written direction lawfully given by the manager to the contrary, shall have, without further or other authorisation and free from any power or control on the part of the investors, full, absolute, and exclusive power, control and authority over the scheme property to the same extent as if the supervisor were the sole owner of that scheme property in its own right, to do all such acts and things directed by the manager for carrying out any of the purposes of the fund.

Presumption the supervisor has powers

157. In construing the provisions of this deed, presumption shall be in favour of the granting of powers to the supervisor.

Supervisor's powers not limited

158. The enumeration of any specific power herein shall not be construed as limiting the general powers or any other specified power conferred herein on the supervisor. Notwithstanding the obligation, under this deed, for the supervisor to act on any direction or request of the manager, the supervisor shall have the power at any time to do or omit to do any act, matter or thing which, in the supervisor's opinion is necessary or desirable to protect the interests of the investors and carrying out the purposes of the fund and this deed.

Delegation

159. The supervisor must not delegate any of the functions set out in clause 151 except for the holding of scheme property.

160. The supervisor may from time to time appoint in writing a nominated person in which may be vested all or any of the scheme property.

161. If the supervisor contracts the holding of the scheme property to a nominated person under clause 160, then the supervisor:

161.1 must ensure that the contracting out of that function is pursuant to a written agreement between the supervisor and the nominated person;

161.2 must take all reasonable steps to:

161.2.1 ensure that the function is performed by the nominated person in the same manner and subject to the same duties and restrictions as if that person had performed them directly;

161.2.2 monitor the performance of that function;

161.2.3 ensure that the nominated person does not sub-delegate the function without the prior written consent of the supervisor; and

161.2.4 ensure that the nominated person remains liable for the performance of that function by any of its sub-delegates; and

161.3 is jointly and severally liable with the custodian (and any other person who has contracted out the function) for the performance of that function in accordance with clause 161.2.

Deposit of securities

162. Deliveries of securities to the supervisor as contemplated by this deed may be made by the deposit with the custodian or the transfer of such securities into the name of the supervisor or the custodian, to be held by the custodian in accordance with the custodian arrangements agreed pursuant to clause 161.

Supervisor may deal

163. Subject to the FMCA, the supervisor or any related party of the supervisor may (without being liable to account for profits and without being in breach of the trust created by this deed) hereunder:

163.1 purchase, hold, sell, invest in or otherwise deal with units and securities or other property of the same class and nature as the scheme property, whether on the supervisor's or related party's own account or for the account of another (in a fiduciary capacity or otherwise)

163.2 use in other capacities knowledge gained in the supervisor's capacity as the supervisor hereunder provided that the supervisor or the related person may not make use of any specific confidential information that, if generally known, might be expected to affect materially the value of a unit or any investment.

Not liable if relied on manager

164. Without limiting clauses 171 to 190 the supervisor shall not be liable with respect to any action taken or omitted to be taken by the manager on its behalf and shall be entitled to rely and act upon any information or request of the manager believed by it to be genuine and to have been signed by a proper officer of the manager.

Supervisor may engage experts

165. The supervisor is entitled, in the performance of the supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the supervisor considers, on reasonable grounds (which it advises to the manager in writing prior to any engagement), that it requires the assistance of the expert to:

165.1 determine the financial position of the manager or the fund; or

165.2 review the business, operation, or management systems, or the governance, of the manager or the fund.

Supervisor relieved if it complies with this deed

166. The supervisor shall not be liable for the proper application of any part of the scheme property, if payment or disposition of such investments is made in accordance with this deed.

No bond required

167. Unless otherwise required by law, the supervisor shall not be required to give any bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder.

Not whole time

168. The supervisor shall not be required to devote its entire time to the affairs of the fund.

Other functions

169. The supervisor may with the consent of the manager perform any additional duties not expressly contemplated under this deed on behalf of the manager, and the supervisor shall be entitled to be reimbursed expenses and paid such fee as agreed between the manager and the supervisor for any such undertaking.

Supervisor's statutory duty

170. Nothing in this deed shall limit the supervisor's duty of care, skill and diligence under the FMCA in carrying out its duties under this deed or shall prevent or restrict any determination as to whether there has been a breach of trust or shall affect the operation of the provisions of any statute prescribing the circumstances under which the supervisor may obtain relief from breach of trust.

Indemnities, discretions etc

Indemnity

171. Subject to the FMCA, the supervisor and the manager shall each be indemnified out of the fund from and against any and all losses, costs, expenses and liabilities incurred by the supervisor or manager in respect of the fund in performing any of their respective duties, or exercising any of their respective powers pursuant to this deed, and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing in relation to the fund with the exception of any loss, costs, expenses or liabilities arising out of:

    171.1 fraud, wilful neglect, wilful breach of trust or dishonesty on the part of the person claiming the indemnity or any of its officers, employees or agents (whether or not the officer is claiming to be indemnified)

    171.2 in the case of the supervisor, a breach of trust where the supervisor fails to show the degree of care and diligence required by relevant law of the supervisor having regard to the limited duties, powers, authorities and discretions conferred on the supervisor by this deed

    171.3 in the case of the manager, a failure by the manager to show the degree of care, skill and diligence required by the FMCA of the manger having regard to the duties, powers, authorities and discretions conferred on the manager by this deed and relevant law

    and the supervisor may retain and pay out of any monies in its hands upon the trusts of this deed all sums necessary to effect and satisfy that indemnity in addition to the remuneration and reimbursements provided in this deed, to the extent permitted by law.

Manager's undertakings

172. The manager undertakes in favour of the supervisor to ensure that the funds which may properly be applied to meet expenses will be sufficient for the purposes of

ensuring that the supervisor will not be called upon to meet such expenses from its own resources.

Manager indemnifies supervisor

173. The manager indemnifies the supervisor against all claims, costs, charges and expenses or other liability, contingent or otherwise, arising from or attributable to the manager's directions, recommendations, advice or requests or the manager's failure to perform any of its obligations, whether delegated or otherwise, or to comply with any of its responsibilities under this deed. This clause does not affect the manager's right to an indemnity under clause 171.

Lien

174. Subject to relevant law, the supervisor and the manager shall have a lien on and may use any, or any part of, any scheme property 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 171 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the investments under this deed.

Reliance of manager and supervisor

175. Subject to relevant law, 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, 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.

Failure to perform

176. Subject to relevant law, 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 provision 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.

Payments in good faith

177. Subject to relevant law, neither the supervisor nor the manager shall be liable to account to any investor or otherwise for any payments made by the supervisor or the manager in good faith to any fiscal authority for taxes upon the investments of the fund or in respect of investors or with respect to any transaction under this deed notwithstanding that any such payment need not have been made.

Liability

178. The manager of the fund will have the same liability and have extended to it the same relief from liability as it would have if it were a trustee, for any acts and omissions by it in the exercise and performance of its functions, powers and duties as manager as it would have if it exercised and performed those functions, powers and

duties as a trustee of the fund (except to the extent that those duties are altered by or are inconsistent with the FMCA).

179. No provision of clauses 171 to 190 shall have the effect of exempting the supervisor or the manager, or any director or officer of the supervisor or the manager, or indemnifying the supervisor or the manager, or any such director or officer, other than in relation to the proper performance of their general duties and duties to comply with the relevant professional standards of care under the FMCA.

Liability limited

180. The liability of the supervisor and the manager under this deed, the FMCA or at law shall at all times be limited to the assets from time to time of the fund.

