

Trust Deed

relating to

the Vital Healthcare New Zealand Property Trust

NorthWest Healthcare Properties Management Limited

as Manager

and

Trustees Executors Limited

as Supervisor

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This **Trust Deed** is made on [] April 2020

between (1) **NorthWest Healthcare Properties Management Limited** (the **Manager**)

and (2) **Trustees Executors Limited** (the **Supervisor**)

Introduction

A. The Trust was established as a managed investment scheme under the FMC Act pursuant to this deed dated [] April 2020.

It is agreed

1. Interpretation

1.1 Definitions

Activity Fees means the fees for Activity Services set out in Schedule 3.

Activity Services means the services set out in Schedule 3.

Additional Costs means the remuneration for Additional Services set out in Schedule 2.

Additional Services means the services set out in Schedule 2.

Application Money means:

- (a) the cash lodged with an application for Units; or
- (b) the value of the asset (other than cash) contributed to the Trust to acquire Units.

Applicable Law means the laws of New Zealand and Australia, and stock exchange listing rules, applicable to the Trust from time to time, including:

- (a) the FMC Act;
- (b) any Exemption Notice; and
- (c) the Listing Rules.

ASIC means the Australian Securities and Investments Commission.

Associated Person has the meaning given to that term in the Listing Rules.

ASX means:

- (a) ASX Limited or any body that replaces it or performs its functions; and
- (b) the financial market operated by ASX Limited,

as the context requires.

ASX Listing Rules means the listing rules of ASX and any other rules of ASX to the extent that they are applicable while the Trust is admitted to the official list, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Auditor means the auditor of the Trust Fund for the time being appointed pursuant to clause 26.8.

Authorised Investments means at any time any investment authorised by the SIPO at that time.

Base Fee means the fee calculated in accordance with clause 20.4.

Board means the board of directors of the Manager.

Borrow means to borrow money, including to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments that represent money borrowed, or otherwise howsoever, and **Borrowing** and **Borrowed** have a corresponding meaning. For the avoidance of doubt, money raised from the issue of Convertible Obligations that are mandatorily convertible (that is, they are issued on the condition that they shall not be redeemed in cash, other than in default, but shall be satisfied by the issue of Units) will not constitute Borrowing.

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

Capital Reallocation Issue means an issue of Units in the circumstances contemplated by clause 6.7.

Capital Reallocation Units has the meaning set out in clause 6.7.

Certificate means a certificate evidencing that the person named on the certificate is the holder of the Units referred to on the certificate.

Class means a class of Units having identical rights, privileges, limitations and conditions, and includes or excludes Units which NZX in its discretion deems to be of or not of that Class.

Commencement Date means [] April 2020.

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

Custodian means a person contracted to hold any of the Investments who meets the external custodianship requirements in section 156 of the FMC Act.

Distribution means:

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

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

Distribution Period means, subject to clause 36, each period of three months ending on a Quarterly Date.

Employee means a permanent or full-time or part-time employee (including a director) of the Manager, the Vital Australia Responsible Entity, the Vital Australia Investment Manager or any of their related bodies corporate from time to time.

Employee Security Plan means an employee security plan, employee option plan or employee rights plan pursuant to which Units may be issued or transferred, or rights to receive Units may be granted to Employees.

Exemption Notice means:

- (a) any exemption or declaration granted by the FMA under section 556 of the FMC Act; and
- (b) any other instrument issued by the FMA under a power conferred on the FMA which applies to the Supervisor, the Manager or the Trust.

Financial Product has the meaning given to that term in the Listing Rules.

Financial Reporting Act means the *Financial Reporting Act 2013*.

Financial Year in relation to the Trust means, subject to clause 36, the period of twelve months ending on 30 June in each year.

FMA means the Financial Markets Authority.

FMC Act means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund Security has the meaning given to that term in the Listing Rules and **Fund Securities** has a corresponding meaning.

GAV Ratio means, as at a particular date, the ratio that the Gross Value of Vital NZ bears to the Gross Value of the Stapled Group. For the avoidance of doubt, as at any particular date, the sum of the GAV Ratio of the Trust Fund and the equivalent for Vital Australia shall equal 1.

Government Agency means:

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

Gross Income in relation to a Financial Year means the gross income of the Trust Fund in respect of that Financial Year, taking account of all income accrued or accruing due, but for the avoidance of doubt excluding adjustments required under generally accepted accounting

practice requiring lease payments to be recognised on a straight-line basis over the term of the lease.

Gross Value of the Stapled Group in respect of any Business Day means the aggregate in respect of that Business Day of:

- (a) the Gross Value of Vital Australia; and
- (b) the Gross Value of Vital NZ.

Gross Value of Vital NZ in respect of any Business Day means such sum as is ascertained and fixed by the Manager in respect of that Business Day as being the greater of:

- (a) the book value of the tangible assets of the Trust and its Subsidiaries as disclosed by the most recently published consolidated annual financial statements of the Trust; and
- (b) the aggregate of:
 - (i) the market value of all of the Investments other than cash;
 - (ii) any income accrued or payable but not included in such market value; and
 - (iii) the amount of cash forming part of the Trust Fund,

(in both cases irrespective of and ignoring any liabilities attributable to the assets or of any Subsidiaries or other entities through which the assets are held).

Gross Value of Vital Australia in respect of any Business Day means the “Gross Value of Vital Australia” calculated pursuant to the Vital Australia Trust Deed.

High Watermark Net Tangible Assets means, in respect of a Financial Year, an amount equal to the higher of:

- (a) the Net Tangible Assets of the Stapled Group as at the last Business Day of the previous Financial Year (**FY-1**);
- (b) the Net Tangible Assets of the Stapled Group as at the last Business Day of the Financial Year immediately before FY-1 (**FY-2**); and
- (c) the Net Tangible Assets of the Stapled Group as at the last Business Day of the Financial Year immediately before FY-2 (**FY-3**).

Incentive Fee means the fee calculated in accordance with clause 20.5.

Independent in relation to an expert advisor or such advice as may be obtained from the same means such an advisor who has no connection with or interest in either the Manager or the Supervisor.

Independent Director means a director of the Manager elected or appointed or deemed elected or appointed pursuant to clause 28.

Interest Group, in relation to any action or proposal affecting rights attached to Units, Convertible Obligations or other Financial Products issued by the Trust, means a group of holders of Units, Convertible Obligations or other Financial Products issued by the Trust:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise holders of Units, Convertible Obligations or other Financial Products of one or more classes, except where action is taken in relation to some holders of Units, Convertible Obligations or other Financial Products in a class and not others, or a proposal expressly distinguishes between some holders of Units, Convertible Obligations or other Financial Products in a class and other holders of Units, Convertible Obligations or other Financial Products in that class, in which case the holders of Units, Convertible Obligations or other Financial Products in that class may fall into two or more interest groups.

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

Issue Price has the meaning given by clause 6.1.

Issuer has the meaning given to that term in the Listing Rules.

Land means land and real estate of every estate or description and every interest therein or relating thereto and includes without limitation:

- (a) estates and interests in freehold and leasehold or other tenure;
- (b) estates and interest in any stratum estate created (in relation to New Zealand pursuant to the Unit Titles Act 2010) or in relation to Australia or elsewhere in the world pursuant to any similar legislation;
- (c) any purchase agreement, licence, easement, option, joint venture agreement, building contract or other agreement or right of any type attaching to or relating to land, real estate or any interest therein; and
- (d) all buildings, improvements, plant, machinery, fixtures and fittings erected or installed on or relating to land, real estate or any interest therein.

Liabilities means all liabilities of every nature of the Trust (including liabilities accrued but not yet paid and any unpaid amounts due and payable to Unit Holders, the Manager or the Supervisor) and any provision which the Manager, having due regard to the most recent audited financial statements available for the Trust, decides should be taken into account in determining the liabilities of the Trust. The term Liabilities does not include contingent liabilities.

Listed has the meaning given to that term in the Listing Rules.

Listing Rules means, as the context requires, the:

- (a) NZX Listing Rules; and
- (b) ASX Listing Rules,

in force from time to time.

Maximum Fee has the meaning set out in clause 20.2.

Market Value means:

- (a) the average of the daily weighted average of all sale prices for Stapled Units for each day on which the Stapled Units were sold on NZX during the last 10 Business Days before the commencement of the period of 10 Business Days immediately preceding:
 - (i) in the case of Stapled Units to be issued as a result of the exercise of an Option, the date of exercise of the Option;
 - (ii) in the case of reinvestment of income or capital in Stapled Units, the date determined by the Manager in accordance with the terms of this deed;
 - (iii) in the case of Stapled Units issued to Employees, the date on which the Stapled Units are to be issued under the terms of the employee share scheme;
 - (iv) in the case of forfeited Stapled Units, the date determined in accordance with any applicable ASIC instrument in relation to the sale of forfeited Units;
 - (v) in the case of Stapled Units to be issued to the Manager (or its related body corporate nominee) in lieu of, or otherwise in connection with, its fees:
 - (A) in respect of the Incentive Fee, in accordance with clause 20.7(b); or
 - (B) otherwise, the date on which the relevant fees become payable to such person;
 - (vi) in any other case, the date of the proposed issue or offer, and where the offer is contained in a product disclosure statement or other offer document, the date of the product disclosure statement or offer document, or
- (b) if there are no sales during that period, the last bid price for the Stapled Units during that period.

Minimum Number in relation to any class of Units means such number of Units of that class as the Manager may from time to time designate as the minimum number which may be held by a Unit Holder, provided that, for so long as the Trust is Listed, the Minimum Number shall mean a Minimum Holding of those Units as that term is defined in the NZX Listing Rules.

Net Income means the net income earned by the Trust Fund, determined in accordance with clauses 13.6 and 13.7.

Net Tangible Assets of the Stapled Group or NTA (Stapled Group) in respect of any Business Day means the aggregate in respect of that Business Day of:

- (a) the Net Tangible Assets of Vital NZ; and
- (b) the Net Tangible Assets of Vital Australia.

Net Tangible Assets of Vital NZ or NTA (Vital NZ) in respect of any Business Day means such sum as is ascertained and fixed by the Manager in respect of that Business Day using the following formula:

$$\text{NTA (Vital NZ)} = A - L$$

where:

A = the Total Tangible Assets of the Trust; and

L = all Liabilities and any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purposes of making a fair and reasonable determination of the total net tangible assets of the Trust, having due regard to generally accepted accounting practice.

Net Tangible Assets of Vital Australia or NTA (Vital Australia) in respect of any Business Day means the “Net Tangible Assets of Vital Australia” calculated pursuant to the Vital Australia Trust Deed.

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

NTA Ratio means, as at a particular date, the ratio that the Net Tangible Assets of Vital NZ bears to the Net Tangible Assets of the Stapled Group. For the avoidance of doubt, as at any particular date, the sum of the NTA Ratio of the Trust and the equivalent for Vital Australia shall equal 1.

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

NZX Listing Rules means the NZX Listing Rules in force from time to time.

NZX Main Board means the main board Financial Product market operated by NZX.

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

Option means an option to subscribe for or to acquire a Unit.

Option Holder means a person whose name is entered in the Register as the holder of an Option.

Ordinary Resolution means a resolution passed by a simple majority of Votes of Unit Holders and those holders of Convertible Obligations (if any) which carry Votes, that are entitled to vote and voting.

Participating Unit Holders has the meaning given to that term in clause 14.5.

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

Personal Representative means:

- (a) in relation to a deceased individual Unit Holder, the executor, administrator or trustee of the estate of that Unit Holder;
- (b) in relation to a bankrupt individual Unit Holder, the assignee in bankruptcy of that Unit Holder; and

- (c) in relation to any other individual Unit Holder, a person appointed or deemed to have been appointed to administer property, a manager appointed or deemed to have been appointed, or a donee of an enduring power of attorney under or in accordance with Applicable Law.

Qualified Advisor means an appropriately qualified Person (who may be an employee of the Supervisor or the Manager) with at least five years' experience in valuing the particular kind of asset or property appointed by the Supervisor (or appointed by the Manager and approved by the Supervisor) for the purpose of determining the value of any of the Investments of the Trust Fund.

Quarterly Date means the last days of September, December, March and June.

Quoted has the meaning given to that term in the Listing Rules, and **Quote** and **Quotation** have corresponding meanings.

Register means the Register described in clause 8.

Registrar means the person appointed pursuant to clause 8.2.

Related Company has the meaning given in section 2(3) of the Companies Act 1993 and in relation to the Trust, has the same meaning as if the Trust were a company, and includes an associated person as defined in the FMC Act.

Representative means a person appointed as a proxy or representative under clause 11 of Schedule 3 or a Personal Representative; **Ruling** has the meaning given to that term in the Listing Rules.

Shareholder means at any time a person that holds greater than 50% of the ordinary shares of the Manager.

SIPO means a statement of investment policy and objectives prepared by the Manager under the FMC Act and clause 12.2.

Special Resolution means a resolution approved by Unit Holders holding Units with a combined value of not less than 75% of the value of Units held by those persons who are entitled to vote and who vote on the question.

Stapled Group means, collectively, Vital Australia, the Trust and each of their respective Subsidiaries.

Stapled Unit means a Unit in a class and a Vital Australia Unit in the equivalent class which are Stapled together and registered in the name of the Unit Holder.

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

Stapled Unit Register means the register of Stapled Units to be established and maintained by or on behalf of the Manager in accordance with clause 17.7.

Stapling means the linking together of the rights and obligations which attach to a Stapled Unit so that a Unit (or other class of unit or Convertible Obligation issued by the Trust) and a Vital Australia Unit (or other class of unit or convertible obligation issued by Vital Australia) may only be dealt with together, and **Stapled** has a corresponding meaning.

Stapling Provision means a provision of this deed relating to, referring to or connected with Stapling.

Statement has the meaning set out in clause 9.2.

Subsidiary means:

- (a) a company if, but only if,-
 - (i) the Trust:
 - (A) controls the composition of the board of the company;
 - (B) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company;
 - (C) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (D) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (ii) the company is a subsidiary of a company that is the Trust's subsidiary; or
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act with such necessary modifications to reflect the fact that the "Issuer" for the purposes of the Financial Reporting Act is the Trust.

Total Tangible Assets means the consolidated total market value of the assets of the Trust and its Subsidiaries that are considered by generally accepted accounting practice to be tangible assets including, without limitation, the amount of cash and receivables, but excluding:

- (a) any unrealised movements in currency reserves and derivatives (including derivatives relating to interest rates or currency) during the relevant Financial Year;
- (b) any increase in the tangible assets of the Trust arising solely from subscriptions received for new Units (net of any fees incurred relating to such subscriptions); and
- (c) any decrease in tangible assets arising solely from distributions of any kind paid to Unit Holders other than normal course recurring distribution payments.

Trust means the Trust constituted by a Trust Deed dated [] 2020 known as Vital Healthcare New Zealand Property Trust.

Trust Fund means the trust fund described in clause 3.5.

Trust Property means property that is Trust Fund of the Trust for the purposes of the Applicable Laws, being property held by or for the Supervisor in connection with the Trust,

but does not include Application Money in respect of which Units have not yet been issued or any amount in any distribution account.

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

Unit Holder means a Person who holds an interest in the Trust.

Units on Issue means the number of:

- (a) fully paid Units; plus
- (b) Units equal to the total number of all the fractions represented by the respective proportions of the Issue Price which have been paid on all the partly paid Units,

on issue at the time.

Unstapled means, in relation to a Unit, that Unit not being Stapled to a Vital Australia Unit.

Unstapling means the process that results in the Stapled Units no longer being Stapled.

Unstapling Date has the meaning set out in clause 17.5(b).

Unstapling Event has the meaning set out in clause 17.5(a).

Vital Australia means the trust established under the Vital Australia Trust Deed known as Vital Healthcare Australian Property Trust (formerly Vital Healthcare Property Trust).

Vital Australia Investment Manager means NorthWest Healthcare Australian REIT Manager Pty Ltd or such other investment manager of Vital Australia as appointed by the Vital Australia Responsible Entity from time to time.

Vital Australia Responsible Entity means the body corporate registered with ASIC as the responsible entity of the Vital Australia trust under the Corporations Act 2001 (Cth), and, where the context permits, includes any agent or delegate of the Vital Australia Responsible Entity.

Vital Australia Trust Deed means the trust deed of Vital Australia dated 1 September 1999, as amended, modified or replaced from time to time.

Vital Australia Unit means a "Unit" as defined in the Vital Australia Trust Deed.

Vital Australia Unit Holder has the meaning given to the term "Unit Holder" in the Vital Australia Trust Deed.

Vote means a right to vote at Unit Holders' meetings other than:

- (a) a right to vote solely upon matters of a nature immaterial or inconsequential to the control of the Trust, or to the control of any material part of the business or operations of the Trust;

- (b) a right to vote only when a payment in respect of the Unit in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Unit, or in other circumstances of a special or remote nature; or
- (c) a right to vote attaching to Units which are not Fund Securities, exercisable only at meetings of holders of those Units.

1.2 Construction of certain references

In this deed, unless the context otherwise requires, any reference to:

- (a) **cash** includes a cheque;
- (b) the table of contents and headings are inserted for convenience only and shall be ignored in construing this deed;
- (c) the singular includes the plural and vice versa;
- (d) one gender includes the other genders;
- (e) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (f) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (g) references to clauses and sections are references to clauses and sections in this deed, unless stated otherwise;
- (h) the expression "generally accepted accounting practice" has the same meaning as that term in the Financial Reporting Act; and
- (i) words and expressions cognate with words or expressions defined in this deed have meanings corresponding to those of the defined words and expressions.

1.3 Business days

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

1.4 Conversion into dollars

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 the selling rate quoted for that other currency on that day by any registered bank in New Zealand.

1.5 **Supervisor's approvals**

Where this deed provides for the approval of the Supervisor to be obtained, in determining whether or not to give its approval, the Supervisor shall have due regard to the best interests of the Unit Holders.

1.6 **Listing Rules – Definitions**

Any terms that are used in this deed and which are defined in the Listing Rules shall be given in this deed the meaning that the relevant term has under the Listing Rules, except where otherwise indicated, and notwithstanding whether this deed expressly notes or not that a Listing Rule definition applies.

1.7 **Listing Rules – Amendments**

A reference in this deed to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

1.8 **Agreed amendments**

If any part of this deed (a **Required Part**) is included to comply with the requirements of any Applicable Law and that Applicable Law ceases or changes, each Unit Holder agrees that unless the Manager determines otherwise, this deed may be amended by removing the Required Part (or amending it to reflect the altered requirements of the Applicable Law), and authorises the Manager to make that amendment in a deed made for that purpose.

1.9 **FMC Act – Application**

The provisions of this deed are subject to the FMC Act, and:

- (a) pursuant to section 16(1) of the FMC Act, the provisions of the FMC Act have effect despite anything to the contrary in this deed; and
- (b) pursuant to section 138 of the FMC Act, this deed has no effect to the extent that it contravenes, or is inconsistent with, the FMC Act or the FMC Regulations.

1.10 **FMC Act – Definitions**

Expressions defined in the FMC Act and not otherwise defined in this deed or the Listing Rules have the same meaning as in the FMC Act.

