

**Dated 28 May 2021**

**(1) SPRING ASSET MANAGEMENT LIMITED  
(as Manager)**

**- and -**

**(2) DB TRUSTEES (HONG KONG) LIMITED  
(as Trustee)**

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**FIRST AMENDING AND RESTATING DEED**

modifying the trust deed dated 14 November 2013 constituting

**SPRING REAL ESTATE INVESTMENT TRUST**

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**THIS FIRST AMENDING AND RESTATING DEED** is made on 28 May 2021

**BETWEEN:**

- (1) **SPRING ASSET MANAGEMENT LIMITED** (the “**Manager**”), a company incorporated in Hong Kong and whose registered office is at Room 2801, 28/F, Man Yee Building, 68 Des Voeux Road, Central, Hong Kong; and
- (2) **DB TRUSTEES (HONG KONG) LIMITED** (the “**Trustee**”), a company incorporated in Hong Kong and whose registered office is at Level 60, International Commerce Centre, 1 Austin Road, West Kowloon, Hong Kong.

**WHEREAS:**

- (A) This First Amending and Restating Deed amends and restates a trust deed dated 14 November 2013 made between the Manager and the Trustee constituting the real estate investment trust named Spring Real Estate Investment Trust as supplemented by the First Supplemental Deed dated 22 May 2015 (together, the “**Principal Deed**”).
- (B) Pursuant to clause 31.1 of the Principal Deed and 9.6 of the REIT Code, the Manager and the Trustee have agreed to enter into this First Amending and Restating Deed to amend and restate the provisions of the Principal Deed in the manner set out in the First Amended and Restated Deed in the Schedule.

**THIS DEED WITNESSETH AS FOLLOWS:**

**1. Interpretation**

**1.1 Definitions**

"**Effective Date**" means the date hereof.

"**First Amended and Restated Deed**" means the Principal Deed as amended and restated pursuant to this First Amending and Restating Deed and as set out in the Schedule.

**1.2 Construction of Certain References**

All terms and references used in the Principal Deed and which are defined or construed in the Principal Deed but are not defined or construed in this First Amending and Restating Deed shall have the same meaning and construction in this First Amending and Restating Deed. Unless otherwise stated, references to “**Clauses**” and the “**Schedule**” are to be construed as references to the clauses of and the schedule to this First Amending and Restating Deed.

**1.3 Headings**

The headings in this First Amending and Restating Deed are for convenience only and shall not affect the construction hereof.

**2. Amendments to and Restatement of the Principal Deed**

**2.1 Effective Date**

The Manager and the Trustee agree that the Principal Deed shall, with effect on and from the Effective Date and subject to Clause 2.2 below, be amended and restated in the form of the First Amended and Restated Deed set out in the Schedule so that the rights and obligations of the Manager, of the Trustee and of each Holder under the Principal Deed shall, on and from the Effective Date, be governed by, and construed in accordance with, the terms of the First Amended and Restated Deed set out in the Schedule. For the avoidance of doubt, the amendments to the Principal Deed effected by this First Amending and Restating Deed shall take effect on the Effective Date.

## **2.2 Accrued Rights and Interests Not Affected**

Nothing in this First Amending and Restating Deed shall affect any accrued rights or interests of the Manager, the Trustee or the Holders under the Principal Deed existing immediately prior to the Effective Date.

## **3. Trustee's Certification**

The Trustee hereby certifies, pursuant to clause 31.1 of the Principal Deed and 9.6 of the REIT Code, that it is of the opinion that insofar as the Principal Deed is modified, altered or added to by the First Amended and Restated Deed, such modifications, alterations and/or additions:

- (i) are necessary to comply with fiscal or other statutory or official requirements (whether or not having the force of law); or
- (ii) do not materially prejudice the interests of the Holders, do not to any material extent release the Trustee, the Manager or any other person from any liability to the Holders and do not increase the costs and charges payable from the Deposited Property.

## **4. Severability**

If any provision or part of a provision of this First Amending and Restating Deed or the Schedule or its application to any party, shall be, or be found by any court or authority of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this First Amending and Restating Deed or the Schedule, all of which shall remain in full force and effect.

## **5. Third Party Rights**

A person who is not a party to this First Amending and Restating Deed may not enforce its terms, except that each Holder may enjoy the benefit of and enforce the terms of this First Amending and Restating Deed subject to the provisions of this First Amending and Restating Deed.

## **6. Governing Law and Jurisdiction**

This First Amending and Restating Deed shall be governed by, and construed in accordance with, the laws of Hong Kong. The Manager and the Trustee hereby submit to the non-exclusive jurisdiction of the courts of Hong Kong.

## **7. Counterparts**

This First Amending and Restating Deed may be executed in one or more counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

**Schedule – Form of First Amended and Restated Deed**

**(1) SPRING ASSET MANAGEMENT LIMITED  
(as Manager)**

**- and -**

**(2) DB TRUSTEES (HONG KONG) LIMITED  
(as Trustee)**

**TRUST DEED**  
constituting  
**SPRING REAL ESTATE INVESTMENT TRUST**

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**THIS DEED** is made on 14 November 2013

**BETWEEN:**

- (1) **SPRING ASSET MANAGEMENT LIMITED ("Manager")**, a company incorporated in Hong Kong and whose registered office is at Room 2801, 28/F, Man Yee Building, 68 Des Voeux Road, Central, Hong Kong; and
- (2) **DB TRUSTEES (HONG KONG) LIMITED ("Trustee")**, a company incorporated in Hong Kong and whose registered office is at Level 60, International Commerce Centre, 1 Austin Road, West Kowloon, Hong Kong.

**BACKGROUND:**

- A The parties intend to establish a real estate investment trust to be called, "Spring Real Estate Investment Trust" (the Chinese name being 春泉產業信託).
- B The Manager has agreed to act as manager and the Trustee has agreed to act as trustee of the Trust on the terms set out in this Deed.

**IT IS AGREED:**

**1. Interpretation**

**1.1 Definitions**

Unless the context otherwise requires, the following words or expressions shall have the meanings respectively assigned to them, namely:

**"Accounts"** means in respect of each Financial Year, the accounts of the Trust for that period, as referred to in clause 10.4.7;

**"Acquisition Cost"** means in relation to an Investment, the total cost of that Investment to the Trust including the Acquisition Price, Duties and Charges, valuation fees, legal costs, the Acquisition Fee, the Trustee's Additional Fees, and any other costs, disbursements and expenses incurred by the Trust in connection with the acquisition of that Investment by the Trust;

**"Acquisition Date"** means the date upon which the Investment in question is acquired by or on behalf of the Trust;

**"Acquisition Fee"** means the acquisition fee not exceeding 1.0% of the Acquisition Price of any Real Estate acquired directly or indirectly by the Trust (prorated if applicable to the proportion of the Trust's interest in the Real Estate acquired) payable to the Manager pursuant to clause 11.2.1.1;

**"Acquisition Fee Permitted Limit"** has the meaning set out in clause 11.2.1.1;

**"Acquisition Price"** means the total consideration actually paid for any acquisition of Real Estate by the Trust;

**"Adjustments"** has the meaning set out in clause 20.5.3;

**"Aggregate Development Costs"** shall have the meaning set out in clause 15.2.1;

**"Annual Distributable Income"** has the meaning set out in clause 20.5.2;



**"Approved Person"** means a person approved by the SFC pursuant to sections 104(2) and 105(2) of the SFO for the purposes of being served by the SFC with notices and decisions for: (a) the Trust; and (b) the issue of any advertisement, invitation or document;

**"Approved Valuer"** means a company or firm appointed in writing by the Trustee in its capacity as trustee of the Trust to provide a valuation of any Authorised Investment in accordance with clause 18.1;

**"Associate"** has the same meaning as defined in Chapter 14A of the Listing Rules, save that, for the purpose of interpretation of this Deed, a Special Purpose Vehicle or Joint Venture Entity held by the Trustee in its capacity as trustee of the Trust only shall not be an associate of the Trustee;

**"Auditors"** means the accountant or accountants for the time being appointed as auditor or auditors of the Trust by the Manager with the approval of the Trustee;

**"Authorised Investments"** means:

- (a) Real Estate (including Minority-owned Properties) as permitted under the Code;
- (b) any improvement or extension of or addition to or reconstruction or renovation or other development of any Real Estate (including Property Development and Related Activities);
- (c) Real Estate Related Assets;
- (d) Relevant Investments as permitted under the Code;
- (e) Cash and Cash Equivalent Items;
- (f) shares in the issued share capital of, and loans to, any Special Purpose Vehicle or Joint Venture Entity and any goodwill and other intangible assets acquired in relation to the acquisition of such shares in the Special Purpose Vehicle or Joint Venture Entity; and
- (g) investments in relation to arrangements for the purposes of enhancing the return on, or reducing the risks associated with, the Authorised Investments contemplated by paragraphs (a), (b), (c), (e) and **Error! Reference source not found.** of this definition, or of other Investments, or in respect of the Trust generally, including investments in the form of derivatives instruments for hedging purposes,

in each case whether held by the Trustee directly or indirectly through a Special Purpose Vehicle, Joint Venture Entity or otherwise pursuant to this Deed;

**"Base Fee"** means the fee payable to the Manager pursuant to clause 11.1.1;

**"Business Day"** means any day (excluding Saturdays, Sundays, public holidays and days on which a tropical cyclone warning no. 8 or above or a "black" rainstorm warning signal is hoisted in Hong Kong at any time between the hours of 9.00 a.m. and 5.00 p.m.) on which licensed banks are open for general business in Hong Kong;

**"Business Hours"** means 9.00 a.m. to 5.00 p.m. (Hong Kong time) on a Business Day;

**"Cash"** means any amount standing to the credit of any bank account of the Trust;

**"Cash Equivalent Items"** includes without limitation, deposits, short term investment accounts and money market instruments and instruments and other investments of such high liquidity and safety that they are as good as cash;

**"CCASS"** means the Central Clearing and Settlement System operated by Hong Kong Securities Clearing Company Limited or any successor system operated by Hong Kong Securities Clearing Company Limited or any successor thereto;

**"Certificate"** means a certificate issued or to be issued in accordance with clause 3.4 and schedule 2 of this Deed;

**"Charge-Out Collections"** means in relation to Real Estate and in relation to any Financial Year or part thereof, all items of air-conditioning charges, management fees, promotional charges, government rates, government rents, utility charges and cleaning and other charges payable by the tenants and the licensees in relation to that Real Estate attributable to that Financial Year or part thereof;

**"Chief Executive"** means a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the relevant entity;

**"Code"** means the Code on Real Estate Investment Trusts issued by the SFC, as the same may from time to time be modified, amended, revised or replaced, or supplemented either by published guidelines, policies, practice statements or other guidance issued by the SFC or, in any particular case, by specific written guidance issued by the SFC in response to a specific request by the Manager and/or the Trustee;

**"Collective Investment Scheme"** has the same meaning as defined in Schedule 1 of the SFO;

**"Connected Party Transaction"** means:

- (a) any transaction between any Connected Person and either the Trust or any of its subsidiaries;
- (b) if the Manager manages any other real estate investment trust other than the Trust, any transaction between the Trust and such other real estate investment trust; and
- (c) any transaction that would constitute a connected transaction for listed companies contemplated under paragraph 8.7A of the Code,

but excludes transactions which are not regarded as connected party transactions under the Code, the Listing Rules (to the extent appropriate and practicable) or any published guidelines, policies, practice statements or other guidance issued by the SFC from time to time;

**"Connected Person"** means:

- (a) the Manager;
- (b) the Trustee;
- (c) Substantial Holder;
- (d) a director or Chief Executive of any of the Manager, the Trustee or any subsidiary of the Trust, or a Former Director;

- (e) an Associate of the persons or entities in paragraph (a), (b), (c) or (d) of this definition;
- (f) a "connected subsidiary" as defined in Chapter 14A of the Listing Rules; or
- (g) a person deemed to be connected by the SFC;

**"Constitutive Document"** means each of the constitutive documents (as defined in the Code) of the Trust;

**"Convertible Instruments"** has the meaning determined in accordance with clause 7.1.6(iv);

**"Corporate Communication"** has the same meaning as defined in the Listing Rules;

**"Deal"** in relation to the Deposited Property or any part thereof includes convey, transfer, dispose, encumber and lease, and any reference to **"Dealings"** shall be construed accordingly;

**"Deed"** means this trust deed as from time to time altered, modified or added to in accordance with the provisions herein contained and shall include any deed supplemental hereto executed in accordance with the provisions herein contained;

**"Deposited Property"** means all of the assets of the Trust, including all its Authorised Investments for the time being held or deemed to be held upon the trusts of this Deed and any interest arising on subscription monies from the issuance of Units;

**"Distribution Amount"** means the amount determined in accordance with clause 20.4;

**"Distribution Calculation Date"** means in each year occurring after the Listing Date, 30 June, 31 December and/or such other date or dates as the Manager may determine in its discretion, provided that the first Distribution Calculation Date shall occur on 30 June 2014;

**"Distribution Date"** means the date on which the Distribution Amount is paid;

**"Distribution Entitlement"** means the entitlement of a Holder to the Distribution Amount determined in accordance with clause 20.4.3;

**"Distribution Period"** means:

- (a) for the first Distribution Period, the period from and including the Listing Date to and including 30 June 2014;
- (b) for the last Distribution Period, the period from and including the day after the immediately preceding Distribution Calculation Date to and including the date on which the completion of the liquidation of the Trust occurs; and
- (c) in all other circumstances, the period from and including the day after the immediately preceding Distribution Calculation Date to and including the next occurring Distribution Calculation Date;

**"Divestment Fee"** means the divestment fee payable to the Manager pursuant to clause 11.2.1.2;

**"Divestment Fee Permitted Limit"** has the meaning set out in clause 11.2.1.2;

**"Duties and Charges"** means all stamp and other duties, Taxes, governmental charges, brokerage, commissions, bank charges, transfer fees, registration fees and other duties and

charges whether in connection with the constitution of the Deposited Property or the increase of the Deposited Property or the creation, issue, sale or repurchase of Units or the sale or purchase of Investments or otherwise which, may have become or may be payable in respect of or prior to or upon the occasion of the transaction or dealing in respect of which such duties and charges are payable;

**"Financial Year"** means:

- (a) for the first Financial Year, the period from and including the Listing Date to 31 December 2013;
- (b) for the last Financial Year, the period from and including the most recent 1 January before the date on which the completion of the liquidation of the Trust occurs and including the date of such occurrence; and
- (c) in all other circumstances, the 12 month period ending on 31 December in each year;

**"Former Director"** means a person who was a director of the Manager or any subsidiary of the Trust in the last 12 months;

**"Holder"** means the person for the time being entered in the Register as the holder of a Unit and (where the context so admits) persons jointly so entered;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"IFRS"** means International Financial Reporting Standards;

**"Incentive Scheme"** means any scheme which may be adopted by the Manager from time to time pursuant to clause 7.4 for the purpose of providing equity or equity-linked incentives (whether in the form of options over Units, Convertible Instruments or otherwise) to management, executives and/or employees of the Manager or any Special Purpose Vehicle (provided that such Special Purpose Vehicle is owned and controlled by the Trust) or to other specified participants, with all fees, charges and expenses in connection with the adoption, implementation, administration, operation and maintenance of Incentive Scheme(s) (including but not limited to those related to the issue of new Units and/or Convertible Instruments pursuant to Incentive Scheme(s)) to be borne by the Trust;

**"Initial Public Offering"** means the initial offer of Units to the public in Hong Kong pursuant to an Offering Circular;

**"Interim Distributable Income"** has the meaning set out in clause 20.5.1;

**"Investment"** means any one of the assets forming for the time being a part of the Deposited Property or, where appropriate, being considered for acquisition to form part of the Deposited Property;

**"Issue Price"** means the price per Unit at which Units are from time to time issued, as determined in accordance with clause 7.2;

**"law"** means any law, statute, ordinance, code, rule, regulation, judgment, decree, order, writ, award, injunction or determination of any authority (whether with the force of law or not), including the Code and any conditions imposed by the SFC on the authorisation of the Trust and the licence of the Manager under the SFO;

**"Joint Venture Entity"** means an entity or partnership or other arrangement in which or through which the Trust invests in any jointly owned Real Estate as contemplated under paragraph 7.7A of the Code, which may be majority-owned or minority-owned by the Trust;

**"JV Valuer"** has the meaning set out in clause 18.6.3;

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

**"Listing Date"** means the date on which Units are first listed on the SEHK;

**"Listing Rules"** means the listing rules for the time being applicable to the listing of Units on the SEHK (modified as appropriate pursuant to 2.26 of the Code);

**"Management Fee"** means the fees payable to the Manager comprising the Base Fee, the Variable Fee, the Acquisition Fee and the Divestment Fee;

**"Manager"** means Spring Asset Management Limited, or any other person appointed to act as manager of the Trust in accordance with the provisions of this Deed;

**"Market Price"** in relation to a Unit has the meaning set out in clause 7.2.3;

**"Maximum Cap"** has the meaning set out in clause 15.3.7;

**"Minority-owned Property"** means Real Estate which is jointly owned by the Trust and in which the Trust does not have majority ownership and control. For the avoidance of doubt, Real Estate which is in the nature of car parks, units or floors in a building or complex which are wholly or majority-owned by the Trust shall not be regarded as Minority-owned Properties;

**"Net Asset Value of the Deposited Property"** means at any time the Value of the Deposited Property, less the Liabilities;

**"Net Property Income"** means in relation to any period, the Total Property Revenue for that period less the Total Property Expenses for that period;

**"Non-qualified Minority-owned Property"** means a Minority-owned Property which is not a Qualified Minority-owned Property;

**"Notifiable Transaction"** has the meaning given to it in Chapter 14 of the Listing Rules;

**"Offering Circular"** means any offering circular prepared and issued by the Manager in connection with any issue of Units;

**"Ordinary Resolution"** means a resolution passed at a meeting of Holders duly convened and held in accordance with the provisions contained in schedule 1 of this Deed and carried by a simple majority of the votes of those Holders present and entitled to vote in person or by proxy where the votes shall be taken by way of poll;

**"Property Development and Related Activities"** means the acquisition of uncompleted units in a building by the Trust and property developments (including both new development projects and re-development of existing properties) undertaken in accordance with the Code, but does not (for the purpose of determining whether the Property Development Cap has been complied with) include refurbishments, retro-fittings and renovations;

**"Property Development Cap"** means 10% of the Gross Asset Value of the Deposited Property, being the threshold limit on the Aggregate Development Costs;

**"Property Value"** means the Value of all Real Estate, whether directly held by the Trustee or indirectly held by the Trustee through a Special Purpose Vehicle or Joint Venture Entity provided that, where a Special Purpose Vehicle or Joint Venture Entity is not wholly owned by the Trust, the Value of the Real Estate owned by that Special Purpose Vehicle or Joint Venture Entity (as the case may be) which is attributable to the Trust shall be the proportion of the total value of the relevant Real Estate which corresponds with the Trust's shareholding or equity interest or interest of a similar nature in the Special Purpose Vehicle or Joint Venture Entity (as the case may be);

**"Public Float Percentage"** in relation to the Trust, has the meaning set out in clause 5.5;

**"Qualified Institutional Investor"** has the definition set out in Article 10 of the Cabinet Ordinance Concerning Definitions under Article 2 of the Financial Instruments and Exchange Act of Japan;

**"Qualified Minority-owned Property"** means a Minority-owned Property which satisfies the overarching principles and specific conditions in paragraph 7.7C of the Code and, where required, has been approved by the SFC as a Qualified Minority-owned Property;

**"Real Estate"** means any land, and any interest, option or other right in or over any land. For the purposes of this definition **"land"** includes land of any tenure, whether or not held apart from the surface, and buildings or parts thereof (whether completed or otherwise and whether divided horizontally, vertically or in any other manner) and tenements and hereditaments, corporeal and incorporeal, and any estate or interest therein, and shall include, for the avoidance of doubt, industrial properties, warehouses, commercial shopping malls, hotels and serviced apartments;

**"Real Estate Related Assets"** means assets incidental to the ownership of Real Estate, including, without limitation, furniture, carpets, furnishings, machinery and plant and equipment installed or used or to be installed or used in or in association with any Real Estate;

**"Record Date"** means the date or dates in respect of each Distribution Period determined by the Manager for the purpose of determining the Distribution Entitlement of the Holders to the Distribution Amount and the date or dates to determine the Holders entitled to receive notice of and to vote at any meeting of the Trust;

**"Register"** means the Register of Holders referred to in clause 6.1;

**"Registrar"** means the Trustee or such other person or persons as shall from time to time be appointed by the Trustee with the recommendation or prior approval of the Manager to perform all or any of the duties and functions of keeping and maintaining the Register under this Deed;

**"Relevant Date"** has the meaning pursuant to clause 7.1.6(v); **"Relevant Investments"** has the meaning ascribed to it in clause 15.2.4;

**"Relevant Law"** has the meaning pursuant to clause 1.8.2;

**"Repurchase Circular"** means circular dated 31 January 2008 issued by the SFC with respect to "On-market Unit Repurchases by SFC authorised REITs";

**"Sale Price"** means, in relation to any Real Estate in the form of land sold directly or indirectly by the Trust, the total consideration receivable by the Trust for such Real Estate, or the shares

or equity interest or other interest of similar nature in the relevant Special Purpose Vehicle or Joint Venture Entity and any shareholders' loans to the relevant Special Purpose Vehicle or Joint Venture Entity, as applicable, which for the avoidance of doubt excludes any transaction costs;

**"SEHK"** means The Stock Exchange of Hong Kong Limited;

**"SFC"** means the Securities and Futures Commission referred to in section 3 of the SFO;

**"SFO"** means the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong);

**"Special Distribution"** has the meaning set out in clause 20.1.2;

**"Special Distribution Record Date"** means the record date in respect of a Special Distribution determined by the Manager for the purpose of determining the Distribution Entitlement of the Holders to the Special Distribution;

**"Special Purpose Vehicle"** means a special purpose vehicle that is incorporated, owned and controlled in accordance with the Code but, for the avoidance of doubt, does not include a Joint Venture Entity minority-owned by the Trust;

**"Special Resolution"** means a resolution passed at a meeting of Holders duly convened and held in accordance with the provisions contained in schedule 1 of this Deed and carried by 75% or more of the votes of those Holders present and entitled to vote in person or by proxy where the votes shall be taken by way of poll;

**"Specified Stock Exchange"** has the same meaning as defined in Part 3 of Schedule 1 of the SFO;

**"subsidiary"** has the meaning given to it in the Listing Rules;

**"Substantial Holder"** means a Holder who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the Trust or any subsidiary of the Trust;

**"Takeovers Code"** means the Codes on Takeovers and Mergers and Share Buy-backs issued by the SFC;

**"Tax"** means any income tax, duty and any other taxes, duties, levies, imposts, deductions and charges and any interests penalties or fines imposed in connection with any of them;

**"Total Property Expenses"** means in relation to any period, all costs and expenses incurred for the account of the Trust in the ownership, operation, maintenance, management and marketing of Real Estate held by the Trust attributable to that period, including but not limited to the following:

- (a) the fees payable to the property manager in relation to such Real Estate;
- (b) building management fees and maintenance and other contributions required under the relevant deed of mutual covenants to be paid in respect of such Real Estate;
- (c) government rents and rates and Taxes in relation to such Real Estate;
- (d) expenditure on fit-out, alterations, additions or improvements in or to such Real Estate, and the expenditure spent on landlord provisions and any tenancy works,

including but not limited to corridors erection and partitioning of units, that are incurred primarily for marketing purposes or that may be required under or incidental to the tenancy agreements, surrender agreements and licences, as the case may be, for the lease and licence of units in such Real Estate;

- (e) incentive allowances or subsidies given to tenants in order to induce tenants to take up tenancies or to renew their tenancies, including but not limited to, relocation allowance and fitting out allowance;
- (f) utility charges for heating, air-conditioning, electricity, gas, water, telephone and any other utilities;
- (g) costs of services including contract cleaning fees, contract security fees, repair and maintenance expenses;
- (h) legal fees and related expenses in relation to collection of overdue rent as well as actions for recovery of possession;
- (i) legal fees, stamp duty and related expenses in relation to tenancy agreements, surrender agreements and licences for the lease or licence of units in such Real Estate;
- (j) advertising, promotion and public relations expenses;
- (k) commissions and expenses to the property manager and other leasing agents for the lease or licence of units in such Real Estate;
- (l) insurance premiums for insurances taken out for or in relation to the Real Estate;
- (m) audit and valuation fees and other professional fees;
- (n) expenses for purchase and replacement of Real Estate Related Assets;
- (o) allowance for doubtful accounts or bad debts, as the Manager (after consultation with the Auditors) shall determine in accordance with IFRS;
- (p) expenses related to the operation of the parking facilities of such Real Estate,

but, shall not include the following:

- (a) expenditure on alterations, additions or improvements in or to such Real Estate of a capital nature which are not regarded as operating costs and expenses in accordance with IFRS;
- (b) all depreciation or amortisation costs of the Real Estate; and
- (c) interest on loans taken up by the Trust;

**"Total Property Revenue"** in relation to any period, means all income accruing or resulting from the ownership or leasing of Real Estate held by the Trust for that period, including but not limited to its base rental income, turnover rent, licence fees, compensations, Charge-Out Collections and other sums (after deduction for all rebates, refunds, credits or discounts and rebates for rent free periods) due from tenants, licensees and concessionaires, business interruption insurance payments, car park income, atrium income, interest income, advertising and other income attributable to the operation of such Real Estate for that period, but shall exclude the following:



- (a) proceeds derived or arising from the sale and/or disposal of the Real Estate and/or the Real Estate Related Assets, or any part thereof;
- (b) all proceeds from insurances taken out (other than business interruption insurance payments which shall form part of Total Property Revenue);
- (c) all rental and other refundable security deposits; and
- (d) all goods and services or value added taxes (whether in force at present or in the future), charged to tenants, licensees and users of the Real Estate for the sale or supply of services or goods, which taxes are accountable by the Trust to any tax authorities;

**"Trading Day"** means any day on which the SEHK is open for the business of dealing in securities;

**"Trust"** means the Collective Investment Scheme, constituted as a trust by this Deed and known as **"Spring Real Estate Investment Trust"** and which shall be 春泉產業信託 in Chinese, or, in accordance with clause 2.2 by such other name as the Manager (with the approval of the Trustee or the approval of the Holders by an Ordinary Resolution) may from time to time determine;

**"Trustee"** means DB Trustees (Hong Kong) Limited, or any other person appointed to act as trustee of the Trust in accordance with the provisions of this Deed;

**"Trustee's Additional Fees"** has the meaning set out in clause 11.4.2;

**"Trustee Ordinance"** means the Trustee Ordinance (Cap. 29 of the Laws of Hong Kong);

**"Unauthorised Investment"** has the meaning set out in clause 18.10;

**"Underwriting Agreements"** has the meaning set out in clause 5.3.3;

**"Unit"** means one undivided share in the Trust;

**"Value"** except where otherwise expressly stated, means with reference to any Authorised Investment or the Deposited Property, its value for the time being as determined pursuant to clause 18;

**"Variable Fee"** means the fee payable to the Manager pursuant to clause 11.1.2;

**"Website"** means the website of the Trust, at such address or domain name which is notified to Holders from time to time; and

**"Year"** means a calendar year.

## 1.2 Gross Asset Value of the Deposited Property

The Gross Asset Value of the Deposited Property shall be determined in accordance with the following formula:

$$\text{Gross Asset Value of the Deposited Property} = \text{GAV} - \text{D} \pm \text{V}$$

Where:

GAV	=	total assets as shown in the Trust's latest published accounts;
D	=	the amount of any distribution proposed in the Trust's latest published accounts and any distribution declared since the issuance of the Trust's latest published accounts; and
V	=	the change (if any) in the Approved Valuer's (or, where applicable, the JV Valuer's) determination of the Value of the Trust's Real Estate, based on its valuation report(s) issued subsequent to the issuance of the Trust's latest published accounts.