Manager's notices and certificates

181. Any certificate or notice signed by two or more directors of the manager on behalf of the manager, provided by the manager:

181.1 as to any fact or matter prima facie within its knowledge and which the supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied

181.2 stating that any particular dealing, transaction, step or thing is expedient or commercially desirable and is not materially adverse to the fund's SIPO

is sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing.

Certificates under this deed

182. The statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed is conclusive evidence of the facts stated therein.

Manager and supervisor relying on advice

183. The manager and the supervisor may act on the opinion, or advice of, or an expert in New Zealand or elsewhere (which may be a related party of the manager or the supervisor and whether obtained by the manager or the supervisor) and the manager and/or the supervisor, shall not be responsible for any loss occasioned by so acting so long as the manager and/or the supervisor has no reason to believe that the opinion or advice is not authentic.

Proper Instructions

184. The manager authorises the supervisor to accept, rely on and act on proper instructions received in the following manner:

184.1 the supervisor is entitled to accept, rely on and act on proper instructions received by email, from authorised email addresses notified by the manager to the supervisor from time to time, without enquiry.

184.2 all emails will be sent to the supervisor's email address as notified by the Supervisor to the Manager from time to time.

185. The manager will only provide proper instructions for lawful and proper purposes and in accordance with relevant law.

186. The supervisor and the manager will provide each other with a list of authorised signatories and those signatories' delegated powers. Any document, notice, instruction or other communication between the parties must be made by a staff member acting within their authorisation.

Discretion of supervisor

187. The supervisor shall (except 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, subject to the FMCA, provided it shall not have acted fraudulently or negligently 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.

Discretion of manager

188. The manager shall (except 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, subject to the FMCA, provided it shall not have acted fraudulently or grossly 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.

Payments to investors

189. 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 investors except out of funds held by it for that purpose under the provisions of this deed.

Failure to carry out agreement

190. 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 supervisor or manager.

Related party transactions

Ability to hold units

191. Without prejudice to the generality of clauses 171 to 177, nothing in this deed shall be deemed to prohibit the supervisor or the manager, or any related company of the supervisor or the manager, or any shareholder or officer of the supervisor or the manager ('relevant persons') from being an investor or from acting in any representative capacity for an investor. In particular and without prejudice to the generality of the foregoing, any relevant person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for an investor and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this deed or imposed or implied by law.

Transactions with related party

192. The manager and any person to whom the manager has contracted out some or all of its functions as manager, must not enter into a transaction that provides for a related party benefit to be given, except as permitted by relevant law.

193. Subject to relevant law, the manager or the supervisor may:

193.1 Sell, purchase or otherwise dispose of or acquire any investment to for from the supervisor or the manager or any related party

193.2 Enter into any contract, agreement or other arrangement with any related part to provide management, consultancy, or any other services for the fund

193.3 Enter into any other transaction with the supervisor or the manager or any related party in relation to any such investment

Provided that the manager or the supervisor ensure that the particular transaction is effected on reasonable arm's length terms and on reasonable commercial terms and

193.4 the transaction is entered into in accordance with the guidelines from time to time agreed upon between the supervisor and the manager

193.5 the prior consent in writing of the supervisor or manager, as appropriate, is obtained.

No liability to account

194. The supervisor, manager nor any such related party is liable to account to the fund or any investor for any profit or loss arising from any such transaction except to the extent required by the applicable requirements of relevant law.

Remuneration of the supervisor

Supervisor's fee

195. To the extent permitted by law, the supervisor shall be entitled to receive for its own account fees as agreed between the manager and the supervisor and disclosed in the PDS.

Remuneration basis

196. To the extent permitted by law, the supervisor shall be paid out of the fund or any income from the fund or (if the manager so determines) by the manager in respect of the supervisor's services hereunder such fee (if any) as the manager and the supervisor may agree from time to time.

Waiver of fees

197. The supervisor may waive or reduce the amount of any fees payable either generally or specifically in any particular case and for any period.

Reimbursement of taxes

198. The supervisor shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.

Fee calculated on a daily basis

199. The fee referred to in clause 196 shall be calculated daily on the basis of the fund value from day to day, and shall be paid in arrears on each quarterly date and on the date of termination of the period of the fund or otherwise as the supervisor and manager may agree from time to time.

Agency fees separate

200. The reference to fees in clauses 195 to 199 does not include any remuneration the supervisor may be entitled to for any service the supervisor undertakes as agent for an investor.

Retirement and removal of supervisor

Retirement by supervisor

201. The supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the manager of its intention so to do, or such other period as the supervisor and the manager may agree.

Supervisor's removal at investors' request

202. The supervisor shall be removed from its position if directed by a special resolution of investors.

Supervisor's removal at manager's request

203. The supervisor shall be removed from its position if the manager so requests upon giving 90 days' notice in writing to the supervisor, or such other period as the supervisor and the manager may agree.

Supervisor's retirement or removal is conditional

204. The supervisor's retirement or removal under clauses 201 to 203 is subject to relevant law and the due appointment of a new supervisor (which must be a licensed supervisor) and the transfer to such new supervisor of all scheme property.

Point of retirement

205. Any retirement or removal of the supervisor pursuant to clause 201 to 203 shall take effect on the date specified in such notice, unless otherwise agreed by the manager and the supervisor.

Removal of supervisor by the FMA

206. The supervisor shall cease to hold office as trustee and supervisor if it is removed by the FMA pursuant to the FMCA.

Appointment of a new supervisor

207. There shall be one trustee and supervisor of the fund. The power of appointing a new supervisor of the fund in place of a supervisor which has retired or been removed pursuant to clauses 201 or 206, or which becomes incapable of acting or if for any other cause a vacancy shall threaten in the office of supervisor, shall be vested in the manager. The manager shall use reasonable endeavours to secure the appointment of a new supervisor if any of the abovementioned circumstances shall occur. Any supervisor so appointed by the manager in accordance with this clause

shall be a company duly incorporated and registered in New Zealand (or as otherwise required under relevant law) and shall be a licensed supervisor.

Deemed transfer of investments

208. The right, title and interest of the supervisor in the fund shall be resettled or otherwise be vested in any person who becomes duly appointed as supervisor pursuant to clause 207, so far as may be achieved without any further act. That person shall have all the rights, privileges, powers, obligations and immunities of the supervisor under this deed. Such right, title and interest shall vest in the new supervisor whether or not conveyancing documents have been executed and delivered in connection with the fund.

Transfer of investments

209. For the purposes of clauses 201 to 214 the fund shall be transferred by the retiring supervisor and vested in the group investment fund of the new supervisor with such formalities as may be necessary. If the transfer requires a winding up or termination of the fund and immediate revesting of the scheme property in a new fund, and/or a resettlement of the trusts in favour of the investors, and/or a simultaneous withdrawal and reinvestment by the investors, the manager may sign all documents and do all things it considers necessary and desirable on behalf of the investors as their agent to effect any such winding up or termination and revesting, or resettlement, or withdrawal and reinvestment (as the case may be).

Identical terms of trust

210. Any new fund of any new supervisor, which is established in accordance with clause 209, shall take the revested or resettled scheme property on terms and issue terms as near as can be to the existing terms and issue terms with unbroken continuity, notwithstanding the change of supervisor and reinvestment or resettlement.

Assumption of liabilities

211. Any new supervisor appointed pursuant to clause 207, may assume liabilities of the former supervisor payable from the fund or other monies held under the trusts of this deed, as the manager and the new supervisor think fit.

Retiring supervisor released

212. From the date of appointment of a new supervisor pursuant to clause 207 the retiring supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof).