1.11 **Trust Act and Trustee Act**

Upon the repeal of the Trustee Act 1956, references to that Act in this deed shall be of no effect, unless expressly provided to the contrary. Any default duties under the Trusts Act, which are applicable to the Supervisor or the Trust are excluded to the maximum extent permitted by the Trusts Act.

1.12 **Frameworks or methodologies**

Where the FMA has published frameworks or methodologies that require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the

Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies. Any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this deed and the provisions of this deed shall be construed accordingly.

1.13 Compliance with the ASX Listing Rules

A clause of this deed which is expressed to apply subject to the ASX Listing Rules, is only so subject while the Trust is admitted to the official list of ASX (and the clause is to be read accordingly). If the Trust is admitted to the official list, then, notwithstanding clause 30, for so long as the Trust is so admitted, the following clauses apply:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.

2. Compliance with the NZX Listing Rules

2.1 Compliance with NZX Listing Rules

Subject to the terms of:

- (a) any Ruling from time to time given by NZX; and
- (b) any other Applicable Laws,

while the Trust is Listed on the NZX, the Manager, the Supervisor (in its capacity as Supervisor of the Trust) and the Trust shall comply with the NZX Listing Rules where required of each of them as and to the extent that the NZX Listing Rules apply to an Issuer of Fund Securities. In particular, in clauses of this deed which reflect or incorporate provisions of the Listing Rules, references to "Units" shall be deemed to be references to "Financial Products", "Fund Securities", "Quoted Fund Securities" or "Quoted Financial Products" as the case may be, to the extent necessary to ensure that the relevant clause of this deed appropriately reflects or incorporates the provisions of the relevant NZX Listing Rule.

In determining the appropriateness of any particular reference, regard must be had to the purpose and intent of the NZX Listing Rules, and the scope of the Manager's and Supervisor's roles as provided for under the Applicable Laws.

2.2 Incorporation by reference

While the Trust is Listed:

- (a) any provisions of the Listing Rules which are required by the Listing Rules to be contained or incorporated by reference in this deed (as they may be modified by any Ruling relevant to the Trust) will be deemed to be incorporated in this deed and have the same effect as though they were set out in full in this deed with any necessary modification; and
- (b) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision.

2.3 Listing Rules prevail

While the Trust is Listed, but subject to compliance with the Applicable Laws and clause 2.4, if there is any provision in this deed that is inconsistent with the Listing Rules applicable to the Trust, the Listing Rules shall prevail.

2.4 Ruling

If a Ruling has been granted in relation to the Trust authorising any act or omission which, in the absence of that Ruling, would be in breach of this deed, that act or omission shall, subject to compliance with the Applicable Laws and unless a contrary intention appears in this deed, be deemed to be authorised by this deed.

2.5 Failure to Comply with Listing Rules

Failure to comply with:

- (a) the Listing Rules; or
- (b) a provision of this deed corresponding with a provision of the Listing Rules (whether such provision is set out in full in this deed or incorporated in it pursuant to clause 2.2),

does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Unit Holders or other matter entered into by, or affecting, the Manager, the Supervisor or the Trust, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This clause does not limit the rights of Unit Holders against the Trust, the Supervisor, the Manager or the directors of the Manager.

3. Commencement of this Deed and Constitution of the Trust Fund

3.1 Commencement of this deed

This deed shall take effect on the Commencement Date.

3.2 Appointment of Supervisor

The Supervisor is appointed as the trustee of the Trust and agrees to act as trustee for the Unit Holders to hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed.

3.3 Appointment of manager

The Manager is appointed as the Manager of the Trust and agrees to act as the Manager on the terms and conditions contained or implied in this deed.

3.4 Name of trust

The Trust is known as the "Vital Healthcare New Zealand Property Trust". The name of the Trust may be changed to such other name as the Supervisor and the Manager may from time to time agree.

3.5 Constitution of the Fund

The Trust Fund shall consist of all the cash, Investments, assets, rights, and other property for the time being held by the Supervisor upon the trusts of this deed including:

- (a) the proceeds of subscriptions for Units;
- (b) the proceeds of sale of any Investments;
- (c) all additions or accretions thereto; and
- (d) all income and gains held pending distribution or reinvestment.

3.6 Custodian

The Supervisor shall be entitled in accordance with section 156 of the FMC Act to contract to another person who meets the external custodianship requirements (as defined in that section) the holding of all or part of the Investments of the Trust.

4. Units

4.1 Trust Fund divided into Units

The beneficial interest in the Trust Fund shall be divided into Units. Subject to the rights attaching to unpaid or partly paid Units and other Units with special rights, and to clause 13.14, each Unit shall confer an equal interest in the Trust Fund.

4.2 Units undivided share of the Trust Fund

Subject always to the provisions of the FMC Act, no Unit shall confer any interest in any particular part of the Trust Fund and no Unit Holder shall be entitled to require the transfer to that Unit Holder of any of the Investments nor (subject to the rights of Unit Holders created by this deed and by law) shall any Unit Holder be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this deed or in respect of the Trust Fund or any part or parts thereof. Except where expressly provided to the contrary

in this deed or where the context does not so permit, all the benefits and provisions (including but not limited to those expressed to enure for the benefit of and bind the Unit Holders of any class or classes) contained in this deed enure for the benefit of and bind each Unit Holder of the relevant class or classes.

4.3 Quotation of Units

The Manager may at its discretion at any time apply to NZX, ASX or any other stock exchange for quotation of the Units of any class.

5. Issue of Units

5.1 Offers

The Manager may, subject to the Applicable Laws and this deed, invite offers, subscriptions or applications for Units, may issue rights or Options to subscribe for Units, Convertible Obligations, and Units of any Class (including unpaid and partly paid Units) upon and subject to the terms and conditions contained in this deed and otherwise in such manner and upon such terms and conditions as the Manager shall determine.

5.2 Offers to comply with law

The Manager shall in inviting offers in terms of this clause 5 comply with all Applicable Law relating to such offers.

5.3 Underwritten offers

Any proposed issue of Units may (subject to Applicable Law) in the Manager's discretion be underwritten. The Manager shall have power to:

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

5.4 Maximum number of units

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

6. Issue Price

6.1 Price

A Unit may only be issued at the **Issue Price** which is calculated as follows:

- (a) in the case of a proportionate offer (including a rights issue) of Units as part of a proportionate offer (including a rights issue) of Stapled Units, in accordance with clause 6.2;
- (b) in the case of a placement of Units as part of a placement of Stapled Units or issue of Units as part of an issue of Stapled Units under an interest purchase plan, in accordance with clause 6.4;
- (c) in the case of reinvestment of distributions in Units as part of a reinvestment in Stapled Units, in accordance with clause 6.5;
- (d) in the case of Units issued pursuant to a Capital Reallocation Issue as part of a capital reallocation between the Trust and Vital Australia, in accordance with clause 6.7(c);
- (e) in the case of Units issued to any Employee as part of an issue of Stapled Units pursuant to any Employee Security Plan, in accordance with clause 6.8;
- (f) in the case of Units issued pursuant to the exercise of an Option as part of an issue of Stapled Units, at Market Value (as apportioned in accordance with clause 6.6); or
- (g) otherwise in accordance with clause 6.6, provided that the aggregate of the Issue Price of that Unit and the issue price of the Vital Australia Unit to which that Unit will be Stapled is equal to the Market Value calculated in accordance with this deed of a Stapled Unit.

6.2 Pro rata rights issues

The Manager may, subject to compliance with any Applicable Laws, offer Units as part of an offer of Stapled Units for subscription at a price determined by the Manager in accordance with clause 6.6 to those persons who were Unit Holders on a date determined by the Manager not being more than 20 Business Days immediately prior to the date of the offer, provided that all Unit Holders are offered Units at the same Issue Price on a pro rata basis (whether or not the right of entitlement is renounceable).

However, subject to compliance with any Applicable Laws, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than New Zealand or Australia and such other jurisdiction (if any) as the Manager may in its absolute discretion determine.

6.3 Terms of pro rata issues

- (a) Any offer made under clause 6.2 must specify the period during which it may be accepted and must be made to Unit Holders in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 6.2. However, the Manager may adjust any entitlement to accord with Applicable Law and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Unit Holder may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 6.2 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any other person. The Issue Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Unit Holders.

- (c) If an underwriter has underwritten any offer for subscription of Stapled Units under clause 6.2, the underwriter may take up any Stapled Units not subscribed for by Unit Holders.

6.4 **Placements and interest purchase plan**

While Stapled Units are not suspended from Quotation, the Manager may at any time issue Units as part of an issue of Stapled Units by way of a placement or under a Stapled Unit purchase plan at a price and on terms determined by the Manager, provided that the Manager complies with Applicable Laws.

6.5 **Reinvestment**

- (a) The Manager may arrange for a Scheme (as defined in clause 14) pursuant to which Unit Holders may elect to have an amount of income or capital that would otherwise be paid to them as a distribution in cash, to be applied as consideration for the issue of Units to that Unit Holder as part of an issue of Stapled Units, provided:
 - (i) all Unit Holders are offered the opportunity to participate in the Scheme on substantially the same terms; and
 - (ii) the Issue Price payable for each additional Unit on reinvestment of distributions (if any) may be determined by the Manager, provided that the Manager complies with Applicable Laws.
- (b) However, subject to Applicable Laws, in respect of Unit Holders whose address on the Register is in a place other than New Zealand or Australia, the Manager:
 - (i) is not required to offer them participation in the Scheme; or
 - (ii) may vary the terms of the Scheme to enable their participation.

6.6 **Apportionment of Issue Price in respect of Stapled Units**

If a Unit is to be issued as part of a Stapled Unit and this deed contains a provision for the calculation or determination of the issue price for a Stapled Unit but not for the Unit, the proportion of the issue price of the Stapled Unit that is represented by the issue price of a Unit for the purposes of this deed is to be determined as follows:

- (a) the allocation is to be in the respective ratios that the Net Assets of Vital Australia and Net Assets of the Trust at the end of the relevant period immediately prior to the issue of the Stapled Unit bears to the Net Assets of the Stapled Group at the same date; or
- (b) notwithstanding paragraph (a), as otherwise agreed in writing between the Manager and the Vital Australia Responsible Entity.

For the purposes of this clause 6.6:

- (c) **Net Assets of the Trust** in respect of any Business Day means the consolidated net assets of the Trust and its Subsidiaries as determined by the Manager, having due regard to generally accepted accounting practice;
- (d) **Net Assets of Vital Australia** in respect of any Business Day means the Net Assets of Australia calculated pursuant to the equivalent provision of the Vital Australia Trust Deed; and

- (e) **Net Assets of the Stapled Group** in respect of any Business Day means the aggregate in respect of that Business Day of the Net Assets of Vital Australia and the Net Assets of the Trust.

6.7 Capital Reallocation Issue

- (a) Despite any other provision of this deed, the Manager may at any time issue Units (**Capital Reallocation Units**) as part of a capital reallocation between the Trust and Vital Australia in either of the following circumstances:
 - (i) the Manager makes an application for Capital Reallocation Units as agent for all Unit Holders and compulsorily applies a distribution of capital paid out of the Trust Fund towards the Application Moneys for those Capital Reallocation Units; or
 - (ii) the Vital Australia Responsible Entity makes an application for Capital Reallocation Units out of a distribution of capital paid out of Vital Australia and the Manager is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to Stapled Unit Holders.
- (b) The Manager must immediately consolidate the Capital Reallocation Units issued under paragraph (a) above with all other Units then on issue in the Trust such that the total number of Units on Issue after the consolidation is equal to the total number of Units on Issue prior to the issue of the Capital Reallocation Units taking place. Each so consolidated Unit will continue to be Stapled to a Vital Australia Unit.
- (c) Capital Reallocation Units issued under this clause will be issued at an Issue Price equal to the amount calculated by dividing the total amount received in relation to the application by the number of Units then on issue in the Trust.

6.8 Employee Security Plan

The Manager may at any time issue Units to any Employee as part of an issue of Stapled Units pursuant to any Employee Security Plan at a price and on terms it may determine, provided that the Manager complies with the Applicable Laws relating to such issue.

7. Buy-back

- (a) Units are not redeemable, except where the Manager may, subject to and in accordance with the Applicable Laws, purchase Units as part of a buy-back of Stapled Units at a price determined in its discretion (such purchase being funded by the Trust Property) and cause the Units to be cancelled.
- (b) If the Manager purchases Units pursuant to paragraph (a), the Manager may determine at its discretion that the buy-back price paid to a Unit Holder comprises income as well as capital. If the Manager makes such a determination the Manager must notify the Unit Holder or the former Unit Holder of the composition of the buy-back price. In the absence of such a determination, the buy-back price will comprise capital only.
- (c) If the buy-back price paid to a Unit Holder on the purchase of Units pursuant to paragraph (a) by the Manager comprises any income, the Unit Holder shall be

presently entitled to such income and shall continue to be presently entitled to such income notwithstanding the purchase of such Unit Holder's Units and the payment of the buy-back price to the Unit Holder.

8. Register

8.1 Manager to maintain Register

The Manager shall keep and maintain, or cause to be kept and maintained, in accordance with Applicable Law, an up-to-date register of Unit Holders that must contain:

- (a) the name and address of each Unit Holder; and
- (b) the number and class of Units held by each Unit Holder.

The Register may include any other information the Manager determines.

8.2 Manager may appoint registrar

The Manager may, from time to time, appoint a registrar acceptable to the Supervisor to keep and maintain the Register on the Manager's behalf upon such terms and conditions as the Manager thinks fit, and shall have the power to remove such Registrar at any time.

8.3 Joint holders

Joint Unit Holders shall be jointly and severally liable in respect of all payments required to be made in respect of the relevant Units. Only the Person whose name stands first in the Register as one of the joint Unit Holders of any Unit shall be entitled to delivery of any Certificate, notice, cheque or other communication from the Manager or the Supervisor, and any Certificate, notice, cheque or other communication given to any such Person shall be deemed to have been given to all the joint Unit Holders. The Manager may amend the name of the Person standing first in the Register with the consent of all joint Unit Holders of a relevant Unit.

8.4 Register to be audited

The Manager shall cause the Register to be audited in accordance with section 218 of the FMC Act and regulations 108 to 110 of the FMC Regulations.

8.5 Changes of address to be notified

Any change of name or address of a Unit Holder shall be notified by such Unit Holder in writing to the Manager, who shall alter the Register accordingly.

8.6 Inspection of the Register

The Manager shall make the Register available for inspection in accordance with sections 221, 222 and 223 of the FMC Act and regulations 111 and 112 of the FMC Regulations.

8.7 Reliance on Register

Each of the Manager and the Supervisor shall be entitled:

- (a) to rely absolutely on the Register as being correct except, in respect of the Manager, in the case of an error in the Register which has been caused by the Manager;
- (b) for all purposes to treat a Person whom it believes to be the Person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units; and
- (c) to effect transfers or other dealings of any nature with Units on the basis of the information recorded in the Register without requiring production or surrender of any Certificate relating to those Units.

8.8 Evidence of ownership

Notwithstanding clause 8.7, the Manager shall be entitled, in its absolute discretion before giving effect to any transfer, conversion or other dealing with any Units, to require the production to the Manager, of evidence satisfactory to it that the Person seeking to effect such dealing is the Person named in the Register as the holder of the Units in question or is otherwise entitled to effect the dealing (for example, a Personal Representative).

8.9 No recognition of trusts

Except as required by law or provided by clause 15.7, neither the Manager nor the Supervisor shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any Person as having any interest in any Unit except for the Person recorded in the Register as the Unit Holder, and accordingly no notice of any trust (whether express, implied or constructive), charge, pledge or equity shall be entered upon the Register.

9. Certificates, Subdivision, Consolidation

9.1 No certificates

Subject to compliance with any requirements of Applicable Laws the issue of Certificates by the Trust is not required, and no Unit Holder shall be entitled to a Certificate.

9.2 Statements

A Statement shall be a statement issued by the Registrar specifying the number of Units held by a Unit Holder and the other matters required under any Applicable Law.

9.3 Issuing of confirmation information and statements

- (a) The Manager shall provide a Unit Holder with the confirmation information required by Applicable Law following the issue, buy-back, or purchase of a Unit.
- (b) Except insofar as the information required in a Statement has already been provided as confirmation information, a Statement shall be issued by the Registrar upon request by the Unit Holder or otherwise in the circumstances required by Applicable Law.

9.4 **Evidence of security**

Except as may be required by law, a Statement shall not be a document of title nor negotiable, nor shall it be prima facie evidence of a Unit Holder's interest in the Trust Fund at the date it is issued.

9.5 **No obligation to issue in respect of certain units**

The Registrar shall not be obliged to issue a Statement in connection with Units bought-back and cancelled or transferred before the date of issue of the Statement.

9.6 **Statement may form part of other document**

Without limitation, a Statement may be issued with, or including, a form of transfer, a notice of dividend or other distribution, a certificate evidencing ownership of any other Financial Product and/or a form for varying any payment.

9.7 **Consolidation and subdivision of units**

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

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

9.8 **Number of Units**

As from the Operative Date, each Unit Holder shall be deemed to hold a number of Units equivalent to the number held by that Unit Holder before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose parts of a Unit beyond 2 decimal places shall be rounded down and ignored.

9.9 **Cancellation of certificates**

Subject to Applicable Laws, the Manager may make such arrangements as it deems appropriate following a consolidation or subdivision for the cancellation of existing Certificates and the issue of new Certificates.

10. **Calls on Units**

10.1 **Manager may make calls**

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

10.2 Interest on unpaid calls

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

10.3 Proof of call

On the hearing of any action for the recovery of any money due for any call, it shall be sufficient to prove that the name of the Unit Holder sued is entered in the Register as the holder or one of the holders of the Units in respect of which such debt accrued and that the call and notice of such call was duly given to that Unit Holder in terms of this deed. Proof of the matters referred to above shall be conclusive evidence of the debt, and it shall not be necessary to prove any other matter whatsoever.

10.4 Cancellation of unpaid amounts

The Manager may, in its discretion, cancel, reduce or defer any obligation to pay amounts unpaid of the issue price of any Unit provided that the Manager shall not agree to do so unless the cancellation, reduction or deferral is approved by Ordinary Resolution.

10.5 Deemed calls

Any sum which by the terms of issue of a Unit becomes payable on allotment or at any fixed date, shall be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable. In the case of non-payment, all the relevant provisions of this deed as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

10.6 Subscriptions paid by instalments

If by the conditions of allotment of any Unit, the whole or part of the amount of the issue price shall be payable by instalments, every such instalment shall, when due, be paid to the Manager by the Unit Holder for the time being or, if applicable, the Personal Representatives of the Unit Holder.

10.7 Differential calls

The Manager may, on the issue of Units, differentiate between the Unit Holders as to the amounts to be paid in respect of the Units and the times of payment of such amounts.

10.8 Joint Unit Holders

Joint Unit Holders are joint and severally liable to pay all calls in respect of Units registered in their names.

11. Forfeiture and Lien

11.1 Demand for payment

If a Unit Holder fails to pay any call or instalment on the due date for payment in respect of a Unit, the Manager may, at any time during such time as any part of the call or instalment

remains unpaid, serve a notice on the Unit Holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Manager or the Trust by reason of such non-payment.