### 1.3 Currencies

Unless expressly provided to the contrary, references to "**Hong Kong Dollar**" or "**HK\$**" are to the lawful currency of Hong Kong.

Unless expressly provided to the contrary, references to "**Renminbi**" or "**RMB**" are to the lawful currency of the People's Republic of China.

### 1.4 Sale and Purchase

References herein to the sale or purchase of Investments, include any acquisition, disposal, subscription for or discounting of, dealing in, or entering into writing of or fulfilment of obligations under, any contract relating to Investments for the account of the Trust or any Special Purpose Vehicle (or, where applicable, any Joint Venture Entity).

### 1.5 Statutes etc.

Any reference herein to any enactment shall be deemed also to refer to any statutory modification, codification or re-enactment thereof. Any reference herein to any instrument, agreement or other document shall be deemed also to refer to such instrument, agreement or other document as from time to time amended, restated or otherwise modified or supplemented.

### 1.6 Miscellaneous Construction

In this Deed, except as the context otherwise requires:

- 1.6.1 words importing the singular number only shall include the plural and vice versa;
- 1.6.2 words importing the masculine gender only shall include the feminine and neuter genders and vice versa;
- 1.6.3 words importing persons include corporations;
- 1.6.4 the words "**written**" or "**in writing**" include printing, engraving, lithography, or other means of visible reproduction or partly one and partly the other; and
- 1.6.5 references to "**clauses**" and "**schedules**" are to be construed as references to the clauses and sub-clauses of, and the schedules to, this Deed.

### 1.7 SFC Conditions

All the provisions of this Deed are subject to any conditions imposed in writing by the SFC from time to time, including in respect of any waiver or modification from strict compliance with the Code, the Takeovers Code and any condition of authorisation of the Trust and any such conditions are deemed to be included and prevail over any other provisions of this Deed (whether more onerous or otherwise) to the extent of any inconsistency, provided always that any further duties of the Trustee or the Manager in relation to the Trust imposed in consequence of such condition or conditions shall take effect only upon receipt of such condition or conditions by the Trustee or the Manager (as the case may be). Where the SFC issues any such condition to the Manager from time to time, the Manager shall promptly notify the Trustee and provide a copy of such condition to the Trustee and take all necessary steps in conjunction with the Trustee to effect any such conditions.

## **1.8 Clause Paramount**

- 1.8.1 Despite anything expressed or implied to the contrary in this Deed, if there is a conflict between this clause 1.8 and any other provision of this Deed, this clause 1.8 prevails to the extent of the conflict.
- 1.8.2 The Trustee has all of the powers necessary to observe an applicable law ("**Relevant Law**") and the Trustee may:
- 1.8.2.1 do, or cause to be done, any matter or thing necessary in order to satisfy a Relevant Law; and
  - 1.8.2.2 refrain from doing any matter or thing which would cause a breach of, or non-compliance with, a Relevant Law.
- 1.8.3 Each provision of this Deed, and each power exercisable by the Trustee or any other person under this Deed, is to be severed, read down or limited to the extent necessary in order to:
- 1.8.3.1 avoid any provision of this Deed being rendered void or invalid under a Relevant Law;
  - 1.8.3.2 generally ensure observance of a Relevant Law; and
  - 1.8.3.3 ensure that, as far as lawfully possible, this Deed is valid and enforceable.
- 1.8.4 Notwithstanding any other provisions in this Deed, nothing in this Deed shall exempt or be construed as to exempt the Manager or the Trustee from any liability to Holders imposed under any Relevant Law or attributable to breaches of trust through fraud, negligence or wilful default or breaches of this Deed or any Constitutive Document to which the Trustee or the Manager (as the case may be) is a party, or breaches of the Code or other applicable law or regulations by the Trustee or the Manager (as the case may be), nor may the Manager and the Trustee be indemnified against such liability by the Holders or at the Trust's expense. For so long as the Trust is authorized by the SFC under section 104 of the SFO as a real estate investment trust, section 41O of the Trustee Ordinance (Cap. 29 of the Laws of Hong Kong) shall not apply to the extent that is inconsistent with clause 9.4.4.3 of this Deed (reflecting paragraph 4.2(a)(iii) of the Code), and shall not in any way operate to exempt or diminish any of the Trustee or the Manager from any of its duties and liabilities under the Code.

## **1.9 Headings**

The headings in this Deed are for convenience only and shall not affect the construction hereof.

## **1.10 Non-corporate Entities**

Having regard to the fact that Special Purpose Vehicles and Joint Venture Entities may include non-corporate entities, when used in this Deed in relation to a Special Purpose Vehicle or Joint Venture Entity:

- 1.10.1 references to "incorporation" (or similar or derivative words) shall, mutatis mutandis, be deemed to include references to all relevant methods of establishment of the Special Purpose Vehicle or Joint Venture Entity (as the case may be);
- 1.10.2 references to "shares" and "shareholders" (or similar or derivative words) shall, mutatis mutandis, be deemed to include references to all relevant types of ownership interests in or in respect of the Special Purpose Vehicle or Joint Venture Entity (as the case may be), and holders of such ownership interests, respectively; and
- 1.10.3 references to "board of directors" and "director" (or similar or derivative words) shall, mutatis mutandis, be deemed to include references to the equivalent or comparable governing body of the Special Purpose Vehicle or Joint Venture Entity (as the case may be), and a member of such governing body, respectively.

## **2. Constitution of the Trust**

### **2.1 Declaration of Trust**

The Trustee declares that the Trust shall initially be constituted by the Trustee holding HK\$100 in cash as the Deposited Property (settled by the Manager on the date of this Deed) on trust and for the benefit of the Manager, pending the issuance of Units pursuant to clause 7, at which time (i) the Manager shall cease to have any interest of any nature whatsoever in such Deposited Property (or any income arising therefrom) and (ii) the Trustee shall hold the Deposited Property on trust and for the benefit of the Holders *pari passu* according to the number of Units held by each Holder.

### **2.2 Name of the Trust**

- 2.2.1 Subject to clause 28.1.2, the name of the Trust is "Spring Real Estate Investment Trust", which in Chinese shall be "春泉產業信託".
- 2.2.2 If the Manager ceases to be the manager of the Trust, the Trustee shall as soon as possible take all necessary steps to effect a change of the name of the Trust to such name which does not have the word "Spring" (or in Chinese, 春泉) or any variation thereof forming part of the name of the Trust, or the Holders shall be deemed to have agreed to such deletion of the word "Spring" (or in Chinese, 春泉) or any variation thereof from the name of the Trust.
- 2.2.3 Without prejudice to clause 2.2.2, the name of the Trust may be changed to such other name as the Manager, with the approval of the Trustee or the approval of Holders by an Ordinary Resolution, may from time to time determine.

### **2.3 Commencement of the Trust**

The Trust shall commence on and from the time the cash amount under clause 2.1 is received by the Trustee from the Manager.

## **2.4 Charges and Fees**

Subject to compliance with the provisions in the Code, including but not limited to paragraph 9.13 of the Code, there shall be payable out of the Deposited Property, in addition to any other charges, fees or expenses expressly authorised by this Deed by way of direct payment or reimbursement of the Trustee or the Manager, all Liabilities, fees, costs, charges and expenses properly suffered or incurred by the Trustee or the Manager in the proper performance of its obligations or the proper exercise of its powers under this Deed, or otherwise arising out of or in connection with this Deed or other Constitutive Documents, including but not limited to:

- 2.4.1 all outgoings (including fees, costs, charges and expenses) which are necessary or desirable for the investment, management, administration or operation of the Trust and the Deposited Property including but not limited to the Total Property Expenses, rates, development and redevelopment costs (to the extent permitted by the Code), quantity surveyors' fees, subdivision and building costs, property taxes and any other statutory or regulatory charges, utility charges, repairs, alterations and maintenance, normal building operating expenses, insurance (including, without limitation, insurance premiums for insurance taken out for or in relation to directors liability insurance and professional indemnity insurance in respect of directors and officers of the Special Purpose Vehicles and, where applicable, the Joint Venture Entities), costs or leasing systems, computer-related charges (including without limitation, maintenance of computer equipment or software used solely for the purpose of managing the Deposited Property), energy charges, wages and salaries, cleaning charges and costs and expenses incurred in conducting baseline studies, costs and expenses incurred for any decontamination of the Deposited Property or any Investment or for compliance with any agreements relating to the Deposited Property or any service charges, land charges, licence fees, landscaping costs, administrative fees, land premium, regularisation fees, reasonable travel and accommodation expenses and other out-of-pocket expenses and, to the extent permitted by the Code or any applicable law or regulation, costs and expenses for promotion, roadshow, marketing, press conferences, luncheons, presentations and other public-relations related fees, costs or expenses incurred in relation to any fund raising exercise by the Trust, any Investment or otherwise in connection with the Trust;
- 2.4.2 the cost of engaging or employing any expert (including without limitation, bankers, lawyers, accountants and valuers) or independent adviser and the fees and expenses of such expert (including without limitation, bankers, lawyers, accountants and valuers) or independent adviser;
- 2.4.3 all stamp duty and other charges and duty payable from time to time on or in respect of this Deed;
- 2.4.4 all Acquisition Costs and Duties and Charges, excluding in accordance with clause 11.2.3, any fees payable to third party real estate agents or brokers in connection with any acquisition or divestment of Real Estate;
- 2.4.5 all expenses incurred and transaction fees charged in relation to the acquisition, holding, registration and realisation of any Investment or the holding in the name of the Trustee, any Special Purpose Vehicle, any Joint Venture Entity and/or their nominees of any Investment or the custody of the documents of title thereto (including insuring documents of title against loss in shipment, transit or

otherwise and charges made by agents or delegates of the Trustee, the relevant Special Purpose Vehicle or the relevant Joint Venture Entity for retaining documents in safe custody) and all fees and expenses of the custodians, joint custodians and sub-custodians appointed pursuant to clause 9.4.2 and all transactional fees of the Trustee as may be agreed from time to time between the Manager and the Trustee in relation to all transactions involving the whole or any part of the Deposited Property;

- 2.4.6 all brokerage, commission, stamp duty, legal and other costs, and valuation fees incurred in, and expenses relating to, the acquisition or disposal or attempted acquisition or disposal of or otherwise in relation to Investments;
- 2.4.7 all issuing fees, costs and expenses, underwriting fees charges and expenses, underwriter's co-ordination and structuring fees and expenses, placement fees, charges and expenses and brokerage in connection with any subscription or sale of Units or Convertible Instruments (whether or not any such subscription or sale is completed or aborted) by any issue manager, underwriter or placement agent appointed in relation to any issue of Units or Convertible Instruments and all fees, costs and expenses under clause 7, notwithstanding that such fees, charges and expenses may be incurred by or payable to any Connected Person and all other fees, costs and expenses (including costs and expenses incurred in respect of roadshows, press conferences, luncheons, presentations, and other public relations-related fees, costs or expenses and fees for public relations consultants and Unit/Convertible Instrument issuance-related expenses) in connection with any offering or issue of Units or Convertible Instruments, and for the avoidance of doubt, shall include without limitation the subscription or sale of Units before the Listing Date or in connection with the Listing;
- 2.4.8 all fees, charges and expenses incurred in connection with the investigation, research, negotiation, acquisition, development, redevelopment or refurbishment (if and to the extent permitted by the Code), registration, custody, holding, management, supervision, repair, renovation improvement, maintenance, valuation, sale of or other dealing with an Investment (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Investments notwithstanding that such fees, charges and expenses may be incurred by or payable to the Manager or any Connected Person from time to time;
- 2.4.9 all fees, charges and expenses incurred in relation to the assigning and maintaining of a credit rating to the Trust;
- 2.4.10 all taxation payable in respect of income or the holding of or Dealings with the Deposited Property or any Investment;
- 2.4.11 all expenses incurred in the collection of income (including expenses incurred in obtaining tax repayments or relief and agreement of tax liabilities), or the determination of taxation in relation to the Trust;
- 2.4.12 all interest, fees, charges and expenses (including, without limitation, legal fees and costs and fees and costs related to debt arrangement and underwriting of debt instruments) on any lending or borrowings effected under clause 16 and in negotiating, entering into, varying, carrying into effect (with or without variation) and terminating any lending or borrowing arrangement (whether or not any such debt arrangement or underwriting is completed or aborted);

- 2.4.13 all costs and expenses of and incidental to preparing any such supplemental deed as is referred to in clause 31 (including, without limitation, legal fees and costs) or any supplemental deeds for the purpose of ensuring that the Trust conforms to legislation coming into force after the date hereof;
- 2.4.14 all fees, costs and expenses (including costs and expenses incurred in respect of roadshows, press conferences, luncheons, presentations, (including but not limited to the preparation of reports and materials and reimbursement of out-of-pocket expenses) and other public relations-related fees, costs or expenses and fees for public relations consultants and Unit/Convertible Instrument issuance-related expenses) incurred in connection with convening and holding of meetings of Holders or meetings with investors or analysts, and all fees, costs and expenses incurred in connection with any public relations-related activities in connection with the Trust other than the fees, costs and expenses already referred to above or in clause 2.4.6 and all costs and expenses in connection with the maintenance of communications channels and relationships with Holders, investors and analysts;
- 2.4.15 any amounts required to indemnify the Trustee pursuant to clause 12.3 or the Manager pursuant to clause 13.3;
- 2.4.16 the remuneration of the Trustee and the Manager authorised by this Deed;
- 2.4.17 all fees and expenses incurred for the provision and maintenance of the Register (including the fees and expenses of the Registrar) and the provision of fund valuation and accounting services in relation to the Trust;
- 2.4.18 all fees or costs incurred in the administration of the Trust, including, without limitation, any expense, charge or fee incurred in relation to the appointment by the Trustee of any process agent outside of Hong Kong;
- 2.4.19 all fees and expenses of the Auditors in connection with the Trust, and all fees and expenses related to keeping of accounting records incurred by the Trustee or any of its agents in connection with the Trust;
- 2.4.20 all costs and disbursements incurred in connection with:
- 2.4.20.1 the negotiation for and acquisition of any Investment; and
- 2.4.20.2 any Dealing with or disposal of any Investment and any negotiation for an leading of any Investment, including selling commissions and advisory fees payable to real estate agents, property managers, asset managers or advisers notwithstanding that such real estate agents, property managers, asset managers or advisers may be the Manager or any Connected Person;
- 2.4.21 all fees and expenses incurred in connection with the retirement or removal of the Manager, the Auditors or the Trustee or the appointment of a new manager, new auditors or a new trustee;
- 2.4.22 all fees, costs and expenses (including without limitation, any legal fees and costs) incurred by the Trustee and the Manager in establishing, forming, terminating or merging the Trust and, to the extent permitted by the Code or any relevant law, regulation, rule or directive, all fees, costs and expenses incurred in the initial and subsequent marketing, promotion, advertising and sale of Units,

including the fees and expenses of any consultants and marketing and sales agents appointed by the Manager and all costs and expenses, including reimbursement of out-of-pocket expenses, incurred and/or to be incurred from time to time in connection with any exhibition and conference for the marketing, promotion or advertising of Units or the Trust;

- 2.4.23 all fees and expenses, including reimbursement of out-of-pocket expenses, of any bankers, accountants, financial advisers, legal advisers, tax advisers, computer experts or other professional advisers employed or engaged and/or to be employed or engaged by the Trustee or the Manager in the proper performance of their respective obligations and duties under this Deed in connection with the acquisition, holding, registration and realisation of any Investment of the Trust and/or by the Manager, the Trustee, issue managers, underwriters and placement agents and/or any vendor in connection with the listing of Units and/or the Trust on the SEHK or any other Specified Stock Exchange and the offer, subscription, sale and purchase of the Units notwithstanding that such fees, charges and expenses may be incurred by or payable to any Connected Person;
- 2.4.24 all costs and expenses of and incidental to preparing cheques, warrants, statements, circulars and notices,
- 2.4.25 all fees and expenses incurred as a result of and incidental to preparing, updating, printing, issuing, lodging and registering any Offering Circular preparing, printing and issuing any explanatory memorandum, publicity material or other sales literature relating to the Trust, or determining and publishing the prices of Units;
- 2.4.26 all printing, publishing, postage, telex, facsimile, telephone, internet, on-line computer and web development costs and other disbursements properly incurred by the Trustee or the Manager in sending, publishing or otherwise disseminating to Holders, copies of the Accounts or any reports or statements issued by the Manager to the Holders or otherwise in the proper performance of their respective obligations and duties under this Deed;
- 2.4.27 all other expenses, charges or fees properly and reasonably incurred by the Trustee or the Manager as a consequence of the due performance by the Trustee or the Manager of their respective obligations and duties under this Deed, including (without limitation) any expense, charge or fee incurred as a result of:
  - 2.4.27.1 the application for and maintenance of any required licence;
  - 2.4.27.2 the introduction of any change in, or in the interpretation or application of, any law, regulation, rule or directive (whether or not having the force of law) of any agency of state or regulatory or supervisory body; or
  - 2.4.27.3 compliance by the Trustee or the Manager with any such law, regulation, rule or directive;
- 2.4.28 all costs and expenses incurred in the subdivision or consolidation of Units pursuant to clause 3.5;
- 2.4.29 all costs and fees incurred in connection with the authorisation or approval of the Trust under any law or regulation;



- 2.4.30 all costs and expenses incurred by the Trustee and the Manager in obtaining and/or maintaining the listing of Units on the SEHK or any other Specified Stock Exchange and/or the authorisation or other official approval or sanction of the Trust under the SFO or any other law or regulation in any part of the world, including without limitation, costs and expenses for advertising or promotional activities and roadshow expenses in relation to the listing of the Units, all fees payable to the SEHK and/or the SFC and any registration fees applicable;
- 2.4.31 all fees incurred in relation to the calculation of the Value of Authorised Investments, the Net Asset Value of the Deposited Property, the Net Property Income, the Property Value and/or preparing the financial statements of the Trust;
- 2.4.32 all fees of and expenses incurred by the Trustee and the Manager or their respective agents or delegates in acquiring or incorporating any company or other entity, including Special Purpose Vehicles and, where applicable, Joint Venture Entities, for the purpose of holding Investments and the costs of maintaining, managing and administering such company or other entity and, where applicable, the costs of liquidating, winding up or terminating the company or other entity;
- 2.4.33 all property management fees incurred, by the Trustee and/or the Manager or its agent or payable to the Manager in respect of the Investments;
- 2.4.34 all fees, charges and expenses of asset managers, property managers, project managers and collection agents appointed in relation to the operation and management of the Investments which are Real Estate notwithstanding that such asset managers, property managers, project managers and collection agents may be the Manager or any Connected Person;
- 2.4.35 all fees, charges, expenses and liabilities incurred or to be incurred in relation to the administration and investment activities of the Trust or the Trustee and/or the Manager rendering any additional services (not set out in this Deed), following the proposed termination or merger of the Trust, in order to ensure its proper termination and distribution of proceeds to the Holders or merger; and
- 2.4.36 all fees, charges, expenses and liabilities incurred in relation to the implementation, administration and operations in relation to any Incentive Scheme including but not limited to any and all costs and expenses (i) relating to the adoption of any Incentive Scheme, and (ii) associated with the issue of new Units pursuant to such Incentive Scheme,

and provided that there are sufficient funds in the Trust (in the event that any of the foregoing fees, charges and expenses is invoiced to the Manager) the Trustee shall make the relevant payment of such fees, expenses and charges in so far as practicable within 14 Business Days upon the production by the Manager (if applicable) of supporting invoices and other documents.

## **2.5 Other Trusts**

- 2.5.1 Nothing herein contained shall be construed so as to prevent the Trustee from acting as the trustee of trusts separate and distinct from the Trust and the Trustee shall not in any way be liable to account to the Holders or any other person for any profit or benefit made or derived hereby or in connection therewith.
- 2.5.2 To the extent permitted by the Code or any applicable laws and regulations, the Manager shall be entitled to act as manager of other trusts separate and distinct from the Trust and the Manager shall not in any way be liable to account to the

Holders or any other person for any profit or benefit made or derived thereby or in connection therewith.

### **3. Holders, Units and Certificates**

#### **3.1 Interest of Holders**

- 3.1.1 Other than the beneficial interest of the Manager pursuant to clause 2.1, the beneficial interest in the Trust is divided into Units.
- 3.1.2 No Unit shall confer on any Holder or person claiming under or through him any interest or share in any particular part of the Deposited Property.
- 3.1.3 A Holder has no equitable or proprietary interest in the Deposited Property.
- 3.1.4 A Holder shall not be liable to the Manager or the Trustee to make any further payments to the Trust after he has fully paid the consideration to acquire his Units and no further liability shall be imposed on such Holder in respect of his Units.
- 3.1.5 A Holder may not:
  - 3.1.5.1 interfere or seek to interfere with or question the rights, powers, obligations, authority or discretion of the Trustee or the Manager to the extent those rights, powers, obligations, authority or discretion are properly exercised or performed under this Deed;
  - 3.1.5.2 claim or exercise any right in respect of the Deposited Property or any part of the Deposited Property or lodge any caveat or other notice affecting the Deposited Property or any part of the Deposited Property; or
  - 3.1.5.3 require that any of the Deposited Property or any part of the Deposited Property (or of any estate or interest in the Deposited Property or in any part of the Deposited Property) be transferred to the Holder.
- 3.1.6 Nothing in or under this Deed makes the Trustee the agent of a Holder or creates any relationship other than that of beneficiary and trustee.

#### **3.2 Deed to Bind Holders**

The terms and conditions of this Deed shall be binding on each Holder and all persons claiming through or under him as if he had been party thereto and as if this Deed contained covenants on the part of each Holder to observe and be bound by all the provisions hereof and an authorisation by each Holder to do or refrain from doing all such acts and things as this Deed may require or authorise the Trustee or the Manager (as the case may be) to do.

#### **3.3 Copy of Deed Available for Inspection**

A copy of this Deed for the time being in force shall be made available for inspection by the public in Hong Kong, free of charge at all times on the Website or during Business Hours at the place of business of the Manager and that of the approved person in Hong Kong and shall be supplied by the Manager to any person on application at a charge of HK\$500 (or such other reasonable amount as the Manager may determine from time to time) per copy.

### **3.4 Certificates**

Subject to the provisions as provided in schedule 2 of this Deed, Units shall be evidenced by Certificates in such form as may from time to time be agreed between the Manager and the Trustee. Certificates may be issued in any denomination of one or more whole Units. Each Certificate shall bear a serial number, shall be dated and shall specify the number of Units evidenced thereby and the name of the Holder.

### **3.5 Sub-division and Consolidation of Units**

The Manager may at any time with the approval of the Holders by Ordinary Resolution and on prior written notice given by the Manager to the Trustee and each Holder, determine that each Unit shall be sub-divided into two or more Units or consolidated with one or more other Units and the Holders shall be bound accordingly. The Manager shall instruct the Registrar to amend the Register and the Register shall be altered accordingly to reflect the new number of Units held by each Holder as a result of such sub-division or consolidation.

### **3.6 Units to be Held Free from Equities**

A Holder entered in the Register as the registered holder of Units shall be the only person to be recognised by the Trustee or by the Manager as having any right, title or interest in or to the Units registered in his name and the Trustee and the Manager may recognise such Holder as absolute owner thereof and shall not be bound by any notice to the contrary and shall not be bound to take notice of or to see to the execution of any trust, express, implied or constructive, save as herein expressly provided or save as required by some court of competent jurisdiction to recognise any trust or equity or other interest affecting the title to any Units. Save as provided in this Deed, no notice of any trust, express, implied or constructive, shall be entered on the Register.

### **3.7 Restrictions**

The Holders shall not give any directions to the Manager or the Trustee (whether at a meeting of Holders convened pursuant to clause 22 or otherwise), and the Manager and the Trustee shall not be bound to follow such directions, if it would require the Trustee or Manager to do or omit doing anything which may result in:

- 3.7.1 the exercise of any discretion expressly conferred on the Trustee or the Manager by this Deed or the determination of any matter which under this Deed requires the agreement of either the Trustee or the Manager or both of them; provided that nothing in this clause 3.7.1 shall limit the right of a Holder to require the proper operation of the Trust in accordance with this Deed or the compliance by the Trustee or the Manager with their respective obligations under this Deed; or
- 3.7.2 the Trust ceasing to comply with the Code, the Listing Rules or any condition to the authorisation of the Trust by the SFC.

### **3.8 Extent of Holder's Rights**

In no event shall a Holder have or acquire any rights against the Trustee or the Manager except as expressly conferred on the Holder hereby nor shall the Trustee be bound to make any payment to any Holder except out of the funds held by it for that purpose under the provisions of this Deed.

## **4. Code and Listing Rules**

### **4.1 Compliance with the Code**

4.1.1 The Manager and the Trustee shall in the performance of their respective duties under this Deed with respect to the Trust at all times comply with applicable provisions of the Code, to the extent that they apply to them as if the same were set out in this Deed, subject to compliance with any applicable waiver or exemption given by the SFC in respect of the Code.

4.1.2 In the event of any conflict or inconsistency between:

4.1.2.1 the provisions of the Code and any such waivers or exemptions; and

4.1.2.2 the provisions of this Deed in relation to the Trust,

then to the extent of such conflict or inconsistency, the provisions of the Code and any such waivers or exemptions shall prevail.

### **4.2 Compliance with the Listing Rules**

In the event that the Units are listed on the SEHK or any Specified Stock Exchange, the Manager shall at all times comply with applicable provisions of the Listing Rules or any relevant regulations required by such Specified Stock Exchange. The Trustee shall assist the Manager, as appropriate and upon the request of the Manager, to comply with the Listing Rules or any relevant regulations required by such Stock Exchange.

## **5. Listing of the Trust**

### **5.1 Manager to List Units**

5.1.1 The Manager shall use its best efforts to cause the Units to be admitted for trading on the SEHK and subject to clauses 29 and 30 to continue to be so listed. The Manager may also cause the Units to be listed on any Specified Stock Exchange subject to the prior written consent of the Trustee.

5.1.2 The Trust shall be subject to the relevant provisions of the Listing Rules applicable to authorised Collective Investment Schemes on and from the Listing Date.