Termination of fund if no new supervisor

213. If the manager fails to appoint a new supervisor within 30 days before a vacancy is due to occur, the fund shall be terminated upon the vacancy occurring. In that case, the fund shall be distributed in accordance with clauses 277 to 279. The then current supervisor shall continue to act as supervisor of the fund until all of the fund has been so distributed or if there is no such supervisor, the manager shall distribute the fund.

Merger of supervisor

214. Any corporation into which the supervisor may be merged or with which it may be consolidated or amalgamated or any corporation resulting from any merger, consolidation or amalgamation to which the supervisor shall be a party shall be the new supervisor under this deed without the execution of any instrument or any further act.

Remuneration of the Manager

Manager's fee

215. To the extent permitted by law, the manager shall be entitled to receive out of any income from the fund for its own account fees as agreed between the manager and the supervisor and disclosed in the PDS.

Reimbursement of taxes

216. The manager shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.

Fee calculated on a daily basis

217. The fee referred to in clause 215 shall be calculated daily on the basis of the fund value from day to day.

Agency fees separate

218. The reference to fee in clause 215 does not include any remuneration the manager may be entitled to for any service the manager undertakes as agent for an investor.

Retirement and removal of the manager

Retirement by manager

219. The manager may retire as manager of the fund by giving 90 days' written notice to the supervisor, or such other period as the supervisor and the manager may agree.

Removal of the manager at the investors' request

220. The manager shall be removed from its position if so directed by a special resolution of investors.

Manager's removal at the supervisor's direction

221. The manager shall be removed if, after the supervisor certifies that it is in the best interest of investors, the supervisor makes a written direction to the manager requiring it to retire.

Manager's removal following court order

222. The manager shall be removed if, following the application of the supervisor, the FMA or an investor, the court orders the removal of the manager pursuant to the FMCA.

Appointment of temporary or replacement manager by Manager

223. Subject to the supervisor's prior approval (such approval not to be unreasonably withheld or delayed), the manager shall appoint a replacement manager who shall

have all the powers of the manager under this deed for the term of their appointment. A replacement manager appointed pursuant to this clause shall forthwith upon such appointment execute a deed in such form as the manager and the supervisor may require whereby the new manager undertakes to the manager, supervisor and the investors to be bound by all the covenants on the part of the manager under this deed from the date of such appointment. From such date the retiring manager shall be absolved and released from all such covenants (except any prior breaches), and the new manager shall from such time execute all the powers and enjoy and exercise all the rights and be subject to all the duties and obligations of the manager under this deed in all respects as if it had been originally named as a party to the deed.

Actions on removal of manager

224. The manager shall cease to hold office as manager if:

224.1 the manager retires in accordance with clause 219;

224.2 the manager is removed pursuant to the FMCA (including removal under clauses 220 to 222); or

224.3 the manager shall have a receiver or voluntary administrator appointed or if an order is made or a resolution passed for the liquidation or winding up of the manager.

225. If the manager ceases to hold office pursuant to clause 224, the manager and any delegates of the manager shall immediately desist from all activities related to the fund, unless the supervisor agrees to the contrary.

226. The supervisor has the power to appoint a temporary manager of the fund. No person shall be appointed as a new manager of the fund unless that person complies with any legal requirements for appointment.

227. Where the fund does not have a manager, and where relevant law so requires, the supervisor shall appoint a new or temporary manager which satisfies any legal requirements for such appointment, including under the FMCA.

228. Where the supervisor appoints a temporary manager, the supervisor must take all reasonable steps to appoint a permanent manager for the fund which satisfies any legal requirements for such an appointment.

229. If the supervisor has not appointed a temporary manager or the supervisor requests the FMA to do so, the FMA may, where relevant law so requires, appoint a temporary manager that satisfies any legal requirements. The FMA's costs and expenses incurred in connection with any such appointment of a temporary manager will be reimbursed out of the fund.

230. A temporary manager has all of the powers and duties of the manager under this deed or relevant law.

Manager entitled to payment

231. Nothing in clauses 219 to 223 and clauses 232 to 233 shall prevent the manager from receiving:

231.1 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;

231.2 payment from a replacement manager arising from the manager's retirement.

Settlement of outstanding balances

232. 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.

Retirement of Fund Managers Otago Limited

Cease to use the name NZ Mortgage Income Trust

233. Notwithstanding any other provision of this deed, if Fund Managers Otago Limited (FMOL) ceases for any reason to be the manager of the fund then (except to the extent that FMOL otherwise agrees in writing and unless a related company of FMOL is appointed in its place):

233.1 if on the date of such cessation the name of the fund includes the expression 'NZ Mortgage Income Trust', from that date the name of the fund shall be the name arrived at by removing the expression 'NZ Mortgage Income Trust' if lawful, and if not lawful, the name of the fund shall be another name without the expression 'NZ Mortgage Income Trust' agreed between the supervisor and FMOL

233.2 if on the date of such cessation the name of a custodian includes the expression 'NZ Mortgage Income Trust ' the supervisor shall forthwith after that date direct that the custodian changes its name so that the expression 'NZ Mortgage Income Trust' ceases to appear therein

233.3 the supervisor and the manager shall each ensure that, from the date of such cessation, the expression 'NZ Mortgage Income Trust' does not appear in any documents, publications, or advertisements relating to the fund, and that all registers and records are amended to record the change of name of the custodian.

Limitation of liability

Limitation

234. Notwithstanding anything contained in this deed or any rule of law:

234.1 no investor shall in any circumstances be liable to indemnify the supervisor or manager in respect of any debt or liability incurred in respect of the fund

234.2 nothing in this deed or in the relationship between the investors shall be deemed to create a partnership amongst investors

234.3 each investor's liability in this deed is limited to any unpaid amounts in relation to their holding in the fund

234.4 the supervisor and the manager shall not have power to incur liabilities on behalf of any investor or pledge the credit of any investor.

Accounts reports and compliance

Financial and other reports required by law

235. The manager will prepare financial and other reports in connection with the fund as set out in clauses 238 to 246 and as required by relevant law.

Accounting records

236. The manager shall keep or cause to be kept true and proper accounting records of all sums of money received and expended by or on behalf of the fund and the matters in respect of which such receipt and expenditure takes place and of the issue and cancellation of units and of all other matters for which accounting records should properly be kept.

237. In keeping or causing to be kept the manager's proper records or accounts under clause 236:

237.1 the manager must have appropriate systems of control and oversight;

237.2 the manager must keep such records or accounts at a suitable secured location accessible by the supervisor and the auditor; and

237.3 the provisions of Part 7 of the FMCA must be complied with.

Annual financial statements and tax returns

238. As soon as practicable but within 3 months after each financial year and as required by the FMCA and the Financial Reporting Act 2013:

238.1 the manager shall cause to be prepared annual financial statements and the tax return in respect of the fund for each financial year

238.2 the manager shall cause to be prepared and shall certify as true and correct all tax returns for the fund

Audit

239. All financial statements prepared in accordance with clause 238 shall be audited by the auditor who shall report in the terms required by the Financial Reporting Act 2013 and the FMCA.

Explanations

240. In carrying out its duties the auditor may require from the supervisor and manager such information, explanations, documents, certificates and financial statements as the auditor considers necessary.

Annual reports

241. At the end of each financial year, the manager must:

241.1 provide a final draft of the annual report to the supervisor for its review at least 10 business days prior to finalisation;

241.2 prepare an annual report for the fund as required by the FMCA; and

241.3 arrange for the annual report to be filed and sent to investors and the supervisor in the time and manner required by the FMCA.