11.2 Notice of non-payment

The notice shall name a further day (not earlier than 10 Business Days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Units in respect of which the call was made or instalment is payable will be liable to be forfeited.

11.3 Forfeiture

If the requirements of any such notice are not complied with, any Unit in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by the Manager. Such forfeiture shall include all Distributions in respect of the forfeited Units not actually paid before the forfeiture.

11.4 Notice and entry of forfeiture in Register

When any Unit has been so forfeited, notice of the forfeiture shall be given to the Unit Holder in whose name it stood immediately prior to the forfeiture or, if applicable, to the Personal Representatives of that Unit Holder. An entry of the forfeiture, with the date thereof, shall be made in the Register. At any time before a sale or disposition of the relevant Unit the forfeiture may, subject to Applicable Law, be cancelled on such terms as the Manager thinks fit.

11.5 Unit Holder remains liable to pay

Each Person whose Units have been forfeited shall cease to be a Unit Holder in respect of the forfeited Units, but shall notwithstanding such forfeiture remain liable to pay all money which, at the date of forfeiture, was payable by such Person in respect of the Units. Such liability shall cease if and when the Manager receives payment in full of all such money in respect of the Units.

11.6 Manager has a lien

The Manager shall have a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others) which is not a fully paid Unit and upon the proceeds of sale for any unpaid calls, instalments, premiums or other amounts owing in respect of such Unit, any interest payable on such amounts, and for such amounts (if any) as the Supervisor or the Manager may be called upon to pay under any Applicable Law in respect of Units of a deceased or other Unit Holder, whether the period for the payment, fulfilment or discharge shall have actually arrived or not. Such lien shall extend to all Distributions from time to time in respect of the relevant Unit. Unless otherwise determined by the Manager, the registration of a transfer of Units shall operate as a waiver of the lien, if any, on such Units.

11.7 Manager may sell forfeited Units

The Manager may sell any forfeited Unit, or any Unit on which the Manager has a lien, but shall not sell any Unit:

- (a) unless the amount in respect of which a lien exists is due and payable; and

- (b) unless the notice referred to in clause 11.2, or in the case of a lien at least 5 Business Days written notice demanding payment of the amount in respect of which the lien exists, has been given to the Unit Holder.

11.8 Discretion to sell

Subject to clause 11.7, the Manager may sell any forfeited Unit, or any Unit on which it has a lien, as part of a sale of Stapled Units at Market Value (as apportioned in accordance with clause 6.6) and in accordance with any Applicable Law relating to the sale of forfeited Units. All Unit Holders and former Unit Holders shall be bound absolutely by the Manager's decision as to the sale of any such Unit, and no Unit Holder or former Unit Holder shall be entitled to claim or commence any action against the Manager, the Supervisor, or any other Person, or to resist or contest payment of the unpaid balance of any call, instalment, or other amount, on the grounds that the best price was not obtained for any such Unit, or on the grounds that the sale or manner of sale of any such Unit was for any other reason detrimental to the interests of that Unit Holder or former Unit Holder.

11.9 Arrangements for purchase of forfeited Units

Without limiting clause 11.8, the Manager may at any time, whether before or after any call or instalment becomes due, and the powers of the Manager under this clause 11 become exercisable, enter into an agreement with any Person or Persons to the effect that that Person or those Persons will purchase Units which the Manager sells under this clause 11, on such terms and at such price as may be recorded in that agreement, or otherwise agreed between the Manager and that Person or those Persons, and none of the Manager, the Supervisor or any other Person shall in any circumstances be liable for any loss caused to any Unit Holder or former Unit Holder by reason of the performance of any such agreement.

11.10 Proceeds of sale

The net proceeds of the sale of any forfeited Unit or of Units sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, instalments, expenses or other amounts and any interest on those amounts. Subject to clause 13.15, the residue, if any, shall be paid to the former Unit Holder or, if applicable, the Personal Representatives or assigns of the former Unit Holder.

11.11 Conclusive evidence

A certificate signed by the Manager that the power of sale has arisen and is exercisable by the Manager under this deed, or that a Unit has been duly forfeited, shall be conclusive evidence of those matters for all purposes.

11.12 Purchaser need not enquire

For giving effect to any sale after forfeiture of any Unit, or for enforcing a lien over any Unit, the Manager may authorise any person to transfer any Unit to the purchaser. The purchaser shall be registered as the holder of the Unit and shall not be concerned to see to the application of the purchase money or as to whether or not the power of sale contained in this clause 11 has been properly exercised, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Manager.

11.13 Unit Holder remains liable

The forfeiture or sale of a Unit shall not relieve the former holder of that Unit, or any other Person, from the obligation to pay all calls, instalments or interest payable in respect of that Unit, so that, after credit has been given for the actual net proceeds of sale in accordance with clause 11.10, the former holder of that Unit and every other Person who may be liable to make payment in respect of that Unit shall remain liable to pay the balance of the calls, instalments and interest (whether falling due before or after the date of forfeiture or sale) in respect of that Unit.

12. Investments

12.1 Manager's power to invest

Subject to the following provisions of this clause 12, to the provisions of clause 25.2, and to Applicable Laws, the Manager (or, if applicable, any attorney or subagent appointed pursuant to this deed) shall have absolute and uncontrolled discretion as to the investment and expenditure of any sums forming part of the Trust Fund and as to the purchase, sale, transfer, exchange or alteration of any Investments from time to time. The Manager alone shall be entitled to effect any transactions which it may consider to be in the interests of Unit Holders. The Supervisor shall to the extent of the Trust Fund held by it or by any person contracted to hold Investments pursuant to clause 3.6, effect and pay for such Investments and expenditures or purchases, sales, transfers, exchanges or alterations of Investments as may be directed in writing by the Manager and shall do all things necessary on its part to give effect to any such direction.

12.2 SIPO

The Manager shall develop, in consultation with the Supervisor, a SIPO which provides adequately for the investment policy and objectives of the Trust and complies with section 164 of the FMC Act, and shall in respect of that SIPO comply with sections 165 and 166 of the FMC Act. The Manager must provide a copy of the SIPO (or any alteration to the SIPO) to the Supervisor at least 14 days prior to the SIPO (or alteration) taking effect. If the Manager proposes to alter the definition of Authorised Investments in the SIPO, the Manager must comply with the provisions of the SIPO in that respect. If the Manager proposes to alter the SIPO in any other manner which materially affects existing Unit Holders (including incremental alterations that together materially affect existing Unit Holders) the Manager shall, prior to effecting any such alteration, give at least 30 days' written notice to Unit Holders. Notwithstanding any of the above, the Manager may not amend or supplement the process for altering Authorised Investments as set out in the SIPO without the prior written consent of the Supervisor.

12.3 Authorised investments

The Trust Fund shall be invested only in Authorised Investments and in accordance with the SIPO. The investment obligations of the Supervisor under this deed shall constitute a "contrary intention" for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956, for so long as that Act remains in force.

12.4 Refusal by Supervisor

The Supervisor shall refuse, and must direct any Custodian to refuse, to act on a direction of the Manager that relates to the acquisition or disposal of Investments if the Supervisor considers that the proposed acquisition or disposal would be:

- (a) in breach of this deed, any rule of law, or any enactment; or
- (b) manifestly not in the interests of Unit Holders.

The Supervisor and any Custodian are not liable to Unit Holders or the Manager for refusing, or directing any Custodian to refuse, to act on direction of the Manager in accordance with this clause. The Supervisor and Custodian must comply with section 160 of the FMC Act in relation to any direction given in accordance with this clause.

12.5 Notice to Supervisor

The Manager shall give the Supervisor at least two Business Days' notice prior to directing the Supervisor to purchase, sell, transfer, exchange or alter any Authorised Investment and shall supply the Supervisor forthwith with such information as the Supervisor may request in relation to such direction before entering into any contract or deed whereby the Supervisor shall be required to enter into any such transaction.

12.6 Valuation by Qualified Advisor

- (a) The Manager shall ensure that all Trust Property is valued by a Qualified Advisor at regular intervals appropriate to the nature of the Trust Property. Valuations of Land shall be carried out in accordance with clause 12.9. If at any time the Manager shall be of the opinion that the determination of the value of an Investment does not accurately reflect the current value of that Investment, the Manager may, with the approval of the Supervisor, assess the current value of that Investment as at any day and in such manner the Manager sees fit having regard to the most recent determination of the value of that Investment, or the cost of that Investment, as the case may be, and to the time which has elapsed since that determination or the acquisition of that Investment. The value of any Investment determined by the Manager pursuant to this clause 12.6 shall be deemed to be the market value of that Investment for all purposes of this deed until such time as a new value is determined pursuant to this clause. Notwithstanding the foregoing, the Supervisor may at any time require that any Investment be valued, at the expense of the Trust, by an independent appropriately qualified person appointed by the Supervisor, and the Manager shall send a copy of the valuation report to the Auditor.
- (b) Where the Manager exercises a discretion in relation to determining the value of an Investment, its method for calculating the value must be consistent with the range of ordinary commercial practice for valuing that type of Investment and, where the calculation is for the purposes of determining the Issue Price, must produce a value that is reasonably current at the time of issue or withdrawal.

12.7 Investments registered in name of Supervisor

All Investments shall be held by the Supervisor or a Custodian in accordance with section 156 of the FMC Act. Where ownership documentation relating to Investments is relevant, as soon as reasonably practicable after receipt of the necessary documents by the Supervisor such Investments shall be registered (if registrable in nature) in the name of the Supervisor or any person contracted to hold Investments pursuant to clause 3.6, and be held in safe custody by the Supervisor or by some person selected by the Supervisor in accordance with this deed, and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions hereof.

12.8 Acquisition or disposal of Land

The Supervisor shall be under no obligation to acquire or dispose of any Land until the Manager has delivered to the Supervisor a valuation report on the relevant Land carried out by an Independent registered valuer.

12.9 Valuation of Land

The Manager will, in relation to each valuation of Land:

- (a) instruct a Person as a Qualified Advisor who:
 - (i) is suitably registered and qualified to carry out such valuations having at least five (5) years' relevant experience; and
 - (ii) has no pecuniary or other interest that could reasonably be regarded as being capable of affecting the Person's ability to give an unbiased opinion;
- (b) ensure that such Person receives all necessary instructions and information for the purpose of the valuation including particulars of leases and current rent receipts and will send a copy of all such instructions and information as sent to such Person to the Supervisor;
- (c) ensure that the valuation is prepared on the basis of market value subject to all existing leases and occupancies, encumbrances and potential benefits. "Market value" for the purposes of this clause 12 means the price at which an interest in a property might reasonably be expected to be sold by private treaty at the date of valuation assuming:
 - (i) a willing seller;
 - (ii) a reasonable period within which to negotiate the sale taking into account the nature of the property and the state of the market;
 - (iii) values will remain static throughout the period;
 - (iv) the property will be freely exposed to the market with reasonable publicity; and
 - (v) no account is taken of an additional bid by a special purchaser;
- (d) ensure that the same Qualified Advisor does not value any property for more than two consecutive Financial Years. For this purpose, members or employees of the same valuation firm or company are deemed to be the same valuer; and
- (e) it will incorporate the new valuation in the books of the Trust (with such adjustments as are appropriate to comply with generally accepted accounting practice as defined in the Financial Reporting Act 2013) as the value of the property as soon as practicable after receipt of the report by the Manager.

12.10 Supervisor's Right to Limit Liability

The Supervisor may, before entering into any transaction, security or liability of the Trust require that its liability is restricted or limited to its satisfaction to the Investments for the time being of the Trust.

12.11 Manager to Keep Records

The Manager must keep complete, accurate and separate records of all Investments.

12.12 Inspection by Supervisor

The records of Investments must be available for inspection by the Supervisor or its agents without charge at any time on any Business Day.

12.13 Reliance on Records

The Supervisor is entitled to assume that the Manager's records of Investments are complete and accurate and may rely upon them accordingly.

13. Distributions

13.1 Net income retained or distributed

All Net Income shall, at the discretion of the Manager, be either:

- (a) retained by the Supervisor and invested in accordance with the provisions of clause 12; or
- (b) distributed by the Supervisor to Unit Holders in accordance with the provisions of clause 13.3.

13.2 Distributions

Subject to the rights, obligations and restrictions attaching to any Units or Classes of Units, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor to distribute any amount of Net Income or any part of the capital of the Trust Fund to Unit Holders in cash or by way of an in specie distribution of assets of the Trust Fund.

The Supervisor shall (subject to clause 12.4 in respect of any direction to realise Investments) act in accordance with any such direction.

13.3 Distributions to be pro-rata

All distributions pursuant to clause 13.2 shall be distributed to the Unit Holders in respect of each Distribution Period as soon as practical after the end of each Distribution Period and shall (subject to clauses 13.4 and 13.13 and to the rights attaching to unpaid or partly paid Units and other Units with special rights) be distributed amongst the Unit Holders in proportion to the number of Units held by them and according to the amounts paid or credited as paid on the Units in respect of which the distribution is paid but no amount paid or credited and paid on a Unit in advance of calls shall be treated for the purposes of this clause as paid on that Unit.

13.4 Deductions from distributions

The Supervisor or the Manager may deduct from any distribution payable to any Unit Holder all sums of money, if any, presently payable by such Unit Holder on account of calls or instalments on the Units in respect of which the distribution is payable, but subject thereto,

and save as expressly permitted by the terms of this deed, or as required by law, no deduction or retention shall be made from any distribution.

13.5 Rights to distributions

The Manager may as a condition of issue of any Units provide that those Units shall not participate in full in any distribution or distributions, or shall participate in distributions on a basis calculated by reference to the period for which they have been held by a particular Unit Holder or the amount of the issue price paid or payable thereon. The Supervisor shall take all necessary steps to give effect to any such condition.

13.6 Determination of Net Income

In determining Net Income of the Trust Fund for any Distribution Period there shall be deducted from Gross Income for such period all costs, charges and expenses accrued or accruing, including, without limiting the generality of the foregoing:

- (a) all fees, costs and disbursements payable to the Manager and the Supervisor (except to the extent that the Manager determines, acting reasonably, that such fees, costs and/or disbursements should be capitalised under generally accepted accounting practice);
- (b) all costs and expenses incurred in respect of Investments (including, without limitation, the costs and expenses incurred in connection with the insurance, valuation, repair, maintenance, acquisition or sale of Investments);
- (c) all depreciation of Investments of an amount determined by the Manager;
- (d) all costs and disbursements incurred in connection with this deed or in connection with the Trust Fund or the administration thereof (including the costs of valuations);
- (e) due allowance for prepayments, doubtful debts and bad debts;
- (f) all taxes (including without limitation income taxes) or duties paid or payable by or in respect of the Trust Fund;
- (g) the fees and expenses of the Auditor in connection with the audit of the Trust Fund;
- (h) all contingencies which it may be necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust for that period;
- (i) any amount considered necessary to provide for the amortisation of the cost of any leasehold property forming part of the Investments;
- (j) interest and other costs and expenses incurred in borrowing or raising money;
- (k) valuation fees payable in respect of any valuation made pursuant to this deed;
- (l) unrealised development margins; and
- (m) such other provisions as the Manager deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust for that period,

provided that the Manager may determine that any particular cost, charge or expense shall be charged against capital rather than against Gross Income.

13.7 Manager to determine Net Income

If any question shall arise as to whether any money or property constitutes Net Income (or Gross Income) such question shall be determined by the Manager in consultation with the Auditor.

13.8 Payments of distributions

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

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

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

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

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

13.9 Currency of distribution payments

Unless Unit Holders elect otherwise by notice in writing to the Manager, moneys payable to a Unit Holder pursuant to this clause 13 or to any other provision of this deed will be paid in the lawful currency of:

- (a) New Zealand if the Unit Holder's address in the Register is in New Zealand;
- (b) Australia if the Unit Holder's address in the Register is in Australia; or
- (c) such lawful currency as the Manager may determine at its discretion if the Unit Holder's address in the Register is in a country other than New Zealand and Australia.

13.10 Capital gains and losses

Unless taken into account in determining Net Income in accordance with clause 13.6, all capital gains or losses whether on revaluation or realisation of Investments will be credited or debited, as the case may be, to a capital reserve account in the accounts of the Trust. Such capital reserve account shall be maintained in two parts:

- (a) a realisation account into which gains or losses on realisation shall be entered; and
- (b) a revaluation account which gains or losses on revaluation shall be entered.

13.11 Distributions of net realised capital gains

The Supervisor may at the request of the Manager distribute to Unit Holders, as at a date and on a basis determined by the Manager such of the net realised capital gains of the Trust after provision for taxes on capital gains (if any) as the Manager may recommend. Unless taken into account in determining Net Income in accordance with clause 13.6 all amounts so distributed shall be debited to the capital reserve account referred to in clause 13.10. The amount of net realised capital gains available for distribution at any time in accordance with this clause 13.11 is the amount of realised capital gains standing to the credit of the relevant part of the capital reserve account referred to in clause 13.10 less:

- (a) all capital losses then realised; and
- (b) the amount (if any) by which all unrealised losses on revaluation at that time exceed all unrealised gains on revaluation at that time.

13.12 Capitalisation of reserves and undistributed profits

The Manager may resolve to capitalise any sum standing to the credit of the capital reserve account referred to in clause 13.10, and any undistributed Net Income, to the extent that the relevant sum be set free for distribution amongst the Unit Holders who would have been entitled thereto if the relevant sum were distributed in cash, and in the same proportions, on condition that the same be not paid in cash but be applied either in or towards paying up any amounts unpaid on any Units held by those Unit Holders respectively or paying up in full Units to be allotted and distributed, credited as fully paid up to and amongst those Unit Holders in such proportion, or partly in one way and partly in the other. Such Units shall, when issued, rank *pari passu* in all respects with all other fully paid Units with full participation rights then on issue, and all amounts so capitalised shall be treated as funds subscribed by Unit Holders.

13.13 Holders of Convertible Obligations

Where the holders of any Convertible Obligations are entitled to participate in any Distribution, such Persons shall be entitled to participate in any such Distribution to the extent, and in the manner, authorised by the terms of issue of the Convertible Obligations held by them.

13.14 Supplementary distributions

Notwithstanding any other provision of this deed, the Manager may direct the Supervisor to pay such supplementary distributions to Unit Holders resident outside New Zealand as may be provided for by section LP2 of the Income Tax Act 2007 and as may be determined by the Manager as being fair and equitable.

13.15 Unclaimed money

Subject to the provisions of the legislation relating to unclaimed money in the relevant state, territory or country that applies to the money, any money payable to any Unit Holder or former Unit Holder remaining unclaimed for five years from the date upon which the amount became payable, shall, at the expiry of such period of five years, be forfeited to the Trust Fund. After forfeiture, the Person or Persons who would have been entitled to payment of

such amount if it had not been forfeited shall be entitled to payment thereof upon producing to the satisfaction of the Manager sufficient evidence that such Person or Persons would have been entitled to such amount had it not been forfeited.

13.16 **Distribution statements**

The Manager shall, upon the making of a distribution, send a distribution statement to each Unit Holder in respect of the period to which the distribution relates. Each distribution statement shall contain such information as the Manager considers appropriate.