5.1.3 Upon the Manager's request, the Trustee undertakes to provide assistance to the Manager, as appropriate, to achieve a listing of the Units on the SEHK and to maintain such listing save that the Trustee shall not act as Listing Agent (as such term is defined in the Code) of the Trust.

5.2 All costs and expenses of making application for, and maintaining any listing on the SEHK and/or a Specified Stock Exchange under clause 5.1 shall be chargeable out of the Deposited Property.

### **5.3 Manager and Trustee's Powers in relation to Listing**

Each of the Manager and the Trustee (but in the case of Trustee, only upon the instructions of the Manager) shall have the power to:

5.3.1 do everything necessary or desirable to be done in connection with the offering of Units pursuant to any Offering Circular including, without limitation, effecting

or facilitating the stabilisation of Units as may be contemplated by the Offering Circular, to the extent permitted by and subject to compliance with applicable law;

- 5.3.2 negotiate and determine the terms of, and enter into on behalf of the Trust (and so as to bind the Deposited Property) and perform, each of (i) the agreements entered into on behalf of the Trust as described in and contemplated by an Offering Circular; and (ii) any other agreement entered into on behalf of the Trust which may be required in connection with the Initial Public Offering or the underwriting of the Initial Public Offering;
- 5.3.3 to the extent permitted under this Deed and by the Code, pay on behalf of the Trust (and from the Deposited Property), any underwriting commissions and similar or related fees, and all relevant costs and expenses, as stipulated or contemplated in any underwriting agreement (as such term is defined in the relevant Offering Circular) or any other or subsequent underwriting agreement entered into on behalf of the Trust for the issue of further Units or other securities of the Trust at any time and from time to time (collectively, "**Underwriting Agreements**"); and
- 5.3.4 give representations, warranties and undertakings, and to grant guarantees and/or indemnities, on behalf of the Trust (and so as to bind and to be payable from the Deposited Property) including specifically (but without limitation) any representations, warranties, undertakings and/or indemnities under or in connection with any Underwriting Agreement and/or each of the agreements described in and contemplated by an Offering Circular (and, for the avoidance of doubt, subject to clause 12.3 and 13.3, such indemnity or indemnities may indemnify third parties for the acts and omissions of the Manager on behalf of the Trust).

Notwithstanding the powers granted to the Trustee under this clause 5.3, nothing in this clause 5.3 shall be construed as obliging the Trustee to exercise these powers or requiring the Trustee to be a party to any Underwriting Agreement or any other agreements described in and contemplated by an Offering Circular, which the Trustee considers, with the agreement of the Manager, that it shall not be a party to.

#### **5.4 Offering Circular**

- 5.4.1 The Manager shall issue any Offering Circular, advertisement (as defined in the SFO) and all other relevant circulars and announcements in accordance with applicable law, rules and regulations, the Listing Rules and the Code.
- 5.4.2 The Manager and each of its directors are jointly and severally responsible for the contents, completeness and accuracy of the information contained in an Offering Circular, circulars and any notices and announcements published or distributed and for ensuring that all material statements therein have been verified and that they comply with all applicable laws and regulations.

#### **5.5 Public Float Requirement**

The Manager shall use its best efforts to ensure that a minimum of 25% (or any other percentage specified or permitted by the SFC from time to time) (the "**Public Float Percentage**") of the outstanding Units are held in public hands. In the event that the Manager becomes aware that the percentage of the outstanding Units in the public hands has fallen below the Public Float Percentage, the Manager shall use its best efforts to restore the percentage of Units held in public

hands to at least the Public Float Percentage of the outstanding Units. The Manager shall adopt proper internal procedures for monitoring the public float and shall notify the Trustee and the SFC promptly if such percentage falls below the Public Float Percentage of the outstanding Units and issue an announcement regarding the same.

## **5.6 Substantial Unit Holdings**

- 5.6.1 The provisions of Divisions 2 to 4 of Part XV of the SFO (other than section 328) and provisions of Divisions 7 to 9 of Part XV of the SFO (other than section 351) (and any regulations made and forms prescribed in relation thereto) apply with the necessary changes as if specifically incorporated in this clause 5.6.
- 5.6.2 Neither the Manager nor the Trustee shall, by reason of anything done under this clause 5.6:
- 5.6.2.1 be taken for any purpose to have notice of; or
- 5.6.2.2 be put on enquiry as to;
- a right of any person to or in relation to a Unit.
- 5.6.3 The Manager may by notice in writing require any Holder, within such reasonable time as is specified in the notice to inform it:
- 5.6.3.1 whether it holds any Units as beneficial owner or as trustee, and if any Unit is held by it as trustee, as far as it can, the person for whom it holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of the interest; or
- 5.6.3.2 whether any of the voting rights carried by any Units held by it is the subject of an agreement or arrangement under which another person is entitled to control the exercise of those rights and if so, to give particulars of the agreement or arrangement and the parties to it.
- 5.6.4 The Manager upon receiving relevant notification from relevant persons will comply with requirements set out by the SEHK for announcements to be made to the SEHK in connection with substantial unit holdings and the interest of directors of the Manager in Units.

## **6. Registration of Holders**

### **6.1 Register of Holders**

Holders shall have the right to hold and register Units in their own names. An up-to-date Register shall be kept in Hong Kong by the Trustee or a Registrar where appointed, which may be kept either in written form or by such other means capable of being reproduced in written form (including computer record, microfiche or electronic recording) as the Trustee and the Manager shall from time to time determine. There shall at all times be entered in the Register the following information:

- 6.1.1 the names and addresses of the Holders (but so that for any second or subsequent forenames an initial shall suffice);

- 6.1.2 the number of Units held by each Holder and the distinctive numbers of the Certificate or Certificates issued in respect thereof;
- 6.1.3 the date on which every such person, entered in respect of the Units standing in his name became a Holder and where he became a Holder by virtue of an instrument of transfer a sufficient reference to enable the name and address of the transferor to be identified; and
- 6.1.4 the date on which any transfer is registered and the name and address of the transferee.

## **6.2 Joint Holders**

Notwithstanding anything to the contrary in this Deed, the Registrar shall not be bound to register more than one person as the Holder of any Unit or more than four persons as joint Holders of any Unit.

## **6.3 Change of Name or Address**

Any change of name or address on the part of any Holder shall forthwith be notified to the Registrar in writing or in such other manner as the Registrar may approve, who on being satisfied thereof and on compliance with such formalities (including in the case of a change of name the surrender of any Certificate previously issued to such Holder) as it may require shall alter or cause to be altered the Register accordingly and in the case of a change of name shall issue a new or amended Certificate to such Holder (and, in the case of any Certificate issued by the Registrar, the Registrar may charge the Holder a reasonable amount therefor).

## **6.4 Inspection of Register**

- 6.4.1 The Registrar shall at all reasonable times during Business Hours give the Manager and the Trustee (if the Trustee is not the Registrar) and their respective representatives access to the Register and all subsidiary documents, records, orders, transfers and cancelled Certificates relating thereto and allow them to inspect and to take copies of the same without charge but neither the Manager nor the Trustee (if the Trustee is not the Registrar) nor their respective representatives shall be entitled to remove the same (save in the case where the Manager or the Trustee is required to produce the Register to a court of competent jurisdiction or otherwise as required by law); and except when the Register is closed in accordance with clause 6.5, the Register shall during Business Hours (subject to such reasonable restrictions as the Registrar may impose but so that not less than two hours in each Business Day shall be allowed for inspection) be open to the inspection of any Holder, without charge provided that if the Register is kept electronically or in accordance with some other system such that it is not capable of being read in the normal manner, the provisions of this clause 6.4 may be satisfied by the production of legible evidence of the contents of the Register.
- 6.4.2 Where the Trustee is acting as the Registrar and if the Trustee is removed or retires in accordance with the provisions of clause 27, the Trustee shall deliver to the Manager the Register and all subsidiary documents and records relating thereto.

## **6.5 Closure of Register**

- 6.5.1 Subject to applicable laws and regulations, the Register may be closed at such times and for such periods as the Registrar may from time to time determine

provided that it shall not be closed for more than 30 Business Days in total in any one Year.

- 6.5.2 The Manager shall give not less than 6 Business Days' prior notice to the Holders in the event that the Register is closed during any Business Day for a rights issue and 10 Business Days' prior notice to the Holders in other cases. In cases where there is an alteration of the closing dates of the Register, the Manager shall, at least 5 Business Days before the announced closure or the new closure, whichever is earlier, notify the SEHK in writing and give further notice to the Holders. Such notice may be given by way of such publication method as may be required or permitted by the Code or the SFC from time to time. If, however, there are exceptional circumstances (including but not limited to a typhoon signal 8 or higher hoisted or black rainstorm warning or any force majeure event) that render the giving of the notification to the SEHK and publication of the notice impossible, the Manager shall comply with the notification requirements as soon as practicable.

## **6.6 Transfer of Units**

- 6.6.1 Every Holder shall be entitled to transfer the Units or any of the Units held by him as follows:
- 6.6.1.1 a transfer of Units shall be effected by an instrument of transfer in writing in common form (or in such other form as the Manager and the Trustee may from time to time approve) or in a form prescribed by the Specified Stock Exchange;
  - 6.6.1.2 every instrument of transfer relating to Units must be signed by the transferor and the transferee, or if the transferor or transferee is a clearing house (or its nominee(s)), under hand or by machine imprinted signature or by such other means of execution as the Manager may approve from time to time, and the transferor shall be deemed to remain the Holder of the Units transferred until the name of the transferee is entered in the Register in respect thereof and, for the avoidance of doubt, the instrument of transfer need not be a deed;
  - 6.6.1.3 all charges in relation to such transfer as may be imposed by the Registrar shall be borne by the person who lodges the instrument of transfer with the Registrar for registration;
  - 6.6.1.4 there are no restrictions as to the number of Units which may be transferred by a transferor to a transferee; and
  - 6.6.1.5 transfers and other documents relating to or affecting the title of any Units shall be registered where required,

provided that no transfer shall be registered if such registration would:

- 6.6.1.6 result in the transferor or the transferee being a Holder of fewer than one Unit; or
- 6.6.1.7 violate applicable laws or regulations specified in this Deed or in the relevant Offering Circular or, in the opinion of the Trustee or the Manager, jeopardise the regulatory status of the Trust or be contrary to the best interests of the Trust.



- 6.6.2 Every instrument of transfer must be duly stamped (if required by law) and left with the Registrar for registration accompanied by: (i) any necessary declarations or other documents that may be required in consequence of any legislation for the time being in force; (ii) the Certificate or Certificates relating to the Units to be transferred; and (iii) such other evidence as the Registrar may require to prove the title of the transferor or his right to transfer the Units. The Registrar may dispense with the production of any Certificate which shall have become lost, stolen or destroyed upon the transferor's compliance with the like requirements to those arising in the case of an application by him for the replacement thereof. In case some (but not all) of the Units represented by any Certificate are transferred, the transferor shall be entitled to a new Certificate in respect of the balance of the Units which are not transferred upon the payment of such fee as the Manager and the Trustee may from time to time determine.
- 6.6.3 All instruments of transfer which shall be registered in respect of Units shall be retained by the Trustee or the Registrar on its behalf.
- 6.6.4 No transfer or purported transfer of a Unit other than a transfer made in accordance with this clause 6 shall entitle the transferee to be registered in respect thereof; neither shall any notice of such transfer or purported transfer (other than as aforesaid) be entered upon the Register.
- 6.6.5 If and to the extent any Units are deposited, cleared and settled in CCASS, HKSCC Nominees Limited shall be the sole Holder of such Units, holding such Units in accordance with the general rules of CCASS.
- 6.6.6 Any Units offered in Japan in accordance with clause 7.1.11 and acquired by any Qualified Institutional Investor can only be transferred to one or more Qualified Institutional Investors.

## **6.7 Death of Holders**

- 6.7.1 The executors or administrators of a deceased Holder of Units (not being a joint Holder) shall be the only persons recognised by the Trustee and the Manager as having title to the Units.
- 6.7.2 In case of the death of any one of joint Holders, the survivor or survivors shall be the only person or persons recognised by the Trustee and the Manager as having any title to or interest in the Units held by such joint Holders subject to applicable law for the time being in force, provided where the sole survivor is a minor (i.e. any individual under the age of 18 years), the Manager or the Trustee shall act only on the requests, applications, or instructions of the surviving minor only after he attains the age of 18 years and shall not be obligated to act on the requests, applications or instructions of the heirs, executors or administrators of the deceased joint Holder and shall not be liable for any claims or demands whatsoever by the heirs, executors, or administrators of the deceased joint Holder, the minor joint Holder or the minor joint Holder's legal guardian in omitting to act on any request, application or instruction given by the minor before he attains such age of by the heirs, executors, or administrators of the deceased joint Holder. The executors or administrators of a deceased Holder (not being one of several joint Holders) shall be the only person recognised by the Trustee and the Manager as having title to the Units of that deceased Holder.

## **6.8 Transmission**

The following provisions shall apply in relation to any person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency or liquidation of any sole Holder or of the survivor of joint Holders:

- 6.8.1 subject as hereinafter provided and upon producing such evidence as to his title as the Registrar shall think sufficient, such person may either be registered himself as Holder of such Unit (upon giving to the Registrar notice in writing of his desire) or transfer such Unit to some other person. All the limitations, restrictions and provisions of this Deed relating to transfers shall be applicable to any such notice or transfer as if the death, bankruptcy, insolvency or liquidation had not occurred and such notice or transfer were a transfer executed by the Holder;
- 6.8.2 subject to clause 6.8.3, such person may give a discharge for all moneys payable in respect of the Unit but he shall not be entitled in respect thereof to receive notices of or to attend or vote at any meeting of Holders until he shall have been registered as the Holder of such Unit in the Register; and
- 6.8.3 the Trustee may at its discretion retain any moneys payable in respect of any Unit of which any person is under clauses 6.8.1 and/or 6.8.2 to be registered as the Holder or which any person under those provisions is entitled to transfer until such person shall be registered as the Holder of such Units or shall duly transfer the same.

## **6.9 Payment of Fee**

In respect of the registration of any probate, letters of administration, power of attorney, marriage or death certificate, stop notice, order of the court, deed poll or other document relating to or affecting the title to any Unit, the Trustee may require from the person applying for such registration a fee of HK\$500 (or such other amount as the Trustee and the Manager may from time to time agree) together with a sum sufficient in the sole opinion of the Trustee to cover any stamp duty or other governmental taxes or charges that may be payable in connection with such registration.

## **6.10 Appointment of Registrar**

- 6.10.1 The Trustee may with the recommendation or the approval of the Manager at any time or from time to time appoint an agent on the Trustee's behalf to keep and maintain the Register subject to clause 6.10.2.
- 6.10.2 For as long as Units are listed on the SEHK or any Specified Stock Exchange, a duly qualified Registrar (other than the Trustee) shall be appointed by the Trustee on terms acceptable to the Manager.
- 6.10.3 All reasonable fees and expenses of the Registrar (as may be agreed from time to time between the Manager, the Trustee and the Registrar) shall be payable out of the Deposited Property.
- 6.10.4 Prior to the appointment of any Registrar (other than the Trustee), such Registrar shall first undertake in writing with the Trustee and the Manager as follows:
  - 6.10.4.1 to keep the Register in all respects in accordance with the requirements of this Deed and the Code and the applicable laws;

- 6.10.4.2 to maintain the Register in a form and manner directed by the Trustee and the Manager and at a place as notified by the Registrar to the Trustee and the Manager from time to time. The Registrar shall provide at least two (2) months' prior written notice to the Trustee and the Manager in the event of any change in the location of the Register;
- 6.10.4.3 to supply on request any information or explanation that the Trustee or Manager might require comprised in or in relation to the Register and the conduct of the Registrar in respect thereof;
- 6.10.4.4 a body corporate may be registered as a Holder or as one of joint Holders. The successor in title of any corporate Holder which loses its legal entity by reason of a merger or amalgamation shall be the only person recognised by the Trustee and the Manager as having title to the Units of such corporate Holder; and
- 6.10.4.5 when it comes to knowledge of the Registrar that a minor is registered or to be registered as a sole Holder, based on information or data contained in the relevant share transfer form, the Registrar shall notify the Manager and the Trustee as soon as practicable and act in accordance with the instructions of Manager and the Trustee in this regard.

## **7. Issue of Units**

### **7.1 Issue of Units**

- 7.1.1 The Manager has the exclusive right to effect, for the account of the Trust, the creation and issue of Units and/or Convertible Instruments in accordance with this Deed and subject to the provisions of the Code and any other applicable laws and regulations (including an initial issue of Units, the issuance of Units pursuant to the Initial Public Offering, a rights issue, a capitalisation issue, an issue of new Units otherwise than by a rights issue or any issue pursuant to a reinvestment of distribution arrangement or an issue of Units in consideration of the contribution of Real Estate to the Trust, or an issue of Units to the Manager in full or partial satisfaction of the Manager's remuneration pursuant to clause 11.1 or 11.2).
- 7.1.2 No fractions of a Unit shall be issued. In issuing such number of Units as correspond to the relevant subscription proceeds, the Manager shall in respect of each Holder's entitlement to Units truncate (but not round off) to the nearest whole Unit and any balance arising from such truncation shall be retained as part of the Deposited Property.
- 7.1.3 Issues of Units shall only be made on a Business Day unless and to the extent that the Manager with the prior consent of the Trustee otherwise prescribes.
- 7.1.4 Where to do so would give rise to a conflict of interest on the part of the Manager or any Connected Persons related to it, the Manager and such Connected Persons shall abstain from voting at any general meeting in relation to any issuance of Units.
- 7.1.5 After the Listing Date:

- (i) the Manager may issue and offer Units and/or Convertible Instruments on a pro rata basis to all persons who were Holders (on a particular day prior to the date of the relevant issue of Units as determined by the Manager) subject to the terms of this clause 7.1.5;
- (ii) Units and/or Convertible Instruments offered or issued under clause 7.1.5 will be offered and issued at an Issue Price as determined by the Manager which may (for the avoidance of doubt) be a price different from any other Issue Price falling to be calculated in accordance with clause 7.2;
- (iii) any offer of Units and/or Convertible Instruments pursuant to clause 7.1.5 shall require specific prior approval of Holders by Ordinary Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed if such issue of Units, together with such Convertible Instruments (assuming full conversion), would increase the total number of issued Units by more than 50% (on its own or when aggregated with any other pro rata issue of Units under this clause 7.1.5 or open offers announced by the Trust (a) within the 12 month period immediately preceding the announcement of such pro rata issue or (b) prior to such 12 month period where dealing in respect of Units issued pursuant thereto commenced within such 12 month period, together with any Convertible Instruments (assuming full conversion) granted or to be granted to Holders as part of such pro rata issues or open offers). For the purposes of this clause 7.1.5(iii), the effect on the total number of issued Units of any relevant issue under this clause 7.1.5 (and the relevance and effect of any other issue within the relevant preceding 12 month period) shall be estimated and determined by the Manager in good faith and using its best endeavours, having regard to the terms and conditions of the relevant offer(s) or issue(s) under this clause 7.1.5 and the Manager will, if required by the Trustee, confirm to the Trustee in writing the estimate and determination (as the case may be) made by the Manager on such basis; and
- (iv) an offer of Units and/or Convertible Instruments shall be considered and deemed for the purposes of this clause 7.1.5 to be made on a pro rata basis notwithstanding that (i) the Manager may, in its discretion, elect not to offer Units and/or Convertible Instruments to persons whose addresses are outside Hong Kong, and/or offer the Units and/or Convertible Instruments on a basis, or contain such other terms, providing for any such other exclusions or adjustments determined by the Manager, provided that the Manager considers such exclusions or adjustments to be necessary or expedient (1) on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place (in such case, the Manager may, at its discretion, offer for sale the rights or entitlements to such Units and/or Convertible Instruments in the market, and will pay the net proceeds (after deduction of the costs of sale) of such sale (if successful) to the relevant Holders who would otherwise be entitled to such rights or entitlement but for the aforesaid exclusion), or (2) in relation to fractional entitlements (in such case, the Manager may at its discretion sell such fractional entitlements for the benefit of the Trust), and in each case, in compliance with the relevant provisions

of the Listing Rules (as if they were applicable to the Trust) to the extent not inconsistent with any applicable rules and guidance issued by the SFC; and/or (ii) where and to the extent that Holders do not accept any offer of Units and/or Convertible Instruments within the applicable period for acceptance (as determined by the Manager), such Units and/or Convertible Instruments may be offered or made available to, and taken up by, other persons as determined by the Manager, subject to compliance with all applicable laws and regulations (including the Code). In relation to (i) above, where necessary, the Trustee shall have the discretion to impose such other terms and conditions in connection with the relevant sale.

#### 7.1.6

- (i) Subject to clause 7.1.7, Units may be issued, or agreed (conditionally or unconditionally) to be issued, in any Financial Year (whether directly or pursuant to any Convertible Instruments), otherwise than on a pro rata basis to all existing Holders, without the approval of Holders, if:
  - (a) the total number of new Units issued, or agreed (conditionally or unconditionally) to be issued, in that Financial Year pursuant to this clause 7.1.6, without taking into account:
    - (1) any new Units issued or issuable in that Financial Year pursuant to any Convertible Instruments issued (whether in that or any prior Financial Year) pursuant to and in compliance with this clause 7.1.6, to the extent that such new Units are covered by the aggregate number of new Units contemplated under clause 7.1.6(i)(b) at the Relevant Date applicable to the relevant Convertible Instruments;
    - (2) such number of new Units issued or issuable pursuant to any such Convertible Instruments as a result of adjustments arising from the consolidation or sub-division or re-designation of Units;
    - (3) any new Units issued in that Financial Year pursuant to any agreement for the issuance of Units, to the extent that such, new Units were previously taken into account in the calculation made under this clause 7.1.6(i)(a) (whether in that or any prior Financial Year) at the Relevant Date applicable to that agreement;
    - (4) any new Units issued or issuable (whether directly or pursuant to any Convertible Instruments) in that Financial Year pursuant to any pro rata offer made in that Financial Year in accordance with clause 7.1.5;
    - (5) any new Units issued, or agreed (conditionally or unconditionally) to be issued, otherwise than on a pro rata basis to all existing Holders and in respect of which the specific prior approval of Holders in accordance with the relevant requirements hereunder and under applicable laws

and regulations (including the Code) has been obtained;  
and/or

- (6) any new Units issued or issuable in that Financial Year pursuant to any reinvestment of distributions made in that Financial Year in accordance with clause 20.9.

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- (b) (1) the maximum number of new Units issuable at the Initial Issue Price (as defined in clause 7.2.2) pursuant to any Convertible Instruments issued, or agreed (conditionally or unconditionally) to be issued, otherwise than on a pro rata basis to all existing Holders and whose Relevant Date falls within that Financial Year; and

(2) the maximum number of any other new Units which may be issuable pursuant to any such Convertible Instruments as at the Relevant Date thereof as estimated or determinable by the Manager in good faith and using its best endeavours and based on such assumptions as may be considered appropriate by the Manager and confirmed in writing to the Trustee and the SFC, having regard to the relevant terms and conditions of such Convertible Instruments (including any additional new Units issuable under any adjustment mechanism thereunder other than adjustments arising from the consolidation or sub-division or re-designation of Units);

does not increase the number of Units that were outstanding at the end of the previous Financial Year (or, in the case of an issue of, or an agreement (whether conditional or unconditional) to issue, Units or Convertible Instruments during the first Financial Year, the number of Units that were outstanding as at the Listing Date) by more than 20% (or such other percentage of outstanding Units as may, from time to time, be prescribed by the SFC) provided that such threshold in terms of number of Units shall in the event of any consolidation or sub-division or re-designation of Units during that Financial Year be proportionally adjusted to give effect to such consolidation, sub-division or re-designation of Units.

- (ii) Any issue of, or any agreement (whether conditional or unconditional) to issue new Units exceeding the threshold in this clause 7.1.6 will require specific prior approval of Holders by Ordinary Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed.
- (iii) For the purposes of clauses 7.1.6, 7.1.7, 7.1.9, 7.2.2 and 7.2.3:
- (iv) "**Convertible Instruments**" means any securities convertible or exchangeable into Units, or any options or warrants or similar rights for the subscription or issue of Units or securities convertible or exchangeable into Units), issued by the Trust or any Special Purpose Vehicle; and references to an issue of Units "pursuant to any Convertible Instruments" means an issue of Units pursuant to exercise of any conversion, exchange and/or subscription or similar rights (as the case may be) under the terms and conditions of such Convertible Instruments; and

- (v) **"Relevant Date"** means, as the case may be, the date of the relevant agreement or other instrument for the issue or proposed issue of any Units or Convertible Instruments, or the date of the grant of any Convertible Instruments, whichever is the earlier.

7.1.7 Any issue, grant or offer of Units or Convertible Instruments to a Connected Person will require specific prior approval of Holders by Ordinary Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed, unless such issue, grant or offer is made under the following circumstances (where, for the avoidance of doubt, no Holders approval will be required):

7.1.7.1 the Connected Person receives a pro rata entitlement to Units and/or Convertible Instruments in its capacity as a Holder (provided that such issue will not increase market capitalisation of the Trust by more than 50.0%); or

7.1.7.2 Units are issued to a Connected Person under clause 11.1.1 and clause 11.1.2 in or towards the satisfaction of the Base Fee and the Variable Fee, respectively, pursuant to a waiver granted by the SFC, one of the conditions of which being that in respect of each Financial Year, the maximum number of Units that may be issued to the Manager as payment of all or part of the Base Fee and Variable Fee for that Financial Year shall be limited to such number of Units as represents 3.0% of the total number of Units outstanding as at the last day of the immediately preceding Financial Year plus the number of Units (if any) issued in the relevant Financial Year for the purposes of financing any acquisition of real estate by the Trust; or

7.1.7.3 Units and/or Convertible Instruments are issued to a Connected Person within 14 calendar days after such Connected Person has executed an agreement to reduce its holding in the same class of Units and/or Convertible Instruments by placing such Units and/or Convertible Instruments to or with any person(s) who is/are not its Associate(s), provided always that: (i) the new Units and/or Convertible Instruments must be issued at a price not less than the placing price (which may be adjusted for the expenses of the placing); and (ii) the number of Units and/or Convertible Instruments issued to the Connected Person must not exceed the number of Units and/or Convertible Instruments placed by it; or

7.1.7.4 the Connected Person is acting as underwriter or sub-underwriter of an issue or offer of Units or other securities by or on behalf of the Trust or any Special Purpose Vehicle, provided that:

(i) the issue or offer is made under and in accordance with clause 7.1.5; and

(ii) the issue or offer is in compliance with any applicable provisions of the Listing Rules where a connected person is acting as an underwriter or sub-underwriter of an offer of shares or other securities by a listed company, with necessary changes being made, as if the provisions therein are applicable to real estate investment trusts; or

7.1.7.5 the excess application and the taking up of pro rata entitlements by the Connected Person in respect of a pro rata issue of Units and/or Convertible Instruments under clause 7.1.5 or an open offer by the Trust; or

7.1.7.6 Units are issued to a Connected Person pursuant to a reinvestment of distribution in accordance with clause 20.9.