Regulatory compliance

242. The manager shall in relation to the fund at all relevant times:

242.1 file or lodge all reports, returns, statements, information or other material required by law to be filed or lodged with any public registry or regulatory authority

242.2 cause to be prepared all statements (including interim financial statements) reports or other material required by law or for the purposes of any exemption from law.

Fund update

243. The manager shall:

243.1 prepare quarterly fund updates as required by the FMCA;

243.2 provide a final draft of all fund updates to the supervisor for its review at least 5 business days prior to finalisation; and

243.3 arrange for the fund updates to be lodged with the Registrar of Financial Service Providers and sent to investors and the supervisor in the time and manner required by the FMCA.

Manager's reports

244. The manager must from time to time during the currency of the fund:

244.1 furnish or cause to be furnished to the supervisor copies of any financial statements, notices, reports, circulars or other documents issued to the investors at the time of such issue;

244.2 give to the supervisor such other information as the supervisor (acting reasonably and in accordance with its statutory obligations) requires with respect to all matters relating to the fund and the manager, within such time period as is reasonable, given the nature of the information required;

244.3 at the request of the supervisor by not less than 14 days' notice in writing (which request shall only be made when the supervisor considers that special circumstances warrant such request and so certifies in writing to the manager specifying such special circumstances), give to the supervisor:

244.3.1 copies of the financial statements of the fund specified by the supervisor, duly audited and signed and made up as at the end of the next month occurring after the expiry of the said notice, or as at such other date as the supervisor and the manager agree, together with all documents and reports required by the FMCA or the Financial Reporting Act 2013 to be annexed to or to accompany such financial statements; and

244.3.2 a report by the auditors setting out the information referred to in clause 247 in respect of the financial statements so

requested with such adaptations as may be necessary or such of that information as may be required by the Supervisor,

such financial statements and auditor's report to be provided within 120 days after the relevant accounting date, or within such other period as the Supervisor may in its discretion agree.

Manager's monthly report to the supervisor

245. Within 30 days of the last day of each month the manager shall furnish to the supervisor a monthly report in relation to the fund, prepared in a format agreed by the supervisor and manager or as required by relevant law.

Manager's quarterly report to the supervisor

246. Within 30 days of the last day of each quarter the manager shall furnish to the supervisor a quarterly certificate in relation to the fund prepared in a format agreed by the supervisor and manager or as required by relevant law.

Auditor's report to the supervisor

247. The manager shall furnish (or cause to be furnished directly by the auditor) to the supervisor a report prepared by the auditor for the supervisor and the manager in the form agreed from time to time between the manager, the supervisor and the auditor or as required by relevant law. The report is to be provided within one month of the auditor issuing the audit opinion on the financial statements of the fund for each financial year.

Other information and review

248. The manager shall, for the purpose of conducting a review should the supervisor, acting reasonably, form a view that such review is necessary or desirable within the time and in the manner (which must be reasonable in the circumstances) specified by the supervisor:

248.1 make available to the supervisor (or its agent) all documents and records relating to the manager and the fund (including those held by an investment manager or an administration manager);

248.2 give to the supervisor (or its agent) such other reports or information as the supervisor requires:

248.2.1 with respect to all matters relating to the fund; or

248.2.2 any business of the manager, or to any property of the manager (whether acquired before or after the date of this deed) or otherwise relating to the affairs of the manager or the performance of the supervisor's function.

248.3 permit the supervisor or its agents to have access to the manager's staff; and

248.4 give to the supervisor any other reports or information required by relevant law.

Auditor

Appointment

249. The manager, after consultation with the supervisor and in accordance with relevant law, shall appoint (or re-appoint) as auditor of the fund a person qualified for appointment in terms of clause 250.

Qualifications of auditor

250. The auditor must be licenced under the Auditor Regulation Act 2011 and meet the requirements of all relevant law. An auditor shall not be an officer (or the partner of an officer) of the supervisor or manager;

251. The terms of appointment of an auditor must meet the requirements of the Regulations.

Remuneration of auditor

252. The remuneration of the auditor shall be fixed by the manager and shall be paid out of the fund.

Retirement of auditor

253. An auditor may retire upon the expiration of not less than 30 days' notice in writing to the manager.

Removal of auditor

254. The manager, after consultation with the supervisor, may at any time and from time to time remove the auditor.

Vacancy

255. Any vacancy in the office of an auditor occurring under clause 253 or 254 shall, after consultation with the supervisor, be filled by the auditor nominated and duly appointed by the manager provided the auditor is a person qualified for appointment in terms of clause 250.

Meetings of investors

Manager must convene

256. A meeting of investors may be called by the manager on the written request of:

256.1 the supervisor; or

256.2 investors holding units that have a combined value of no less than 5% of the value of units then on issue.

Manager may convene

257. The manager may at any time convene a meeting of the investors. To convene a meeting the manager must be acting in good faith and for an identified reason first notified to the supervisor.

Proceedings

258. All meetings of investors shall be convened and held in accordance with the provisions set out in Schedule 1 and otherwise as prescribed by law. To the extent that there is any inconsistency between the provisions of this deed (including

schedule 1) and Schedule 11 of the Financial Markets Conduct Regulations 2014 (with the exception of clauses 2,3 and 5 of that Schedule 11), the provisions of this deed (including schedule 1) shall prevail.

Information

259. The manager shall supply to the investors, in general meeting, any oral or written information relating to the affairs of the fund that any investor has given the manager reasonable notice to supply.

Directions

260. The investors shall, by means of a special resolution, have the power to give such directions to the manager and supervisor as they think proper concerning the fund, being directions that are consistent with the provisions of this deed and any relevant law. Subject to the FMCA, and to clauses 202 and 220 neither the supervisor nor the manager shall be bound to follow such directions.

Discretion

261. Subject to relevant law, where any direction is given to the supervisor or the manager pursuant to clause 260 in respect of any matter, the supervisor or the manager, as the case may be, may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction.

Notices and payments

To investor

262. Any notice to be given to any investor may be given either personally or by sending it by post or by email to the address of the investor shown in the relevant register. A notice may be given to the joint holders of a unit by giving the notice to any joint holder. All such notices or communications shall be deemed to have been duly given or made:

262.1 in the event of posting to an address inside New Zealand, 2 business days after being deposited in the mail by the sender with mail postage prepaid

262.2 in the event of posting to an address outside New Zealand, 5 business days after being deposited in the mail by the sender with mail postage prepaid

262.3 on delivery when delivered by hand to the addressee or to its registered or head office.

262.4 if sent by email, the following business day unless a verifiable query is promptly raised.

Notice to manager, legal representative etc

263. A notice may be given by the manager to the manager of a mentally disordered person, or the persons entitled to a unit in consequence of the death or bankruptcy of an investor, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has

been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

Notice where no address

264. If any investor has no registered address and has not supplied to the manager an address for the giving of notices, or if any 2 notices posted to an investor are returned to the manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this deed, until the investor shall give notice in writing to the manager of some other address, the address of the investor for all purposes of this deed shall be deemed to be the office.

Calculation of notice period

265. Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.

Accidental failure

266. The failure by accident or accidental omission or otherwise unintentionally, to give any investor any notice provided for in this deed shall not affect the validity, taking effect or time of taking effect of any action referred to in such notice, and the person failing to give such notice shall not be liable to any investor for any such failure.

Deemed notice on death or bankruptcy

267. Any notice or document sent by post or email to or left at the address of an investor shall, notwithstanding the death or bankruptcy of such investor, and whether or not the manager has notice of such death or bankruptcy, be deemed to have been duly served and such service shall be deemed sufficient service on all persons interested in the units concerned.