14. **Distribution Reinvestment Scheme**

14.1 **Election of Unit Holders**

The Manager in its discretion may, in accordance with this clause 14, give to Unit Holders the right to elect to receive, in lieu of distributions in cash (such distributions being in this clause 14 called **Cash Distributions**) an allotment of fully paid Units.

14.2 **Terms of scheme**

The terms of any scheme by which Units may be allotted to Unit Holders under this clause 14 (**Scheme**) shall be such as the Manager determines subject to this clause 14, clause 6.5 and the Applicable Laws.

14.3 **Notice of scheme**

The Manager may give written notice to the Unit Holders specifying the terms of a Scheme and advising that any Unit Holder who wishes to elect to receive Units in lieu of Cash Distributions may do so upon giving prior written notice to the Manager (**Election Notice**). The Manager may change the terms of any Scheme by giving notice of such change to Unit Holders (which may be given by way of an announcement to NZX and ASX). No such change shall be made during the period commencing on the date seven days before the Record Date (as described in the Listing Rules) and ending on the date of payment of that Cash Distribution.

14.4 **Effectiveness of election notice**

An Election Notice shall be effective in respect of any Cash Distribution so long as it is received on or before the date and at the address set for that purpose in accordance with the terms of the Scheme at the Office, or at such other address as the Manager may from time to time determine, provided that Election Notices received whilst the Register is closed shall not take effect until the day upon which the Register is re-opened.

14.5 **Issue of new Units**

Subject to the Manager having given notice pursuant to clause 14.3, the following provisions shall apply in respect of each Cash Distribution made after the date of giving of that notice, other than any Cash Distribution in respect of which the Manager has determined that this clause shall not apply:

- (a) the amount of the Cash Distribution shall be limited to the aggregate amount actually required to be paid to Unit Holders after taking into account the Unit Holders who have elected to receive fully paid Units in accordance with this clause 14;

- (b) at the same time as the Cash Distribution is made, the Manager shall issue and allot to the Unit Holders who have given and have not revoked an Election Notice (**Participating Unit Holders**) (but to no others) such number of fully paid Units as such Participating Unit Holders are entitled to receive pursuant to the terms of the Scheme;
- (c) the Manager shall capitalise out of the amount for the time being standing to the credit of the Trust's reserve accounts or to the credit of the statement of financial performance or otherwise available for distribution a sum equal to the aggregate issue price calculated in accordance with clause 6.5 (and then apportioned to the Units in accordance with clause 6.6) of the additional Units to be so allotted and issued and such sum in paying up in full the issue price of such Units; and
- (d) the additional Units to be so allotted shall rank pari passu in all respects with the then existing fully paid Units with full participation rights, and shall have the right to participate in full in all Distributions declared or made after the date of allotment.

14.6 Revocation of election notice

An Election Notice may be revoked by written notice from the Unit Holder concerned in accordance with the terms of the Scheme. If such notice of revocation is not received on or before the date set for that purpose in respect of a Cash Distribution it shall not be effective in respect of that Cash Distribution, but shall be effective in respect of all subsequent Cash Distributions.

14.7 Transfers cancel existing election notices

An Election Notice shall not attach to the Units in respect of which it has been given but shall be personal to the Unit Holder concerned and shall in respect of any Units transferred be automatically revoked upon registration of the transfer of the Units. The Manager shall upon registration of the transfer of any Units or the allotment of new Units to a new Unit Holder advise such new Unit Holder in writing of such Unit Holder's rights under any scheme then in force.

14.8 Existing Election Notices

If any Unit Holder has given an Election Notice (**Existing Election Notice**) prior to the Commencement Date in respect of the Trust's Distribution reinvestment scheme in effect immediately prior to the Commencement Date, the Existing Election Notice shall be deemed to apply to the Scheme to take effect after the Commencement Date provided that the terms of such Scheme have been notified to all Unit Holders and Unit Holders have been given not less than 14 days to revoke their Existing Election Notice if they wish to do so.

14.9 Distribution Reinvestment Scheme while Stapling applies

While Stapling applies:

- (a) no reinvestment of distributions may occur unless, contemporaneously with the reinvestment in additional Units, each Participating Unit Holder subscribes for or purchases an equivalent number of Vital Australia Units in the equivalent class that are Stapled to the additional Units to form Stapled Units;
- (b) the Manager may make provision for, and make payment of, the subscription and aggregate issue price for such Stapled Units in accordance with paragraph (a) out of the distribution, income or other available monies (as applicable) that is otherwise available for reinvestment under the terms of the Scheme;

- (c) if the amount to be reinvested in Units as part of a reinvestment in Stapled Units results in a fraction of a Unit, the money representing the fraction may be paid to the Participating Unit Holder or held for future reinvestment under the terms of the Scheme; and
- (d) whenever money is held on behalf of a Participating Unit Holder for future reinvestment, the money so held may be aggregated and on each occasion on which the aggregated amount equals the aggregate issue price of a Stapled Unit, the amount will be applied to purchase a new Unit for issue as part of an issue of a Stapled Unit to the Participating Unit Holder.

14.10 Automatically carried over to Stapled Group Scheme

- (a) If any Unitholder has, prior to the Stapling of Units to Vital Australia Units, given a valid Election Notice in respect of the Vital Healthcare Property Trust (now Vital Australia) Distribution reinvestment scheme in effect immediately prior to that Stapling taking effect (the **VHPT Scheme**) and has not revoked such Election Notice (a **Participating Unit Holder**), that Election Notice shall be deemed to apply to the amended Scheme to commence after the Stapling takes effect in relation to the reinvestment of distributions from the Trust and Vital Australia to subscribe for Stapled Units that will be operated jointly by the Responsible Entity and Manager (the **Stapled Group Scheme**) and each such person will be deemed to be a Participating Unit Holder in the Stapled Group Scheme.
- (b) The terms of the Stapled Group Scheme must be notified to all such Participating Unit Holders and they must be given not less than 14 days to revoke their existing Election Notice if they wish to do so.

15. Transfer and Transmission of Units

15.1 Units transferable

Subject to such of the restrictions in clauses 8.8 and 15.6 as may be applicable, any Unit Holder may transfer all or any of the Units held by such Unit Holder in accordance with this clause 15.

15.2 Transfers

Subject to any restrictions contained in this deed, Units may be transferred:

- (a) under a system of transfer approved under sections 376 to 378 of the FMC Act or in accordance with the rules of a “designated settlement system” under the Reserve Bank of New Zealand Act 1989 which is applicable to the Trust;
- (b) on the ASX or under any other securities transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Units are listed and which is applicable to the Trust; or
- (c) by an instrument of transfer which complies with this deed.

15.3 Method of transfer

A Unit which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in clause 15.2(a) or 15.2(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied

with the provisions of the FMC Act if it had been executed by the transferor in New Zealand, the Manager may nevertheless procure that it be registered by the Registrar if it is executed in a manner acceptable to the Manager or the Registrar.

15.4 Forms of transfer

An instrument of transfer to which the provisions of clause 15.3 are not applicable shall comply with the following provisions:

- (a) the form of the instrument of transfer shall comply with the requirements of the FMC Act (and any other Applicable Laws), as well as any other reasonable requirements prescribed by the Manager, the Supervisor or the Registrar;
- (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) where the Units being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

15.5 Entry in register

The transferor of a Unit shall be deemed to remain the holder of the Unit until the name of the transferee is entered in the Register in respect thereof.

15.6 Manager may decline to register

The Manager may decline to register any transfer of a Unit where:

- (a) the Manager has a lien on such Unit;
- (b) the instrument of transfer is not accompanied by the Certificate (if any) relating to such Units, and/or such other evidence as the Manager or the Registrar may reasonably require to show the right of the transferor to make the transfer;
- (c) the instrument of transfer is not accompanied by an instrument of transfer for the corresponding Vital Australia Unit to which the Unit is Stapled;
- (d) the provisions of clauses 15.3 or 15.4 (as applicable) or clause 17, any other permitted restriction on transfer or any Applicable Laws have not been complied with; or
- (e) the registration of the transfer (together with registration of any further transfers then held by or on behalf of the Manager and awaiting registration) would result in the proposed transferee or a transferor having a holding below a Minimum Number.

15.7 Separate registered parcels

The Manager, or the Registrar on behalf of the Manager, subject to any Applicable Laws:

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

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

15.8 Manager may sell small holdings

- (a) The Manager may at any time give notice to a Unit Holder holding less than the Minimum Number of Units that if, at the expiration of three months after the date the notice is given, the Units then registered in the name of the Unit Holder are less than the Minimum Number of Units, the Manager may sell those Units through NZX, ASX or in some other manner approved by NZX.
- (b) If the power of sale under clause 15.8(a) is exercised:
 - (i) the Manager may authorise the transfer of the relevant Units to the purchaser of the Units;
 - (ii) the Unit Holder shall be deemed to have authorised the Manager to act on behalf of the Unit Holder in relation to the sale of the relevant Units, and to sign all necessary documents relating to such sale;
 - (iii) the proceeds of sale of the Units must be applied as follows:
 - (A) first, in payment of any reasonable sale expenses;
 - (B) second, in satisfaction of any unpaid calls or any other amounts owing to the Trust in respect of the Units (including any interest payable on such amounts); and
 - (C) the balance, if any, must be paid to the Unit Holder (or his or her executors, administrators and assigns);
 - (iv) the title of the purchaser of any Units sold pursuant to this clause shall not be affected by any irregularity or invalidity in the exercise or purported exercise of the power of sale or the sale itself; and
 - (v) the remedy of any person aggrieved by the sale shall be in damages only and against the Trust only.
- (c) A certificate, signed by the Manager, that records that a power of sale under this clause has arisen and is exercisable by the Manager is conclusive evidence of the facts stated in that certificate.

15.9 Transfer documents

All instruments of transfer which have been registered may be retained by the Manager. If the Manager, pursuant to the powers contained in this deed, refuses to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return the transfer to the transferor together with such documents of title which may have been left with the transfer.

15.10 Suspension of transfers

Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend

registration of transfers for a period exceeding 30 Business Days in any calendar year without the approval of the Supervisor.

15.11 Transmission of Units

The Personal Representatives of a deceased Unit Holder (not being one of several joint Unit Holders) and in the case of the death of one or more of several joint Unit Holders, the survivor or survivors, shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. Nothing contained in this clause 15.11 shall release the estate of a deceased joint Unit Holder from any liability in respect of any Unit which had been jointly held by that Unit Holder with other Persons.

15.12 Incapable persons

Any Personal Representative of a mentally disordered Unit Holder or a bankrupt Unit Holder shall, upon such evidence being produced as may from time to time be properly required by the Manager, have the right either to be registered as a Unit Holder in respect of the Unit or, instead of being so registered to make such transfer of the Unit as the mentally disordered, deceased or bankrupt Unit Holder could have made. The Manager shall in either case have the same right to decline or suspend registration as it would have had in the case of a transfer of the Unit by the mentally disordered, deceased or bankrupt Unit Holder before such event.

15.13 Registration by Personal Representative

- (a) If the Personal Representative so becoming entitled elects to be registered personally, the Personal Representative shall deliver or send to the Manager a notice in writing signed by the Personal Representative stating that they so elect.
- (b) If the Personal Representative elects to have another Person registered, the Personal Representative shall execute in favour of such other Person transfers of the relevant Unit.
- (c) All the limitations, restrictions and provisions of this deed relating to the right to transfer and the registration of transfers of Units shall be applicable to any such notice or transfer as if the mental disorder, death or bankruptcy of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.

15.14 Rights of Personal Representatives

A Unit Holder's Personal Representative:

- (a) is entitled to exercise all rights (including, without limitation, the rights to receive distributions, to attend meetings and to vote in person or otherwise), and is subject to all limitations, restrictions and provisions of this deed applicable to the Units held by that Unit Holder; and
- (b) is entitled to be registered as the Unit Holder of the relevant Units, but such registration shall not operate as a release of any rights (including any lien) to which the Trust was entitled to prior to the registration of the Personal Representative pursuant to this clause 15.14(b).

15.15 Joint Personal Representatives

Where a Unit is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this deed be deemed to be joint holders of the Unit.

16. [Takeover Restrictions]

[Drafting Note: Currently takeover restrictions on VHPT units are imposed through clauses 16-19 of the existing VHPT Trust Deed. A product of the Stapled Group structure is that the Australian Takeovers' Code will apply to Vital Australia Units, absent relief from ASIC. The Manager has applied for relief from ASIC so as to preserve the current position.]

If that relief is granted, provisions equivalent to clauses 16 – 19 of the existing VHPT Trust Deed will be included in the Vital NZ and Vital Australia Trust Deeds.

If that relief is not granted, the Corporations Act regime will apply to Vital NZ indirectly by virtue of the fact that Vital NZ Units are Stapled to Vital Australia Units. A clause will be included to ensure compulsory acquisition provisions under the Corporations Act will apply to Vital NZ Units as part of a takeover of the Stapled Group]

17. Stapling

17.1 Stapling to Vital Australia

- (a) Pursuant to the power in clause 17.2, Units are Stapled to Vital Australia Units.
- (b) Subject to Applicable Law, the Manager will ensure that, if the Trust issues any further classes of Units, or any Convertible Obligations, such new Units or Convertible Obligations will be Stapled to equivalent units or Convertible Obligations issued by Vital Australia.

17.2 Power to Staple

- (a) The Manager is empowered to execute all documents and do all things that it considers to be necessary, desirable or reasonably incidental to give effect to the Stapling of Vital Australia Units to the Units, including consolidating or dividing the Units, without needing further authority or approval of Unit Holders.
- (b) The Manager is irrevocably appointed as the agent and attorney of each Unit Holder to execute all documents or do all things which it reasonably considers are necessary or desirable to be done on behalf of Unit Holders to give effect to the Stapling, including:
 - (i) making distributions to or on behalf of a Unit Holder;
 - (ii) applying for or purchasing Vital Australia Units on behalf of a Unit Holder;
 - (iii) agreeing, on behalf of a Unit Holder, that the Unit Holder become a Vital Australia Unit Holder and consenting to the entry of the name of the Unit Holder in the register of Vital Australia Unit Holders; and

- (iv) so far as permitted by law, supplying the Vital Australia Responsible Entity (or its advisers, the Vital NZ Supervisor, or other service providers) with information, notices and elections relating to that Unit Holder.

17.3 **Paramourncy of Stapling Provisions**

Subject to clause 30, the Stapling Provisions prevail over all other provisions of this deed including any that are expressed to prevail over others, except where this would result in a breach of the Applicable Laws. Any clause of this deed which is inconsistent with this clause 17 does not operate to the extent of any inconsistency.

17.4 **Units to be Stapled**

- (a) Details of all Stapled Units sufficient to identify the Vital Australia Units and Units must be recorded in the Stapled Unit Register.
- (b) The number of issued Units which are Stapled at any time must equal the number of issued Vital Australia Units.
- (c) The Manager must not issue Units unless satisfied that each of those Units will be Stapled to the same number of Vital Australia Units to form a Stapled Unit or that those Units will be issued as part of a Capital Reallocation Issue.
- (d) The Manager and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Unit. In particular:
 - (i) the Manager must not offer a Unit for subscription or sale (including by way of offering Options) unless an offer is made at the same time and to the same person for the same number of Vital Australia Units for issue or sale;
 - (ii) any offer of a Unit for subscription or sale must require the Unit Holder to subscribe for or buy the same number of Vital Australia Units;
 - (iii) a Unit Holder must not sell a Unit to any person unless the same number of Vital Australia Units is also sold to the same person at the same time;
 - (iv) the Manager must not issue or sell a Unit to any person unless the same number of Vital Australia Units are also issued or sold to the same person at the same time;
 - (v) the Manager must not consolidate, split, sub-divide, cancel, redeem or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation, redemption or other reorganisation of Vital Australia Units;
 - (vi) the Manager must not make a call on a partly paid Unit unless a call is also made on the Vital Australia Unit to which that Unit is Stapled;
 - (vii) the Manager must not cancel a Unit Holder's Unit unless the Vital Australia Unit to which that Unit is Stapled is also cancelled; and
 - (viii) the Manager must not register the transmission or transfer of Units unless the same number of Vital Australia Units is also transmitted or transferred (as the case may be),

but nothing in this clause 17.4 prevents the Manager from issuing Units as part of a Capital Reallocation Issue.

17.5 Unstapling

- (a) Stapling will continue for so long as the Units are on issue, unless:
 - (i) otherwise agreed between the Manager and the Vital Australia Responsible Entity and approved by a Special Resolution of Unit Holders;
 - (ii) Stapling becomes unlawful; or
 - (iii) either the Trust or Vital Australia becomes insolvent or commences winding up, (each an **Unstapling Event**).
- (b) On and from the date of an Unstapling Event (or such other date as may be agreed between the Vital Australia Responsible Entity and the Manager) (**Unstapling Date**), the Manager must do all things reasonably necessary to procure that the Vital Australia Units are Unstapled.
- (c) On and from the Unstapling Date:
 - (i) the Stapling Provisions in this deed will no longer apply; and
 - (ii) the Manager may make such amendments to this deed as may be permitted by Applicable Law to ensure the effective continuation of the Trust

17.6 Transfer of Stapled Units

- (a) A transfer of a Unit forming part of a Stapled Unit will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 15, the transfer relates to or is accompanied by a transfer of the same number of Vital Australia Units from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the same number of Vital Australia Units will be taken to authorise the Manager as agent for the transferor to effect a transfer of the same number of Vital Australia Units from the same transferor to the same transferee.
- (c) A transfer of a Vital Australia Unit to which a Unit is Stapled which is not accompanied by a transfer of the Unit will be taken to authorise the Manager as agent for the transferor to effect a transfer of the Unit and Vital Australia Unit to which the Unit is Stapled to the same transferee.
- (d) Each Unit Holder irrevocably appoints the Manager as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Manager the transfer to the Manager or to a person determined by the Manager of the Vital Australia Unit which was Stapled to a partly paid Unit which has been cancelled.

17.7 Stapled Security Register

The Manager must cause to be set up and maintained a Stapled Unit Register which:

- (a) may incorporate, or form part of, the Register; and
- (b) records the names of the Unit Holders, the number of Units held, the number of Vital Australia Units held by the Unit Holders to which each Unit Holder's Units are Stapled and any additional information required by the Applicable Laws or determined from time to time by the Manager.

17.8 Shared information while Stapling applies

While Stapling applies, if the following information or notices are provided by a Vital Australia Unit Holder to the Vital Australia Responsibility Entity in accordance with the Vital Australia Trust Deed, it is deemed to have been provided at the same time to the Manager for the purposes of the following clauses of this deed:

- (a) any change of name or address of a Unit Holder for the purposes of clause 8.5;
- (b) an Election Notice for the purposes of clauses 14.3 and 14.4;
- (c) a revocation of an Election Notice for the purposes of clause 14.6; or
- (d) a notice signed by a Personal Representative for the purposes of clause 15.13.

17.9 Consistency with Vital Australia Trust Deed

The Manager must use every reasonable endeavour to procure that the Stapled Units are dealt with under this deed in a manner consistent with the provisions relating to the Vital Australia Units in the Vital Australia Trust Deed.