Notwithstanding the above, the Manager shall not: (a) issue Units and/or; (b) issue Units at an issue price, that would result in non-compliance with the other provisions of this Deed in respect of issue of Units, including, but not limited to the provisions regarding compliance with the Listing Rules as may be applicable in determining the issue price.

7.1.8 Where payment of the Issue Price payable in respect of any Unit agreed to be issued by the Manager has not been received by the Trustee before the seventh (7<sup>th</sup>) Business Day after the date on which the Unit was agreed to be issued (or such other date as the Manager and the Trustee may agree in writing), the agreement to issue such Unit may, in the absolute discretion of the Manager, at that time or at any time thereafter be cancelled by the Manager by giving notice to that effect to the Trustee and the applicant therefor shall have no right or claim in respect thereof against the Manager or the Trustee, provided that:

7.1.8.1 no previous valuations of the Trust shall be re-opened or invalidated as a result of the cancellation of such Units; and

7.1.8.2 the Manager shall be entitled to charge the applicant (and retain for its own account) a cancellation fee of such amount as it may from time to time determine to represent the administrative costs involved in processing the application for such Units from such applicant.

7.1.9 (i) The Manager may arrange for:

- (a) any offer for sale, subscription or issue of Units or Convertible Instruments; or
- (b) the exercise of Convertible Instruments;

to be underwritten by an underwriter or underwriters on terms determined by the Manager, subject to the Code and other applicable laws and regulations.

(ii) An underwriter of any offer of Units and/or Convertible Instruments may:

- (a) subject to the Code and other applicable laws and regulations, and subject to the remaining provisions of this clause 7.1.9, be a Connected Person related to the Manager or the Trustee;
- (b) where applicable, take up any Units or Convertible Instruments for resale under or in connection with the offer; or
- (c) take up any Units or Convertible Instruments not subscribed for or otherwise taken by other investors.

(iii) Without limiting the power of the Manager and the Trustee under clause 5.3, the Manager is authorized to, negotiate, enter into and perform any agreement



required to be entered into on behalf of the Trust in connection with any underwriting contemplated in clause 7.1.9(i).

(iv) Where any Units and/or Convertible Instruments are to be subscribed for or purchased by any underwriter pursuant to or in connection with any underwriting arrangement under this clause 7.1.9 in connection with any offer of Units and/or Convertible Instruments, the Manager may issue or sell such Units and/or Convertible Instruments to the underwriter at an Issue Price that is equal to the Issue Price that the Units or Convertible Instruments are intended to be, or were or would have been, issued to persons other than the underwriter or underwriters under the offer.

7.1.10 Units shall be issued free from any restriction on the right of transfer (except as permitted by the SFC) and shall be free from any lien.

7.1.11 Any Units to be issued directly or indirectly in Japan or to, or for the benefit of any resident in Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) can only be offered to Qualified Institutional Investors.

## 7.2 Issue Price

7.2.1 The issue of Units on the Listing Date shall be at an Issue Price determined on or before the Listing Date for such Units on the basis disclosed in the Offering Circular. Subject to the Initial Public Offering becoming unconditional, the Manager shall determine:

7.2.1.1 the Issue Price;

7.2.1.2 the manner of (and amount payable and any applicable refund on) an application for Units during the Initial Public Offering; and

7.2.1.3 the timetable for, and application procedures relating to, the Initial Public Offering,

in each case on the basis disclosed in the Offering Circular.

7.2.2 After the Listing Date, and for so long as the Units are admitted for trading on the SEHK:

7.2.2.1 the Manager may, subject to clauses 7.1.5 and 7.2.1, effect or agree to effect the issue of Units on behalf of the Trust (whether directly, or pursuant to any Convertible Instruments) on any Business Day at an Issue Price per Unit that is:

- (i) equal to the Market Price;
- (ii) in its discretion, at a discount of no more than 20% to the Market Price or at a premium to the Market Price; or
- (iii) where approval by way of an Ordinary Resolution is obtained pursuant to clause 7.2.2.2 on the pricing basis as authorised in such Ordinary Resolution.

For the avoidance of doubt, the Issue Price shall, in the case of any Convertible Instruments, mean the initial price per Unit at which Units are to be issued pursuant to the exercise of any conversion, exchange or subscription or similar rights under such Convertible

Instruments, before any adjustments which may apply thereunder (the "**Initial Issue Price**"); and

7.2.2.2 an issue of, or agreement (whether conditional or unconditional) to issue, new Units at an Issue Price or Initial Issue Price (as the case may be) that is otherwise than in accordance with the pricing basis and/or discount allowed in clauses 7.2.2.1(i) or 7.2.2.1(ii) above, or bonus issues and/or capitalisation issues which are not on a pro rata basis, will require specific prior approval of Holders by Ordinary Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed, and such approval may be subject to such conditions as the Holders may approve, including without limitation stating the basis of pricing, or authorising the Manager to determine the pricing basis on such terms as are authorised under that Ordinary Resolution.

7.2.3 For the purposes of this Deed, "Market Price" shall mean the price as determined by the Manager, being the higher of:

- (a) the closing price of the Units on the SEHK on the date of the relevant agreement or other instrument for (i) the proposed issue of Units, or (ii) the proposed issue of any Convertible Instruments; and
- (b) the average closing price of the Units in the ten (10) Trading Days immediately prior to the earlier of:
  - (i) the date of announcement of (1) the proposed issue of Units, or (2) the proposed issue of any Convertible Instruments;
  - (ii) the date of the relevant agreement or other instrument for (1) the proposed issue of Units, or (2) the proposed issue of any Convertible Instruments; and
  - (iii) the date on which the Issue Price is fixed;

Notwithstanding sub-clauses (a) and (b) of this clause 7.2.3, for the purposes of clause 11.1.1 and clause 11.2.6 of this Deed, "**Market Price**" shall mean the price as determined by the Manager as being the average closing price of the Units in the ten (10) Trading Days immediately preceding the date on which the relevant Units are issued to the Manager pursuant to clause 11.1.1 or clause 11.2.6 (as applicable).

7.2.4 In relation to the issue of Units pursuant to an exercise of an option to subscribe for Units, the Market Price and Issue Price may be determined by the Manager either at the time of grant of the option or at the time of exercise of the option or such other date(s) as the Manager considers appropriate subject to the terms of the grant of such option.

7.2.5 In addition to the Manager's obligations under clause 7.2.5, where any Units are issued for non-cash consideration in the nature of Real Estate, the value of such non-cash consideration in the nature of Real Estate shall be determined by the Manager on an arm's length basis which is fair and reasonable to Holders.

7.2.6 In relation to any rights issue pursuant to clause 7.1, the Manager may, in its absolute discretion, elect not to extend an offer of Units under the rights issue to those Holders whose addresses are outside Hong Kong if the Manager considers

such exclusion to be necessary and expedient on account either of the legal restrictions or requirements of the regulatory bodies or stock exchanges in such jurisdiction(s). In such event, the rights or entitlement to the Units of such Holders will be offered for sale by the Manager as the nominee and authorised agent of each such relevant Holder and at such price as the Manager may determine. Where necessary, the Trustee shall have the discretion to impose such other terms and conditions in connection with such sale. The proceeds of any such sale, if successful, will be paid to the relevant Holders.

7.2.7 The Manager may affect the issue of Units before the Listing Date at any price provided that the basis of the calculation of such price shall be properly disclosed in the Offering Circular in relation to the Initial Public Offering.

### **7.3 Statement of Dealings**

The Manager shall furnish the Trustee from time to time on demand, with a statement of all issues of Units and Convertible Instruments and of the terms on which the same are issued and of any Investments which it determines to direct to be purchased for the account of the Trust, and also a statement of any Investments which in accordance with the powers hereinafter contained it determines to direct to be sold for account of the Trust, and any other information which the Trustee may reasonably request as being necessary for the performance of the Trustee's duties under this Deed. The Trustee shall be entitled to require the Manager to refuse to issue a Unit if at any time the Trustee is of the opinion that the provisions of this clause 7 in regard to the issue of Units are being breached.

7.4 Without prejudice to the generality of clause 7.1.1 and subject to compliance with the Code, the Manager shall have the power from time to time to adopt any Incentive Scheme with the prior approval of Holders by way of an Ordinary Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed and to issue new Units pursuant to any Incentive Scheme, and notwithstanding clause 7.2.2, such new Units may be issued pursuant to such Incentive Scheme at the issue price as determined in accordance with the terms of the Incentive Scheme (including, if so provided for under the terms of the Incentive Scheme, for nil consideration) without further approval of Holders.

## **8. Buy-Back and Redemption of Units**

### **8.1 No Right to Demand, Buy-Back or Redemption of Units**

No Holder shall have the right to demand the buy-back or redemption of their Unit(s).

### **8.2 Buy-back and Redemption of Units by Manager**

The Manager is permitted to buy-back or redeem any Unit(s) so long as any buy-back or redemption of Units by the Manager is effected in accordance with the Code, the Takeovers Code, the Repurchase Circular or other relevant codes and guidelines issued by the SFC from time to time and applicable laws and regulations or in accordance with any waiver or exemption granted by the SFC.

## **9. Trustee's Powers and Duties**

### **9.1 Agreement to Act**

The Trustee has agreed to act as the trustee of the Trust on the terms of and subject to this Deed.

## 9.2 General Powers of Trustee

Subject to this Deed and the law, the Trustee shall have the powers and legal capacity of a natural person or a corporation acting in his, her or its own personal capacity.

## 9.3 Specific Powers of the Trustee

In addition to the powers conferred on it by law and elsewhere in this Deed, subject to the provisions of this Deed, the Trustee shall have the following powers (and in the case of clauses 9.3.1 to 9.3.4, the Trustee may only exercise those powers upon the written instructions of the Manager, and such instructions shall not conflict with this Deed, the Code or any applicable law or regulations):

- 9.3.1 to acquire and dispose of Authorised Investments in its capacity as trustee of the Trust;
- 9.3.2 to enter into all agreements, deeds and documents or to refrain from entering into such agreements, deeds or documents in its capacity as trustee of the Trust;
- 9.3.3 to apply any part of the Deposited Property towards improving or developing any Real Estate and generally to enter into such contracts and agreements as the Manager considers necessary for the proper advancement of those improvements or developments;
- 9.3.4 to incur Liabilities and obligations (including existing indebtedness of a Special Purpose Vehicle) in its capacity as trustee of the Trust (and so as to bind the Deposited Property), and to create and grant security of any form or nature (including security over the Deposited Property) for or in respect of such Liabilities and obligations (including existing indebtedness of a Special Purpose Vehicle) and to perform and discharge such Liabilities and obligations (including existing indebtedness of a Special Purpose Vehicle) from the Deposited Property;
- 9.3.5 following appropriate consultation with the Manager, to commence proceedings or take actions on behalf of the Trust;
- 9.3.6 to act in the exercise of any of its powers under this Deed:
  - 9.3.6.1 by delegating to its responsible officers for the time being; or
  - 9.3.6.2 by appointing an agent,

in respect of all or any of trusts, powers and discretions vested in it by this Deed and such delegation or appointment of an agent or delegate may be made subject to any regulation and on terms and conditions (including power to sub-delegate) as the Trustee thinks fit provided that the Trustee may not make any such delegation or appointment of an agent or delegate without the prior written approval of the Manager. Save where directed by the Manager to appoint any agent or make any delegation, the Trustee shall, notwithstanding any approval given in accordance with the preceding sentence, exercise all reasonable care in the selection of potential delegates and agents appointed by it, and shall supervise the proceedings and activities of such delegates and agents to ensure that the functions intended to be carried out by them are properly carried out. Notwithstanding the foregoing, the Trustee shall be fully liable for all losses, liabilities, damages, costs and expenses suffered or incurred by the Trust as a result of any fraud, negligence, breach of duty, breach of trust, or breach of agreement or applicable law by any such delegate or

agent (other than any delegate or agent which the Trustee appoints at the direction of the Manager). For the avoidance of doubt, the Trustee shall have no liability for any clearing system or depository operator; and

- 9.3.7 to require any Holder to promptly disclose to the Trustee all of the Holder's beneficial interests in Units and where the Trustee believes that a Holder may be a Substantial Holder, the Trustee shall have the power to require the Holder to promptly disclose to the Trustee and the Manager all of the legal, beneficial and equitable interests in Units held by the Holder,

and none of the provisions of this clause 9.3 shall be read down to limit the powers conferred on the Trustee by any of the other provisions and each provision shall be severally considered and provided that:

- (i) except for the purpose of complying with the Code, the Trustee shall not be under any obligation, institute, acknowledge service of, appear in, prosecute or defend any action, suit, proceedings or claim in respect of the provisions hereof or in respect of the Deposited Property or any part thereof, or in respect of any entitlement or interest of the Trust or any corporate or Holders' action (which in its opinion would or might involve it in expense or liability), unless the Manager shall so request in writing pursuant to clause 26.3 in which case, subject to clause 9.6 and clause 12, the Trustee shall be obliged to act as requested if it considers that such act is in the best interest of the Holders; and
- (ii) subject to the Code and any waivers thereof granted by the SFC, clause 1.7 and applicable laws and regulations, nothing herein shall prevent the Trustee or a Connected Person related thereto from contracting or entering into any financial, banking or any other type of transaction with the Manager (when acting other than in its capacity as Manager of the Trust) or any Holder or any company or body any of whose shares or other securities form part of the Deposited Property or from being interested in any such contract or transaction, provided that any such transaction shall be in compliance with clause 26. The Trustee or any Connected Person related thereto shall not be liable to account either to the Manager or to the Holders or any of them for any profits or benefits made or derived from or in connection with any such transaction.

#### **9.4 Duties of the Trustee**

9.4.1 The Trustee shall hold the Deposited Property on trust for the benefit of the Holders, and to oversee the activities of the Manager in accordance with and for compliance with this Deed, other relevant Constitutive Documents and the regulatory requirements applicable to the Trust. This duty includes ensuring that all investment activities carried out by the Manager are in line with the investment objective and policy of the Trust and the Constitutive Documents, and are in the interests of the Holders.

9.4.2 The Trustee shall be responsible for the safe custody of the Deposited Property held by it directly or held through any Special Purpose Vehicle, whether in bearer or registered form, be paid or transferred to or to the order of the Trustee or a Special Purpose Vehicle forthwith on receipt by the Manager and be dealt with as the Trustee may think proper for the purpose of providing for the safe custody thereof. Cash constituting Deposited Property may, where necessary or derived directly or indirectly from Real Estate outside Hong Kong, be held in an account in the name of a Special Purpose Vehicle (or any delegate of a Special Purpose Vehicle) and operated by the Trustee or the Manager (or any delegate of the Manager) provided that the Trustee shall exercise due powers of oversight with

regard to the same. The Trustee may act as custodian itself or may appoint such persons (including any Connected Person) as custodian or joint custodians (with the Trustee if acting as custodian or with any other custodian appointed by the Trustee) of the whole or any part of the Deposited Property and (where the Trustee is custodian) may appoint or (where the Trustee appoints a custodian) may empower such custodian or joint custodian (as the case may be) to appoint with prior consent in writing of the Trustee, sub-custodians. The fees and expenses of any such custodian, joint custodian or sub-custodian shall be paid out of the Deposited Property.

9.4.3 The Trustee may at any time procure that:

- 9.4.3.1 the Trustee; or
- 9.4.3.2 any officer of the Trustee jointly with the Trustee; or
- 9.4.3.3 any nominee appointed by the Trustee; or
- 9.4.3.4 any such nominee and the Trustee; or
- 9.4.3.5 any custodian, joint-custodian or sub-custodian appointed; or
- 9.4.3.6 any company operating a depository or recognised clearing system in respect of the Deposited Property; or
- 9.4.3.7 any broker, financial institution or other person with whom the same is deposited in order to satisfy any requirement to deposit margin or security,

takes delivery of and retains and/or be registered as proprietor of any Authorised Investments in registered form held upon the trusts of this Deed.

Notwithstanding anything contained in this Deed, but subject to the Code:

- (i) the Trustee shall not incur any liability in respect of or be responsible for losses incurred through the insolvency of or any act or omission of any depository or clearing system with which Authorised Investments may be deposited;
- (ii) the Trustee shall not incur any liability in respect of or be responsible for losses incurred through (a) the insolvency of any nominee, custodian, joint custodian or sub-custodian or (b) any act or omission of any nominee, custodian, joint custodian or sub-custodian appointed by the Trustee upon instruction of the Manager or in circumstances where it is necessary to appoint such nominee, custodian, joint custodian or sub-custodian and the Trustee has no discretion in the choice of such appointee, except where the Trustee has failed to exercise reasonable skill and care in the monitoring of such appointee (having regard to the market in which the relevant appointee is located) or the Trustee is in wilful default; and

- (iii) the Trustee shall not incur any liability in respect of or be responsible for losses incurred through the insolvency of or any act or omission of any sub-custodian not appointed by it.

9.4.4 The Trustee shall:

- 9.4.4.1 exercise all due diligence and vigilance in carrying out its functions and duties and in protecting the rights and interests of Holders, and in respect of such duties and functions the Trustee may seek and rely upon the advice of independent professional advisers as it deems appropriate;
- 9.4.4.2 ensure that the Deposited Property is properly segregated and held for the benefit of the Holders in accordance with the provisions of this Deed and any other relevant Constitutive Documents;
- 9.4.4.3 be liable for the acts and omissions of its nominees and agents in relation to the Deposited Property (other than the Registrar (if the Trustee is not the Registrar), the Manager (and any nominee or agents or delegate appointed by or at the discretion of the Manager) and any Approved Valuer or JV Valuer);
- 9.4.4.4 take all reasonable care to ensure that the sale, issue, buy-back and cancellation of Units are carried out in accordance with provisions of this Deed, other relevant constitutive documents, applicable law, the Code, the Repurchase Circular and the Listing Rules;
- 9.4.4.5 on the recommendation of the Manager, appoint from time to time an Approved Valuer who, where applicable, meets the qualification requirements set out in the Code;
- 9.4.4.6 cause a valuation of any of the Real Estate of the Trust to be carried out if it, or the Manager, reasonably believes that such valuation is appropriate;
- 9.4.4.7 carry out the instructions of the Manager in respect of Investments unless they are in conflict with this Deed or other Constitutive Documents or under applicable law or the Code;
- 9.4.4.8 take all reasonable care to ensure that the investment and borrowing provisions set out in clauses 15 and 16 are complied with;
- 9.4.4.9 take all reasonable care to ensure that the conditions under which the Trust was authorised by the SFC pursuant to the SFO and the conditions upon which the Manager was licensed by the SFC to manage the Trust and notified to the Trustee are complied with;
- 9.4.4.10 take all reasonable care to ensure that, unless otherwise permitted from time to time under the Code and/or any published guidelines, policies, practice statements or other guidance issued by the SFC, no Real Estate is acquired or disposed of by or on behalf of the Trust until the Trustee has received a recent valuation report of the Approved Valuer where:

- (a) in respect of a transaction which requires Holders' approval, the effective date as at which the Real Estate is valued shall not be more than three months before the date on which the relevant circular is issued; and
  - (b) in the case of a transaction which does not require Holders' approval, the effective date as at which the Real Estate is valued shall not be more than three months before the date of the relevant sale and purchase agreement of the Real Estate to be acquired or disposed of;
- 9.4.4.11 take all reasonable care to ensure that all transactions carried out by or on behalf of the Trust are conducted at arm's length and that Connected Party Transactions are carried out in accordance with clause 26 and (if applicable) any waivers granted by the SFC in relation to Connected Party Transactions and any conditions to such waivers provided that in the event that the Trustee is in any doubt as to whether a transaction is a Connected Party Transaction it shall require that such transaction is conducted pursuant to clause 26;
- 9.4.4.12 issue a report to the Holders, to be included in the annual report of the Trust, on whether, in the Trustee's opinion, the Manager has in all material respects managed the Trust in accordance with the provisions of this Deed and other Constitutive Documents; if the Manager has not done so, the report shall specify the respects in which it has not done so and the steps which the Trustee has taken in respect thereof;
- 9.4.4.13 take all reasonable care to ensure that any Certificates are not issued until subscription monies have been paid in full (other than in respect of (i) Units issued for nil consideration pursuant to the terms of an Incentive Scheme; or (ii) Units issued for consideration other than cash in any circumstances permitted under this Deed and the Code);
- 9.4.4.14 take all reasonable care to ensure that the Trust (including, where relevant, a Special Purpose Vehicle) has good marketable legal and beneficial title to any Real Estate owned by the Trust (including where relevant, a Special Purpose Vehicle), and that each of the contracts (such as property contracts, rental agreements, joint venture or joint arrangement agreements and any other agreements) entered into on behalf of the Trust (including, where relevant, a Special Purpose Vehicle) with respect to the Investments is legal, valid and binding and enforceable by or on behalf of the Trust (including, where relevant, a Special Purpose Vehicle) in accordance with its terms;
- 9.4.4.15 take all reasonable care to ensure that the Manager complies with clause 10.4.4.7 relating to insurance;
- 9.4.4.16 take all reasonable care to ensure that the Net Asset Value of the Deposited Property and Net Asset Value of the Deposited Property per Unit (being the Net Asset Value of the Deposited Property divided by the number of Units then in issue) is calculated by the Manager in accordance with this Deed as and when annual valuation report(s) of the Trust's Real Estate is issued by the Approved Valuer



or, where applicable, JV Valuer for the relevant period, and that such Net Asset Value of the Deposited Property and Net Asset Value of the Deposited Property per Unit shall be published in the annual report for the Trust;

- 9.4.4.17 require that the Manager reports to the Trustee as soon as reasonably practicable any breaches of the Constitutive Documents, applicable laws, the provisions of the Code, the authorisation conditions of the Trust and the licensing conditions of the Manager, and the Trustee shall inform the SFC of any such breaches, where appropriate, upon notification by the Manager and monitor the implementation of any remedial action taken in respect of such breaches;
- 9.4.4.18 be responsible for the appointment of the board of directors of all Special Purpose Vehicles and Joint Venture Entities to be appointed by the Trust as provided in clause 15.5; and
- 9.4.4.19 send or cause to be sent to the Manager all notices, reports, accounts, circulars and other documents which are received by it or on its behalf as the holder of any Authorised Investment for the time being constituting part of the Deposited Property.

## **9.5 Legal Proceedings**

The Trustee has the power, but except for the purpose of complying with the Code, shall not be under any obligation, to institute, acknowledge service of, appear in, prosecute or defend any action, suit, proceedings or claim in respect of the provisions hereof or in respect of the Deposited Property or any part thereof, or in respect of any entitlement or interest of the Trust or any corporate or Holders' action (which in its opinion would or might involve it in expense or liability), unless the Manager shall so request in writing pursuant to clause 26.3 in which case, subject to clause 9.6 and clause 12, the Trustee shall be obliged to act as requested if it considers that such act is in the best interest of the Holders.

## **9.6 Trustee Not Responsible for Errors of Judgment**

The Trustee may act and rely upon any opinion, advice of or information obtained from the Manager or any bankers, accountants, brokers, lawyers, Approved Valuers, JV Valuers, licensed securities dealer, agents or other persons acting as agents or advisers of the Trustee and/or the Manager and the Trustee shall not be liable for anything done or omitted or suffered in reliance upon such advice or information provided that the Trustee has acted in good faith in the absence of fraud, negligence, wilful default, breach of trust, breach of duty, breach of applicable laws or regulations or breach of this Deed or other Constitutive Documents, and exercised due care in the appointment thereof where the selection and appointment of such persons was made by the Trustee. The Trustee shall not be responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any such banker, accountant, broker, lawyer, Approved Valuer, JV Valuer, licensed securities dealer, agent or other person as aforesaid or of the Manager. Any such advice or information may be obtained or sent by letter, facsimile transmission or email and the Trustee shall not be liable for acting in good faith and, in the absence of fraud, negligence, wilful default, breach of trust, breach of duty, breach of applicable laws or regulations or breach of this Deed or other Constitutive Documents, on any advice or information purported to be conveyed by any such letter, facsimile transmission or email although the same contains some error or shall not be authentic.

## **9.7 Trustee's Discretion Absolute**

Except if and so far as herein otherwise expressly provided, the Trustee shall as regards all the trusts, powers, authorities and discretions vested in it in this Deed have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode of and time for the exercise thereof, and in the absence of fraud, negligence, wilful default, breach of this Deed, breach of trust, breach of the Constitutive Documents (to which the Trustee is a party), the Code or any applicable laws and regulations, the Trustee shall not be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

## **9.8 Deduction of Tax**

Before making any distribution or other payment in respect of any Unit or in respect of the Management Fee, the Trustee and the Manager may make such deductions as by the law of Hong Kong or by the law of any other country in which such payment or distribution is made the Trustee is required or entitled to make in respect of any Taxes, charges or assessments whatsoever and the Trustee and the Manager may also deduct the amount of any stamp duties or other governmental taxes or charges payable by it or for which it may be made liable in respect of such distribution or any documents signed by it in connection therewith. The Trustee and/or the Manager may, but is not bound to, consult or rely on:

- 9.8.1 any advice of or calculation by any accountants, tax advisers or the Auditors; or
- 9.8.2 any information obtained from the taxing or government authorities in respect of any Taxes, charges, duties or assessment before making such deductions. The Trustee and the Manager shall not be liable to account to any Holder or otherwise for any payment made or suffered by the Trustee or the Manager (as the case may be) in good faith and in the absence of fraud, negligence, wilful default, breach of this Deed or breach of any applicable laws or regulations to any duly empowered fiscal authority of Hong Kong or elsewhere for taxes or other charges in any way arising out of or relating to any transaction of whatsoever nature under this Deed notwithstanding that any such payments ought not to be or need not have been made or suffered.

## **9.9 Manager's Statements may be Accepted**

Subject to the Code and this Deed, the Trustee shall not be under any liability on account of anything done or suffered to be done by the Trustee in good faith in accordance with or in pursuance of any instruction, direction, request or advice of the Manager. Whenever pursuant to any provision of this Deed any certificate, notice, direction, instruction or other communication is to be given by the Manager to the Trustee, the Trustee may accept as sufficient evidence thereof a document signed or purporting to be signed on behalf of the Manager by any one person whose signature the Trustee is for the time being authorised by the Manager to accept and the Trustee may act on verbal or facsimile instructions given by authorised officers of the Manager (the authority of such authorised officers shall be evidenced in writing by the Manager and such evidence to be provided to the Trustee).

## **9.10 Certificates as to Value may be Accepted**

The Trustee may accept as sufficient evidence of the Value of any Investment or the cost price or Sale Price thereof or of any quotation from the SEHK or any other Specified Stock Exchange, a certificate by an Approved Valuer or, where applicable, JV Valuer, a licensed securities dealer or other professional person, firm or association approved by the Trustee as qualified to value such Investment.

## **9.11 Acts of Trustee**

- 9.11.1 Any provision in this Deed providing for any act or matter to be done by the Trustee may be performed on behalf of the Trustee by any officer or responsible official of the Trustee and any act or matter so performed shall be deemed for all the purposes of this Deed to be the act of the Trustee.
- 9.11.2 The Trustee shall not be liable to account to any Holder or otherwise for any payment made or suffered by the Trustee in good faith as required by and to any duly empowered authority of Hong Kong or elsewhere for taxes or other charges in any way arising out of or relating to any transaction of whatsoever nature under this Deed notwithstanding that any such payments ought not to be or need not have been made or suffered.