Notice to supervisor and manager

268. Any notice, communication or information required by this deed to be given to the manager and/or supervisor shall be in writing or by any other means permitted by relevant law and be signed by the person or a duly authorised officer of the person giving the notice. The manager and/or supervisor may agree that certain notices or communications may be given by email.

269. Notices, directions and other communications shall be addressed as follows:

269.1 if to the manager:

Fund Managers Otago Limited
Level 8, ASB House, 248 Cumberland Street
PO Box 5741
DUNEDIN

Attention: Managing Director

Facsimile No. (03) 479 0598

Email: enquiries@mortgagetrust.co.nz

269.2 if to the supervisor:

Trustees Executors Limited
Level 7, 51 Shortland Street
PO Box 4197
AUCKLAND 1140

Attention: Client Services Manager

Email: gio@trustees.co.nz

or such other address as may be notified in writing from time to time by one party to the other.

Telephone and electronic instructions

270. If provided for in the relevant issue terms, an investor may give instructions by telephone or electronic communication in accordance with such procedures for verification of identity or authority, disclosure and payments as the manager thinks fit and in accordance with other relevant provisions of this deed. Such instructions may relate to or be for:

270.1 application for units

270.2 withdrawal amounts

270.3 transfers of units (to the extent permitted under clauses 58 and 60)

270.4 changes in amounts or the destination of amounts authorised for payment to the investor

270.5 such other matters as the manager may permit from time to time.

Payments

271. If any payment made in respect of any units in the fund to any investor at its last address in the register or in accordance with its payment instructions is returned or otherwise unclaimed, the amount thereof shall be retained by the manager and held for such investor without liability to invest the same or pay interest thereon. Any amount unclaimed for 5 years or longer shall be dealt with by the manager in accordance with the Unclaimed Money Act 1971.

Stipulation of exclusive payment method as condition of issue

272. The relevant issue terms for a unit may stipulate that a certain method or means of payment or delivery of any consideration for issue or redemption of units shall be the only method(s), or means by which such payments or deliveries will be effected. In any such case, the manager and the supervisor may, but shall not be obliged to, waive any such restrictions on such conditions as they think fit.

Payment conclusively deemed to have been made

273. Payment shall be conclusively deemed to have been made, as regards the investor (in the absence of subsequent dishonour, or reversal) by the posting of a direct credit to the investor's nominated account.

Minimum economic amount

274. Neither the supervisor nor the manager shall be obliged to undertake any transaction for which a payment or transfer (to the extent permitted by clauses 58 and 60) would

be for an amount less than the out of pocket costs that would be incurred by either of them in giving effect to any such transaction.

Amendments to deed

Power to amend

275. Subject to clause 276 the supervisor may, with the concurrence of the manager at any time, make any alteration, modification, variation or addition to the provisions of this deed (by means of a deed executed by the supervisor and manager) in any of the following cases:

275.1 if in the opinion of the supervisor and manager the same is made to correct a manifest error or is of a formal or technical nature.

275.2 if in the opinion of the supervisor and manager the same is necessary or desirable for the more convenient economical or advantageous working management or administration of the fund or for the purpose of complying with any relevant law or any exemption from any relevant law, or for safeguarding or enhancing the interests of the fund or investors and is not likely to become prejudicial to the interests of investors generally.

275.3 if the same is authorised by a special resolution of the investors.

275.4 in all other cases if the manager has given all investors and the supervisor 3 months' written notice of its intention to amend the deed.

The supervisor must not consent to any alteration, modification, variation or addition to the provisions of this deed unless the requirements of the FMCA are met.

Procedure for amendments

276. Where any amendment has been made to this deed the manager will notify all investors in writing in summary form of all amendments made to the deed and include a description of any material changes in the fund's annual report.

Winding up

Winding up generally

277. The fund shall determine and be wound up upon the occurrence of the earliest of the following events:

277.1 if the manager certifies in writing that in the manager's opinion it is in the interests of the investors that the fund should be wound up.

277.2 the expiration of a period of 6 months from the date the supervisor certifies in writing to the manager that in the supervisor's opinion it is in the interest of the investors that the fund should be wound up.

277.3 if a special resolution of the investors is passed resolving to wind up the fund.

277.4 the expiration of a period of 80 years (less 2 days) from 18 October 2007.

277.5 the day appointed by the manager by giving not less than 2 months' written notice to the investors and to the supervisor.

277.6 the day on which the supervisor retires under clause 201 or clause 202 or a vacancy in that office otherwise occurs and a new supervisor is not appointed.

277.7 the day on which the manager retires, if no successor has been secured by the supervisor, or the manager's authority terminates under clauses 220, 221 or 222.

Notice of termination

278. The manager shall, within 14 days after the occurrence of any event referred to in clause 277, give to each investor notice of the occurrence of that event and of the intention of the manager to direct the supervisor to distribute the fund. From the date of the giving of such notice no withdrawal notice may be given.

Procedure

279. The manager shall as soon as is practicable after the occurrence of an event referred to in clause 277:

279.1 sell, call in and convert into cash the whole of the fund.

279.2 pay out, discharge or otherwise make proper provision for the liabilities of the fund.

279.3 distribute the fund (or so much of the fund as may from time to time be available for distribution) less all costs and expenses incurred by the manager in respect of the winding up amongst investors in proportion to the numbers of units held by them.

280. No investor has any liability in respect of units issued to that investor, to contribute to the fund before its winding up.

281. The supervisor must, on winding up of the fund, comply with the requirements of the FMCA, including:

281.1 giving a copy of any order or resolution for the winding up to the FMA within the timeframes required by the FMCA; and

281.2 ensuring that the final financial statements of the fund are prepared and audited within the required timeframes;

281.3 ensuring that copies of the final audited financial statements are sent to the FMA and investors within the required timeframes; and

281.4 informing the FMA of the date on which the final distribution of the assets is completed.

Governing law

New Zealand law

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

Taxation liability

Definitions

283. In this clause:

'PIE or Portfolio Investment Entity' has the same meaning as defined in Section YA1 of the Income Tax Act 2007.

'PIE Rules' means the provisions of the Income Tax Act 2007 dealing with PIEs.

'relevant person' means an investor and the investor's personal representatives or successors.

'tax' includes all taxes, duties, levies, imposts, goods and services tax, income tax, withholding tax, deductions, transfer taxes, and other charges, including penalties and interest and including tax attributable to income allocated under the PIE Rules.

'Tax Act' means the Income Tax Act 2007.

'taxation amount' means, in relation to a relevant person:

- any tax payable by or on account of that person or in respect of that person's units
- any withholding tax or similar amounts required to be withheld or deducted by the manager in respect of an investor.

Computation of income and gains

284. The net taxable income of the fund attributable to each unit for New Zealand tax purposes for any year shall be determined in accordance with the Tax Act.

Deductions

285. The manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a relevant person or may require payment directly from the relevant person, an amount equal to the taxation amount of that relevant person where such amount is payable or anticipated to become payable or has been paid by the manager or by the supervisor or from the fund.

Application of deduction

286. Amounts deducted under clause 285 shall be applied in:

286.1 payment of the taxation amount to the person or authority entitled thereto

286.2 reimbursement of the manager or the supervisor for any corresponding amount paid from its own funds.

Any balance shall be refunded to the relevant person.

Indemnity

287. Each relevant person shall indemnify the manager and the supervisor in respect of any taxation amount paid or payable by the manager or the supervisor in respect of a relevant person.