17.10 Separate managed investment schemes

- (a) Despite the Stapling of Units:
 - (i) the Trust and Vital Australia are separate managed investment schemes;
 - (ii) the Supervisor does not have any role or responsibility to supervise Vital Australia or to take any action on behalf of unit holders of Vital Australia.
- (b) To the fullest extent permitted by Applicable Law:
 - (i) the Manager or the Supervisor is entitled to have regard to the fact that the Trust is operating with the Vital Australia Responsible Entity and Vital Australia Investment Manager in respect of Vital Australia as part of the Stapled Group with common Stapled Unit Holders and with the intention that the economic and other interests of the Trust and Vital Australia are aligned as part of the Stapled Group; and
 - (ii) in exercising any power or discretion or in fulfilling any of their respective obligations, the Supervisor and the Manager may have regard to the interests of Unit Holders as holders of Stapled Units.

18. Remuneration of Supervisor

18.1 Supervisor's Fees

The Supervisor shall be entitled to receive and retain for its own use and benefit out of the Trust Fund, by way of remuneration for its services as Supervisor, the following fees:

- (a) in respect of each year, a fee determined on the basis previously agreed between the Supervisor and the Manager calculated daily and paid monthly; and
- (b) in addition to the fees stipulated above, such fee for convening and attending meetings of Unit Holders and in respect of any other non-routine or abnormal matters as shall from time to time be agreed between the Manager and the Supervisor.

18.2 Fee on termination

On the termination of the Trust, the Supervisor shall be entitled to receive and retain for its own use and benefit out the Trust Fund a reasonable fee agreed by the Manager and the Supervisor and based on time spent by the Supervisor on matters relating to the termination of the Trust.

18.3 Arbitration

If the Manager and the Supervisor shall fail to reach agreement on any amounts payable to the Supervisor under this clause such difference or dispute shall be referred to a single arbitrator if the parties can agree on one and otherwise to two arbitrators, one to be appointed by the Manager and one by the Supervisor in accordance with and subject to the provisions of the Arbitration Act 1996 and its amendments.

18.4 GST

The Supervisor shall be entitled, to the extent that it is applicable, to receive goods and services tax (as that term is defined in the Goods and Services Tax Act 1985), in addition to the fees under clause 18.1 and 18.2.

18.5 Custodian Fees

If a Custodian is appointed, that Custodian shall be paid out of the Trust Fund remuneration agreed between the Custodian and the Manager, and approved by the Supervisor.

19. Removal and Retirement of Supervisor

19.1 Removal

The Supervisor may be removed from office:

- (a) in the manner provided for in section 193 of the FMC Act; or
- (b) subject to section 193(2) of the FMC Act, (including, for the avoidance of doubt, the requirement for the Manager to obtain the FMA's consent) by the Manager if the Supervisor shall have a receiver appointed or if an order is made or resolution passed for the liquidation of the Supervisor or if the Supervisor otherwise becomes insolvent.

19.2 Retirement

The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention to do so, subject to the due appointment of a new Supervisor and the transfer to such new Supervisor of all of the Investments and all other property or assets of any nature of the Trust Fund.

19.3 Appointment of new Supervisor

The power of appointing a new Supervisor (in place of a Supervisor which has retired pursuant to clause 19.2 or been removed from office pursuant to clause 19.1) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless licensed under the Financial Markets Supervisors Act 2011. If the Manager fails or refuses to appoint a new Supervisor, the new Supervisor may be appointed by a Special Resolution.

20. Remuneration of Manager

20.1 Manager's fee

The Manager may charge and shall be paid out of the Trust Fund, in respect of its management services, the Base Fee, Incentive Fee and Activity Fees pursuant to this clause 20.

20.2 Maximum Fee across the Stapled Group

In aggregate, the:

- (a) base fee payable to the Vital Australia Investment Manager under the Vital Australia Trust Deed;
- (b) Base Fee payable to the Manager;
- (c) incentive fee payable to the Vital Australia Investment Manager under the Vital Australia Trust Deed;
- (d) Incentive Fee payable to the Manager;
- (e) activity fees payable to the Vital Australia Investment Manager under the Vital Australia Trust Deed; and
- (f) Activity Fees payable to the Manager,

shall not exceed an amount equal to 1.75% per annum of the Gross Value of the Stapled Group (the **Maximum Fee**). The Maximum Fee will be assessed each Financial Year:

- (g) as at the last day of that Financial Year;
- (h) in respect of the Base Fees, Incentive Fee and any Activity Fees (and equivalents under the Vital Australia Trust Deed), attributable to that Financial Year (regardless of when or whether they have been demanded or paid); and
- (i) with reference to the Gross Value of the Stapled Group as at the last day of that Financial Year.

In the event that, notwithstanding this clause 20.2, the aggregate of the fees listed in clause 20.2(a) – (f) paid to the Manager and the Vital Australia Investment Manager for a Financial Year exceeds the Maximum Fee, the amount of that excess (the **Excess**) will be carried forward into the following Financial Year such that the aggregate of the Excess (from the prior Financial Year), and the fees listed in clause 20.2(a) – (f) paid to the Manager and the Vital Australia Investment Manager for that next Financial Year, will not exceed the Maximum Fee.

20.3 **Composition of fee**

The Manager's fee for performing the functions of manager contemplated by section 142 of the FMC Act shall be comprised of:

- (a) in respect of each calendar month, the Base Fee;
- (b) in respect of each Financial Year, the Incentive Fee; and
- (c) in respect of each Financial Year during which Activity Services are provided, Activity Fees in respect of those Activity Services.

20.4 **Base fee**

- (a) The Base Fee will be calculated each calendar month on the basis described in 20.4(b). For these purposes the "Gross Value of the Stapled Group" will be the monthly average of the Gross Value of the Stapled Group for the calendar quarter ended on the last day of that month (calculated by aggregating the Gross Value of the Stapled Group at the end of each calendar month during that calendar quarter and dividing such sum by three).
- (b) The Base Fee for any calendar month shall be calculated as the amount below divided by 12 and multiplied by the GAV Ratio:
 - (i) if the Gross Value of the Stapled Group is less than or equal to \$1 billion, 0.65% per annum of such value;
 - (ii) if the Gross Value of the Stapled Group is greater than \$1 billion, but less than or equal to \$2 billion, the aggregate of:
 - (A) \$6.5 million (being 0.65% of the first \$1 billion); and
 - (B) 0.55% per annum of the amount by which such value exceeds \$1 billion;
 - (iii) if the Gross Value of the Stapled Group is greater than \$2 billion, but less than or equal to \$3 billion, the aggregate of:
 - (A) \$6.5 million (being 0.65% of the first \$1 billion);
 - (B) \$5.5 million (being 0.55% of the second \$1 billion); and
 - (C) 0.45% per annum of the amount by which such value exceeds \$2 billion; and
 - (iv) if the Gross Value of the Stapled Group is greater than \$3 billion, the aggregate of:

- (A) \$6.5 million (being 0.65% of the first \$1 billion);
- (B) \$5.5 million (being 0.55% of the second \$1 billion);
- (C) \$4.5 million (being 0.45% of the third \$1 billion); and
- (D) 0.40% per annum of the amount by which such value exceeds \$3 billion.

20.5 Incentive Fee across the Stapled Group

- (a) The Manager shall be entitled to an annual incentive fee determined in accordance with the following formula.

$$\text{Incentive Fee} = 10\% \times \text{Average NTA Increase} \times \text{NTA Ratio}$$

Where **Average NTA Increase** is the average annual increase in the Net Tangible Assets of the Stapled Group over the relevant Financial Year and the two preceding Financial Years (in each case as adjusted pursuant to this clause 20.5).

- (b) For the purposes of determining the increase in the Net Tangible Assets of the Stapled Group for a Financial Year, the actual Net Tangible Assets of the Stapled Group on the last day of that Financial Year shall be measured against the High Watermark Net Tangible Assets applicable to that Financial Year such that the increase in the Net Tangible Assets of the Stapled Group for the Financial Year will reduce to zero if the actual Net Tangible Assets of the Stapled Group does not exceed the High Watermark Net Tangible Assets applicable to that Financial Year. Where an Investment is acquired at any time during a Financial Year it shall be deemed to have been purchased on the first day of that Financial Year. By way of example only, an indicative example of the calculation of the Incentive Fee under this clause 20.5 is set out in Schedule 1.
- (c) To the extent required when calculating the Average NTA Increase for the Stapled Group, the Net Tangible Assets of the Stapled Group for:
 - (i) Financial Years ending prior to 30 June 2020 will be the net tangible assets of Vital Australia (named Vital Healthcare Property Trust at that time) as would have been calculated pursuant to the Vital Australia Trust Deed as at 31 December 2019; and
 - (ii) the Financial Year ending on 30 June 2020 will be the Net Tangible Assets of the Stapled Group excluding any impact that is unintended or outside the ordinary course of business and arising as a result of the restructuring of Vital Australia (named Vital Healthcare Property Trust at the time) into the Trust and Vital Australia. The intention of excluding these impacts is that the Net Tangible Assets of the Stapled Group should be the same as the net tangible assets of Vital Healthcare Property Trust would have been at 30 June 2020 if the restructuring had not occurred..

20.6 Activity Fees

Activity Fees in respect of Activity Services will be calculated on the basis set out in Schedule 3 of this deed.

20.7 Payment

- (a) The Base Fee shall be paid before the fifteenth day of the calendar month immediately following the calendar month to which it relates.
- (b) The Incentive Fee shall be paid within 60 days from the last day of the relevant Financial Year (or, if such day is not a Business Day, the immediately succeeding Business Day) and, subject to this clause, immediately after receipt by the Manager shall be applied in full by the Manager (or its related body corporate nominee) subscribing for new Stapled Units. The issue price for each such new Stapled Units shall be the weighted average of the prices at which Stapled Units of that class were sold through the NZX Main Board during the period of seven days immediately preceding the last day of the immediately preceding Financial Year. Such Stapled Units when issued shall rank *pari passu* with all other Stapled Units. The Manager will not be required to apply the Incentive Fee to the subscription of new Stapled Units pursuant to this clause to the extent that the issue of such new Units to the Manager would:
 - (i) be inconsistent with the Listing Rules or other Applicable Laws; or
 - (ii) in the opinion of the Manager, acting reasonably, have an adverse effect on Unit Holders other than the Manager and its Associated Persons.
- (c) Activity Fees will be paid on the basis set out in Schedule 3 of this deed.
- (d) The Manager may, subject to compliance with Applicable Law, direct that all or any part of any fee payable to the Manager be paid:
 - (i) to any Related Company of the Manager which provides services related to the Trust; and/or
 - (ii) by any Subsidiary, which payment shall be deemed to be a payment out of the Trust Fund.

For clarity, this sub-clause (d) does not authorise the payment of any greater amount in aggregate than is otherwise payable to the Manager under this Deed.

20.8 GST

The Manager shall be entitled to receive, in addition to any fees payable pursuant to clause 20.3, any value added tax or duty or similar tax or duty payable in respect of such fee.

21. Removal and Retirement of Manager

21.1 Removal

The Manager shall cease to hold office as Manager of the Trust if removed or substituted in accordance with the provisions of section 185 of the FMC Act. Subject to the FMC Act (including the Supervisor's duty to act in the best interests of the Unit Holders), the Supervisor shall, when deciding whether to exercise its powers of removal pursuant to section 185(1)(a) of the FMC Act:

- (a) give written notice to the Manager specifying the reasons why the Supervisor considers that it is in the best interests of Unit Holders that the Manager be removed;

- (b) allow the Manager 10 Business Days to respond; and
- (c) give due consideration to the Manager's response before taking any further action.

21.2 Fee on removal

If NorthWest Healthcare Properties Management Limited is removed as manager by a Special Resolution of Unit Holders pursuant to section 185(1)(b) of the FMC Act, the Supervisor shall pay out of the Trust Fund to NorthWest Healthcare Properties Management Limited a fee being an amount equal to the Base Fee paid to the Manager under clause 20.3(a) for the Financial Year (i.e. the aggregate of the monthly Base Fees for the Financial Year) immediately preceding the date that NorthWest Healthcare Properties Management Limited ceases to be the Manager.

21.3 Default by Manager

Without limiting anything in clause 21.1, the Supervisor may, by notice to the Manager, remove the Manager from office if:

- (a) the Manager is in breach of its obligations under this deed, and fails to remedy that breach within 10 Business Days after notice from the Supervisor requiring the Manager to do so; or
- (b) the Manager fails to carry out its duties to the satisfaction of the Supervisor; or
- (c) the Manager is wound up (except for the purposes of an amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager.

21.4 Cessation of activities

If the Manager ceases to hold office pursuant to clauses 21.1, 21.3 or 21.5, the Manager shall immediately desist from all activities related to the Trust, unless the Supervisor agrees to the contrary. The Manager shall be entitled to all fees accrued to the date upon which it ceases to hold office and if clause 20.3 applies to the fee provided for in that clause. If the Manager ceases to hold office on a day other than the last day of a Financial Year the Manager's entitlement to remuneration under clause 20 for the then current period shall be calculated by reference to the date upon which it ceased to hold office.

21.5 Retirement

The Manager may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 21.8.

21.6 Temporary Manager

The Supervisor shall have power in accordance with section 186 of the FMC Act to appoint a temporary Manager of the Trust in place of a Manager which has retired or been removed from office. The temporary Manager will continue in office until replaced by the Supervisor under this clause or a new Manager is appointed under clause 21.7.

21.7 Appointment of replacement

The Supervisor shall, upon a vacancy in the office of Manager occurring, summon a meeting of Unit Holders at which the Unit Holders may by Ordinary Resolution appoint as new Manager of the Trust:

- (a) a temporary manager appointed by the Supervisor pursuant to clause 21.7 or the FMC Act; or
- (b) some other person licensed pursuant to the FMC Act.

The Supervisor will be empowered to take such steps as that meeting or any subsequent meeting of Unit Holders may by Ordinary Resolution require to give effect to the appointment of the new Manager.

21.8 Execution of deed

A new or temporary Manager appointed pursuant to the FMC Act or clause 21.7 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new or temporary Manager undertakes to the Supervisor and the Unit Holders to be bound by all the covenants on the part of the Manager under this deed from the date of such appointment. On and from such date the retiring Manager shall be absolved and released from all such covenants (except in respect of any prior breach of this deed) and the new or temporary Manager shall exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager in all respects as if such new or temporary Manager had been originally named as a party to this deed.

22. Borrowing, Guarantees and Security

22.1 Supervisor's powers

The Supervisor shall have power, if so directed by the Manager pursuant to clause 22.2 to:

- (a) Borrow, subject to clause 22.3;
- (b) enter into or become liable under any guarantee, underwrite, indemnity or similar arrangement with respect to the obligations of any Person, whether or not wholly owned by the Trust (**guarantee**); and
- (c) enter into any arrangement in such manner as the Manager sees fit (**security**) which has the effect of granting security to any Person over all or any part or parts of the Trust Fund to secure any or all liabilities or obligations (including obligations under (b) above) incurred or undertaken by the Supervisor for the purposes of the Trust.

22.2 Manager to direct Supervisor

The Manager may, subject to clause 22.3, by notice in writing to the Supervisor require the Supervisor to Borrow, give a guarantee or security in such manner as the Manager thinks fit. Any such notice shall specify such details concerning the Borrowing, guarantee or security as the Supervisor may reasonably request.

22.3 Limitation

The Supervisor shall on receipt of a direction by the Manager pursuant to clause 22.2 take all necessary steps to give effect to that direction provided however that:

- (a) no Borrowing shall be made if the effect of that Borrowing would be that immediately after that Borrowing the aggregate of:
 - (i) the total of money Borrowed by the Supervisor on behalf of the Trust Fund and outstanding ; and
 - (ii) the total money "Borrowed" (as defined in the Vital Australia Trust Deed) by the Vital Australia Responsible Entity on behalf of Vital Australia and outstanding, would exceed 50% of the Gross Value of the Stapled Group at that date (calculated in accordance with paragraph (b) of the definitions of "Gross Value of Vital Australia" in the Vital Australia Trust Deed and of "Gross Value of Vital NZ", and taking into account the proceeds of the Borrowing); and
- (b) the Supervisor shall not be required to execute any agreement, or other document in respect of any Borrowing, guarantee or security if the Supervisor considers it should not comply with such direction, or, which, in the opinion of the Supervisor, would render the Supervisor personally liable in respect of such Borrowing, guarantee or security, and unless the liability of the Supervisor thereunder is to the satisfaction of the Supervisor limited to the assets for the time being of the Trust.

22.4 Lender need not enquire

No person lending money to or otherwise dealing with the Supervisor shall be bound to inquire as to whether the limit in clause 22.3(a) has been exceeded, and no breach of such limit shall affect the validity or enforceability of any loan or any other transaction.

23. Supervisor's and Manager's Liabilities and Indemnities

23.1 No personal liability for Trust's debts

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

23.2 Indemnity

If contrary to clause 23.1 either the Supervisor or the Manager is held personally liable to any other Person in respect of any debt, liability or obligation incurred by or on behalf of the Trust or any action taken or omitted in connection with the Trust, then (subject to clauses 23.3 and 23.6) the Supervisor or the Manager (as the case may be) shall be entitled to indemnity and reimbursement out of the Trust Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined including, without limitation, legal fees and disbursements. The Manager shall, in consultation with the Auditor, determine whether any such amount should be charged against Gross Income or capital.

23.3 Liability for breach of trust or default

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

23.4 Reimbursement of expenses

Subject to clause 23.6, the Supervisor and the Manager shall each be entitled to be reimbursed out of the Trust Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this deed. Without prejudice to the generality of the foregoing, the Supervisor and the Manager shall be entitled to be indemnified against:

- (a) all costs, charges, disbursements and expenses incurred in connection with the investigation, negotiation, acquisition, registration, custody and the appointment and remuneration of a Custodian, disposal of or other dealing with an Investment, including, without limitation, commission, bank charges and stamp duty;
- (b) all income tax, capital gains tax, stamp duties, and all other duty, tax or impost properly charged to or payable by the Supervisor or Manager (whether by any trading authority or any other person) in connection with and for the account of the Trust;
- (c) interest on Borrowings, discounts and acceptance and other fees in respect of bill facilities;
- (d) costs of postage in respect of all cheques, accounts, Certificates, distribution statements, notices, reports and other documents sent to all or any Unit Holders in accordance with the provisions of this deed;
- (e) costs of convening and holding any meeting of Unit Holders;
- (f) all costs, fees and expenses incurred in respect of the appointment and engagement of the Independent Directors, including (without limitation):
 - (i) director fees for the Independent Directors;
 - (ii) associated insurance premiums for the Independent Directors; and
 - (iii) costs in connection with attendance at meetings (including associated travel and accommodation costs);
- (g) costs of preparing and printing cheques, accounts, Certificates, distribution statements, notices, reports and other documents required to be prepared in connection with the Trust, pursuant to this deed, the rules or requirements of any stock exchange on which the Units are listed, or any Applicable Law;
- (h) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this deed and any supplemental deeds, the preparation and registration of any product disclosure statement or register entry, the acquisition, registration, custody and the appointment and remuneration of a Custodian, disposal or other dealing with Investments, including bank charges and stamp duty, and the expenses of any agents or nominated company of the Supervisor or the Manager but excluding

any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager or the Supervisor;

- (i) fees and expenses of any valuer, auditor, solicitor, barrister, property manager, agent or consultant, computer expert or other expert from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this deed;
- (j) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records, the Register and the Stapled Unit Register;
- (k) all costs, charges and expenses incurred in the advertising and promotion of the Trust;
- (l) all costs, charges and expenses incurred in connection with or which are incidental to the application for the listing of the Units on any stock exchange and the costs of the maintenance of such listing;
- (m) any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in the Trust or the provisions of this deed;
- (n) all costs or expenses of any nature (including without limitation amounts payable to contractors and professional consultants) in respect of the acquisition of any Land;
- (o) the cost of the preparation and lodgement of returns pursuant to any Applicable Law; and
- (p) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this deed.