The Trustee shall be entitled to rely absolutely on any declaration of tax residence which may be received from a Holder or prospective Holder or applicant for Units.

## **9.12 Provision of Documents**

The Trustee shall be entitled to receive, and the Manager shall provide, copies of the following documents within the periods of time specified below (or such other periods as may be agreed between the Manager and the Trustee):

- 9.12.1 the Trust's monthly management reports within one month after the end of each calendar month; and
- 9.12.2 in respect of each Financial Year, the Trust's annual approved budget by no later than the commencement of that Financial Year.

## **10. Manager's Powers and Duties**

### **10.1 Appointment as Manager**

The Manager is the management company (as defined in the Code) of the Trust. The Manager shall not be appointed to act, or agree to act, as manager of any real estate investment trust other than the Trust. The Manager shall at all times act independently of the Trustee.

### **10.2 Powers of the Manager**

- 10.2.1 The Manager is responsible for, and has the power to manage and operate the Trust, and without limiting the generality of the foregoing shall have all the powers and obligations set out in the other provisions of this Deed, including the powers contained in schedule 1 of this Deed concerning meetings of Holders.
- 10.2.2 Without limiting the generality of the foregoing and subject to the other provisions of this Deed, the Manager shall have the power and discretion to manage and invest the Deposited Property.

### **10.3 Manager may Delegate**

- 10.3.1 The Manager may to the extent permitted by applicable regulatory requirements:
- 10.3.1.1 delegate to any person as it thinks fit specific aspects (but not the whole) of the management and the administration of the Authorised Investments and any of the rights, trusts and discretions granted to the Manager by this Deed; and

- 10.3.1.2 appoint an agent to carry out any of the functions which may be delegated under clause 10.3.1.1.
- 10.3.2 The Manager shall ensure that its delegates have sufficient experience and financial resources at their disposal to enable them to conduct their business and meet their liabilities.
- 10.3.3 The Manager shall exercise all reasonable care in the selection of potential delegates and agents and shall supervise the proceedings and activities of such delegates and agents to ensure that the functions intended to be carried out by them are properly carried out.
- 10.3.4 The Manager shall have in place proper due diligence procedures and management or administrative structures for the selection and on-going monitoring of the delegates.
- 10.3.5 Notwithstanding the foregoing, the Manager shall be fully liable to the Trustee (in its capacity as trustee of the Trust), for all losses, liabilities, damages, costs and expenses suffered or incurred by the Trust arising from all the acts and omissions of its delegates and agents (including delegates or agents appointed by the Trustee at the discretion of the Manager) as if the relevant act or omission had been performed by the Manager itself.

#### **10.4 Manager's Duties**

The Manager shall (by itself or through its delegates and agents) carry out all activities as the Manager may deem necessary for the management of the Trust and its business in accordance with the Code or any published guidelines, policies, practice statements or other guidance issued by the SFC from time to time. Without limiting the generality of the foregoing, the Manager shall (by itself or through its delegates and agents) in relation to the Trust and the Deposited Property:

- 10.4.1 manage the Trust and Deposited Property in accordance with this Deed in the sole interests of the Holders;
- 10.4.2 fulfil the duties imposed on it under applicable law as the manager of the Trust;
- 10.4.3 ensure that in managing the Trust, it has sufficient oversight of the daily operations and financial conditions of the Trust and the Deposited Property (other than Non-qualified Minority-owned Properties), and shall remain to be the key decision-maker of all material matters relating to the management of the Trust;
- 10.4.4 ensure that the financial and economic aspects of Deposited Property are professionally managed in the sole interest of the Holders, including:
  - 10.4.4.1 formulating the investment strategy and policy of the Trust and managing risks connected with the Trust efficiently;
  - 10.4.4.2 determining the borrowing limit of the Trust, complying at all times with the provisions of clause 16.3;
  - 10.4.4.3 investing Deposited Property only in Real Estate and other Authorised Investments;
  - 10.4.4.4 monitoring and supervising the cashflow management of the Trust;

- 10.4.4.5 monitoring and supervising the management of the financial arrangements of the Trust;
- 10.4.4.6 formulating dividend payment schedules of the Trust;
- 10.4.4.7 arranging adequate property insurance and public insurance coverage in accordance with clause 17.1;
- 10.4.4.8 planning the tenant mix and identifying potential tenants for the Real Estate;
- 10.4.4.9 formulating and implementing leasing strategies for the Real Estate;
- 10.4.4.10 enforcing tenancy conditions for the Real Estate;
- 10.4.4.11 ensuring compliance with government regulations in respect of Real Estate;
- 10.4.4.12 performing tenancy administration work, including managing tenants occupancy and ancillary amenities, and negotiating with tenants on grant, surrender and renewal of leases, rent review, termination and re-letting of premises;
- 10.4.4.13 monitoring and supervising: (i) the conducting of rental assessment; (ii) the formulation of tenancy terms; (iii) the preparation of tenancy agreements; (iv) rent collection and accounting; (v) the recovery of arrears; and (vi) possession; for the Real Estate;
- 10.4.4.14 securing and administering routine management services (either internally by the Manager or through the appointment of external third parties) for the Real Estate, including security control, fire precautions, communication systems and emergency management;
- 10.4.4.15 formulating and implementing policies and programmes in respect of building management, maintenance and improvement for the Real Estate;
- 10.4.4.16 initiating refurbishment of any part of the Deposited Property comprising Real Estate under management and monitor such activity; and
- 10.4.4.17 appointing and reviewing the performance of the Auditors and the auditors for Special Purpose Vehicles;
- 10.4.5 calculate the Net Asset Value of the Deposited Property in accordance with this Deed;
- 10.4.6 ensure that the Trust (including where relevant, a Special Purpose Vehicle) has good and marketable legal and beneficial title to the Real Estate, and that each of the contracts (such as property contracts, rental agreements, joint venture or joint arrangement agreements and any other agreements) entered on behalf of the Trust (including where relevant, a Special Purpose Vehicle) with respect to its assets is legal, valid and binding, and enforceable for the benefit of the Trust in accordance with its terms;

- 10.4.7 maintain or cause to be maintained proper books and accounts and records of the Trust (and of all Special Purpose Vehicles and joint ownership arrangements majority-owned by the Trust) in Hong Kong which contain the information required by the Code, and shall permit the Trustee from time to time on demand to examine and take copies of or extracts from any such books. The Manager shall prepare or cause to be prepared the Trust's financial statements which are in agreement with the Trust's books and records and in accordance with IFRS, the Code, this Deed and which give a true and fair view of the state of affairs of the Trust at the end of the relevant Financial Year and of the financial transactions of the Trust for the relevant Financial Year. The Manager shall cause the Accounts to be audited by the Auditors and auditors of the Special Purpose Vehicles;
- 10.4.8 prepare and publish:
- 10.4.8.1 annual reports and accounts to be distributed to Holders and filed with the SFC within four (4) months of the end of the relevant Financial Year; and
- 10.4.8.2 semi-annual reports to be distributed to Holders and filed with the SFC within three (3) months of the end of the period they cover, in each case complying with the provisions of the Code,
- provided, however, that by virtue of Article 59 and Article 14, Paragraph 1, Item 1 of the Investment Trusts and Investment Corporations Act of Japan (the "ITICA") the investment report to Holders of the Units (which would otherwise be required to be prepared and delivered pursuant to the ITICA) will not be prepared and delivered with respect to the Units issued and offered pursuant to clause 7.1.11.
- 10.4.9 ensure that all Constitutive Documents (including those in relation to the listing of Units on the SEHK, but excluding such documents containing commercially sensitive information as determined at the discretion of the Manager) are made available for inspection by the public in Hong Kong, free of charge at all times on the Website or at the place of business of the Manager in Hong Kong and that of the approved person during Business Hours; and ensure that copies of such documents are available upon request by any person upon the payment of a reasonable fee;
- 10.4.10 ensure that Holders are given sufficient prior notice in accordance with the applicable notice provisions of this Deed, and where applicable, right to vote, with respect to any material change to the Trust, including, without limitation, changes in investment objectives or policies or proposal to de-authorise or de-list the Trust;
- 10.4.11 ensure compliance with the licensing and authorisation conditions of the Manager and the Trust and with any applicable laws, rules, codes or guidelines issued by government departments, regulatory bodies, exchanges or any other organisations regarding the activities of the Trust or its administration and the activities of the Special Purpose Vehicles, including satisfying the SFC that internal systems controls and procedures are in place to ensure all applicable requirements are complied with;
- 10.4.12 notify the Trustee as soon as possible of any breaches of any provision of the Constitutive Documents, any provision of the Code, any authorisation, condition

of the Trust, any licensing condition of the Manager and applicable law and take all necessary steps within a reasonable period of time to remedy such breach, taking into account the interests of Holders;

- 10.4.13 nominate a suitably qualified person to be an Approved Person in respect of the Trust;
- 10.4.14 use all reasonable efforts to procure compliance by each Special Purpose Vehicle, mutatis mutandis, with the Constitutive Documents, the Code and applicable law;
- 10.4.15 cause to maintain the status of the Trust as an authorised Collective Investment Scheme in the nature of a real estate investment trust under section 104 of the SFO;
- 10.4.16 execute or procure the execution of such other documents and carry out or procure the carrying out of such other acts as may be necessary to give effect to the performance of its obligations under this Deed;
- 10.4.17 possess the human, organisational and technical resources to properly perform its functions in relation to the Trust and observe high standards of integrity, market conduct, fair dealing and corporate governance; and
- 10.4.18 disclose to Holders the name of any Substantial Holder with which it has a relationship, and the nature of such relationship.

## **10.5 Manager Free to Carry on Transactions**

Subject to the Code and any waivers thereof granted by the SFC, clause 1.7 and applicable law and regulations, nothing herein shall prevent the Manager or any Connected Person related to it from contracting or entering into any financial, banking or any other type of transaction with the Trustee (when acting other than in its capacity as trustee of the Trust) or any Holder or any company or body any of whose shares or other securities form part of the Deposited Property or from being interested in any such contract or transaction provided that any such transaction shall be in compliance with clause 26. The Manager or any Connected Person related to it shall not be liable to account to the Trustee or to the Holders or any of them, for any profits or benefits or other commissions made or derived from, or in connection with any such transaction that is in compliance with clause 26.

## **10.6 Manager Not Responsible for Errors of Judgement**

The provisions of this clause 10.6 are subject to and without prejudice to the provisions of clause 10.3.5. The Manager may act upon any advice of or information obtained from any bankers, accountants, brokers, lawyers, agents or other persons acting as agents or advisers of the Manager and in the absence of fraud, negligence, wilful default, breach of this Deed, breach of the Constitutive Documents, the Code or any applicable laws and regulations, the Manager shall not be liable for anything done or omitted or suffered in reliance upon such advice or information provided that the Manager has acted in good faith and with due care in the appointment thereof. The Manager shall not be responsible for any misconduct, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any such banker, accountant, broker, lawyer, agent or other person as aforesaid and provided further that the Manager has acted in good faith and with due care in the appointment thereof. Any such advice or information may be obtained or sent by letter, facsimile, email or other electronic means and the Manager shall not be liable for acting in good faith and in the absence of fraud, negligence, wilful default, breach of this Deed, breach of the Constitutive Documents, the Code or any applicable laws and regulations, on any advice or information purported to be conveyed by any

such letter, facsimile, email or other electronic means although the same contains some error or shall not be authentic.

#### **10.7 Manager's Discretion Absolute**

Except if and so far as herein otherwise expressly provided the Manager shall as regards all the powers, authorities and discretions vested in it have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof and in the absence of fraud, negligence, wilful default, breach of this Deed, breach of the Constitutive Documents, the Code or any applicable laws and regulations, the Manager shall not be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

#### **10.8 Appointment of Experts by Manager**

Subject to the Code and other provisions of this Deed, without in any way affecting the generality of its powers and duties, the Manager (in managing the Trust and in carrying out and performing its duties and obligations under this Deed), in the exercise of any or all of its powers and discretions and to perform all or any of its obligations under this Deed may:

10.8.1 recommend, appoint and engage (or, if relevant, direct the Trustee to appoint and engage) as appropriate such persons, including any independent financial advisers, auditors, Approved Valuers, JV Valuer, legal practitioners, accountants, surveyors, real estate agents, contractors, qualified advisers, property manager and service providers and (subject as otherwise expressly provided in this Deed) all fees, charges and moneys payable to any such persons and all disbursements, expenses, duties and outgoings in relation thereto shall be paid from the Deposited Property; and

10.8.2 appoint and engage on arm's length basis and on normal commercial terms any real estate agents or managers or service providers or such other persons in relation to the management development, leasing, purchase or sale of any of the Investments and pay to such real estate agents or managers in respect of their services fees not exceeding such fees as are commercially reasonable which shall be paid out of the Deposited Property as an expense of the Trust provided that any such person appointed or engaged be approved by the Trustee and where applicable, such person appointed or engaged complies with the qualifications set out in the Code.

#### **10.9 Manager to Supervise the preparation of Cheques and Warrants**

It shall be the duty of the Manager or its agent or delegate to supervise the preparation of all cheques, warrants, statements and notices which the Trustee has to issue, send or serve as hereby provided, to stamp the same as necessary and (where authorised by the Trustee) to sign the same on behalf of the Trustee and despatch them on the day on which they ought to be despatched or (otherwise) to deposit the same (with the necessary stamped and addressed envelopes) with the Trustee so as to afford the Trustee ample time to examine and sign the same and despatch them on the proper day.

### **11. Remuneration of Trustee and Manager**

#### **11.1 Remuneration of Manager**

##### **11.1.1 Base Fee**



- 11.1.1.1 The Manager shall be entitled to receive, commencing from and including the Listing Date, for its own account, out of the Deposited Property, the Base Fee at the rate of 0.4% per annum of the amount of the Deposited Property. For the purpose of calculating the Base Fee, the value of the Deposited Property shall be taken as the valuation as at the latest published interim report (if any) of the Trust or the latest published audited annual Accounts available at the time that the calculation is made. The Base Fee shall be calculated quarterly as of the close of business on the last Business Day of each calendar quarter and be allocated rateably for any partial periods. The Manager shall submit an invoice with such computation of the Base Fee to the Trustee within 15 calendar days (or such later date as agreed by the Manager and the Trustee) of the end of each calendar quarter, or partial period. Any invoice submitted under this clause shall be subject to the review and clearance by the Trustee and the Trustee shall pay the Base Fee to the Manager within five (5) calendar days of the Trustee's receipt of the Manager's invoice. If the aggregate of the Base Fee paid quarterly to the Manager exceeds the Base Fee due to the Manager in respect of the relevant Financial Year calculated based on the audited annual Accounts for that Financial Year, then the Manager shall pay to the Trust the difference in cash within 30 days after the publication of such audited annual Accounts in cash. If the aggregate of the Base Fee paid quarterly to the Manager is less than the Base Fee due to the Manager in respect of the relevant Financial Year calculated based on the audited annual Accounts for that Financial Year, then the Trust shall pay the Manager the difference within 30 days after the publication of such audited annual Accounts in cash. An announcement will be made by the Manager in relation to such adjustments (if any).
- 11.1.1.2 The Base Fee shall be paid to the Manager in the form of cash or, at the election of the Manager, entirely in the form of Units or partly in cash and partly in the form of Units in accordance with this Deed. The Manager shall make elections for the payment of the Base Fee in cash and/or Units, annually, on or before 15 January in each calendar year by way of notice in writing to the Trustee and an announcement to the Holders, such election to be irrevocable during the calendar year in which it was made. In the event that the Manager fails to make such an election in any calendar year, the Base Fee shall be paid in cash.
- 11.1.1.3 The Manager shall be entitled to alter the rate of the Base Fee to some smaller percentage than that provided by notice to the Trustee in writing provided that the Manager shall give written notice of any alternation of such rate to a higher percentage within the permitted limit to all Holders and the Trustee, not less than three (3) months' prior to the date of effect thereof. Any increase in the Base Fee above the permitted limit or any change in the structure of the Base Fee shall not be implemented without the approval of a Special Resolution at a meeting of Holders, duly convened and held in accordance with the provisions of this Deed. The Manager may lower the rate of the Base Fee to some smaller percentage than the relevant permitted limit specified in this Deed or, where relevant, such other maximum percentage as approved by a Special Resolution. The Manager may increase the rate of the Base Fee to a higher percentage

that the Manager proposes to charge from time to time provided that it is within the relevant permitted limit specified in this Deed or, where relevant, such other maximum percentage as approved by a Special Resolution by giving at least one (1) months' prior written notice to all Holders and the Trustee.

11.1.1.4 When the Base Fee is paid in the form of Units, the Manager shall be entitled to receive such number of Units as may be purchased for the relevant amount of the Base Fee at the prevailing Market Price at the time of the issue of such Units as determined in accordance with this Deed rounded down to the nearest whole number of Units, provided that, (a) the maximum number of Units that may be issued to the Manager as payment of all or part of the Base Fee and the Variable Fee (in accordance with clause 11.1.2.2) for each financial year shall be limited to such number of Units as represents 3% of the total number of Units outstanding as at the last day of the immediately preceding financial year plus the number of Units (if any) issued in the relevant financial year for the purposes of financing any acquisition of real estate by the Trust; and (b) in the event payment is to be made in the form of Units and (i) the relevant thresholds for the issuance of outstanding Units without Holders' approval (including the threshold of 20% (or such other percentage as permitted by the Code) of outstanding Units that the Manager may issue in each financial year without Holders' approval pursuant to the Code, and any other limit or threshold specified in any waiver from strict compliance with the Code granted by the SFC) are exceeded and Holders' approval is not obtained, or (ii) any thresholds for triggering a mandatory offer under the Takeovers Code will be reached as a result, then payment of that excess part of the Base Fee and the Variable Fee shall be paid in the form of cash instead of Units.

#### 11.1.2 **Variable Fee**

11.1.2.1 With effect from and including the Listing Date, the Manager shall be entitled to receive, for its own account, out of the Deposited Property the Variable Fee for each Financial Year commencing from the Listing Date at the rate of 3% per annum of the Net Property Income (before deduction therefrom of the Base Fee and the Variable Fee).

11.1.2.2 The Variable Fee shall be paid to the Manager in the form of cash or, at the election of the Manager, entirely in the form of Units or partly in cash and partly in the form of Units in accordance with this Deed. The Manager shall make elections for the payment of the Variable Fee in cash and/or Units, annually, on or before 15 January in each calendar year by way of notice in writing to the Trustee and an announcement to the Holders, such election to be irrevocable during the calendar year in which it was made. In the event that the Manager fails to make such an election in any calendar year, the Variable Fee shall be paid in cash.

11.1.2.3 Any increase in the Variable Fee payable to the Manager or any change in the structure of the Variable Fee shall be subject to the

approval of the Holders by a Special Resolution at a meeting of Holders, duly convened and held in accordance with this Deed.

- 11.1.2.4 The Manager shall at the end of each quarter of each Financial Year compute the Variable Fee for the quarter, based on management accounts of the Trust (if that real estate is directly owned by the Trustee) or the relevant Special Purpose Vehicle or Joint Venture Entity (if the real estate is owned by a Special Purpose Vehicle or Joint Venture Entity) and shall submit an invoice with such computation of the Variable Fee to the Trustee within 15 calendar days (or such later date as agreed by the Manager and the Trustee) of the end of each quarter of each Financial Year, or partial period. Any invoice submitted under this clause shall be subject to the review and clearance by the Trustee and the Trustee shall pay the Variable Fee to the Manager within five (5) calendar days of the Trustee's receipt of the Manager's invoice. If the aggregate of the Variable Fee paid quarterly to the Manager exceeds the Variable Fee due to the Manager in respect of the relevant Financial Year calculated based on the audited annual Accounts for that Financial Year, then the Manager shall pay to the Trust the difference in cash within 30 days after the publication of such audited annual Accounts in cash. If the aggregate of the Variable Fee paid quarterly to the Manager is less than the Variable Fee due to the Manager in respect of the relevant Financial Year calculated based on the audited annual Accounts for that Financial Year, then the Trust shall pay the Manager the difference within 30 days after the publication of such audited annual Accounts in cash. An announcement will be made by the Manager in relation to such adjustments (if any).
- 11.1.2.5 Where any part of the Variable Fee is to be paid in Units in respect of the last calendar quarter of any distribution period or Financial Year for which an interim distribution or final distribution (as the case may be) will be paid, such Units shall not be issued to the Manager until after the Record Date for such interim distribution or final distribution (as the case may be). Where any such distribution period is shorter than three (3) months, all Units to be issued by way of payment of the Variable Fee to the extent referable to such distribution period shall not be issued until after the Record Date for such distribution.
- 11.1.2.6 When the Variable Fee is paid in the form of Units, the Manager shall be entitled to receive such number of Units as may be purchased for the relevant amount of the Variable Fee at the prevailing Market Price at the time of the issue of such Units as determined in accordance with this Deed rounded down to the nearest whole number of Units, (a) the maximum number of Units that may be issued to the Manager as payment of all or part of the Variable Fee and the Base Fee (in accordance with clause 11.1.1.2) for each financial year shall be limited to such number of Units as represents 3% of the total number of Units outstanding as at the last day of the immediately preceding financial year plus the number of Units (if any) issued in the relevant financial year for the purposes of financing any acquisition of real estate by the Trust; and (b) provided that, in the event payment is to be made in the form of Units and (i) the relevant thresholds for the issuance of outstanding Units without

Holders' approval (including the threshold of 20% (or such other percentage as permitted by the Code) of outstanding Units that the Manager may issue in each financial year without Holders' approval pursuant to the Code, and any other limit or threshold specified in any waiver from strict compliance with the Code granted by the SFC) are exceeded and Holders' approval is not obtained, or (ii) any thresholds for triggering a mandatory offer under the Takeovers Code will be reached as a result, then payment of that excess part of the Variable Fee and the Base Fee shall be paid in the form of cash instead of Units.

## 11.2 Acquisition Fee and Divestment Fee

11.2.1 The Manager is also entitled to receive:

11.2.1.1 An Acquisition Fee not exceeding the rate of 1.0% (and being 1.0% as at the date of this Deed) of the Acquisition Price (the "**Acquisition Fee Permitted Limit**") of any Real Estate in the form of land acquired directly or indirectly by the Trust (pro-rated if applicable to the proportion of the Trust's interest in the Real Estate acquired). The Manager shall give the Holders at least one month's prior written notice of any increase in the rate of the Acquisition Fee that the Manager proposes to charge from time to time up to (but not exceeding) the Acquisition Fee Permitted Limit. Any increase in the Acquisition Fee above the Acquisition Fee Permitted Limit or any change in the structure of the Acquisition Fee shall be approved by a Special Resolution of a meeting of Holders duly convened and held in accordance with the provisions of schedule 1 of this Deed. The Acquisition Fee will be paid to the Manager in the form of cash or, at the election of the Manager, entirely in the form of Units or partly in cash and partly in the form of Units. The Acquisition Fee is payable as soon as practicable after completion of the acquisition. When paid in the form of Units, the Manager shall be entitled to receive such number of Units as may be purchased for the relevant amount of the Acquisition Fee at the same issue price of Units used to finance or part finance the acquisition in respect of which the Acquisition Fee is payable or, where Units are not issued to finance or part finance such acquisition, at the issue price as determined by the Manager as being equal to the highest of the average closing price for a Unit on the SEHK for the period of 10 Trading Days immediately prior to each of the following events:

- (a) the entry into of the agreement for the acquisition of the Real Estate;
- (b) the announcement in respect of the acquisition of the Real Estate; and
- (c) the completion of the acquisition of the Real Estate. No Acquisition Fee is payable in relation to the acquisition of the Special Purpose Vehicles for the Initial Public Offering.

11.2.1.2 A Divestment Fee not exceeding the rate of 0.5% (and being 0.5% as at the date of this Deed) of the Sale Price (the "**Divestment Fee Permitted Limit**") of any Real Estate in the form of land sold or

divested directly or indirectly by the Trust (pro-rated if applicable to the proportion of the Trust's interest in the Real Estate sold). The Manager shall give the Holders at least one (1) month's prior written notice of any increase in the rate of the Divestment Fee that the Manager proposes to charge from time to time up to (but not exceeding) the Divestment Fee Permitted Limit. Any increase in the Divestment Fee above the Divestment Fee Permitted Limit or any change in the structure of the Divestment Fee shall be approved by a Special Resolution of a meeting of Holders duly convened and held in accordance with the provisions of schedule 1 of this Deed. The Divestment Fee will be paid to the Manager in the form of cash or, at the election of the Manager, entirely in the form of Units or partly in cash and partly in the form of Units. The Divestment Fee is payable as soon as practicable after completion of the divestment. When paid in the form of Units, the Manager shall be entitled to receive such number of Units as may be purchased at the issue price as determined by the Manager as being equal to the highest of the average closing price for a Unit on the SEHK for the period of 10 Trading Days immediately prior to each of the following events:

- (a) the entry into the agreement for the disposal of the Real Estate;
- (b) the announcement in respect of the disposal of the Real Estate; and
- (c) the completion of the disposal of the Real Estate.

11.2.2 The Trustee acting in consultation with the Manager, may rely on the recommendation of tax advisors and authorise the payment of any Acquisition Fee, Divestment Fee or Variable Fee, either at the level of the Trust or if relevant, at the level of the Special Purpose Vehicle.

11.2.3 Any payment to third party agents or brokers in connection with the acquisition or divestment of any Real Estate for the Trust shall be paid by the Manager to such persons out of the Acquisition Fee, the Divestment Fee or Variable Fee received by the Manager, and not additionally out of the Deposited Property.

### **11.3 Payments to the Manager and the Trustee**

11.3.1 The amount of any fees payable to the Manager and/or the Trustee shall be net of all applicable goods and services tax, value added tax, sales tax, governmental impositions, duties and levies whatsoever imposed thereon by the relevant authorities in Hong Kong or elsewhere.

11.3.2 In the event that the Trust is required by applicable laws and regulations to withhold or deduct any taxes or other charges from any payment to the Manager and/or the Trustee of its fees, the payment shall be grossed up by an amount such that the gross-up payment, minus the tax or charge, equals the amount due if no such tax or charge were imposed.

11.3.3 Remuneration payable to the Manager and/or the Trustee for a broken period shall be pro-rated on a time basis. For the avoidance of doubt, the remuneration of the Manager pursuant to the first Financial Year shall be pro-rated according to the number of days between the Listing Date and 31 December 2013.

11.3.4 Subject to clause 26 and the provisions of the Code, the Manager shall be entitled to all the rights attached to any Units issued to it under clauses 11.1 and 11.2 as any other Holder of Units.

#### 11.4 Remuneration of Trustee

11.4.1 The Trustee shall be entitled to receive for its own account out of the Deposited Property within 30 calendar days (or such later date as determined by the Trustee) of the last day of every calendar quarter in each Financial Year, in the form of cash, the amount of the remuneration of the Trustee accrued to it pursuant to this clause 11.4 and remaining unpaid.