Interest

288. Any taxation amounts paid on behalf of a relevant person shall carry interest calculated on a daily basis at such rate as the manager or the supervisors may determine and such interest shall be paid on demand by the relevant person to the manager or the supervisor, as the case requires and compounded monthly until paid.

Tax statements

289. The manager shall ensure that statements of income for tax purposes (including without limitation, statements of portfolio investor allocated income or loss) and other net income and net taxable gains and return of capital shall be sent to investors annually. Neither the manager nor the supervisor shall be liable to any person in respect of any statement, advice or information, provided in good faith and relating to taxation, or in respect of any omission to provide advice or information on taxation matters.

Manager's authorisation

290. The manager is authorised by investors to receive on their behalf from the supervisor each investor dividend statement required to be issued by the supervisor under section 29 of the Tax Administration Act 1994 provided that a consolidation of them is sent to the unitholders at least annually.

291. If an investor is entitled to a tax rebate relating to its interest in the fund, the manager on behalf of the investor may either offset the amount of such rebate against tax payable on any other investor's interest in the fund, or claim such rebate directly from the Inland Revenue Department. The manager shall take such tax rebates for any investor into account in determining the amount of any distribution from the fund to that investor.

Interpretation

Definitions

292. In this deed unless the context otherwise requires:

'accrued expenses' means all costs, charges and other outgoings (other than those which in the opinion of the supervisor are not material) incurred or accrued in connection with the holding of the investments or otherwise in connection with the fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that valuation day falls but which have not yet fallen due for payment and including an allowance for any unpaid acquisition or realisation costs in respect of investments)

'agency agreement' means an agreement between the applicant and the Manager entered into pursuant to clause 27 of this deed

'AML/CFT Act' means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

'application' means an application to acquire units that is signed, authorised or authenticated by the applicant and containing such information and made in a manner that the manager may from time to time prescribe

'application monies' means the total amount paid by an investor to purchase a unit or units

'auditor' means the auditor of the fund appointed pursuant to clause 249

'authorised investments' to the extent to which the supervisor is lawfully permitted from time to time to hold such investments for the purposes of the fund, means:

- cash, deposits with, loans to, or other debt securities of any bank whether secured or unsecured
- loans made upon the security of any mortgages or mortgage backed securities
- the acquisition of any mortgages or mortgage backed securities by way of transfer or assignment of the mortgagee or chargeholder's interest in the mortgage or security
- property which comes into the possession ownership or control of the supervisor by virtue of the exercise of the powers authorities and discretions vested in the supervisor by any mortgage or mortgage backed security held by the supervisor
- public sector securities
- derivatives
- any trust which invests primarily or wholly in one or more of the investments referred to in the preceding bullet points; and
- any other investments agreed between the supervisor and the manager from time to time and disclosed in the SIPO

provided that until such time as the manager and the supervisor agree to the contrary the fund shall:

- primarily be invested in loans made upon the security of mortgages and mortgage backed securities; and
- only be invested in investments in which a group investment fund is permitted to invest in order to fall within the definition of a designated group investment fund as defined in section OB1 of the Income Tax Act 1994, with the intent that (unless agreed by the parties to the contrary) the fund shall always be a designated group investment fund for taxation purposes

'authorised person' means any one or more of the persons designated from time to time by written notice from the manager to the supervisor in such form as the supervisor may approve from time to time

'bank' means a bank registered as such under the Reserve Bank of New Zealand Act 1989 or a bank authorised to carry on general banking business in New Zealand

'business day' means a day upon which registered banks are open for business in the province of Otago but excludes any day in the period 24 December to 5 January in any year (or such other period as the manager and supervisor agree that the manager's office is closed over the Christmas/New Year period)

'confirmation information' has the meaning given in the FMCA

'contribution fee' means the manager's fee for issuing units calculated in accordance with clause 22

'deed' means this trust deed

'distribution date' means such periodic date as the manager with the agreement of the supervisor may fix from time to time for the purpose of determining distributions of income

'distribution period' means the period from and including a distribution date to and excluding the next distribution date

'effective date' means the date set out in Background D of this deed

'electronic communication' means a transmission of an instruction, request, notice or information by, facsimile, computer (email) or other electronic medium approved by the manager subject to such conditions as the manager considers appropriate as to identification of the person making the communication or verification of the content of the communication

'exchange' means any official or formally constituted share, security, unit or other equity ownership interest, futures or options exchange on which a relevant investment is quoted in any country

'existing deed' has the meaning set out in Background A

'expenses' means all costs and expenses incurred by the manager and the supervisor in connection with the fund, including fees, costs and expenses for which the manager and the supervisor are entitled to reimbursement under this deed

'financial markets legislation' has the meaning set out in the FMCA

'financial statements' means in relation to the fund, financial statements as that term is defined in the Financial Reporting Act 2013

'financial year' means:

- each period of 1 year commencing on 1 April
- the period commencing on 1 April immediately preceding the date of termination of the fund and ending on the date of termination of the fund

or such alternative period as the manager may fix

'FMA' means the Financial Markets Authority established by the Financial Markets Authority Act 2011

'FMCA' means the Financial Markets Conduct Act 2013 and, where relevant, the Regulations and any other regulations made under that Act

'foundation investment' means the sum of $1 vested in the supervisor by the manager on 18 October 2007 and held by the supervisor subject to the trusts and with the powers contained in this deed, and thereafter for the purposes of the fund

'fund' means the group investment fund established by the supervisor as Group Investment Fund No. 151 and known as 'NZ Mortgage Income Trust Group Investment Fund', as more particularly described in clauses 2 to 9, and all scheme property it holds.

'fund update' has the meaning set out in regulation 5 of the Regulations

'fund value' has the meaning set out in clause 97

'holding' in respect of any investor means at any particular time the total number of units registered in the name of the investor.

'income' means the net income earned by the fund determined in accordance with the provisions of clauses 61, 62 and 63 as applicable.

'income account' means the account designated as such in the books of the fund into which income received by or accrued to the fund is entered.

'income entitlement' in relation to an investor and the income of the fund in an income period means, for each unit held by the investor, the unit days per investor multiplied by the unit day income

'independent expert' means an appropriately qualified person nominated by the supervisor

'investment' means any investment (including cash) made or held or to be held at any relevant time by the fund

'investment policy' or 'SIPO' means, the statement of investment policy and objectives prepared by the manager under the FMCA

'investor' means the person for the time being entered on the register as the holder of a unit in the fund

'issue price' means the price for issue of units determined in accordance with clause 34

'issue terms' in relation to the fund means the terms and conditions on which units are issued or are to be issued from time to time as determined under this deed by the manager with the approval of the supervisor, and reflected in the prevailing PDS at the relevant time

'issuer obligations' has the meaning set out in the FMCA

'liabilities' means debts and other obligations of the manager and supervisor acting in their respective capacities payable from the fund (including in particular but without limitation all taxes or duties payable by or in respect of the fund) but excludes:

- contingent liabilities (except to the extent that the manager or supervisor with the approval of the auditor decides that an allowance should be made for such liabilities)
- any fees payable to the manager or the supervisor out of the fund or otherwise permitted under this deed
- such debts and other obligations of the manager and supervisor in respect of which, by the terms of this deed or by law, the manager and supervisor are not entitled to be indemnified out of the fund

'licensed' has the meaning given in the FMCA

'licensed manager' means a person under the FMCA who holds a licence to act as a manager of a managed investment scheme

'licensed supervisor' means a person who holds a licence to act as a supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011

'managed investment scheme' has the meaning set out in the FMCA

'manager' means Fund Managers Otago Limited or any new manager appointed pursuant to clause 223

'market value' has the meaning set out in clause 98

'minimum transaction value' means such aggregate unit value of units of the fund as may be determined by the manager from time to time as the minimum aggregate unit value which may be invested or withdrawn.