All such items (other than those referred to in sub-paragraph (m)) shall unless the Manager determines otherwise, be chargeable against the Gross Income.

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

23.5 Further provisions relating to liability

Without prejudice to the generality of clauses 23.1 to 23.4, and subject always to clauses 23.9 and 23.10:

- (a) the Supervisor shall not, subject to any Applicable Law, be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake, or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager except to the extent that the loss is attributable to the Supervisor's own gross negligence or wilful default;
- (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;

- (c) the Supervisor and the Manager may each act upon the opinion or advice of, or upon statements of or information in relation to the Trust or Stapled Group obtained from, any solicitor, barrister, banker, accountant, broker, valuer or other Person believed by the Supervisor or the Manager to be expert in relation to the matters on which advice was obtained, and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision of this deed any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary, officer or responsible employee of the Manager or by any other Person or Persons appearing to be authorised by the Manager;
- (e) except insofar as otherwise expressly provided, the Manager and the Supervisor as regards all the trusts, powers authorities and discretions vested in each of them by this deed have absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of or time for their exercise;
- (f) subject to the provisions of this deed and to any Applicable Laws, nothing in this deed is deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of either (in this clause included in the expression "the Supervisor") from being a Unit Holder or from acting in any representative capacity for a Unit Holder and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, Supervisor, receiver, attorney or agent or in any other fiduciary, vicarious or other professional capacity. Nor shall the acting in any such capacity be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Unit Holders on the other established by this deed or otherwise imposed or implied by law. The Supervisor shall not by reason of its fiduciary capacity be in any way precluded from making any contract or entering into any transaction with the Manager, or with itself as Supervisor, in the ordinary course of the business of the Supervisor or from undertaking any banking, financial or agency services for the Manager or for itself as Supervisor. Without prejudice to the generality of these provisions such contracts and transactions include any contract or transaction in relation to the subscription or placing of, or any dealing with, any stock, shares, debenture stock, debentures or other security of the Manager or of any other company in which any of them is interested and include the acceptance of any office of profit from the Manager or any contract of loan or deposit or other contract or transaction which any Person (not being the Supervisor) could or might have entered into with the Manager or any such other company or with itself as Supervisor including the customary share of brokerage and usual banker's profit. The Supervisor shall not be accountable either to the Manager, any such other Person or the Unit Holders for any profits arising from any such contracts, transactions or offices; and
- (g) the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments, with any Person considered by the Supervisor to be of good repute and the Supervisor shall not be responsible for any loss incurred by the Trust Fund as a result of any such documents being held by any such Person.

23.6 Limitation of indemnity

The indemnities in clause 23.2 and 23.4 are available to the Manager and the Supervisor only in relation to the proper performance of the duties of the Manager and Supervisor under sections 143(1), 144, 153(1) and 154 of the FMC Act.

23.7 Unit Holders recourse to Trust Fund

Notwithstanding anything contained in this deed (other than as set out in clause 12.3), except in the case of fraud or of dishonesty or unless the Supervisor has failed to show the degree of care and diligence required of a Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this deed and by the Applicable Laws, in no event is the Supervisor bound to make any payment to Unit Holders except out of the Trust or be liable to the Unit Holders to any greater extent than the Investments vested in or received by the Supervisor in accordance with this deed.

23.8 Reliance on documents

Neither the Manager nor the Supervisor is liable for any action taken or thing suffered by the Manager or Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

23.9 Supervisor's duty of care

Nothing in this deed limits the Supervisor's duty of care, diligence and skill under section 154 of the FMC Act in carrying out its duties under this deed or prevents or restricts any determination as to whether there has been a breach of trust or affects the operation of the provisions of any statute prescribing the circumstances under which the Supervisor may obtain relief from breach of trust.

23.10 No exemption for breach of trust

No provision of clauses 23.1 to 23.5 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, or indemnifying any such Person against, any liability for breach of trust where the requisite degree of care, diligence and skill has not been shown, having regard to the provisions of this deed and the powers, authorities and discretions conferred hereby.

23.11 Investment Manager indemnity

If an investment manager is appointed in respect of the Trust, the Manager may, in the contract between the investment manager and the Manager, provide for the investment manager to be indemnified out of the Trust Fund for liabilities or expenses incurred in relation to the performance of the investment manager's contracted functions, but only in relation to the proper performance of the investment manager's duty under section 144 of the FMC Act.

24. Supervisor's Powers and Covenants

24.1 Supervisor's Powers

The Supervisor shall have the power to settle and complete all transactions in respect of the Trust. Subject to the provisions in this deed and the powers, rights and discretions given to the Manager by this deed, the Supervisor shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of the Trust Fund and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this deed.

24.2 Waivers and applications to court

The Supervisor may whenever it thinks expedient in the interest of the Unit Holders exercise any of the following powers:

- (a) to waive at any time and on any terms or conditions any breach of the covenants or obligations binding on the Manager under this deed where such waiver will not, in the opinion of the Supervisor, have a material adverse effect on the interests of the Unit Holders; and
- (b) to apply to the Court for directions in relation to any question and assent to and approve of or oppose any application to the Court made by or at the instance of the Manager or any Unit Holder.

24.3 Supervisor's covenants

The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall enure not only to the Manager but to the Unit Holders jointly and to each of them severally) that:

- (a) the Supervisor has power to act continuously as trustee under the trusts herein set forth and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as trustee under this deed or which might prevent it from so acting and will act continuously as trustee under the trusts herein set forth until such trusts are determined as herein provided or until it has retired or been removed from office;
- (b) the Supervisor will exercise due diligence in carrying out its functions and duties hereunder;
- (c) the Supervisor will ensure that any documents of title relating to the Investments are held in safe custody;
- (d) the Supervisor will keep the Trust Fund separate from all other assets, investments and other property vested in or held by the Supervisor;
- (e) except as herein provided or as authorised by law the Supervisor will not sell, mortgage, charge or otherwise part with the possession or ownership of any of the Investments; and
- (f) the Supervisor without delay will forward to the Manager all notices and other information relevant to the Manager and received by or on behalf of the Supervisor in connection with the Trust Fund.

24.4 Supervisor's right to appoint valuer

The Supervisor shall be entitled at any time to appoint an independent valuer to value, at the expense of the Trust, the Assets.

24.5 Other

In addition to the matters recorded above, the Supervisor has the functions, duties, and powers recorded in sections 152 to 155 of the FMC Act.

25. Manager's Powers, Duties and Covenants

25.1 Manager's powers of management

The Trust shall be managed by the Manager (with full power to delegate to its officers, and employees all acts, matters and things whether or not requiring or involving the Manager's judgement or discretion) which hereby agrees to carry out and perform the duties and obligations on its part contained in this deed during the period of the Trust. The Manager shall have the functions recorded in section 142 of the FMC Act and this deed, and all powers, authorities, and discretions set out in the FMC Act or necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this deed. Nothing contained in this deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this deed.

25.2 Manager's duty

The Manager shall have regard to:

- (a) the duties set out in sections 143 to 151 of the FMC Act; and
- (b) the fact that the Trust is operating with Vital Australia as part of a stapled group with common unit holders and with the intention that the economic interests of the Trust and Vital Australia are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of its obligations the Manager may, except to the extent otherwise required by any Applicable Law, have regard to the interests of Unit Holders as holders of Vital Australia Units.

25.3 Appointment of agents

Without in any way affecting the generality of the foregoing, or without in any way releasing the Manager from its obligations under this deed, but subject to any Applicable Laws, the Manager may in carrying out and performing its duties and obligations:

- (a) by Power of Attorney appoint any Person to be the attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions; and
- (b) appoint by writing or otherwise any Person to be an agent or sub-manager in respect of the Trust or the investments or any part thereof, and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this deed or in respect of the Trust (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording terms of any such appointment.

25.4 Manager may engage related persons

The Manager may, subject to the Listing Rules and sections 146 and 172 to 175 of the FMC Act, on behalf of the Trust engage any Person who is a Related Company of the Manager, or who is otherwise associated with the Manager, to provide services to the Trust (including, without limitation, as a property manager, agent or consultant) provided that the fees to be charged do not exceed then prevailing market rates.

25.5 Additional Services

The Manager may be engaged on behalf of the Trust to provide Additional Services, being services that are additional to those contemplated by section 142 of the FMC Act. If it is engaged to provide an Additional Service, the Manager will be paid the applicable Additional Cost in respect of that service, as set out in Schedule 2.

25.6 Information to Supervisor

The Manager shall make available or provide to the Supervisor the documents, records or reports which the Manager is required to provide under sections 147 and 148 of the FMC Act (including the quarterly report relating to related party transaction certificates required by section 147 of the FMC Act).

25.7 Maintaining listing

Subject to any resolution to the contrary passed at a meeting of Unit Holders, the Manager shall use its best endeavours to maintain the Quotation of the Units on the NZX Main Board.

25.8 Voting rights

Except as otherwise expressly provided in this deed and subject to the provisions of the Trustee Act 1956 all rights of voting conferred by the Investments shall be exercised in such manner as the Manager may determine. The Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. Neither the Manager nor the Supervisor shall be under any liability or responsibility in respect of the management of any company or body nor in respect of any vote or action taken or consent given by the Supervisor or the Manager. Neither the Supervisor nor the Manager nor the holder of any proxy or power of attorney given by the Supervisor or the Manager shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Supervisor or the Manager or by the holder of such proxy or power of attorney and neither the Supervisor or the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney except to the extent that such obligation may be attributable to the Supervisor's or the Manager's (as the case may be) own negligent or wilful act or default.

25.9 Manager's covenants

Without limiting any duty or obligation of the Manager elsewhere in this deed, the Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall enure not only to the Supervisor but to the Unit Holders jointly and to each of them severally) that:

- (a) the Manager will pay to the Supervisor or a person contracted under clause 3.6, within 7 days after their receipt by the Manager, any moneys that under this deed, are payable by the Manager to the Supervisor;
- (b) the Manager will prepare or cause to be prepared all distributions, cheques and notices which are to be issued pursuant to this deed and stamp them as required by law and produce them to the Supervisor or a person authorised by the Supervisor for this purpose so as to afford the Supervisor or such authorised person reasonable time to examine and check the same and to sign those cheques for despatch on the day on which they ought to be despatched, and the Supervisor may rely on the report of the Auditor or the Manager given in respect of the accuracy of the particulars of such cheques if such reliance is based upon a reasonable belief that the report is genuine;

- (c) the Manager will pay all moneys belonging to the Trust coming to the hands of the Manager to the Supervisor;
- (d) the Manager will retain in safe keeping all applications for Units and instruments of transfer and transmission, or copies or reproductions thereof, and will make those documents available for inspection by or on behalf of the Supervisor at any time during normal business hours, but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any law to the contrary (including without limitation the FMC Act) and first obtaining the Supervisor's approval) destroy such documents;
- (e) the Manager without delay will forward to the Supervisor all notices and other information relevant to the Supervisor and received by or on behalf of the Manager in connection with the Trust Fund;
- (f) the Manager will consult with the Supervisor in relation to the preparation of, or amendment to, any product disclosure statement or register entry relating to offering Units, provided that such consultation shall in no way affect the liability of the Manager for any omissions or misstatements under the FMC Act;
- (g) unless the Supervisor in writing is satisfied with reference to particular part of the Investments that insurance is unnecessary or commercially undesirable having regard to the risk and cost involved, the Manager will at all times insure and keep insured against loss or damage by fire, war, earthquake and such other risks as shall be commercially desirable (including public risk and property damage) to insure against in an office or offices to be nominated by the Manager and approved by the Supervisor (such approval not to be unreasonably withheld) all of the Investments which are of an insurable nature in such manner and to such extent as is prudent in accordance with the best commercial practice having regard to the premium payable and the risk involved and at all times duly and punctually pay all premiums and other sums (if any) payable in respect thereof and when so required by the Supervisor produce to the Supervisor all receipts for the same. All such insurances shall be effected in the name of the Supervisor with the proceeds payable to the Supervisor. All moneys to be received by virtue of any insurance as aforesaid shall be deemed to be part of the Investments and shall be paid to the Supervisor;
- (h) the Manager will at the request of the Supervisor (which request shall only be made when the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Manager) with all due expedition furnish (or cause to be furnished directly by the Auditor) to the Supervisor a copy of the statements of financial position and financial performance of the Trust Fund duly audited and made up in the case of the statement of financial position at such date as may be required by the Supervisor but being a date not less than twenty-one nor more than forty-two days subsequent to the date of the request and in the case of the statement of financial performance covering the period from the end of the immediately preceding Financial Year or half year up to the date as at which audited statement of financial position is made up together with all documents and reports required by the Companies Act 1993 and/or the Financial Reporting Act 2013 to be annexed to or to accompany such statements of financial position and financial performance as if the Trust were a company (but with such adaptations as may be necessary) and duly signed by the persons as would be required to sign the same by the Companies Act 1993 and/or the Financial Reporting Act 2013 (but with such adaptations as aforesaid) together with a report of the Auditor stating whether or not the Manager has done or omitted to do any act which in the opinion of the Auditor contravenes any of the provisions of this deed;
- (i) the Manager will ensure that at all times the liability of the Supervisor in relation to any contract or agreement or any Borrowing entered into by the Supervisor at the direction of the Manager, is limited to the Investments; and

- (j) the Manager shall at all times comply with the FMC Act and other Applicable Law.

26. Accounts and Auditor

26.1 Preparation of accounts

- (a) The Manager and the Supervisor shall, having regard to their separate functions and obligations, keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place and of the issue of Units and of all other matters for which accounts should properly be kept.
- (b) The Manager shall, in particular, keep or cause to be kept such accounts as may be necessary to enable it to comply with its obligations pursuant to Applicable Laws and such accounts as may be necessary to ensure that moneys received, expended or distributed by the Trust are credited or, as the case may be, debited to the appropriate funds available for distribution to the Unit Holders and so as to ensure that the entitlement of any Unit Holder to participate in the Trust Fund at any particular time may readily be ascertained. The Manager and the Supervisor shall provide to each other from time to time any information necessary for this purpose.
- (c) The Manager must give Unit Holders financial statements and relevant reports on them, transaction confirmations and certificates, as the Applicable Laws require.
- (d) To the extent that Applicable Laws allow the Manager to not provide financial statements and relevant reports on the Trust Fund provided that they are instead provided on a consolidated basis in respect of the Stapled Group, then clause 25.9(h) and this clause 26 will be read as relating to those consolidated Stapled Group financial statements.

26.2 Semi-annual and annual accounts

The Manager shall cause to be prepared semi-annual accounts in respect of the Trust Fund for each financial half-year and annual accounts in respect of the Trust Fund for each Financial Year. The Manager shall in respect of the annual accounts comply with Applicable Laws.

26.3 Audit

The annual accounts prepared in accordance with clause 26.2 shall be audited by the Auditor who shall report to the Manager and to the Supervisor in the terms set out in any agreement referred to in clause 29.1.

26.4 Auditor's rights to request information

The Auditor shall be entitled to require from the Manager and the Supervisor such information, explanations, documents, certificates and accounts as the Auditor considers necessary, and the Manager or the Supervisor (as the case may be) shall provide the same to the Auditor.

26.5 Distribution of accounts

- (a) The Manager shall make available, in accordance with the Listing Rules, a copy of the annual accounts of the Trust Fund together with the Auditor's report, within three

months after the end of the relevant Financial Year, to each Person who is a Unit Holder at the date upon which they are made available, and also to each Person who was a Unit Holder on the date as at which such accounts are made up, and shall send to the Supervisor a copy of those annual accounts and the Auditor's report within three months after the end of the relevant Financial Year.

- (b) The Manager shall make available, by way of an announcement to NZX, a copy of the semi-annual accounts of the Trust Fund, within three months after the end of the first six months of each Financial Year, to each Person who is a Unit Holder at the date upon which they are made available, and also to each Person who was a Unit Holder on the date as at which such accounts are made up, and send to the Supervisor a copy of the semi-annual accounts of the Trust Fund, within three months after the end of the first six months of each Financial Year.

26.6 Announcements through NZX and ASX

The Manager shall cause an announcement to be made pursuant to the Listing Rules through NZX and ASX:

- (a) before the release of each set of annual accounts and not later than 75 days after the end of the Financial Year to which those accounts relate; and
- (b) before the release of each set of semi-annual accounts and not later than 75 days after the end of the period to which those accounts relate.

26.7 Applicable Laws

The accounts to be prepared pursuant to this clause 26 shall be prepared in compliance with the Applicable Laws.

26.8 Appointment of Auditor

The Manager shall after consultation with the Supervisor in accordance with clause 28.13 appoint an auditor or auditors of the Trust Fund and the Manager who shall be a person qualified in terms of clause 28.11.

26.9 Removal and retirement of Auditor

The Auditor may at any time be removed from office by the Manager with the approval of the Supervisor or by the Supervisor. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Supervisor.

26.10 Replacement Auditor

The power of appointing a new Auditor (in place of an Auditor which has been removed from office or which has retired pursuant to clause 26.9) shall be vested in the Manager (with the approval of the Supervisor, which will not be unreasonably withheld).

26.11 Qualification of Auditor

The Auditor must be a person qualified for appointment pursuant to section 461E of the FMC Act.

26.12 Remuneration of Auditor

The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Fund.

26.13 Implied terms

The Manager shall to the extent relevant comply with the provisions implied in this deed by regulation 84 and schedule 13 of the FMC Regulations.

27. Meetings of Unit Holders

27.1 Convening of meetings

The Manager shall summon a meeting of Unit Holders upon request made in accordance with Applicable Laws. Meetings of Unit Holders may be held in conjunction with meetings of the holders of Vital Australia Units and, subject to any Applicable Laws, the Manager and the Vital Australia Responsible Entity may, between them, make such rules for the conduct of such meetings as they determine.

27.2 Annual Meetings

The Manager shall convene an annual meeting of Unit Holders to be held no later than 6 months after the end of each Financial Year and no later than 15 months after the last annual meeting for the purposes of tabling the annual financial statements for the most recently completed Financial Year and considering any other business which may lawfully be undertaken by the meeting.

27.3 Attendance

Unit Holders of all classes and holders of Convertible Obligations are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to Unit Holders entitled to vote at meetings of Unit Holders but are not entitled to vote at any such meeting unless the terms of the relevant Units or Convertible Obligations so provide.

27.4 Meeting procedure

Subject to clause 27.1, all meetings of Unit Holders shall be convened and held in accordance with the provisions set out in Schedule 3. The provisions in Schedule 3 shall, subject to regulation 89(2) of the FMC Regulations, prevail over schedule 11 of the FMC Regulations.