- (a) The remuneration of the Trustee shall comprise:
- (i) an one-off acceptance fee as agreed between the Trustee and the Manager of HK\$180,000; and
  - (ii) in each Financial Year, an ongoing fee, the rate of which will be determined in accordance with the thresholds set out below, subject to (1) a minimum amount of RMB56,000 per month.

	Value of Deposited Property	Fee Rate per Annum
(aa)	Where the Value of the Deposited Property is less than RMB4 billion	0.0250% per annum of the Value of the Deposited Property (which may be increased from time to time pursuant to this clause 11.4.1 to a maximum percentage of 0.06% per annum of the Value of the Deposited Property)
(bb)	Where the Value of the Deposited Property is, or is greater than, RMB4 billion but less than RMB8 billion	0.0200% per annum of the Value of the Deposited Property (which may be increased from time to time pursuant to this clause 11.4.1 to a maximum percentage of 0.06% per annum of the Value of the Deposited Property)
(cc)	Where the Value of the Deposited Property is, or is greater than, RMB8 billion but less than RMB12 billion	0.0175% per annum of the Value of the Deposited Property (which may be increased from time to time pursuant to this clause 11.4.1 to a maximum percentage of

		0.06% per annum of the Value of the Deposited Property)
(dd)	Where the Value of the Deposited Property is, or is greater than, RMB12 billion but less than RMB16 billion	0.0160% per annum of the Value of the Deposited Property (which may be increased from time to time pursuant to this clause 11.4.1 to a maximum percentage of 0.06% per annum of the Value of the Deposited Property)
(ee)	Where the Value of the Deposited Property is, or is greater than RMB16 billion	0.0150% per annum of the Value of the Deposited Property (which may be increased from time to time pursuant to this clause 11.4.1 to a maximum percentage of 0.06% per annum of the Value of the Deposited Property)

Where there is an increase in the percentage rate applicable to any of (aa), (bb), (cc), (dd) or (ee) the other percentage rates specified above (or at such time as applicable) may also be increased pursuant to this clause 11.4.1. Where a threshold for the Value of the Deposited Property set out in the first column above is exceeded, the fee rate at the next level shall be applied to the entire Value of the Deposited Property (and shall not be applied only to the amount by which such threshold is exceeded).

The Trustee shall give at least one month's prior written notice to the Manager and the Holders of any increase in the rate of the remuneration of the Trustee up to and including the maximum rate of the ongoing fee prescribed in this clause 11.4.1(a) ("**Maximum Rate**") that the Trustee proposes to charge from time to time pursuant to this clause 11.4.1(a). Any such increase must be approved by the Manager. Any increase in the Maximum Rate, or any change to the structure of the Trustee's remuneration, shall be subject to the passing of a Special Resolution.

The remuneration of the Trustee under this clause 11.4.1(a)(ii) shall be payable out of the Deposited Property semi-annually or quarterly in arrears (within 30 days of the end of every six (6) calendar months or each calendar quarter) and will be calculated by reference to the

unaudited management accounts of the Trust prepared by the Manager for the relevant six (6) months or the relevant quarter.

(b) The remuneration of the Trustee shall be payable out of the Deposited Property in cash. The remuneration payable to the Trustee for a broken period shall be prorated on a time basis. For the avoidance of doubt, the remuneration of the Trustee pursuant to clause 11.4.1(a)(ii) for the first Financial Year shall be pro-rated according to the number of days between the date commencing on and from the date the Trust acquires the Property as defined in the Offering Circular in connection with the Initial Public Offering and ending on 31 December 2013.

(c) The ongoing fees calculated in accordance with the above are subject to adjustment, as follows:-

$$\text{Adjustment} = (\text{RPF}\% \times \text{DP}) - \text{SQF}$$

Where:

RPF = the relevant percentage figure determined in accordance with clause 11.4.1(a)(ii) above;

DP = the value of the Deposited Property as published in the audited Accounts of the Trust for the relevant Financial Year; and

SQF = the sum of the semi-annually or quarterly ongoing fees received by the Trustee in respect of the relevant Financial Year.

Where the above adjustment is positive, the Trust shall pay the difference to the Trustee within 30 days after the publication of the audited Accounts of the Trust. Where the adjustment is negative, the Trustee shall pay the difference to the Trust within 30 days after publication of the audited Accounts of the Trust for the relevant Financial Year. For the avoidance of doubt, the above adjustment shall not affect the minimum fee of RMB56,000 per month.

(d) The amount of remuneration payable to the Trustee shall be before any deduction of any applicable sales tax, government impositions, duties and levies whatsoever imposed thereon by the relevant authorities in Hong Kong.

(e) The trustee fee shall be paid in full, free of any restriction or condition, without set-off or counterclaim and free and clear of any deduction or withholding for or on account of any Tax, local or otherwise. If any payments of trustee fee due under this Deed are subject to any deductions or withholdings for any present or future taxes, duties, fees, liabilities or other charges imposed by any competent governmental authority, then an additional amount shall be paid or reimbursed to the Trustee as is necessary so that the amount actually received by the Trustee equals the full amount of trustee fee payable or reimbursable under this Deed.

11.4.2 If the Trustee finds it expedient, necessary or is requested by the Manager to undertake duties which are of an exceptional nature or otherwise outside the scope of the Trustee's normal



duties in the ordinary course of normal day-to-day business operations of the Trust including the acquisition or disposal of an Authorised Investment by the Trust after the Initial Public Offering, the Trustee is entitled, to charge and be paid, out of the Deposited Property, additional fees ("**Trustee's Additional Fees**") on a time-cost basis at a rate to be agreed with the Manager.

## **11.5 Charges by Trustee or Manager**

In consideration of the foregoing neither the Trustee nor the Manager shall make any charge against the Holders or against the Deposited Property for its services or for its normal expenses hereunder with the exception of the charges or fees expressly authorised by this Deed and provided that unless and until the Trustee shall be satisfied that adequate provision has been or will be made for the future expenses of the Trust, the Trustee shall have a lien on and shall be entitled to retain the Deposited Property for the purpose of paying, discharging or providing for such expenses and shall pay to the Manager only the balance (if any) after all such payments discharges or provisions have been made.

## **11.6 Expenses of the Trust**

11.6.1 Subject to this Deed, the Trustee is entitled to apply, or to be reimbursed from, the assets of the Trust (at such times and over such periods as the Trustee and the Manager may determine in any particular case) for all Liabilities or any other expenses that may be properly incurred or suffered by the Trustee in the performance of its obligations or the exercise of its powers under this Deed, or otherwise arising out of or in connection with this Deed or other Constitutive Documents, including the amounts specified in clause 2.4.

11.6.2 The Manager is entitled to apply, or to be reimbursed from, the assets of the Trust (at such times and over such periods as the Trustee and the Manager may determine in any particular case) for all Liabilities or any other expenses that may be properly incurred or suffered by the Manager in the performance of its obligations or the exercise of its powers under this Deed, or otherwise arising out of or in connection with this Deed or other Constitutive Documents, including the amounts specified in clause 2.4.

11.6.3 Notwithstanding clauses 11.6.1 and 11.6.2, the Trustee and the Manager are only entitled to apply, or to be reimbursed from, the Deposited Property to the extent permitted by the Code.

## **12. Trustee's Right of Indemnity and Limitation of Liability**

### **12.1 Good Faith of Trustee**

In the absence of fraud, negligence, wilful default, breach of duty, breach of this Deed or other Constitutive Documents (to which it is a party), breach of the Code or other applicable laws and regulations or breach of trust by the Trustee or its any director, employee, servant, agent or delegate, the Trustee shall not incur any liability by reason of any error of judgement or any matter or thing done or suffered or omitted to be done by it in good faith hereunder.

### **12.2 Limitation of Liability of Trustee**

12.2.1 In the absence of fraud, negligence, wilful default, breach of duty, breach of this Deed or other Constitutive Documents (to which it is a party), breach of the Code or other applicable laws and regulations or a breach of trust, the Trustee shall not in any way be responsible to the Trust, the Holders, the Manager or any person

for any loss, costs, damage or inconvenience that may result from the exercise or non-exercise of its powers.

- 12.2.2 Save to the extent that such loss or damage is caused by the fraud, negligence, wilful default, breach of duty, breach of this Deed or other Constitutive Documents (to which it is a party), breach of the Code or other applicable laws and regulations or a breach of trust, the Trustee shall have no liability for act or omission of the Manager, the Registrar (if the Trustee is not the Registrar), any Approved Valuer, any JV Valuer, any Special Purpose Vehicle, any Joint Venture Entity or any directors of the foregoing.
- 12.2.3 Any liability incurred and any indemnity to be given by the Trustee shall be limited to the Deposited Property over which the Trustee has recourse provided that the Trustee had acted without fraud, negligence, wilful default, breach of this Deed or other Constitutive Documents (to which it is a party), breach of trust, breach of the Code or breach of any applicable law or regulation.
- 12.2.4 Subject to the duties and obligations of the Trustee under this Deed, the Trustee shall at all times be entitled to rely on the recommendations, certifications and representations of the Manager in relation to the Trust and shall not be liable for any act or omission of the Manager in relation to the Trust save where the Trustee is fraudulent, negligent, in breach of duty, in breach of this Deed, or in wilful default.
- 12.2.5 In the absence of fraud, negligence, wilful default, breach of this Deed or other Constitutive Documents to which the Trust is a party, breach of the Code or other applicable laws and regulations or breach of trust by the Trustee, it shall not incur any liability by reason of any error of judgement or any matter or thing done or suffered or omitted to be done by it in good faith hereunder.
- 12.2.6 Notwithstanding anything contained in this Deed:
  - 12.2.6.1 the Trustee shall not incur any liability in respect of or be responsible for losses incurred through the insolvency of or any act or omission of any depository or clearing system with which Authorised Investments may be deposited or any broker, financial institution or other person with whom Authorised Investments or Units are deposited;
  - 12.2.6.2 the Trustee shall have no obligation, and the Manager shall not in any circumstances direct the Trustee, to appoint any nominee, custodian, joint custodian or sub-custodian; and
  - 12.2.6.3 the Trustee shall not incur any liability in respect of or be responsible for losses incurred through the insolvency of or any act or omission of any sub-custodian.

### **12.3 Indemnity Out of Deposited Property**

Subject as herein expressly provided and without prejudice to any right of indemnity at law given to the Trustee, the Trustee and any director, employee, servant, agent or delegate of the Trustee shall be indemnified out of, and shall be entitled for the purpose of indemnity against any actions, costs, claims, damages, expenses or demands to which it may be put as Trustee (including as shareholder of any Special Purpose Vehicles or any Joint Venture Entities) and as any director, employee, servant, agent or delegate of the Trustee to have recourse to, the

Deposited Property or any part thereof save where such actions, costs, claims, damages, expenses or demands are occasioned by the fraud, negligence, wilful default or breach of this Deed, breach of trust, breach of the Constitutive Documents (to which it is a party) or breach of the Code or other applicable laws or regulations by the Trustee or any director, employee, servant, agent or delegate of the Trustee (except where such agent or delegate is appointed at the direction of the Manager).

### **13. Manager's Right of Indemnity and Limitation of Liability**

#### **13.1 Good Faith of Manager**

In the absence of fraud, negligence, wilful default, breach of this Deed or other Constitutive Documents, or breach of the Code or any applicable laws and regulations by the Manager it shall not incur any liability by reason of any error of judgement or any matter or thing done or suffered or omitted to be done by it in good faith hereunder.

#### **13.2 Limitation of Liability of Manager**

The Manager shall not in any way be responsible to the Trust, the Holders, the Trustee or any person for any loss, costs, damage or inconvenience that may result from the exercise or non-exercise of its powers. The Manager shall not be under any liability except such liability as may be assumed by it under this Deed nor shall the Manager (in the absence of fraud, negligence, wilful default, breach of this Deed or other Constitutive Documents (to which it is a party), breach of the Code or other applicable laws and regulations) be liable for any act or omission of the Trustee, the Registrar, the Approved Valuer or, where applicable, the JV Valuer.

#### **13.3 Indemnity Out of the Deposited Property**

Subject as herein expressly provided and without prejudice to any right of indemnity at law given to the Manager, the Manager shall be entitled for the purpose of indemnity against any actions, costs, claims, damages, expenses or demands to which it may be put as Manager to have recourse to the Deposited Property or any part thereof, save where such action, cost, claim, damage, expense or demand is occasioned by the fraud, negligence, wilful default or breach of this Deed or other Constitutive Documents, the Code or any applicable laws and regulations by the Manager and any director, employee, servant agent or delegate of the Manager.

### **14. Limitation of Liability Concerning the Trustee and the Manager**

#### **14.1 Legislation**

The Trustee and the Manager shall incur no liability to the Holders for doing or (as the case may be) failing to do any act or thing which by reason of any provision of any present or future law or regulation made pursuant thereto, or of any decree, order or judgment of any court, or by reason of any request, announcement or similar action (whether of binding legal effect or not) which may be taken or made by any person or body acting with or purporting to exercise the authority of any government (whether legally or otherwise) either they or any of them shall be directed or requested to do or perform or to forbear from doing or performing. If for any reason becomes impossible or impracticable to carry out any of the provisions of this Deed due to any force majeure events beyond the control of the Trustee or the Manager, including without limitation, the events referred to in clause 14.3, neither the Trustee nor the Manager shall be under any liability therefor or thereby unless such failure is caused by its fraud, negligence or wilful default.

#### **14.2 Verification of Signatures**

Neither the Trustee nor the Manager shall be responsible for any authenticity of any signature or of any seal affixed to any endorsement on any certificate or to any transfer or form of application, endorsement or other document affecting the title to or transmission of Units or be in any way liable for any forged or unauthorised signature on or any seal affixed to such endorsement transfer or other document or for acting upon or giving effect to my such forged or unauthorised signature or seal. The Trustee and the Manager respectively shall nevertheless be entitled but not bound to require that the signature of any Holder, to any document required to be signed by him under or in connection with this Deed shall be verified to its or their reasonable satisfaction.

#### **14.3 Beyond Control**

Neither the Manager nor the Trustee shall be responsible to the Trust or any Holder for any loss or damage arising from reasons or causes beyond its control, or the control of any of its directors, employees, servant, agent or delegate including (without limitation) nationalisation, expropriation, currency restrictions, change of laws or regulations, acts of war, terrorism, insurrection, revolution, civil unrest, riots or strikes, nuclear fusion, typhoons or acts of God, inability to obtain or the failure of equipment or computer systems beyond its control or any other causes beyond its control whether or not of the same class or kind as specifically named above.

#### **14.4 No obligation to act and other limitations of liability**

No provision of this Deed shall require the Manager or the Trustee to do anything which may require the Manager or the Trustee to expend or risk its own funds (that is to say, funds, not forming part of the Deposited Property), or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity or security against such risk or liability is not assured to it within reasonable time.

#### **14.5 Dealings with Joint-Alternate Holders**

Should the Manager or the Trustee prior to acting on any request, application or instruction from any of the Joint-Alternate Holders, receive a contradictory request, application or instruction from the other Joint-Alternate Holders, the Manager or the Trustee (as the case may be) may elect to act on the latest request, application or instruction received or to act on the joint mandate of all Joint-Alternate Holders, or not to act at all, and will not be held liable for so acting and omitting to act.

#### **14.6 Indemnities - Invalid Documents**

The Manager and the Trustee shall incur no liability in respect of any action taken or thing suffered by them in reliance upon any notice, resolution, direction, consent, certificate, affidavit, statement, certificate of stock, plan of reorganisation or other paper or document believed by each of them in good faith and in the absence of fraud, negligence, wilful default, a breach of this Deed or any applicable laws and regulations or a breach of trust (in the case of the Trustee) to be genuine and to have been passed, sealed or signed by the proper parties.

#### **14.7 Saving Clause as to Indemnities**

Any indemnity expressly given to the Manager or the Trustee in this Deed is in addition to and without prejudice to any indemnity allowed by law; PROVIDED NEVERTHELESS THAT any provision of this Deed shall be void insofar as it would have the effect of exempting the Trustee or the Manager from or indemnifying it against any liability for breach of this Deed or breach of trust (in the case of the Trustee) or any liability which by virtue of any rule of law

would otherwise attach to it in respect of any fraud, negligence or wilful default of which it may be guilty in relation to its duties.

#### **14.8 Other Trusts**

Nothing herein contained shall be construed so as to prevent the Manager and the Trustee in conjunction or the Manager or the Trustee separately from acting as the manager or trustee of trusts separate and distinct from the Trust and neither of them shall in anyway be liable to account to the Holders or any other person for any profit or benefit made or derived hereby or in connection therewith.

#### **14.9 Resolutions**

Neither the Manager nor the Trustee shall be responsible for acting upon any resolution purported to have been passed at any meeting of the Holders in respect whereof minutes shall have been made and signed even though it may be subsequently found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not binding upon all the Holders.

#### **14.10 Reliance by Manager and Trustee**

- (a) The Manager and the Trustee may accept as sufficient evidence of the Value of any Investment or the cost price or sale price thereof or of any quotation from the SEHK or any other Specified Stock Exchange, a certificate by an Approved Valuer or JV Valuer in respect of Real Estate and a licensed securities dealer in respect of securities or any other professional person, firm or association qualified in the opinion of the Manager to provide such a certificate.
- (b) At all times and for all purposes of this Deed, the Manager and the Trustee may rely upon the established practice and rulings of SEHK or any other Specified Stock Exchange and any committees and officials thereof on which any dealing in any Investment or other property is from time to time effected in determining what shall constitute a good delivery and any similar matters and such practice and rulings shall be conclusive and binding upon all persons under this Deed.

### **15. Investment of the Deposited Property**

#### **15.1 Scheme of Investment**

Subject to the provisions of clause 20, all Cash and other Investments which ought in accordance with, the provisions of this Deed to form part of the Deposited Property shall be paid or transferred to the Trustee or a Special Purpose Vehicle forthwith upon receipt by the Manager or any delegate of the Manager and all Cash shall be applied at the discretion of the Manager (but subject always to the provisions of this Deed) in the acquisition of Authorised Investments or otherwise for the purposes of the Trust provided that all or any amount of Cash may during such time or times as the Manager may think fit be retained in Cash or Cash Equivalent Items.

#### **15.2 Investment of the Trust**

Subject to the provisions of this Deed, the Manager's investment policy and objective for the Trust are as follows:

- 15.2.1 the Trust is established to invest in high quality income-producing Real Estate (including Minority-owned Properties) in any part of the world, including but not limited to mainland China, Hong Kong, Macau, Taiwan, Japan and other areas of

Asia and other Authorised Investments. Except for investments in hotels and serviced apartments which shall be held through Special Purpose Vehicles (or, where applicable, Joint Venture Entities), the Trust may hold Real Estate either directly or indirectly through Special Purpose Vehicles or Joint Venture Entities, each of whose primary purpose is to hold or own Real Estate and other Authorised Investments and/or arrange financing for the Trust, or by direct ownership of Real Estate and other Authorised Investments, and the Manager must manage the Deposited Property so that, save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, at least 75% of the Gross Asset Value of the Deposited Property shall be invested in Real Estate that generates recurrent rental income at all times. The Manager may engage or participate in Property Development and Related Activities, including the acquisition of uncompleted units in a building which is unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment, provided that (i) the aggregate investments in all Property Development and Related Activities (which, for such purpose, shall not include refurbishment, retrofitting and renovations) undertaken by the Trust (which shall mean the total project costs borne and to be borne by the Trust, inclusive of the costs for the acquisition of land (if any) and the development or construction costs and financing costs) together with (ii) the aggregate contract value of uncompleted units of Real Estate acquired by the Trust ((i) and (ii) collectively as the “**Aggregate Development Costs**”) shall not exceed the Property Development Cap at any time;

15.2.2 the Manager's principal investment policy in respect of the Trust is to invest in Real Estate as permitted by the Code and other Authorised Investments. Such Real Estate and other Authorised Investments shall be generally be income-producing. The investment strategy of the Trust shall be determined by the Manager from time to time at its absolute discretion so far as it is consistent with the investment policy;

15.2.3 the Manager may from time to time change its investment policy for the Trust as stated in clause 15.2.1 and clause 15.2.2, the relevant Offering Circular subject to compliance with the Code and the Listing Rules and provided that: (i) it has notified the Holders of the change by way of circular in accordance with the requirements of the Code; and (ii) the change has been approved by Holders by Special Resolution at a meeting convened by the Manager in accordance with schedule 1 of this Deed; and

15.2.4 the Trust may, subject to the restrictions and requirements of the Code and the provisions of clause 15.3, invest in the following financial instruments (the “**Relevant Investments**”):

(i) securities listed on SEHK or other internationally recognized stock exchange(s);

(ii) unlisted debt securities;

(iii) government and other public securities; and

(iv) local or overseas property funds,

provided at all times, that save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC:

- (a) the value of the Trust's holding of the Relevant Investments issued by any single group of companies shall not exceed 10% of the Gross Asset Value of the Deposited Property;
- (b) the Relevant Investments shall be sufficiently liquid, could be readily acquired and/or disposed of under normal market conditions and in the absence of trading restrictions, and has transparent pricing; and
- (c) at least 75% of the Gross Asset Value of the Deposited Property shall be invested in real estate that generates recurrent rental income at all times.

### **15.3 Investment Restrictions**

Subject to the restrictions and requirements of the Code, the Manager shall ensure that the following investment restrictions are complied with:

- 15.3.1 subject as provided herein, no investment shall be made by the Trust which would result in non-compliance with the Code (unless waived by the SFC), any applicable laws and regulations, this Deed or applicable investment restrictions in the Listing Rules (if any);
- 15.3.2 the Trust may only invest in Authorised Investments and other Investments permitted by the Code from time to time;
- 15.3.3 the Trust shall not invest in vacant land unless such investment is part-and-parcel of the Property Development and Related Activities undertaken in accordance with clause 15.2.1 and within the investment objective or policy of the Trust;
- 15.3.4 the Trust shall not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person nor shall any part of the Deposited Property be used to secure the indebtedness of any person or any obligations, liabilities or indebtedness other than as provided in clause 16;
- 15.3.5 the Trust shall not acquire any Investment which involves the assumption of any liability that is unlimited;
- 15.3.6 the Trust shall hold each Investment (which is in the nature of a Real Estate or shares in any Special Purpose Vehicle or Joint Venture Entity holding interest in a Real Estate, other than a Non-qualified Minority-owned Property) for a period of at least two years from the date of its acquisition, or in the case of any such Investments in relation to the Property Development and Related Activities undertaken by the Trust, for a period of at least two years from the completion of the relevant Property Development and Related Activities, unless the Manager has clearly communicated to the Holders the rationale for disposal prior to the expiry of such period and the Holders approve the disposal of such Investment by Special Resolution at a meeting to be convened by the Manager in accordance with the schedule 1 of this Deed, or in any other cases as permitted from time to time under the Code and/or any published guidelines, policies, practice statements or other guidance issued by the SFC;
- 15.3.7 save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, the combined value of: (a) all Relevant Investments of the Trust; (b) all Non-qualified Minority-owned Properties of the Trust; (c) other ancillary investments of the

Trust; and (d) all of the Aggregate Development Costs of the Trust, shall not exceed 25% of the Gross Asset Value of the Deposited Property (the "**Maximum Cap**") at any time;

- 15.3.8 save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, the value of the Trust's holding of the Relevant Investments issued by any single group of companies shall not exceed 10% of the Gross Asset Value of the Deposited Property at any time;
- 15.3.9 save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, the Value of the Trust's holding of any Non-qualified Minority-owned Property shall not exceed 10% of the Gross Asset Value of the Deposited Property at any time; and
- 15.3.10 save as may be permitted from time to time under the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, the Value of the Trust's holding of all other ancillary investments (as defined in the Code and/or other published guidelines, policies, practice statements or other guidance issued by the SFC) shall not exceed 10% of the Gross Asset Value of the Deposited Property at any time.

The Manager shall ensure that each Special Purpose Vehicle and, where applicable, Joint Venture Entity shall comply with the requirements set out in this clause 15.3, but, for the avoidance of doubt, notwithstanding any provision in this Deed, investments in Non-qualified Minority-owned Properties are not required to comply with all requirements applicable to Real Estate unless otherwise provided in the Code or any published guidelines, policies, practice statements or other guidance issued by the SFC from time to time, save that the Manager shall exercise due care and skill to comply with the general requirements under the Code to the extent that such matters are within its control.

#### **15.4 Due Diligence by Manager**

The Manager shall implement appropriate policies and conduct due diligence such that Investments are made only after careful and diligent investigations by the Manager as required by the Code. All such procedures and processes followed, and decisions made in relation to whether to invest or not to invest in a particular country or a property by the Trust shall be fully, properly and clearly documented as part of the record-keeping function of the Manager as required by the Code.

#### **15.5 Ownership of Special Purpose Vehicle**

- 15.5.1 The Trust may legally and beneficially acquire and own the issue share capital of any Special Purpose Vehicles in accordance with the Code if the Manager considers it necessary or desirable for the Trust to do so, in which event the Manager shall instruct the Trustee to and the Trustee, shall accordingly establish, subscribe or acquire by transfer, or otherwise invest in, its capacity as trustee of the Trust, a Special Purpose Vehicle provided that: (i) the Special Purpose Vehicle is wholly-owned by the Trust; or (ii) the Trust has majority ownership and control of such Special Purpose Vehicle and there are sufficient and proper safeguards in relation to the Special Purpose Vehicle to address the risks arising from the non-wholly owned structure; and such investment is not in conflict with this Deed, the Code and other applicable law.