'minimum value of units' means such aggregate unit value of units of the fund as may be determined by the manager from time to time as the minimum aggregate unit value which shall be held by an investor

'month' means calendar month

'mortgage' means any mortgage or charge secured over property or any share in any mortgage or charge secured over property including any contributory mortgage held by a supervisor or nominee, any sub-mortgage or sub-charge secured over property and any mortgage backed securities or other mortgage related security

'mortgage backed security' means any investment conferring or creating an interest, whether legal or equitable, in any mortgage by virtue of any agreement, deed, declaration of trust or otherwise

'office' means the registered office from time to time of the manager

'PDS' is a product disclosure statement and has the meaning set out in the FMCA

'person' means and includes a natural person, a company, a corporation, a corporation sole, a trust, a government or a body or persons (whether corporate or unincorporated)

'prescribed time' means noon on any business day or such other time as may be prescribed by the manager from time to time by notice in writing to the supervisor

'proper instructions' means an instruction that the supervisor believes in good faith to have been given by an authorised person.

'property' includes real and personal property in any estate, an interest in any property real or personal, any debt, anything in action and any other right or interest and includes property in New Zealand or elsewhere

'public sector securities' means and includes New Zealand government stock issued and registered in New Zealand (including treasury bills) and any other loans, investments or securities issued or which are guaranteed as to principal and interest by the government or a governmental agency and any other investments or securities which the manager approves as being of a similar character

'qualified adviser' means an appropriate qualified person (who may be an employee of the supervisor or the manager) appointed by the manager with the prior approval of the supervisor (such approval not to be unreasonably withheld) for the purpose of determining the value of any investments of the fund

'quarterly date' means the last days of March, June, September and December in each year or such alternative quarterly period as the manager may fix

'register' means a register referred to in clauses 107 to 124

'register entry' has the meaning set out in the FMCA

'registrar' means the manager or the person from time to time who is charged under clause 110 with the function of keeping and maintaining the register on behalf of the manager

'regular withdrawal notice' means a withdrawal notice that directs a regular withdrawal amount per month (or such other period as the manager shall determine or permit) be withdrawn by the investor giving the withdrawal notice

'Regulations' means the Financial Markets Conduct Regulations 2014

'related body corporate' means a body corporate who is related to another body corporate pursuant to section 12(2) of the FMCA

'related party' in respect of the fund, and as the context requires, has the meaning given in section 172 of the FMCA and also includes:

(a) any managed investment scheme or other trust or scheme that is owned by or controlled by the manager or a related body corporate of the manager;

(b) any trust, estate, fund, managed investment scheme or other trust or scheme in respect of which the supervisor or a related body corporate of the supervisor is manager or supervisor

'related party benefit' of the scheme has the meaning given in section 172 of the FMCA, namely that it is a benefit

- that either is given out of scheme property or creates an exposure to loss for scheme property; and
- that is given to, or received by, a related party of the scheme; but
- does not include fees or expenses that are paid or reimbursed to the manager in accordance with the FMCA or the deed

'relevant instruction' means instructions or directions:

- in relation to the acquisition or disposal of units
- in relation to the exercise of any voting or other rights attached to units
- in connection with any other matter relating to units

'relevant interest' has the same meaning as in the FMCA and includes any other interest or control in respect of which the Manager is obliged to confirm identity under the AML/CFT Act

'relevant law' means, as appropriate, those laws applicable to the manager, the supervisor and/or the fund under financial markets legislation as defined in the FMCA and any legally binding methodologies or frameworks issued by the FMA under such legislation

'reserve fund account' means the account (however named) designated in the books of the fund holding the reserve funds.

'reserve funds' means the accumulated amount of income held in the reserve fund account (such amount being made up of the amounts of income which the manager, from time to time determines to be appropriate to transfer to such account) to meet any reduction in the value of the fund by reason of the default of any borrower in making repayment to the fund or any other contingency that should properly be met by the fund.

'scheme property' has the meaning given in the FMCA

'special resolution' has the meaning given in the FMCA

'standing application' means an application for the issue of units on a regular and periodic basis

'transaction' means the issue of units or withdrawal of units

'unit' means an undivided part or share in the fund as described in clause 10 and includes parts of a unit, with each unit being a financial product for the purposes of the FMCA

'unit day' means each day on which a unit is outstanding

'unit day income' means the income for an income period divided by the total number of unit days in that income period

'unit days per investor' means the number of unit days on which an investor holds a relevant unit

'valuation day' has the meaning set out in clause 100

'withdrawal amount' means an amount calculated in accordance with clause 44 by reference to a number of units so specified, as appropriate in the circumstances

'withdrawal fee' means a fee which the manager is entitled to deduct from the withdrawal amount in accordance with clause 46 or clause 47

'withdrawal suspension notice' means a notice given in accordance with clause 52

'withdrawal notice' means a notice given in accordance with clause 41

'working days' has the meaning given in the Interpretation Act 1999.

General construction

293. Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.

294. References to statutes or regulations includes all amendments, re-enactments and replacements thereof.

295. Headings to clauses are used in this deed for reference only and are not to be used as an aid in the interpretation of this deed.

296. Where under or pursuant to this deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a business day such act, matter or thing shall be done on the following business day.

297. If it shall be necessary for any of the purposes of this deed to determine the equivalent at any date in New Zealand dollars of any amount denominated in any other currency, that equivalent shall be determined by the manager on the basis of such rate of exchange prevailing as at the date as the manager may select.

Schedule 1

Meetings of investors

(clause 258)

Venue of meetings

1. A meeting of the investors shall be held in such place as the manager determines.

Notice of meetings

2. Notice of every meeting shall be given in the manner and to the persons provided in the Regulations.
3. At least 15 working days' written notice of:
   - 3.1 the time, date and place of the meeting
   - 3.2 the general nature of the business to be transacted, in sufficient detail to enable an investor to form a reasoned judgment in relation to it
   - 3.3 the text of any special resolution to be submitted to the meeting; and
   - 3.4 the right of an investor to appoint a proxy

   shall be given to all investors, at his or her last known address.
4. If a special resolution is to be submitted to a meeting to approve a transaction or series of transactions that provides for a related party benefit to be given, then the notice of meeting must contain an explanatory memorandum that sets out:
   - 4.1 the nature and monetary value or, if such value cannot be quantified, the extent of that benefit;
   - 4.2 the related party or parties to whom the benefit is proposed to be given; and
   - 4.3 all other information that is known to the manager that investors would reasonably require to decide whether it is in the investors' best interests to pass the proposed resolution.
5. If a special resolution is to be submitted to the meeting:
   - 5.1 a draft of the proposed notice of the meeting (including any explanatory memorandum under clause 4) must be given to the supervisor at least 10 working days before the notice is given under clause 2 (or any lesser period approved by the supervisor); and
   - 5.2 the notice of the meeting must be accompanied by a document containing the supervisor's comments on the proposed special resolution (but only if the supervisor has approved those comments in writing to the manager at least 5 working days before the notice is given under clause 2, or any lesser period approved by the manager).
6. The accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate proceedings at any meeting.

Quorum

7. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

8. The quorum:

   8.1 for meetings at which a special resolution is to be put shall be investors present in person or by proxy or by attorney or by authorised representative who hold units with a combined value of no less than 25 percent of the value of units held by those persons who are entitled to vote on the business to be transacted at the meeting (or such lesser percentage as may then be permitted pursuant to the FMCA or the Regulations).