27.5 Interest Group meetings

A meeting of the Unit Holders in an Interest Group may be called by the Manager at any time, and shall be called on the written request of holders of Quoted Units carrying together not less than 5% of the votes entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this deed relating to meetings of Unit Holders apply, with all necessary modifications, to a meeting of an Interest Group, except that:

- (a) the necessary quorum is Unit Holders (or their Representatives) who hold no less than 25% of the value of the Units held by Unit Holders in the group or, if there is only one Unit Holder in the group, that Unit Holder (or their Representative);
- (b) if the Manager so elects, one meeting may be held of Unit Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any Unit Holder in the group, present in person or by Representative, may demand a poll.

27.6 Unit Holder Participation

- (a) The chairperson of a meeting of Unit Holders must allow a reasonable opportunity for Unit Holders at the meeting to question, discuss or comment on the management of the Trust.
- (b) A resolution relating to the management of the Trust proposed by the Supervisor or the Unit Holders at any meeting may be passed, but no such resolution shall be binding on the Supervisor or the Manager.

27.7 Vital Australia representatives

Representatives of Vital Australia (including the Vital Australia Responsible Entity and Vital Australia Investment Manager) may attend and speak at any meeting or invite any other person to attend and speak.

27.8

28. Independent Directors

28.1 Principle

Unit Holders shall have the right to appoint and remove two directors of the Manager in accordance with this clause 28.

28.2 Existing Directors

Two persons who are directors of the Manager at the date on which this deed comes into effect, who are eligible under clause 28.6 and who have been selected by the Board as Independent Directors are deemed to be Independent Directors as at the date on which this clause 28 comes into effect.

28.3 Appointment by Board

If at any time there are less than two Independent Directors, the Board may appoint a person or persons as Independent Directors (provided any such person is not a person who sought election as an Independent Director at the immediately preceding annual meeting and at that meeting received more votes against than in favour of his or her election, or has previously been removed as an Independent Director under clause 28.9) so that there are not more than two Independent Directors. Any person so appointed by the Board shall hold office only until the next annual meeting, but shall be eligible for re-election at that meeting. In the event that the board of the Vital Australia Responsible Entity directs the board of the Vital Australia

Investment Manager to appoint a person as an independent director pursuant to the equivalent provision of the Vital Australia Trust Deed, the Manager will direct the Board to appoint the same person as an Independent Director to the Board.

28.4 Retirement by rotation

At the time of each annual meeting, one Independent Director shall retire from office as a director of the Manager. The Independent Director to retire shall be the person who has been longest in office since he or she was last elected or appointed. In the case of Independent Directors who were last elected or appointed on the same day, the Independent Director to retire shall be determined by agreement between those Independent Directors, or if they cannot agree, by lot. Notwithstanding the foregoing, the Independent Director to retire will be the same person retiring from the board of the Vital Australia Investment Manager.

28.5 Persons eligible

No person shall be elected as an Independent Director at an annual meeting other than:

- (a) a person appointed as an Independent Director under clause 28.3;
- (b) a person retiring as an Independent Director under clause 28.4; or
- (c) a person validly nominated as an Independent Director under clause 28.7.

28.6 Independence

No person may be appointed by the Board under clause 28.3, or nominated under clause 28.7, unless that person would on appointment be categorised as an “independent director” under the Listing Rules. The decision of the Board in respect of that matter shall be final and conclusive.

28.7 Nominations

Any Unit Holder may nominate a person for election as an Independent Director at an annual meeting. Nominations must be accompanied by the consent of the person nominated, and be received by the Manager before the closing date for nominations fixed by the Manager. The Manager shall make an announcement to NZX and ASX, in respect of each annual meeting, of the closing date for nominations and contact details for making nominations, not less than 10 Business Days before the closing date for nominations. The closing date for nominations shall be fixed by the Manager, but shall be not more than two months before the date of the annual meeting. Notice of every valid nomination received by the Manager before the closing date shall be given by the Manager to Unit Holders together with, or as part of, the notice of meeting. Any person validly nominated by a Unit Holder under the equivalent provision of the Vital Australia Trust Deed will be deemed to have been nominated under this clause.

28.8 Election procedure

If the number of persons eligible under clause 28.5 and seeking election at an annual meeting is equal to or less than the number of Independent Directors who may be elected at the meeting, any person who receives more votes in favour than against shall be elected as an Independent Director. If the number of persons eligible under clause 28.5 and seeking election at an annual meeting is greater than the number of Independent Directors who may be elected at the meeting, the persons elected shall be those persons corresponding to the number of vacancies available who receive the greatest number of votes of Unit Holders in

favour at the annual meeting. The votes for election of a person as an Independent Director pursuant to this clause will be held together with the vote to appoint that same person as an independent director of the Vital Australia Investment Manager, such that they will be put to Unit Holders together as one resolution.

28.9 Removal

Unit Holders may by Ordinary Resolution direct the removal from office of any Independent Director. The votes for removal of a person as an Independent Director pursuant to this clause will be held together with the vote to remove that same person as an independent director of the board of the Vital Australia Investment Manager, such that they will be put to Unit Holders together as one resolution.

28.10 Effect

If, in accordance with this clause 28, Unit Holders vote to elect any person as an Independent Director, or to remove any person from office as an Independent Director, the Manager shall give notice of that to the Shareholder, and shall request the Shareholder to appoint or remove that person as an Independent Director.

29. Reporting to Supervisor

29.1 Reporting

The Manager shall provide, or cause to be provided, to the Supervisor the reports provided for in any agreement between the Manager and the Supervisor from time to time.

30. Amendments to Deed

30.1 Authority to amend

This deed may be amended by a deed signed by the Manager and the Supervisor if the amendment is authorised pursuant to section 139 of the FMC Act, or by a deed signed by the Manager if the amendment is authorised pursuant to section 140 of the FMC Act.

30.2 Notice of amendments

In addition to its requirements under section 141 of the FMC Act, the Manager shall, each time it makes the annual accounts available to Unit Holders in accordance with clause 26.5, also give notice to the Unit Holders of all amendments to this deed (if any) which have been made since the date of the last such notification. The Manager may give that notice by making the amendments available on a website of the Manager or the Trust, and by notifying Unit Holders that amendments have been made, and may be viewed on that website.

31. Winding Up

31.1 Period of trust

The Trust shall determine and be wound up upon the occurrence of the earliest of the following dates:

- (a) the date on which both the:
 - (i) Manager certifies in writing that in its opinion it is in the interests of Unit Holders that the Trust should be wound up; and
 - (ii) the Vital Australia Responsible Entity certifies in writing that in its opinion it is in the interests of Vital Australia Unit holders that Vital Australia be wound up,
 - and the Manager and Vital Australia Responsible Entity provide a joint written notice to Stapled Unit Holders that each of Vital Australia and the Trust be wound up;
- (b) the date on which a Special Resolution is passed resolving to wind up the Trust;
- (c) the date on which the Trust is wound up by operation of Applicable Law;
- (d) two months after the date on which the office of Supervisor becomes vacant, if a new Supervisor is not appointed in accordance with clause 19.3 within that period; or
- (e) if the High Court orders that the Trust be wound up under section 211 of the FMC Act.

31.2 Perpetuity period

The perpetuity period for the purposes of the Perpetuities Act 1964 is the period commencing on the 10 February 1994 and ending on 10 February 2074. Notwithstanding any other provision of this deed, no Units may be issued or redeemed after 10 February 2074, unless that issue or redemption would not offend the rule against perpetuities, or any other rule or law of equity. The specification of a perpetuity period in this clause 31.2 does not require the termination of the Trust on 10 February 2074 or limit its life to 80 years.

31.3 Notice of distribution

The Supervisor shall within 14 days after the occurrence of any event referred to in clause 31.1, give to each Unit Holder notice of the occurrence of that event and of the intention of the Supervisor to distribute the Trust Fund.

31.4 Conversion to cash

The Supervisor shall as soon as practicable after the occurrence of an event referred to in clause 31.1:

- (a) sell, call in and convert into cash the whole of the Trust Fund;
- (b) pay out, discharge, or otherwise make proper provision for all liabilities of the Trust Fund (including any contingent liabilities);
- (c) subject to clause 13.14, distribute all undistributed Net Income then existing to the Unit Holders in accordance with their rights to such Net Income; and
- (d) subject to clause 13.14, distribute the remainder of the Trust Fund (less all costs and expenses incurred by the Supervisor or the Manager in respect of the winding up of the Trust) amongst the Unit Holders in proportion to the numbers of Units held by them, subject to the particular rights of any Unit Holders to participate in any such distribution including in particular the rights attaching to unpaid or partly paid Units and other Units with special rights.

31.5 Compliance with FMC Act

The Supervisor shall in respect of any winding up of the Trust comply with sections 212 and 213 of the FMC Act.

31.6 Termination and partly paid Units

If the Trust terminates before the payment of, in respect of a partly paid Unit, the amount of Issue Price which has not been called (**Uncalled Amount**) then, subject to the terms of issue of the Units, the Manager may call the Uncalled Amount.

31.7 Distribution by instalments

The Supervisor may make a distribution under clause 31.4(d) in instalments.

31.8 Transfer of Trust Property to Unit Holder

- (a) The Supervisor may transfer Trust Property to a Unit Holder to satisfy, in whole or in part, a requirement to make a payment or distribution under clause 31.4 instead of making it in cash.
- (b) The value of the Trust Property to be transferred must be based on a valuation carried out by a Qualified Advisor within one month before the date of transfer of the Trust Property. The Supervisor may determine that the costs associated with the valuation and transfer of the Trust Property are payable by the Unit Holder.

31.9 Receipt and discharge

The Supervisor may require each Unit Holder to give it a receipt and discharge (in a form approved by the Manager) before it makes a payment or distribution under clause 31.4.

31.10 Timing for realisation of Trust Property

As far as reasonably practicable having regard to the interests of Unit Holders, the Supervisor must realise the Trust Property within 180 days after the termination of the Trust, but the Supervisor may extend that period if it thinks it is in the interests of Unit Holders to do so. The Supervisor will not be liable for any loss attributable to the extension.

31.11 Retention of Trust Property

Despite any other provision of this clause 31, the Supervisor may retain for as long as it thinks fit sufficient Trust Property as in its opinion may be required to meet any actual or contingent liability in respect of the Trust. The Supervisor must distribute to the Unit Holders, in accordance with clause 31.4, anything retained under this clause 31.11 which is subsequently not required.

31.12 Audit on winding up

After the Trust is wound up, the Supervisor must (if required by Applicable Laws) arrange for an independent audit of the Trust's final accounts by a registered company auditor. Despite clause 31.13, this clause 31.12 continues to apply after the date of termination of the Trust until the audit is finished.

31.13 Provisions continue after termination of Trust

Subject to the Applicable Laws, the provisions of this deed (including, for the avoidance of doubt, clause 13) continue to apply after the date of termination of the Trust until the date of final distribution under clause 31.4, but during that period the Manager must not accept any applications for Units.

32. Notices

32.1 Form and deemed delivery

Any notice, communication or other information (a “notice”) required by this deed to be given to any Unit Holder shall be in writing and may be given personally, by sending it by post to the address of the Unit Holder on the Register, or by email if a Unit Holder has elected to receive that notice by email. Where a notice is sent:

- (a) by post, service of the notice by properly addressing, prepaying and posting a letter containing the notice shall be deemed to have been effected on the day following the day of posting; and
- (b) by email, service of the notice by sending it to the email address nominated by the Unit Holder shall be deemed to have been effected on the Business Day on which it was despatched or, if despatched after 5.00pm on a Business Day, on the next Business Day after the date of despatch, provided that the computer system used to transmit the notice has not generated a record that the notice has failed to be transmitted.

32.2 Overseas address

If any Unit Holder has no registered address within New Zealand and has not supplied to the Manager an address within New Zealand for the giving of notices or elected to receive the relevant notice by email, but has supplied an address outside New Zealand, then any notice to be given to such Unit Holder shall be posted to such Unit Holder at such address and shall be deemed to have been received by such Unit Holder three days following the day of posting.

32.3 Notices to managers and representatives of Unit Holders

A notice may be given by the Manager to a Personal Representative by sending it to the address, if any, supplied for that purpose by the Personal Representative, 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.

32.4 No address

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

32.5 Holders of Convertible Obligations

Any notices given to the holders of Convertible Obligations may be given to them in the manner provided for in this clause 32 as if such persons were Unit Holders.

32.6 Determination of period of notice

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.

32.7 Notice to be in writing and signed

Any notice required by this deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer or signatory of the party giving the notice.

33. Governing Law

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

34. Limitation of Liability

Notwithstanding anything contained in this deed (but subject to clause 35) or any rule of law:

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

35. Taxation Liability

35.1 Definitions

In this clause:

Relevant Person means a Unit Holder and the Personal Representatives or successors of a Unit Holder;

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

Taxation Amount means, in relation to a Relevant Person:

- (a) any Tax payable by or on account of that Person or in respect of that Person's Units;
or
- (b) any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Unit Holder.

35.2 Deduction of tax

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

35.3 Sale of Units

If any Distribution is to be effected by way of the transfer or delivery to Unit Holders of Units or other Financial Products, the Supervisor or the Manager may satisfy the Taxation Amount of any Relevant Person by arranging for the sale (in such manner as the Supervisor or the Manager may determine) of sufficient of those Units or other Financial Products to satisfy the Taxation Amount of that Relevant Person, and shall transfer or deliver the balance of those Units or other Financial Products to the Relevant Person.

35.4 Application of deductions

Amounts deducted under clause 35.2 or arising from a sale pursuant to clause 35.3 shall be applied in:

- (a) payment of the Taxation Amount to the Person or authority entitled thereto; or
- (b) reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds;

and any balance shall be refunded to the Relevant Person.

35.5 Indemnity

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

35.6 Interest

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

36. Changes to Dates

Notwithstanding clause 30, the Manager may at any time, giving not less than 2 months' notice to the Unit Holders and the Supervisor, alter the Distribution Periods (both as to length and commencement and expiry dates), the closing date of the Financial Year and the Quarterly Dates. In the event of any such alteration, any calculations required under this deed that are based on a Distribution Period or Financial Year will be adjusted on a pro rata

basis to reflect the shorter or longer period so as to ensure that the alteration does not have an unintended economic impact.

37. Contracts Privity

This deed is intended to confer a benefit on the Unit Holders (for the purposes of the Contract and Commercial Law Act 2017 and, subject to the terms hereof, shall be legally enforceable as between the Supervisor, the Manager and the Unit Holders.

Execution

Executed as a trust deed.

Trustees Executors Limited

Director

Director/Authorised Signatory

Print Name

Print Name

Witness to both signatures
(if not signed by two directors)

Print Name

Occupation

Address

Address of Trustees Executors Limited

Address Level 7, 51 Shortland
 Street
 Auckland

Attention

Telephone 09 308 7100

NorthWest Healthcare Properties Management Limited by

Director

Director

Print Name

Print Name

Address of NorthWest Healthcare Properties Management Limited

Address Level 16, AIG Building
 41 Shortland Street
 Auckland

Facsimile 09 377 2776

Attention

Telephone 09 973 7300

Schedule 1: Worked example of Incentive Fee

Set out below is a worked example of the calculation of the Incentive Fee for example purpose only.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	
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2		Initial NOI	1,000																									
3		NOI Growth	2.0%																									
4		Incentive fee	10.0%																									
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6		No High Water Mark																										
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Schedule 2: Additional Services and Additional Costs

Description	Additional Services	Additional Costs	Payment Terms
Acquisitions	<p>Services in respect of acquisitions of new Investments, including but not limited to due diligence, structuring, arrangement of financing, negotiation of terms and other related services.</p>	<p>A fee equal to 1.5% of the capitalised cost of the relevant Investment, being the contracted price payable by the Supervisor (or the Subsidiary, as the case may be), excluding any deductions netted off the settlement price (such as rates), together with other related capitalised acquisition costs.</p> <p>In the case of an acquisition that involves the provision of a related party benefit in compliance with sections 172 - 175 of the FMC Act, the Manager must pay any costs reasonably and properly incurred by or on behalf of the Independent Directors in carrying out due diligence that is over and above the level of due diligence that would be consistent with standard market practice for a proposed acquisition that did not involve the provision of a related party benefit (for example, the cost of any market valuation of the relevant assets). Any such amounts may be set off against management fees otherwise payable.</p>	<p>Payment to be due at the time of completion of the acquisition (and payment is conditional on completion occurring). Any post-completion adjustment to the purchase price (including, for example, as a result of a warranty claim or deferred consideration) will result in a corresponding amendment to the Additional Cost.</p>
Disposals	<p>Services in respect of disposals of Investments, including but not limited to coordinating the sales process, engaging with potential purchasers, negotiation of</p>	<p>A fee equal to 1.0% of the contracted sale price of the relevant Investment actually received by the Supervisor (or the Subsidiary, as the case may be) (the</p>	<p>Payment to be due at the time of completion of the disposal (and payment is conditional on completion occurring). Any post-completion adjustment to the purchase price (including, for</p>

	terms and other related services.	<p>Disposal Fee), provided that, if a third party agent has been engaged to provide services for the disposal, then the fee payable to the Manager will be an amount equal to the Disposal Fee less the third party agent's costs and commissions.</p> <p>In the case of a disposal that involves the provision of a related party benefit in compliance with sections 172 - 175 of the FMC Act, the Manager must pay any costs reasonably and properly incurred by or on behalf of the Independent Directors in carrying out due diligence that is over and above the level of due diligence that would be consistent with standard market practice for a disposal that did not involve the provision of a related party benefit (for example, the cost of any market valuation of the relevant assets). Any such amounts may be set off against management fees otherwise payable. For clarity, the fee payable to the Manager in respect of a disposal will not be reduced below zero.</p>	example, as a result of a warranty claim or deferred consideration) will result in a corresponding amendment to the Additional Cost.								
Development fee	<p>Services which may be in respect of any one or more of the following services in respect of a project:</p> <p>(i) Managing procurement of statutory authority consents.</p> <p>(ii) Negotiating principal agreements, such as building contracts and</p>	<p>A fee equal to 4% of the total project costs approved by the board of the Manager.</p> <p>However, if:</p> <p>(a) the Manager engages a third party external provider for the development management</p>	<p>Payment to be due at the time of completion of identified trigger points of:</p> <table border="0"> <tr> <td>Design development completion</td> <td>15%</td> </tr> <tr> <td>Development application approval</td> <td>15%</td> </tr> <tr> <td>Builder appointment</td> <td>15%</td> </tr> <tr> <td>Construction start date</td> <td>25%</td> </tr> </table>	Design development completion	15%	Development application approval	15%	Builder appointment	15%	Construction start date	25%
Design development completion	15%										
Development application approval	15%										
Builder appointment	15%										
Construction start date	25%										

	<p>consultancy agreements.</p> <p>(iii) Ensuring compliance with statutory requirements.</p> <p>(iv) Keeping records in connection with the project.</p> <p>(v) Managing insurances.</p> <p>(vi) Managing legal disputes.</p> <p>(vii) Coordination of design, procurement and contractors.</p> <p>(viii) Managing construction process and timetable, commissioning of plant and equipment and rectification of defects.</p> <p>(ix) Managing project budgets.</p> <p>(x) Attending project control group meetings.</p> <p>(xi) Any other services which would usually be performed by a development or project manager.</p>	<p>services; and</p> <p>(b) the fee payable to the third party external provider (Relevant Amount) is payable by the Manager and not re-charged to the tenant by way of rentalisation,</p> <p>the development fee of 4% must be reduced by the Relevant Amount.</p> <p>Notwithstanding the foregoing, the Manager may, at its discretion, agree in writing to charge a fee lower than that which would be otherwise payable for particular projects.</p>	<table border="0"> <tr> <td>Midpoint of construction</td> <td>10%</td> </tr> <tr> <td>Practical completion</td> <td>15%</td> </tr> <tr> <td>Defects Liability period</td> <td>5%</td> </tr> </table> <p>The Manager is to present a request for payment to the Supervisor identifying that the respective trigger point has been reached.</p> <p>On receipt of the Supervisor's approval the payment is to be made.</p> <p>Any post-completion adjustment to the total development fee (including, for example, as a result of a warranty claim or deferred consideration) will result in a corresponding amendment to the final fee payable when presenting a request for the final fee payable as a result of the Defect Liability period trigger.</p>	Midpoint of construction	10%	Practical completion	15%	Defects Liability period	5%
Midpoint of construction	10%								
Practical completion	15%								
Defects Liability period	5%								

Schedule 3: Activity Services and Activity Fees

For the purposes of this Schedule 3, **Rental** means, in respect of a period: (1) in the case of a gross lease or licence, the actual rent (including, but not limited to, turnover rent) payable by the tenant under the lease or licence for that period; or (2) in the case of a net lease or licence, the aggregate of the actual rent (including, but not limited to, turnover rent), tenant recoveries and other outgoings payable by or charged by the landlord to the tenant under the lease or licence for that period, in any case ignoring any incentives or concessions.