- 15.5.2 The Manager shall ensure that neither the memorandum nor articles of association or equivalent constitutional documents and (where applicable) joint venture agreements governing the Special Purpose Vehicles nor the organisation, transactions or activities of such vehicles shall under any circumstance contravene any requirements of the Code or this Deed.
- 15.5.3 As and to the extent required by the Code, the Manager shall have responsibility for the management of, and shall manage, the assets held by any such Special Purpose Vehicle, including as provided in clause 15.5.4 and the Trustee shall, in accordance with the Manager's written instructions, exercise its powers of control as shareholder as provided in clause 15.5.5 subject in all cases to clause 9.4.2. The Manager shall in writing direct the Trustee to appoint and remove the directors of any Special Purpose Vehicle or Joint Venture Entity appointed by the Trust and the Trustee, subject in all cases to clauses 15.5.5, 15.5.6 and 15.5.7, shall only act in accordance with such direction. The costs and expenses of establishing, managing and maintaining and administering such Special Purpose Vehicle, whether incurred by the Manager or by the Trustee shall be paid from the Deposited Property.
- 15.5.4 The Manager shall be responsible for the management of the assets held by each Special Purpose Vehicle including the annual budget and the management and operation of such Special Purpose Vehicle, and generally perform the same activities in relation to the assets of such Special Purpose Vehicle as to the directly held assets of the Trust.
- 15.5.5 Notwithstanding any other provisions in this Deed, the Trustee shall, directly or indirectly, only upon written instruction by the Manager but subject in all cases to clause 9.4 exercise any rights as shareholder of such Special Purpose Vehicle or Joint Venture Entity (including, without limitation the obligation to provide powers of attorneys or proxies as provided in clause 23.1, the obligation to appoint representatives to fill all the seats on the board of directors of such Special Purpose Vehicle or Joint Venture Entity and to ensure that the auditor and accounting principles and policies of any Special Purpose Vehicle are identical to those of the Trust).
- 15.5.6 The Manager shall monitor the actions of the directors of any Special Purpose Vehicle or Joint Venture Entity appointed by the Trustee and, where such actions are not consistent with the provisions of this Deed shall direct the Trustee to remove the directors (or any of them). Notwithstanding the foregoing, the Trustee shall be entitled, but shall not be obliged, at its own discretion, to exercise its power as shareholder (including, without limitation, removing any of the directors of the Special Purpose Vehicles and Joint Venture Entities) if the Trustee considers such actions are necessary to comply with the Constitutive Documents or the Code or are in the best interest of the Holders.
- 15.5.7 The Trustee's duty to appoint the directors of any Special Purpose Vehicle or Joint Venture Entity shall not include finding any suitable individuals or providing any person (including any employee or other Connected Person related to the Trustee) as such candidate or nominee director or directors. In appointing suitable nominees of the Manager (which the Manager shall be obliged to procure) as directors of the Special Purpose Vehicle or Joint Venture Entity, the Trustee may exercise discretion in refusing to appoint any nominee which the Trustee considers to be insufficiently qualified or in respect of whose integrity the Trustee is not satisfied. The Manager shall provide to the Trustee such information on the nominees, as the Trustee reasonably requests, which is

necessary to assess the qualification and fitness and properness of such nominees to be appointed as directors of the Special Purpose Vehicles and Joint Venture Entities. Where a person nominated by the Manager is not appointed in such circumstance, the Manager shall nominate alternative individuals, subject to this clause 15.5.7.

## **15.6 Investment Procedures**

15.6.1 As and to the extent required by the Code, if Real Estate is to be acquired through the acquisition of shares in a Special Purpose Vehicle:

15.6.1.1 a report made by qualified accountants (who shall be named in the relevant Offering Circular or circular) shall be prepared on:

- (a) the profit and loss of the Special Purpose Vehicle in respect of each of the three financial years (or such other shorter period as appropriate) immediately preceding the transaction; and
- (b) the assets and liabilities of the Special Purpose Vehicle as at the last date (which shall not be more than six months old from the date of the report) to which the accounts of the Special Purpose Vehicle were made up;

15.6.1.2 the report required under 15.6.1.1 shall:

- (a) indicate how the profits and losses of the Special Purpose Vehicle would, in respect of the shares to be acquired, have concerned the Trust, if the Trust had at all material times held the shares to be acquired; and
- (b) where the Special Purpose Vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the Special Purpose Vehicle and its subsidiaries, either as a whole, or separately; and

15.6.1.3 a valuation report in respect of the Special Purpose Vehicle's interest in Real Estate shall be prepared, and such report shall comply with the requirements set out in clause 18.

15.6.2 If the Manager at any time and from time to time thinks it desirable in the interests of the Holders to sell or otherwise dispose of, reconstruct, exchange, vary, modify or otherwise change any investment forming part of the Deposited Property, it shall inform the Trustee in writing of its proposal and shall supplement that writing with such information about the proposals as the Trustee reasonably requires and such proposals shall not provide for investment or reinvestment otherwise than in an Authorised Investment. If pursuant to any advice or opinion of any relevant expert (including, without limitation any banker, valuer, accountant or legal adviser), such proposal is providing for investment or reinvestment otherwise than in an Authorised Investment or is in contravention of clause 15.3 or the Manager fails to provide the supplemental information referred to in this clause 15.6.2 to the satisfaction of the Trustee, the Trustee shall be entitled to, without liability, refuse to take such steps as instructed or requested by the Manager to effect such proposal.

## **15.7 Joint Ownership**

Subject to this Deed, the Code and/or published guidelines, policies, practice statements or other guidance issued by the SFC, the Manager may, where it considers it to be in the best interests of Holders, invest the assets of the Trust in jointly owned Real Estate (including Minority-owned Properties), including via Joint Venture Entities. As and to the extent required by the Code, the Manager shall ensure that prior to entering any such joint ownership arrangement, it shall obtain a legal opinion in accordance with the relevant requirements of the Code satisfactory to and addressed to the Trustee stating that the Trust will have good and marketable legal and beneficial interest in the Real Estate.

## **15.8 Realisation of Investments**

If any Investment forming part of the Deposited Property is not or at any time ceases to be an Authorised Investment, it shall be realised by the Manager but the Manager may postpone the realisation of any such Investment for such period as it may determine to be in the interest of the Holders unless the Trustee shall require the same to be realised. Without prejudice to the foregoing provisions and subject to the provisions of clauses 15.3.6 and 15.12 and in particular to the requirements therein mentioned, any Investment comprised in the Deposited Property may at any time be realised at the discretion of the Manager. The net proceeds of the realisation of any Investment (including those which ceased to be an Authorised Investment) may be invested in other Authorised Investments or used to provide Cash required to be paid out of the Deposited Property for the purpose of any provision of this Deed or retained as Cash or on deposit as aforesaid or partly one and partly the other.

## **15.9 Fittings**

Investments of the Trust may be made in fittings (which include, without limitation, furniture, carpets, fittings, furnishings, appliances, machinery, plant and equipment installed or used or to be installed or used in or in association with any item or parcel of Real Estate forming part of the Deposited Property or any building thereon or considered necessary by the Manager to fit out any such item or parcel for the purposes of letting or sale and other assets incidental to the ownership of Real Estate) that ordinarily depreciates in value through use or effluxion of time. Such fittings may be replaced as and when advised by the Manager's agents or delegates which are the property manager(s) of such investments, and the costs of such replacement will be paid out of the Deposited Property.

## **15.10 Manager's Discretion on Investment Decisions**

Subject to the provisions of this Deed and the Code, the Manager alone and to the exclusion of the Trustee shall be vested with the power of discretionary investment management of the Deposited Property and shall have absolute discretion to determine (and it shall be the duty of the Manager to instruct the Trustee) the manner in which any Cash or other assets forming part of the Deposited Property should be invested and what purchases, sales, transfers, exchanges, collections, realisations or alterations of Investments should be effected (and when and how the same should be effected) and to give to the Trustee all directions necessary or which the Trustee may desire in relation to those matters. The Trustee shall act on and give effect to all such instructions as aforesaid by the Manager as are communicated in writing by the Manager in accordance with the provisions of this clause 15.10 to the Trustee which instruction shall not conflict with this Deed, the Code or applicable law.

## **15.11 Trustee to be Indemnified Against Personal Liability**

Unless the Trustee is indemnified to its satisfaction against all liability which it may incur on its own account or the Trustee confirms to the Manager in writing that it does not require in any particular case to be so indemnified, no investment in any Authorised Investment or any borrowing requested by the Manager under this Deed shall be made if the holding of such Authorised Investments or, the borrowing (as the case may be) by the Trustee exposes or may expose the Trustee to any personal liability, actual, contingent, prospective or of some other kind, and the Trustee shall not be bound to enter into any building or other contract or other transaction under which it may be exposed to any such personal liability except to the extent such personal liability arises due to the Trustee's negligence, breach of duty, breach of trust, breach of this Deed or fraud.

#### **15.12 Acquisition and Disposal Costs Borne by the Deposited Property**

Subject to clause 11.2.3, any brokerage, commission, stamp duty, legal and other costs and valuation fees incurred in and expenses relating to the acquisition or disposal or attempted acquisition or disposal of or otherwise in relation to Investments shall be borne by the Deposited Property.

#### **15.13 Trustee to Take Steps to Effect Proposals**

Subject to the provisions of this Deed, its duties and obligations under applicable laws and regulations and this Deed, the overriding fiduciary duties it owes the Trust and to all proper enquiries, investigation and legal steps deemed necessary by the solicitors acting for the Trustee (including, for the avoidance of doubt, any in-house solicitor of the Trustee), the Trustee shall take all necessary steps on its part to give effect to any instructions given to it by the Manager.

### **16. Borrowings of the Trust**

#### **16.1 Permitted Borrowing**

The Trust shall not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person nor shall any part of the Deposited Property be used to secure the indebtedness of any person or any obligations, liabilities or indebtedness other than as provided in this clause 16.

#### **16.2 Manager May Require Trustee to Borrow Money**

16.2.1 Subject to clause 16.3.1 and the Code, the Manager may, whenever it considers it necessary or beneficial to the Trust, to borrow or raise moneys for the purposes of the Trust, instruct the Trustee, arrange, negotiate and agree loan, financing and other relevant documentation by which the Trust shall borrow and give security for or guarantee such borrowing or money raising, and where required to effect such transaction on behalf of the Trust, shall instruct the Trustee in writing to do so on behalf of the Trust by the Trustee directly or through one or more Special Purpose Vehicles (upon such terms and conditions as the Manager thinks fit and in particular by charging or mortgaging all or any of the Investments) and the Trustee shall give effect to such written instruction (including, where requested, by way of giving a guarantee out of the Deposited Property), provided that the Trustee shall not execute any instrument, lien, charge, pledge, hypothecation, mortgage or agreement in respect of the borrowing or raising of moneys which (in the opinion of the Trustee) would render the Trustee's personal liability to exceed the Deposited Property, and provided further that no security granted by the Trustee out of Deposited Property shall contain any restriction on the distribution of Distribution Entitlements to Holders prior to any default in respect of the obligations secured by such security.

- 16.2.2 Subject to clause 16.3.1 and the Code, the Manager may, whenever it considers it necessary or desirable in the interests of Holders to do so or considers it necessary to enable the Trust to meet any liabilities as aforesaid, raise or borrow any sum or sums of money (including, without limitation, the provision of security in respect of any borrowing or any liability and the encumbering of any Investment) for the Trust and may secure the repayment of such moneys and interest costs and other charges and expenses in such manner and upon such terms and conditions in all respects as the Manager may think fit and in particular by charging or mortgaging all or any of the Investments, and provided further that no security granted by the Trustee out of Deposited Property shall contain any restriction on the distribution of Distribution Entitlements to Holders prior to any default in respect of the obligations secured by such security.

### **16.3 Restrictions on Borrowing**

- 16.3.1 No new borrowing or money raising shall be requisitioned by the Manager under clause 16.2.1 or made by the Manager under clause 16.2.2 if upon the effecting of such borrowing or raising the amount thereof (excluding net assets attributable to Holders) together with the aggregated amount of all other raisings or borrowings made by the Trustee at the instruction of the Manager under clause 16.2.1 (in each case, whether directly or through one or more Special Purpose Vehicles, and still remaining to be repaid) would thereupon in the aggregate exceed 50% (or such other higher or lower percentage as may be permitted by the Code or as may be specifically permitted by the relevant authorities) of the Gross Asset Value of the Deposited Property.
- 16.3.2 The Manager covenants with the Trustee for the benefit of the Trustee and the Holders that it will use its best endeavours to ensure that the Trust is so carried on and conducted that the borrowing limitations under clause 16.3.1 are at all times met.

### **16.4 No Liability of Manager or Trustee**

- 16.4.1 Neither the Manager nor the Trustee shall incur any liability by reason of any loss which a Holder, may suffer by reason of any depletion in the value of the Deposited Property which may result from any borrowing arrangements made hereunder and (save as herein otherwise expressly provided) the Trustee shall be entitled to be indemnified out of and have recourse to the Deposited Property in respect of any liabilities, costs, claims or demands which it may suffer arising directly or indirectly from the operation of this clause 16 and the arrangements referred to herein.
- 16.4.2 In the event that any arrangements for borrowing, making deposits, acquiring foreign currency or converting foreign currency into any other currency under this clause 16 shall be made with the Manager or the Trustee or any Connected Person related to either, such person shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom provided that any such arrangements shall be on normal commercial terms and on arm's length basis.

### **16.5 Repayment and Interest**

- 16.5.1 Any borrowing shall be subject to a provision whereunder the borrowing shall become repayable in the event of the termination of the Trust and be further

subject to a provision that the Trustee's liability is limited to the extent of the Deposited Property.

- 16.5.2 Any interest on any borrowing effected under this clause 16 and fees, charges and expenses incurred in negotiating, entering into, varying and carrying into effect, with or without variation and terminating the borrowing arrangements shall be payable out of the Deposited Property.

## **16.6 Security and Other Arrangements**

- 16.6.1 For the purposes of securing any borrowing and interest and expenses thereof and always subject to clause 15.11, the Trustee shall at the written instruction of the Manager, to the extent that the Trustee is satisfied that it shall incur no liability in excess of the Value of the Deposited Property, guarantee and/or indemnify out of, or create a lien on or charge or pledge or mortgage or hypothecate in any manner all or part of the Deposited Property and where any part of the Deposited Property or the document of title thereto is for the time being under the custody or control of some person other than the Trustee in consequence of any such lien, charge, pledge, mortgage or hypothecation, the provisions of this Deed as to the custody and control of the Deposited Property or the documents of title thereto (including registration of Authorised Investments) shall be deemed not to have been infringed thereby. In addition, the Trustee at the direction of the Manager may assign any future rental income of any part of the Deposited Property in the nature of Real Estate to secure any borrowing and interest and expenses thereof provided that the Manager shall ensure that such security is not prejudicial to the interests of Holders and shall not contain any restriction on the distribution of Distribution Entitlements to Holders prior to any default under the borrowing.
- 16.6.2 For the purposes of efficient portfolio management, the Manager may use interest rate and currency swaps and other derivative instruments to hedge against investment risks, including, without limitation, interest rate fluctuations. In order to enhance the performance of the Trust, the Manager may invest in Cash Equivalent Items for efficient portfolio management purposes and to ensure that any Cash held by the Trust is managed efficiently in the best interests of Holders, For the avoidance of doubt, all investments made for efficient portfolio management purposes pursuant to this clause 16.6.2 shall be held by the Trustee directly or indirectly through Special Purpose Vehicles.

## **16.7 Borrowing to be on Commercial Terms**

Subject to the provisions of this clause 16, any borrowing effected hereunder shall be conducted at arm's length, and the terms thereof shall be commensurate with those of transactions of similar size and nature, and shall be on such terms and conditions as may be determined by the Manager.

## **17. Insurance of Investments**

### **17.1 Manager to Effect Insurance**

The Manager will insure or cause to be insured and keep insured or cause to be kept insured the Investments in the normal course of business usually insured, in the name of the Trustee in its capacity as the trustee of the Trust (or, in the case of Investments held through any Special Purpose Vehicle, in the name of such Special Purpose Vehicle) in such amount as is determined by the Manager, with such reputable insurance company as may be determined by the Manager (which may be an insurance company related to the Trustee and/or the Manager) and to such value in accordance with local market practice thereof in the case of Investments which are of

a nature or kind capable of being so insured, against fire, loss of rent and such other risks as the Manager may deem prudent. The Manager may effect such further or other insurances as it may deem necessary or prudent.

## **17.2 Payment of Premiums**

The Manager shall pay or procure the payment of premiums and any other sums payable on any such insurances effected by the Manager out of the Deposited Property on a timely basis within all requisite periods.

## **17.3 Interest of Security Holder**

In the event that pursuant to the provisions of this Deed a borrowing is made by the Trustee on behalf of the Trust or any Special Purpose Vehicle on the security of any Investment the interest of the security holder shall, if the Manager so requires, be noted on the particular insurance policy in place in respect of that Investment and it shall, if the Manager so requires, be a term of the security document entered into by the Trustee or the Special Purpose Vehicle that the Trustee on behalf of the Trust or the Special Purpose Vehicle agrees with the security holder to allow direct payment according to the interest of the security holder of all or part of any insurance proceeds under the insurance policy from the insurer to the security holder.

## **18. Valuation**

### **18.1 Appointment of Approved Valuer**

The Manager shall select and recommend one or more property valuers to the Trustee and the Trustee will appoint at its discretion a property valuer as an Approved Valuer recommended by the Manager, to make a valuation of Real Estate, subject to the Code. In appointing the property valuer, the Trustee shall at all times act in accordance with clauses 9.4.4.1 and 9.4.4.5 and may exercise discretion in refusing to appoint any Approved Valuer recommended by the Manager which the Trustee, after consultation with the Manager, reasonably considers to be insufficiently qualified or in respect of whose integrity the Trustee is not satisfied. Where any property valuer recommended by the Manager is not appointed by the Trustee in such circumstances, the Manager shall recommend an alternative property valuer subject to this clause 18.1. The Manager, when making such recommendations to the Trustee, shall have regard to the particular type or types of Authorised Investments which is the subject of such valuation, recommendation or report, provided that in relation to an Investment which is Real Estate in the form of land, the person so recommended shall be a property valuer that carries on the business of valuing real estate in the applicable jurisdiction, shall meet the criteria of independence as set out in the Code, and have key personnel who are fellows or members of the Hong Kong Institute of Surveyors or the Royal Institution of Chartered Surveyors (Hong Kong Branch) and who are qualified to perform property valuations in accordance with the Code. The Manager shall, upon the request by the Trustee, provide such information about the property valuer recommended by the Manager, which would assist the Trustee in exercising its discretion in the selection of property valuers under this clause 18.1. The remuneration of the Approved Valuer appointed for the purposes of the Initial Public Offering shall be determined on an arm's length basis. Thereafter, the remuneration of any Approved Valuer (which shall be payable out of the Deposited Property) shall be determined by the Manager with the approval of the Trustee and disclosed in the annual financial statements of the Trust. The Trustee shall not be liable for the acts or omissions of such Approved Valuer provided that the Trustee has acted in good faith, with due care and without negligence in the appointment of such Approved Valuer.

In relation to an Investment which is not in the nature of Real Estate, the Manager when making any recommendations to the Trustee as to the valuer thereof shall have regard to the particular nature of such Investment which is the subject of the valuation, recommendation or report.

## 18.2 Terms of Appointment of the Approved Valuer

- 18.2.1 The terms of appointment of any Approved Valuer shall provide that commencing from the date on which the Trust is authorised by the SFC, after the Approved Valuer has conducted valuations of the Real Estate of the Trust for three (3) consecutive years such Approved Valuer shall retire and may only be re-appointed after a period of at least three (3) years thereafter.
- 18.2.2 The Approved Valuer shall be subject to removal by notice in writing from the Trustee in any of the following events (and the Trustee shall ensure that the terms of appointment of the Approved Valuer shall provide for such rights of removal):
- 18.2.2.1 the Approved Valuer goes into liquidation, becomes bankrupt and has a receiver appointed over its assets;
  - 18.2.2.2 if the Approved Valuer ceases to carry on business;
  - 18.2.2.3 in the event of the fraud, wilful default or negligence of the Approved Valuer or the failure to provide services in a manner satisfactory to the Manager and after consultation with the Manager, the Trustee states in writing that a change in the Approved Valuer is desirable in the interests of Holders;
  - 18.2.2.4 an Ordinary Resolution is passed by the Holders to dismiss the Approved Valuer.

## 18.3 Valuation of Investments

The Manager shall ensure that the Value of an Investment at any given date means:

- 18.3.1 in the case of Investments falling within any paragraph of the definition of "**Authorised Investment**" which is not in the nature of Real Estate and subject to clauses 18.3.3, 18.3.4 and 18.3.4.1, the Acquisition Cost thereof on its Acquisition Date, or its depreciated value as reflected in the books of the Trust or any vehicle through which such Investment is held, whichever is the lower;
- 18.3.2 in the case of Investments falling within any paragraph of the definition of "**Authorised Investment**" which is in the nature of Real Estate, whether held directly by the Trustee or indirectly through Special Purpose Vehicles or, where applicable, Joint Venture Entity, and subject to clause 18.3.3:
- 18.3.2.1 on the Trust's acquisition of the Investment and until a subsequent valuation thereof by an Approved Valuer, or where applicable, JV Valuer, its Acquisition Cost thereof on its Acquisition Date; and
  - 18.3.2.2 on a subsequent valuation by an Approved Valuer, or where applicable, JV Valuer of such Investment obtained pursuant to any of the provisions of this Deed since the date of the Trust's acquisition of such Investment, the Value of such Investment as determined by such valuation (and where the Investment is not wholly owned by the Trust, the Value of such Investment which is attributable to the Trust shall be pro rated accordingly);
- 18.3.3 in the case of Investments falling within any paragraph of the definition of "**Authorised Investment**" which are in the nature of shares in the issued share



capital of any financing vehicle, such Investments shall be valued in accordance with the most recent audited financial statements of such financing vehicle;

18.3.4 in the case of Investments falling within any paragraph of the definition of "**Authorised Investment**" which is in the nature of derivative instruments used for hedging or efficient portfolio management purposes and including Relevant Investments for which clauses 18.3.1, 18.3.2, 18.3.3 and 18.3.5 are not applicable, the Value of such Investments shall be determined by the Manager, subject to the approval of the Trustee, and shall be calculated as follows:

18.3.4.1 all calculations of investments quoted, listed, traded or dealt on any stock exchange, commodities exchange, futures exchange or over-the-counter market shall be made by reference to the last traded price on the principal stock exchange for such investments as at the close of business in such place on the day as of which such calculation is to be made; and

18.3.4.2 where there is no stock exchange, commodities exchange, futures exchange or over-the-counter market, all calculations based on the value of investments quoted by any person, firm or institution making a market in such investments (and if there is more than one such market maker, then such market maker as the Manager shall designate) shall be by reference to the mean of the latest bid and offered price quoted thereon provided that the Manager may, with the approval of the Trustee, request a revaluation of any such investments to be made by any such professional person as the Manager may consider, with the approval of the Trustee, to be qualified to value such investments; and

18.3.5 in the case of Investments falling within any paragraph of the definition of "**Authorised Investment**" which is in the nature of Cash or Cash Equivalent Items, such Investments shall be valued at its face value (together with accrued interest), if it is in the form of cash, deposits or similar assets, or its market value (together with accrued interest if default on an ex interest basis) unless, in the opinion of the Manager (after consultation with the Trustee), any adjustment should be made to reflect the value thereof,

and the Value of the Deposited Property at any given date means the aggregate Value of all Authorised Investments comprising the Deposited Property at the relevant date provided that in all cases such Value shall be in accordance with IFRS.

#### **18.4 Net Asset Value**

The Manager shall determine the Net Asset Value of the Deposited Property based upon the Approved Valuer's (or, where applicable, the JV Valuer's) valuation of Real Estate, the Value of Cash and Cash Equivalent Items comprised in the assets of the Trust and other Deposited Property less Liabilities.

#### **18.5 Basis of Valuation**

The Manager shall ensure that all valuations made by Approved Valuers pursuant to this clause 18 shall be carried out in good faith in accordance with market practice on such basis as the Approved Valuers respectively may determine to be appropriate, subject to the terms of this Deed and the provisions of the Code. The valuation methodology for valuation of Real Estate shall follow the HKIS Valuation Standards published from time to time by the Hong Kong Institute of Surveyors or the International Valuation Standards issued from time to time by the

International Valuation Standards Council. Once adopted, the same valuation standards shall be applied consistently to all valuations of Real Estate.

## **18.6 Frequency of Valuation of Real Estate Investments**

18.6.1 Save as provided in clause 18.6.3, the Manager shall ensure that a full valuation of each of the Trust's Real Estate in the form of land and building shall be conducted by an Approved Valuer at least once every Financial Year, and may require the Approved Valuer to carry out additional valuations or inspections at such other dates as the Manager may determine in its sole discretion.

18.6.2 The Manager shall also ensure that, unless otherwise permitted from time to time under the Code and/or any published guidelines, policies, practice statements or other guidance issued by the SFC, an Approved Valuer shall produce a valuation report (i) on Real Estate to be acquired or sold by the Trust; or (ii) in any other circumstance prescribed by the Code.

18.6.3 In the case of annual valuation of a Minority-owned Property, the Manager may adopt the valuation issued by a qualified property valuer engaged by the relevant Joint Venture Entity (the "**JV Valuer**") provided that it is reasonably satisfied with the JV Valuer's competence and independence having regard to its duties under the Code. Where a valuation of a Minority-owned Property is conducted by the Approved Valuer, the Approved Valuer may appoint a competent business valuer or other qualified valuer to assist in preparing the valuation of the Minority-owned Property taking into account any impact or implications the specific ownership structure or any other relevant divestment or other restrictions may have on the value of the property.

## **18.7 Approved Valuer to Receive Information**

The Manager shall ensure that each Approved Valuer appointed to make a valuation of Real Estate receives all information reasonably required by him to make the valuation, including particulars of leases and/or licences and the rents and/or fees currently payable thereunder.

## **18.8 Valuations Addressed to Trustee and Manager and Valuation Costs Borne Out of Deposited Property**

Each valuation carried out pursuant to the foregoing provisions of this clause 18 by an Approved Valuer shall be addressed to the Trustee and to the Manager and shall be acknowledged in writing by the Approved Valuer as being able to be relied upon by each of the Trustee and the Manager and the cost of each and every such valuation shall be paid out of the Deposited Property. The Manager shall ensure that the Trustee is promptly provided with a copy of each valuation report.

## **18.9 Trustee Not Bound to Check Valuations**

Subject to compliance with clause 9.4 and in the absence of fraud, negligence or any error known to the Trustee, the Trustee shall not be responsible for verifying or checking any valuation of the Deposited Property or any calculation of the prices at which Units are to be issued, but shall be entitled at any time to require the Manager to justify the same.

## **18.10 Unauthorised Investments**

In the event that an Investment does not constitute an Authorised Investment (an "**Unauthorised Investment**"), the Manager and the Trustee shall immediately, upon becoming

aware of the same, report such fact to the other, the Manager shall (and the Trustee shall ensure that the Manager shall) report such Unauthorised Investment to the SFC and the Manager shall determine the basis of valuing the Unauthorised Investment for the period during which it is held. The Manager shall, subject to the overall interests of Holders, dispose of such Unauthorised Investment as soon as practicable. The Manager shall promptly notify the SFC and the Trustee of the steps being taken to dispose of such Unauthorised Investment and keep them informed on the progress of such steps.

## **19. Currencies**

### **19.1 Records to Be Maintained in Renminbi**

The Trust and its records and accounts shall be maintained in Renminbi unless and until the Manager and the Trustee agree that such currency is not suitable because it is not in the interests of the Holders and decide that another currency shall be used.

### **19.2 Payments in Hong Kong Dollars**

Notwithstanding that the Trust and its records and accounts are maintained in Renminbi, payments for Units and payments out of the Trust will be made in Hong Kong Dollars provided that the Manager may accept payment for Units and make payments out of the Trust (including distributions of income) in a currency other than Hong Kong Dollars and in such event, the equivalent amount in Hong Kong Dollars of any sum paid in such other currency shall be calculated at such rate (whether official or otherwise) which the Manager shall deem appropriate in the circumstances having regard to any premium or discount which may be relevant and to the rate of exchange.

### **19.3 Transactions in Currencies**

Any transaction authorised hereunder may be effected in Hong Kong Dollars or in any other currency other than Hong Kong Dollars as the Manager may deem fit and for such purpose, any foreign currency may be acquired at such rate of exchange or otherwise as the Manager may determine and either for present or forward settlement and any costs and commissions thereby incurred shall be paid out of the Deposited Property.