   8.2 for any other meetings investors present in person or by proxy or by attorney or by authorised representative who hold no less than 25 percent of the number of units for the time being in existence

9. If within 30 minutes from the time appointed for the meeting a quorum is not present the meeting, if convened upon the request of investors, shall be dissolved. In any other case it shall stand adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place or to such other date, time and place as may be appointed by the supervisor and at such adjourned meeting the investors present in person or by proxy or by attorney or by authorised representative appointed pursuant to clause 28 of this schedule and entitled to vote whatever the number of units held by them shall be a quorum.

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

11. An investor participating by video link or telephone conference call or other electronic or telephonic means of communication in a meeting shall be treated as forming part of the quorum of that meeting provided that the investors present at the meeting can hear and speak to the participating investor.

12. A video link or telephone conference call or other electronic or telephonic means of communication in which a quorum of investors participates and all participants can hear and speak to each other shall be a valid meeting which shall be deemed to take place where the chairman is present unless the investors resolve otherwise.

Supervisor, manager and auditor may attend

13. Any director, officer or solicitor and any other person authorised in that behalf by the supervisor, manager and auditor may attend any meeting and all such persons shall have the right to speak at the meeting but shall have no voting rights.

Chairman

14. A person nominated in writing by the supervisor shall preside at every meeting, or where a person has not been nominated by the supervisor, by any other person appointed in that capacity by the investors present at the meeting.

Adjournment of meetings

15. The chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.

16. No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

Voting rights

17. The only persons entitled to vote in person or by proxy or by attorney or by authorised representative shall be the investors registered in the register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).

Proxies

18. Votes may be given either personally or by proxy or by attorney and also in the case of a corporation by an authorised representative. An instrument of proxy shall be in such form as the manager shall stipulate from time to time and need not be witnessed.

19. Whenever the chairman of the meeting or an officer of the supervisor or the manager is appointed a proxy for an investor and the investor has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which the proxy is to vote upon any resolution coming before the meeting the proxy shall be invalid.

20. The instrument appointing a proxy shall be in writing under the hand of the appointor or of an attorney duly authorised in writing or if the appointor is a corporation either under seal or under the hand of an officer or attorney so authorised.

21. A person appointed to act as a proxy need not be an investor.

22. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy of that power or authority certified notarially or in some other way approved by the board shall:

    22.1 In the case of an instrument in writing (including, whether or not the appointment of proxy is sent in electronic form, any such power of attorney or other authority) be deposited at the office not less than 48 hours before the time of the holding of the meeting or adjourned meeting at which the person named in the appointment proposes to vote; or

    22.2 In the case of an appointment sent in electronic form, where an address has been specified for the purpose of receiving documents or information sent in electronic form:

        22.2.1 in the notice convening the meeting; or

        22.2.2 in any instrument of proxy sent out by the manager in relation to the meeting; or

        22.2.3 in any invitation sent in electronic form to appoint a proxy issued by the manager in relation to the meeting,

    be received at such address not less than 48 hours after it is deemed, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or

22.3 in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or

22.4 in the case of a poll not taken forthwith but taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman of the meeting or some other person authorised for the purpose by the manager.

23. A proxy shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.

24. An instrument or proxy in favour of the chairman of the meeting or the chairman (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.

25. A person appointed proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the investor concerned.

26. 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 mental disorder of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or the transfer of the units in respect of which the vote is given provided that no intimation in writing of such death, mental disorder, revocation or transfer is received by the manager at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Power of attorney

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

Representative of the company

28. A person authorised pursuant to a resolution of the directors or other governing body of a corporation which is an investor to act for it as its representative at any meeting ('authorised representative') shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual investor.

29. An authorised representative shall be required to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting, or for the taking of a poll, at which the authorised representative proposes to vote.

Procedure

30. A resolution put to the vote of a meeting shall be decided on by voice, or if the chairman thinks it necessary or desirable, by a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or by one or more investors holding or representing not less than 5 percent of the number of units in existence. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
31. If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
32. In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a casting vote.
33. A poll demanded on any question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place in Dunedin as the chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
34. 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.
35. On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a person entitled to more than 1 vote need not use all votes or cast all the votes used in the same way.
36. On a show of hands every person present at the meeting and entitled to vote (whether as an investor or as a proxy or attorney or authorised representative) shall have 1 vote only. On a poll every investor who is present in person or by proxy or by attorney or by an authorised representative shall be entitled to 1 vote for every whole unit held.
37. In the case of joint holders the vote of 1 only joint holder who tenders a vote whether in person or by proxy or by authorised representative shall be accepted to the exclusion of the votes of any other joint holder.

Resolutions

38. The expression 'special resolution' means a resolution approved by the investors holding units with a combined value of no less than 75% of the value of the units

held by those persons who are entitled to vote and who vote on the question and means:

38.1 A resolution relating to a matter that is required by the FMCA or the Regulations to be done by way of special resolution; and

38.2 A resolution relating to a matter that is required by this deed or the terms of issue to be done by way of special resolution.

39. A meeting of investors shall have the following powers exercisable by special resolution:

39.1 power to sanction the exchange of units of the fund for, or the conversion of such units into shares, stocks, debentures, debenture stock or other obligations or securities of any company formed or to be formed

39.2 power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the investors howsoever such rights shall arise

39.3 power to assent to any alteration, modification of, variation, or addition to the provisions contained in the trust deed or any deed supplemental thereto or the conditions attaching to units and to authorise the manager and supervisor to execute any supplemental trust deed or other document embodying any such alteration or addition

39.4 subject to relevant law, power to discharge, release or exonerate the manager or supervisor from all liability in respect of any act of commission or omission for which the manager or supervisor has or may become responsible under this deed

39.5 subject to relevant law, 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

39.6 power to require that the manager or the supervisor retire

39.7 power to sanction the exchange of units for, or the conversion of units into, units or interests in any other group investment fund or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the special resolution

39.8 power to sanction the winding up of the fund

40. A meeting of investors may by special resolution give such directions to the manager or supervisor as they think proper concerning the fund, being directions that are consistent with the provisions of the deed and any relevant law.

Special resolution binds all investors

41. A special resolution passed at a meeting duly convened and held in accordance with this schedule shall be binding upon all investors whether present or not present at the meeting. Each of those investors and the manager and supervisor shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the supervisor, manager and those investors be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the

meeting to determine without appeal whether or not the circumstances justify the passing of such resolution. However a resolution which adversely affects the interests of a particular investor or a class of investors only as opposed to the interests of the investors generally shall not be binding on such investor or class of investors unless such investor agrees or such investors agree to be bound by the terms of such special resolution.

Minutes to be kept

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

Execution

This deed was executed on 18th November 2016

SIGNED for and on behalf of **FUND MANAGERS OTAGO LIMITED** in the presence of:

Director

Director

Witness

Signature: _____

Name (full): _____

Occupation: _____

Address: _____

SIGNED for and on behalf of **TRUSTEES EXECUTORS LIMITED** under its common seal:

Melanie Lyn Hewitson

Authorised Signatory

Authorised Signatory

Susan Jane Bingham

TRUSTEES EXECUTORS LIMITED The Common Seal of

2016/234 (1 of 2)

Witness

Signature: Adesh Kaur

Name (full): Adesh Kaur

Occupation: Business Analyst

Address: Auckland

Witness

Signature: Adesh Kaur

Name (full): Adesh Kaur

Occupation: Business Analyst

Address: Auckland