Description	Activity Services	Activity Fee	Payment Terms
<p>New leases or licences</p>	<p>Services in relation to the negotiation of new leases or licence (which is a lease or licence to a new tenant or where agreed with a sitting tenant that a new lease or licence will be granted other than on substantially the same terms) over Investments that are real estate properties, including coordinating the letting process, engaging with potential and sitting tenants, negotiation of terms and other related services.</p>	<p>A fee calculated as follows for each new lease or licence:</p> <ul style="list-style-type: none"> (a) if the term of the lease or licence is less than three years, an amount equal to 11% of the aggregate annual Rental; (b) if the term of the lease or licence is three years, an amount equal to 12% of the aggregate annual Rental; (c) if the term of the lease or licence is greater than three years, the aggregate of: <ul style="list-style-type: none"> (i) an amount equal to 12% of the aggregate annual Rental; and (ii) a further 1% of the annual Rental in respect of each full year by which the term of the lease or licence exceeds 3 	<p>Payment to be due at the time the new agreement to lease or licence, or lease, or licence is executed by the tenant (whichever is the earlier).</p>

		<p>years (adjusted pro rata for part years), up to a maximum of 20% of the aggregate annual Rental,</p> <p>provided that the fee shall not be less than \$2,500 per new lease or licence.</p>	
Lease or licence renewals	<p>Services in relation to the negotiation of lease or licence renewals (whether by exercise of option or separate agreement to renew the lease or licence on substantially the same terms) in relation to Investments that are real estate properties, including engaging with tenants, negotiation of terms and other related services.</p>	<p>A fee equal to 50% of the amount that would have been payable if the lease or licence was a new lease or licence.</p>	<p>Payment to be due at the time the lease or licence renewal is executed by the tenant.</p>
Rent review fees	<p>Services in relation to the negotiation of rent reviews in relation to Investments that are real estate properties, including engaging with tenants, negotiation of rent reviews and other related services.</p>	<p>In the case of a structured (non-market) rent review, or any market rent review which does not result in a Rental increase, an administration fee of \$1,000.</p> <p>In the case of a market review, a fee equal to 10% of the amount that the Rental has increased by during the first year that such increase applies, provided that the fee shall not be less than \$1,000.</p>	<p>In respect of a structured rent review, payment will be due at the time the rent review takes effect.</p> <p>In respect of a market rent review, payment will be due at the time the rent review process has concluded.</p>
Property management fee	<p>Services in relation to the below and other services generally accepted as, or relating to, property management:</p> <ul style="list-style-type: none"> (i) invoicing tenants; (ii) managing bad debts; (iii) managing collection of rental and outgoings 	<p>A fee equal to between 1%-2% of gross income depending on the number of tenants at the property. The fee percentage between 1% and 2% (each inclusive) will be determined based on the following:</p> <ul style="list-style-type: none"> (i) 1% where the property has one principal tenant; 	<p>Payment to be due monthly in advance.</p>

	<p>payments;</p> <p>(iv) preparation of annual operating and capital budgets;</p> <p>(v) managing year end audit of operating expenses and issuing of annual statements to tenants (including recharge or reimbursement where applicable);</p> <p>(vi) preparation of monthly reports including variance analysis against budgets;</p> <p>(vii) management of trust account;</p> <p>(viii) payments to creditors/suppliers;</p> <p>(ix) assisting with conduct of property valuations;</p> <p>(x) collecting and maintain security deposits, bank guarantees and any other security;</p> <p>(xi) documenting, negotiating and administering tenancy agreements (including obtaining any necessary mortgagee's or third party consents);</p> <p>(xii) maintaining full leasing and tenancy records;</p> <p>(xiii) supervising compliance with leases including provision of tenant insurances;</p> <p>(xiv) assisting with assignments and/or sub-leasing;</p>	<p>(ii) 1.5% where the property has between two and five tenants; and</p> <p>(iii) 2% where the property has six or more tenants.</p> <p>Where a single property operator manages multiple sub-tenants at a property, it will be treated as a single tenant for those purposes.</p> <p>Where the property is comprised of a medical centre and hospital, the fee will be based on the number of tenants (excluding sub-tenants) in the medical centre and hospital.</p> <p>The Manager will deduct any amounts recovered by it by way of outgoings from amounts payable to it as a property management fee.</p>	
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	(xv) managing tenant defaults; and (xvi) managing tenant make-good requirements.		
Facilities management fee	<p>Services in relation to:</p> <ul style="list-style-type: none"> (i) inspecting the property regularly; (ii) managing the following: <ul style="list-style-type: none"> (A) car parking arrangements either directly or through a car park management company as required; (B) storage management; (C) presentation, cleaning, repairs and operations of a property; (D) repairs and maintenance including preparing service specifications and tendering services contracts (as and when deemed appropriate); (E) consultants for repairs and maintenance including ensuring contractor compliance; (F) procurement of annual certification statements (AESM, AFSS) and registrations (Cooling tower, Lift); and (G) insurances including putting in place the necessary policies and processing 	<p>A fee equal to the market rate for similar services at similar properties and benchmarked by reference to a reputable and high quality service provider and which fee is recoverable from tenants through outgoings.</p> <p>This fee is payable unless there is a contract in place with a third party external provider to provide facilities management services.</p>	Recoverable through outgoings.

	claims.		
Project management fee	<p>Services in relation to:</p> <ul style="list-style-type: none"> (i) programming major expenditure of base building and capital replacement; (ii) administering fit outs; and (iii) oversight of major capital works. 	<p>The Manager will be entitled to a project management fee in respect of any project with a budget of between \$200,000 to \$2,500,000, where the purpose of the project is to upgrade, repair or otherwise extend the life of the property, including but not limited to replacement or repair of major plant and equipment, structural items and building envelope.</p> <p>The project management fee will be an amount equal to:</p> <ul style="list-style-type: none"> (a) if the Manager is the project lead (i.e., has a project management role), 2% of the committed spend; and (b) if the Manager is not the project lead (i.e., does not have a project management role), but has an oversight role, 1% of the committed spend. <p>For these purposes 'committed spend' is the budget approved by the board of the Manager.</p> <p>Any project with a budget greater than \$2,500,000 will be treated in the manner specified under (a) and (b) above provided, however, that the references to "2%" and "1%" will be replaced with "4%" and "2%" respectively.</p>	<p>Payment to be due at the time of completion of the relevant project.</p> <p>The Manager is to present a request for payment to the Supervisor identifying that the respective project has been completed.</p> <p>On receipt of the Supervisor's approval the payment is to be made.</p> <p>Any post-completion adjustment to the total project management fee (including, for example, as a result of a warranty claim or deferred consideration) will result in a corresponding amendment to the final fee payable.</p>

Schedule 4: Meetings of Unit Holders

1. Venue of Meetings

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

2. Notice of Meetings

- (a) Notice of every meeting shall be given in the manner provided in this deed to:
- (i) every Unit Holder; and
 - (ii) every Personal Representative of a Unit Holder where the Unit Holder would otherwise be entitled to receive notice,
- and all such Persons shall be entitled to attend meetings of Unit Holders.
- (b) A copy of the notice shall be sent to the Supervisor.
- (c) At least 21 days' notice of every meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice shall specify the place, date and time of the meeting and the general nature of the business to be transacted but it shall not be necessary to specify in the notice the terms of the resolutions to be proposed, unless required by Applicable Laws.
- (d) The accidental omission to give notice to, or the failure to receive notice of a meeting by, any person entitled to that notice, does not invalidate the proceedings at that meeting.

3. Quorum

- (a) No business shall be transacted at any meeting unless the requisite quorum is present.
- (b) Subject to clauses 3(d) and (f), the quorum for meetings is present if Unit Holders are present who hold not less than 10% of the number of Units for the time being in existence.
- (c) A Unit Holder is present at a meeting if the Unit Holder (or its Representative):
- (i) in the case of a meeting held under 4(a) or 4(b)(ii), attends the meeting in person;
 - (ii) in the case of a meeting held under 4(b)(i) or 4(b)(ii), participates in the meeting by the means of audio, audio and visual or electronic communication approved by the Supervisor for the purposes of that meeting; or
 - (iii) cast votes by electronic means pursuant to clauses 8(b)(iii) or 8(c).

- (d) If within fifteen minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of Unit Holders, shall be dissolved. In any other case, it shall stand adjourned to such day and time not being less than fourteen (14) days thereafter, and to such place as may be appointed by the chairperson and at such adjourned meeting the Unit Holders or their Representatives present will constitute a quorum.
- (e) Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as the notice for the original meeting and such notice shall state that the Unit Holders present at the adjourned meeting, whatever their number and whatever the number of Units held by them, shall form a quorum.
- (f) If the business of the meeting includes the approval of a Special Resolution, a quorum shall be present if Unit Holders are present who hold not less than 25% of the number of Units for the time being in existence.

4. Method of holding meetings

A meeting of Unit Holders may be held by a number of Unit Holders who constitute a quorum:

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) if approved by the Supervisor in accordance with clause 6 of Schedule 11 of the FMC Regulations:
 - (i) participating in the meeting by means of audio, audio and visual or electronic communication; or
 - (ii) by a combination of both of the methods described in clauses 4(a) and 4(b)(i).

The Manager is not required to hold meetings of Unit Holders in the manner specified in clauses 4(b)(i) or (ii). Meetings will be held in that manner only if the notice of meeting specifies, or the Manager otherwise decides to do so, and Unit Holders and their Representatives must comply with any conditions imposed by the Supervisor in providing its approval of such means.

5. Supervisor and Manager may attend and speak

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

6. Chairperson

A person nominated in writing by the Supervisor (who may without limitation be a director of the Manager) shall act as chairperson of each meeting.

7. Adjournment of Meetings

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

8. Voting Rights

- (a) The only Persons entitled to vote at a meeting of Unit Holders shall be the Unit Holders registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held) or, to the extent applicable, their Representatives.
- (b) In the case of a meeting of Unit Holders held under clause 4(a), unless a poll is demanded or required pursuant to clause 8 of Schedule 11 of the FMC Regulations, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:
 - (i) voting by voice;
 - (ii) voting by show of hands; or
 - (iii) by electronic means permitted by the Manager (including, for clarity, voting on a personal computer or other electronic device, with such vote being transmitted to the meeting).
- (c) In the case of a meeting of Unit Holders held under clauses 4(b) 4(b)(i) or 4(b)(ii), unless a poll is demanded or required pursuant to clause 8 of Schedule 11 of the FMC Regulations, voting at the meeting shall be by any method permitted by the chairperson of the meeting (including by electronic means).
- (d) Subject to the Applicable Laws and to any rights or restrictions for the time being attached to any class or classes of Units:
 - (i) on a vote by voices or a show of hands, every Unit Holder present in person or by Representative shall have one vote; and
 - (ii) on a poll, every Unit Holder present in person or by Personal Representative shall have:
 - (A) in respect of each fully paid Unit held by such Unit Holder, one vote; and
 - (B) in respect of each Unit which is not fully paid held by such Unit Holder, a fraction of the Vote which would be exercisable if the Unit were fully paid. That fraction must be proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call).
- (e) Where two or more Persons are registered as the holder of a Unit, the vote of the Person named first in the Register and voting on a matter will be accepted to the exclusion of the votes of the other joint Unit Holders.

9. Proxies

- (a) Every notice convening a meeting of the Trust shall state that a Unit Holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not be a Unit Holder. The Manager shall send a form of proxy to every Unit Holder entitled to attend and vote at a meeting of the Trust with the notice convening the meeting.
- (b) Votes may be given either personally, by proxy, attorney and also in the case of a corporation by an authorised representative.
- (c) An instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed, provided that, to the extent that the subject and form of the resolutions reasonably permit, the instrument of proxy shall, as a minimum so far as the subject matter and form of the resolutions reasonably permit, provide for a binary voting choice (for and against) on all resolutions, enabling the Unit Holder to instruct the proxy as to the casting of the vote on each resolution. So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.
- (d) No proxy form shall be issued with a proxy named therein, either by name or by reference to an office, but the proxy form may indicate in a footnote that certain persons are willing to act as a proxy if a Unit Holder desires to appoint them or any of them. The proxy form must contain a statement outlining who is subject to voting restrictions in relation to each resolution.
- (e) Except where section 163 of the FMC Act applies, whenever the chairperson of the meeting or an officer of the Supervisor is appointed a proxy for a Unit Holder, and the Unit Holder has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which the Unit Holder's proxy is to vote upon any resolution coming before the meeting, the Unit Holder's vote shall be used in such manner as the proxy thinks fit.
- (f) A proxy must be appointed by notice in writing signed by, or, in the case of an electronic notice, sent by the appointing Unit Holder or by the Unit Holder's attorney duly authorised in writing or, if the appointor is a corporation, signed, or, in the case of an electronic notice, sent by an officer or attorney so authorised. The notice must state whether the appointment is for a particular meeting or a specified term. A Unit Holder may appoint more than one proxy for a particular meeting, provided that more than one proxy is not appointed to exercise the votes relating to a particular Unit held by the Unit Holder.
- (g) No proxy is effective in relation to a meeting unless the instrument of proxy is received by or on behalf of the Manager at the address specified for that purpose in the notice and by the time specified for that purpose.
- (h) An instrument or proxy in favour of the chairperson of the meeting or the chairperson (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the instrument of proxy is used (whether on or not), the lawful proxy of the appointor.
- (i) A person appointed as a proxy shall have the right to attend and speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Unit Holder concerned.

- (j) A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the instrument of proxy or power of attorney or of the authority under which the instrument of proxy was executed or the transfer of the Units in respect of which the vote is given if no intimation in writing of such death, insanity, revocation or transfer is received by the Manager at the Office before the commencement of the meeting or adjourned meeting at which the instrument of proxy or power of attorney is used.

10. Power of Attorney

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

11. Representatives of a Company

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

12. Procedure

- (a) A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or any representative of the Supervisor or by one or more Unit Holders holding or representing not less than 5% of the number of Units in existence. Unless a poll is so demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) The demand for a poll may be withdrawn. If a poll is duly demanded it shall be taken in such manner as the chairperson may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Auditor, or if the Auditor is unable or unwilling to act, then such persons as the chairperson nominate, shall act as scrutineers for the purposes of the poll. The chairperson shall be entitled to declare the result of the poll upon receipt of a certificate from the Auditor setting out the number of votes which could be cast at the meeting, and upon receipt of a notice from the scrutineers that, in the light of the Auditor’s certificate, sufficient votes to determine the result of the resolution have been counted.

- (c) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson 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 in addition to the votes (if any) to which the chairperson may be entitled as a Unit Holder or on behalf of Unit Holders.
- (d) A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 14 days from the date of the meeting) and place as the chairperson may direct. No notice need be given of a poll not taken immediately.
- (e) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (f) On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all that Person's votes or cast all the votes the Person uses in the same way.
- (g) In the case of joint Unit Holders, the vote of the senior who tenders a vote whether in person by proxy, attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Unit Holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

13. Powers exercisable by Special Resolutions

- (a) Subject to the Applicable Laws, a meeting of Unit Holders shall have the following powers exercisable by Special Resolution:
 - (i) power to sanction the exchange of Units for, or the conversion of units into shares, stock, debentures, debenture stock or other obligations or Financial Products of any company formed or to be formed;
 - (ii) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders howsoever such rights shall arise;
 - (iii) power to assent to any alteration, modification of, variation, or addition to the provisions contained in this deed, or the conditions attaching to the Units and to authorise the Manager and Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
 - (iv) power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this deed;
 - (v) power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this deed;
 - (vi) power to appoint a replacement Supervisor if the Manager fails to do so under clause 19.3; and
 - (vii) power to sanction the exchange of Units for or the conversion of Units into, units or interests in any other managed investment scheme or similar entity (whether

established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution.

- (b) A meeting of the Unit Holders of any class of Units shall have power by Special Resolution to vary the rights attaching to Units of that class provided that such variation does not adversely affect the rights attaching to any other class of Units, and provided further that any such meeting shall be convened and variation effected in accordance with the applicable provisions of Applicable Law and this deed.

14. Special Resolution binds all Unit Holders

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

15. Minutes to be kept

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

16. Unit Holder Proposals

Subject to Applicable Law, a Unit Holder may give written notice to the Manager of a matter the Unit Holder proposes to raise for discussion or resolution (but which shall not be binding) at the next meeting of Unit Holders, at which the Unit Holder is entitled to vote on the following basis:

- (a) if the notice is received by the Manager not less than 20 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Trust, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
- (b) if the notice is received by the Manager not less than 5 Business Days and not more than 20 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;

- (c) if the notice is received by the Manager less than 5 Business Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must if practicable, and at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting;
- (d) if the directors of the Manager intend that Unit Holders may vote on the proposal by proxy or by a vote under clause 8(b) or 8(c), they must give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement of not more than 1,000 words prepared by the proposing Unit Holder in support of the proposal, together with the name and address of the proposing Unit Holder. Such resolutions shall not bind the Manager or the Trust;
 - (i) the Manager is not required to include in or with the notice given by the Manager any part of the statement prepared by a Unit Holder that a majority of the directors of the Manager consider to be defamatory; and
- (e) where the costs of giving notice of the Unit Holder proposal and the text of any proposed resolution are required to be met by the proposing Unit Holder, the proposing Unit Holder must, on giving notice to the Manager, deposit with the Trust or tender to the Trust a sum sufficient to meet those costs that will be reasonably incurred in giving such notice.