## **20. Distributions**

### **20.1 Regular and Special Distribution**

20.1.1 Subject to this clause 20, the Manager shall make regular distributions to Holders in respect of each Financial Year at yearly or more frequent intervals as the Manager shall decide in its absolute discretion, subject to the requirement that a Distribution Amount shall be paid to Holders not later than five (5) months after the Distribution Calculation Date for the relevant Distribution Period. The Distribution Amount for the first Distribution Period shall be paid to Holders not later than 30 November 2014.

20.1.2 Subject to this clause 20, the Manager may make special distributions to Holders at such time or times and in such amounts as the Manager shall decide in its absolute discretion (each a "**Special Distribution**"). In respect of each Special Distribution:

20.1.2.1 clauses 20.3, 20.4 and 20.5 shall not apply;

20.1.2.2 each Holder's entitlement to the Special Distribution is to be determined in accordance with the following formula:

$$SD \times \frac{UHSD}{UISD}$$

where:

SD is the amount of the Special Distribution;

UHSD is the number of Units held by the Holder at the close of business on the Special Distribution Record Date for that Special Distribution; and

UISD is the number of Units in issue in the Trust at the close of business on the Special Distribution Record Date for that Special Distribution;

20.1.2.3 clauses 20.6, 20.8 and 20.9 shall apply, mutatis mutandis provided that: (i) the Auditors' review requirement under clause 20.6.1 shall not apply; and (ii) both references to the terms "Distributable Amount" and "Distribution Period" shall be construed as a reference to the term "Special Distribution", the reference to the term "Distribution Date" shall be construed as a reference to such distribution date as the Manager determines for the Special Distribution, the reference to the term "Distribution Entitlement" shall be construed as a reference to the Holders' entitlement to the Special Distribution and references to the term "Record Date" shall be construed as a reference to the term "Special Distribution Record Date";

20.1.2.4 the Manager shall make such adjustments as are necessary in its opinion in order to ensure that no amounts comprising the Special Distribution are included in the calculation of the Distribution Amount for the Distribution Period during which such Special Distribution is made; and

20.1.2.5 reference to the term "Record Date" in clause 21.1 shall be construed to include reference to the term "Special Distribution Record Date".

## **20.2 Minimum Annual Distribution**

20.2.1 In respect of each Financial Year, the total amounts distributable and distributed to Holders shall be no less than 90% of the Annual Distributable Income for the Financial Year.

20.2.2 Subject to clause 20.2.3 nothing in this clause 20 shall affect in any way the ability of the Trust, if so determined by the Manager, to distribute to Holders amounts in excess of 90% of the Annual Distributable Income for any Financial Year.

20.2.3 The Manager may at its discretion from time to time direct the Trustee to make distributions over and above the minimum 90% of Annual Distributable Income if and to the extent the Trust, in the opinion of the Manager has funds surplus to its business requirements, provided that no amount of revaluation surplus on Real Estate credited to income or gains on disposal of Real Estate, whether directly or indirectly through the disposal of any Special Purpose Vehicle or Joint Venture Entity, shall form part of any distribution to Holders unless the Manager shall have obtained the Trustee's prior consent.

20.2.4 To the extent so required by the Code, the Manager and the Trustee shall, insofar as permitted by the relevant constitutive documents and (where applicable) joint venture agreements governing the Special Purpose Vehicle or Joint Venture Entity, use their best endeavours to seek to procure that each Special Purpose Vehicle or Joint Venture Entity for the time being shall, directly or indirectly, distribute to the Trust all (or, where applicable, the minimum amount specified in the joint venture agreement) of its income (after deduction of such costs and expenses as the Manager shall determine be set against such income) attributable to the Trust for each Financial Year as permitted by the laws and regulations of its relevant jurisdiction of incorporation. For the avoidance of doubt, all distributions received and receivable by the Trust from any Minority-owned Property shall form part of the Trust's income.

### **20.3 Frequency of Distribution of Income**

The Manager will endeavour to ensure that for each Financial Year:

20.3.1 there is at least one Distribution Period; and

20.3.2 the last Distribution Period ends on the last day of the Financial Year.

For each Distribution Period, the Manager will calculate, and the Trustee will distribute, each Holder's Distribution Entitlement, in accordance with the provisions of this clause 20.

### **20.4 Distribution Amount and Distribution Entitlement**

20.4.1 The Distribution Amount for a Distribution Period ending other than on the last day of a Financial Year is to be determined in accordance with the following formula:

$$DA = (90\% \text{ of IDI}) + C$$

Where:

DA is the Distribution Amount for that Distribution Period;

IDI is the Interim Distributable Income (as defined in clause 20.5.1) for that Distribution Period determined by the Manager; and

C is any additional amount (including capital), which the Manager has determined is to be distributed.

20.4.2 In respect of the Financial Years prior to and including the Financial Year ended 31 December 2014, the Distribution Amount for a Distribution Period ending on the last day of a Financial Year is to be determined in accordance with the following formula:

$$DA = (90\% \text{ of ADI}) + C$$

Where:

DA is the Distribution Amount for that Distribution Period;

ADI is the amount (if any) by which the Annual Distributable Income (as defined in clause 20.5.2) for that Financial Year exceeds the aggregate

of the Distribution Amount(s) for the previous Distribution Period(s) of that Financial Year; and

C is any additional amount (including capital), which the Manager has determined is to be distributed.

20.4.2A In respect of the Financial Year ending 31 December 2015 and subsequent Financial Years, the Distribution Amount for a Distribution Period ending on the last day of a Financial Year is to be determined in accordance with the following formula:

$$DA = (90\% \text{ of ADI}) + C - D$$

Where:

DA is the Distribution Amount for that Distribution Period;

ADI is the Annual Distributable Income (as defined in clause 20.5.2) for that Financial Year;

C is any additional amount (including capital), which the Manager has determined is to be distributed; and

D is the aggregate of the Distribution Amount(s) for the previous Distribution Period(s) of that Financial Year.

20.4.3 In respect of each Distribution Period, each Holder's Distribution Entitlement is to be determined in accordance with the following formula:

$$DA \times \frac{UH}{UI}$$

Where:

DA is the Distribution Amount for that Distribution Period;

UH is the number of Units held by the Holder at the close of business on the Record Date for that Distribution Period; and

UI is the number of Units in issue at the close of business on the Record Date for that Distribution Period.

## 20.5 Calculation of Interim Distributable Income and Annual Distributable Income

20.5.1 For the purposes of this Deed, the "**Interim Distributable Income**" for a Distribution Period means the amount calculated by the Manager (based on the interim unaudited financial statements of the Trust for that Distribution Period) as representing the consolidated net profit of the Trust and the Special Purpose Vehicles for that Distribution Period, after provision for tax, and as adjusted for accounting purposes to eliminate the effects of the Adjustments.

20.5.2 For the purposes of this Deed, the "**Annual Distributable Income**" for a Financial Year means the amount calculated by the Manager (based on the audited financial statements of the Trust for that Financial Year) as representing the consolidated audited net profit after tax of the Trust and the Special Purpose

Vehicles for that Financial Year, as adjusted to eliminate the effects of the Adjustments.

- 20.5.3 For the purposes of this Deed, "**Adjustments**" means adjustments of certain items which are charged or credited to the consolidated profit and loss account for the relevant Financial Year or the relevant Distribution Period (as the case may be), including, but not limited to:
- 20.5.3.1 unrealised property revaluation gains/losses, including impairment provisions and reversals of impairment provisions;
  - 20.5.3.2 impairment loss of goodwill/recognition of negative goodwill;
  - 20.5.3.3 differences between cash and accounting finance costs;
  - 20.5.3.4 realised gains on the disposal of properties;
  - 20.5.3.5 fair value changes on financial instruments;
  - 20.5.3.6 deferred tax charges/credits in respect of property valuation movements, commercial building allowances/capital allowances and other tax deductions claimed;
  - 20.5.3.7 the portion of the Management Fee that is paid in the form of Units;
  - 20.5.3.8 non-cash foreign exchange gains or losses;
  - 20.5.3.9 costs of any public offering of Units that are expensed through the income statement but are funded by proceeds from the issuance of such Units;
  - 20.5.3.10 depreciation and amortization in respect of Real Estate directly or indirectly owned by the Trust; and
  - 20.5.3.11 other material non-cash gains/losses.

## **20.6 Distribution Entitlements**

- 20.6.1 The Manager shall, as soon as practicable, inform the Trustee and the Registrar (where appointed) of its calculation under this clause 20 of the amount of distribution per Unit in respect of each Distribution Period in writing and instruct the Trustee and the Registrar (where appointed) to pay each Holder accordingly. The Manager shall also arrange for the Auditors to review and check the calculation of the amount of distribution per Unit in respect of each Distribution Period and to issue a confirmation letter regarding such review and verification to the Manager, who will then provide a copy of such confirmation letter to the Trustee.
- 20.6.2 Subject to clarifying any queries which the Trustee and the Manager may have in relation to the calculation under clause 20.6.1, in respect of each Distributable Period, the Manager shall instruct the Trustee and the Trustee shall either pay or direct the Registrar (where appointed) to pay to each Holder his Distribution Entitlement. No Distribution Entitlement shall bear interest against the Trust.

- 20.6.3 For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period, the persons who are Holders on the Record Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount of that Distribution Period. In the event that the Trust does not have sufficient cashflow to meet payments of Holders' Distribution Entitlement, such unpaid Distribution Entitlement shall be accrued and shall be paid to the persons entitled thereto as soon as practicable after the Trust has sufficient cashflow to meet the payment obligations and Holders shall be notified of the suspension of payments by way of announcement issued in accordance with clause 24.
- 20.6.4 The Manager and the Trustee (upon the instructions of the Manager) must deduct from each Holder's Distribution Entitlement all amounts which:
- 20.6.4.1 are necessary to avoid distributing a fraction of a cent;
  - 20.6.4.2 equal any amount of Tax which has been paid or which the Manager determines is or may be payable by the Trustee or the Manager (to the extent required by applicable laws and regulations) in respect of the Holder, on the amount of the income of the Trust and attributable to the Holder, or the amount of the distribution otherwise distributable to that Holder;
  - 20.6.4.3 are required to be deducted by law or this Deed, provided that the Trustee and the Manager shall not be liable to account to any Holder or otherwise for any such deduction made or suffered by the Trustee or the Manager (as the case may be) in good faith and in the absence of fraud, negligence, wilful default, breach of this Trust Deed or breach of any applicable laws or regulations notwithstanding that any such deduction ought not to be or need not have been made or suffered; or
  - 20.6.4.4 are payable by the Holder in respect of the Trust, to the Trustee or the Manager.
- 20.6.5 The Manager must direct in writing the Trustee how any sum so retained under clause 20.6.4 is to be applied and/or paid.
- 20.6.6 For the avoidance of doubt, upon the declaration of any distribution per Unit made by the Manager on behalf of the Trust, the Trust shall be obliged to pay such distribution per Unit regardless of the number of Units in issue as at the Record Date for the relevant period, provided that appropriate adjustments shall be made to take into account any consolidation or subdivision of Units which may have occurred between the date of declaration of the distribution and the Record Date.
- 20.6.7 The Record Date in respect of each Distribution Period should not be a date prior to the date when the relevant distribution is declared.

## **20.7 Holder Notification**

Each Holder must as and when required by the Manager provide such information as to his place of residence for taxation purposes as the Manager may from time to time determine.

## **20.8 Composition of Distribution**



The Manager must notify each Holder through the annual and interim reports of the Trust and the results announcements of the Trust for the relevant periods:

- 20.8.1 the extent to which a distribution under this clause 20 is composed of, and the types of, income and capital (which shall be determined by the Manager in its absolute discretion); and
- 20.8.2 any amounts deducted under clauses 20.6.4.2 to 20.6.4.4.

## **20.9 Distribution Reinvestment Arrangements**

Without limiting the generality of clause 7.1 and this clause 20:

- 20.9.1 the Manager may issue Units pursuant to a distribution reinvestment arrangement in accordance with such terms and conditions as may be determined by it from time to time for the reinvestment by Holders of any distributions to be made by the Trust in return for new Units, provided that no Holder shall be obliged to receive Units in lieu of a cash distribution; and
- 20.9.2 the Issue Price of each Unit issued pursuant to a distribution reinvestment arrangement under this clause 20.9 shall be determined by the Manager in accordance with clause 7.2.2 provided that, for the purposes of determining such Issue Price, notwithstanding clause 7.2.3, "Market Price" shall mean the average closing price of the Units in the five (5) Trading Days immediately preceding the relevant Record Date.

## **21. Payments by the Trust**

### **21.1 Place and Conditions of Payment**

So long as the accounts and records of the Trust are maintained in Hong Kong, any moneys payable by the Trustee or the Manager or the Registrar (where appointed) to any Holder on the relevant Record Date under the provisions of this Deed shall be paid in Hong Kong Dollars, and may be paid by telegraphic transfer to a Hong Kong bank account or cheque or warrant sent through the post to the registered address of such Holder or the joint Holder who is first named on the Register. Every such telegraphic transfer or cheque or warrant sent or payment made shall be made at the sole risk of the Holder and payment of every such telegraphic transfer or cheque or warrant or payment made through CCASS or otherwise (as the case may be) shall be in full satisfaction of the moneys payable and shall be a good discharge to the Trustee and the Manager and the Registrar (where appointed).

### **21.2 Receipt of Holders**

The receipt of the Holder for any amounts payable in respect of Units shall be a good discharge to the Manager or the Trustee (as the case may be) and if several persons are registered as joint Holders or in consequence of the death of a Holder, are entitled to be so registered any one of them may give effectual receipts for any such amounts.

### **21.3 Untraceable Holders and Unclaimed Moneys**

- 21.3.1 In the event that any payment due to a Holder under this Deed is not claimed by the Holder entitled thereto within six (6) years of the due date of such payment, such payment shall be forfeited and transferred to the Deposited Property and thereafter such Holder and any other person otherwise entitled thereto shall not have any right or claim thereof.

- 21.3.2 Without prejudice to the rights of the Manager or the Trustee under clauses 21.3.1 and 21.3.3, the Manager may cease or procure to cease sending cheques for Distribution Entitlements by post if such cheques have been left uncashed for six months on two consecutive occasions. However, the Manager may exercise the power to cease sending cheques for Distribution Entitlements after the first occasion on which such a cheque is returned undelivered.
- 21.3.3 The Manager shall have the power to sell, in such manner as it thinks fit, any Units of a Holder who is untraceable, but no such sale shall be made unless:
- 21.3.3.1 all cheques being not less than three (3) in total number, for any sum payable in cash to the Holder sent during the relevant period in the manner authorised by this Deed have remained uncashed;
  - 21.3.3.2 so far as it is aware at the end of the relevant period, the Manager has not at any time during the relevant period received any indication of the existence of the Holder or of a person entitled to the Units by death, bankruptcy or operation of law; and
  - 21.3.3.3 the Manager has caused an advertisement to be published in an English language newspaper and a Chinese language newspaper or be published by such other means as may be permitted or required by the Code or the SFC and (to the extent the Listing Rules are applicable to real estate investment trusts in Hong Kong) by the Listing Rules or the SEHK, from time to time giving notice of its intention to sell such Units and has notified the SFC of such intention and a period of three (3) months has elapsed since the date of such advertisement.

For the purpose of the foregoing, “**relevant period**” means the period commencing twelve (12) years before the date of publication of the advertisement referred to in clause 21.3.3.3 above and ending at the expiry of the period referred to in that clause.

- 21.3.4 To give effect to any such sale, the Manager may authorise any person to transfer the said Units and instrument of transfer signed or otherwise executed by or on behalf of such person shall be as effective as if it had been executed by the registered Holder or the person entitled by transmission to such Units, and the purchaser shall not be bound to see to the application of the purchase money nor shall his title to the Units be affected by any irregularity or invalidity in the proceedings relating to the sale. The net proceeds of the sale will become assets of the Trust. Neither the Manager nor the Trustee shall be required to account for any money earned from the net proceeds which may be employed in the business of the Trust or as it/they think(s) fit. Any sale under this clause 21.3 shall be valid and effective notwithstanding that the Holder holding the Units sold is dead, bankrupt or otherwise under any legal disability or incapacity.

## 22. Meetings of Holders

The provisions set out in schedule 1 of this Deed relating to meetings of Holders shall have effect as if the same were included herein.

## **23. Voting Rights In Respect of the Deposited Property**

### **23.1 Manager's Right to Determine How Voting Rights are Exercised**

- 23.1.1 Subject to the provisions of this Deed and its duties and obligations under law and this Deed in respect of Special Purpose Vehicles and Joint Venture Entities, all rights of voting conferred by or in respect of any of the Deposited Property shall be exercised in such manner as the Manager may in writing direct (and the Manager may refrain at its own discretion from the exercise of any voting rights).
- 23.1.2 The Trustee shall, upon written request by (and at the expense of) the Manager from time to time, execute and deliver or cause to be executed or delivered to the Manager or its nominees such powers of attorney or proxies as the Manager may reasonably require, in such name or names as the Manager may request, authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the Deposited Property.
- 23.1.3 The Manager shall exercise the said rights in what it may consider to be the best interests of the Holders, but (in the absence of fraud, negligence, wilful default, breach of trust, the Constitutive Documents, the Code or applicable law) neither the Manager nor the Trustee shall be under any liability or responsibility in respect of any vote, action or consent given or taken or not given or not taken by the Manager or the Trustee whether in person or by proxy, and neither the Trustee nor the Manager nor each holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of judgement or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or Manager or by the holder of such proxy or power of attorney under this Deed; and the Trustee shall be under no obligation to anyone and shall not incur any liability with respect to any action taken or caused to be taken or omitted by the Manager or its nominees or by any such proxy or attorney.
- 23.1.4 The Manager shall in respect of its having exercised or not having exercised any such right of voting, action or consent keep a written record (including by electronic means) of such exercise or non-exercise and shall at all reasonable times during Business Hours give the Trustee access to such record and allow the Trustee to inspect such record, provided always that (if such record is kept on magnetic tape or in accordance with some other mechanical or electrical system) the provisions of this clause 23.1 may be satisfied by the production of legible evidence of the contents of such record.

### **23.2 Construction of Voting Rights**

The phrase "**rights of voting**" or the word "**Vote**" used in this clause 23 shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the Deposited Property and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.

## **24. Announcements, Circulars, Notices and Advertisements**

### **24.1 Material Information**

The Manager shall keep Holders informed of any material information pertaining to the Trust in a timely and transparent manner as required by the Code and the provisions of Part XIVA of

the SFO shall have effect, mutatis mutandis, as if the Trust is a “listed corporation” and if the board of directors of the Manager are the board of directors of a “listed corporation”.

## **24.2 Approval of Announcements, Circular and Notices**

Save as otherwise provided from time to time by the Code or any published guidelines, policies, practice statements or other guidance issued by the SFC, all announcements, circulars and notices relating to the Trust shall be submitted to the SFC for prior approval. Upon such approval, they shall be disseminated to Holders as soon as reasonably practicable.

## **24.3 Announcements**

The Manager shall inform Holders by way of announcement as soon as reasonably practicable of any information concerning the Trust which:

- 24.3.1 is necessary to enable Holders to appraise the position of the Trust;
- 24.3.2 is necessary to avoid a false market in the Units;
- 24.3.3 might be reasonably expected to materially affect market activity in, and the price of, the Units; or
- 24.3.4 requires Holders' approval.

For the purposes of this Deed, in case of any reference to an announcement in relation to matters concerning the Trust, the method of publication of such announcement shall be such method as may be required or permitted by the Code or the SFC from time to time.

## **24.4 Circulars**

- 24.4.1 The Manager shall issue a circular to Holders in respect of transactions that, pursuant to the Code (or in the reasonable opinion of the Trustee or the Manager), require Holders' approval, including:
  - 24.4.1.1 the issuance of new Units (other than Units issued pursuant to a dividend reinvestment plan) that requires Holders' approval pursuant to clause 7;
  - 24.4.1.2 entering into a merger or takeover;
  - 24.4.1.3 making a disposal of Real Estate (other than Non-qualified Minority-owned Properties) within a period of less than two (2) years from the date of its acquisition (or if the Trust engages in Property Development and Related Activities, from the date that such Property Development and Related Activities in respect of the Real Estate are completed) ;
  - 24.4.1.4 changing the Manager or Trustee of the Trust;
  - 24.4.1.5 changing the general nature or character of the Trust, such as the investment objective and/or policy of the Trust;
  - 24.4.1.6 changing the level of fees and charges of the Trust only if such alteration requires the approval of Holders; and

- 24.4.1.7 requesting the termination, de-authorisation or delisting of the Trust.
- 24.4.2 The Manager shall issue a circular to Holders in respect of material information in relation to the Trust, including:
  - 24.4.2.1 a material change in the Trust's financial forecast made in any Offering Circular previously issued by the Trust; and
  - 24.4.2.2 a valuation of the Real Estate of the Trust, conducted upon request by the Trustee under clause 9.4.4.6.

The Manager shall also issue a circular to Holders in respect of a Connected Party Transaction or a Notifiable Transaction in accordance with Chapter 8 or 10.10B of the Code (as the case may be) where applicable.

- 24.4.3 In general, the Manager shall send out a circular to Holders within 15 Business Days after the issuance of an announcement (or such longer or shorter period as the SFC may permit or require from time to time) referred to in clause 29.1.2 or 30.1.1. Where a general meeting is to be held, the relevant circular shall be sent to Holders at the same time as or before the notice of the general meeting is given to Holders.

## **24.5 Notices to Holders**

The Manager shall inform Holders of the results of any Holders' voting by poll at a general meeting by way of an announcement or any such other publication method as may be required or permitted by the Code or the SFC from time to time.

## **24.6 Service**

To the extent permitted or required by the applicable laws and regulations and the Code or the SFC from time to time, any Corporate Communication required to be published, mailed, issued, served, delivered, sent, given or otherwise made available to Holders or holders of Convertible Instruments by any means by or on behalf of the Trust may be served, delivered, supplied or made available by:

- (i) posting it to or leaving it at the last known address of such relevant Holders as appearing in the Register or in case of joint Holders, to the joint Holder whose name stands first in the Register. Any Corporate Communication so served by post shall be deemed to have been served or delivered on the day following the day of posting, and in proving such service it shall be sufficient to prove that the letter or other document containing the notice was properly addressed, stamped and posted;
- (ii) sending it to the electronic address provided by such relevant Holders (in the case of joint Holders, by the joint Holder whose name stands first in the Register) or otherwise making it available to such relevant Holders using electronic means (which term includes sending or otherwise making available the Corporate Communication to the Holders in electronic format). Any Corporate Communication so given by electronic means shall be deemed to have been served or delivered on the day on which it is successfully transmitted;
- (iii) making it available on the Website provided that a notification of publication of the Corporate Communication on the Website is sent to such relevant Holders in the manner as prescribed in accordance with the requirements of the Listing Rules. Any

Corporate Communication so made available on the Website shall be deemed to have been sent or published on the latter of:

- (a) the date on which the notification (as referred to above) is sent to the intended recipient; and
- (b) the date on which the Corporate Communication first appears on the Website after that notification is sent; or
- (iv) by such other means as may be permitted or required by the applicable laws and regulations, the Code, the Listing Rules or by the SFC from time to time.

For the avoidance of doubt, the Manager is not prohibited under this Deed to give notices to Holders whose registered address is outside Hong Kong.

Any notice served in accordance with this Deed on Holders, whose registered addresses are in Hong Kong shall be sufficient to enable such Holders to exercise their rights or comply with the terms of any such notice.

#### **24.7 Notices to Trustee and Manager**

Any notice by the Trustee to the Manager or by the Manager to the Trustee shall be addressed to the Manager or the Trustee (as the case may be) at its specified office and shall be delivered by hand or sent by facsimile transmission, email or prepaid post (airmail if overseas). Any such notice sent by facsimile transmission or email shall be deemed to be served at the time of despatch and any such notice sent by post shall, in the absence of industrial action affecting any relevant part of the postal services, be deemed to have been served 3 Business Days after the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

#### **24.8 Advertisement and Other Documents**

No advertisement, circular or other document containing any statement with reference to the Issue Price or sale price of Units or the payments or other benefits received or likely to be received by Holders, or containing any invitation to subscribe for or purchase Units, shall be published or caused to be published by or on behalf of the Manager unless the document in question is in compliance with all applicable law, regulation and the Code with regard to advertisements, except that the Manager is hereby authorised to arrange at its discretion for the publication of the current Issue Price of Units from time to time in major local newspapers circulating in Hong Kong.

#### **24.9 Requisite Consents**

The Manager shall be responsible for obtaining all requisite consents for the issue or publication of any statement, circular or other document from the relevant authorities in any country or state in which issue or publication thereof is effected by the Manager or its agents or delegates.

#### **24.10 Use of Trustee's Name**

In all letters or circulars or advertisements or other publications referring to the issue or sale of Units reference shall be made by the Manager to the Trustee in terms previously approved by the Trustee, such approval is not to be unreasonably withheld or delayed. No letter, circular or advertisement or other publication relating to the Trust which concerns the Trustee or in which the Trustee's name shall appear shall be issued without the Trustee's prior written consent, such consent not to be unreasonably withheld or delayed.

## **25. Duty of Disclosure**

The provisions set out in schedule 3 of this Deed shall have effect as if the same were included herein.

## **26. Connected Party Transactions**

### **26.1 Code and SFC Conditions**

Subject to clause 9.4.4.11, any Connected Party Transaction shall be carried out in accordance with the provisions of the Code, the Listing Rules (to the extent appropriate and practicable) and any conditions (including any conditions of waivers and exemptions from the operation of the Code granted by the SFC from time to time) imposed by the SFC from time to time provided that no Connected Party Transaction shall be void or voidable if it is entered into in breach of such provisions.

### **26.2 Terms of Connected Party Transactions**

26.2.1 All transactions earned out by or on behalf of the Trust by the Manager or the Trustee shall be:

26.2.1.1 carried out at arm's length and on normal commercial terms;

26.2.1.2 valued, in relation to a property transaction, by an Approved Valuer;

26.2.1.3 consistent with the investment objective and strategy of the Trust as set out in clause 15;

26.2.1.4 on terms that are fair and reasonable and in the best interests of the Holders; and

26.2.1.5 (where required) properly disclosed to the Holders.

26.2.2 Where cash forming part of the Trust's assets is deposited with, or the Trust (or any Special Purpose Vehicle) borrows from:

26.2.2.1 the Trustee;

26.2.2.2 the Manager; or

26.2.2.3 any Connected Person (each being licensed to accept deposits or lend money, where required, as the case may be),

interest shall be paid on the deposit or the borrowing, as the case may be, at a rate not lower in the case of deposits, and not higher in the case of borrowings, than the prevailing commercial rate for a deposit or borrowing, as the case may be, of that size, currency and term.

### **26.3 Proceedings**

As and to the extent required by the Code or any conditions of waivers and exemptions from the operation of the Code granted by the SFC from time to time or upon request in writing by the Manager, the Trustee shall take actions or commence proceedings in its capacity as trustee of the Trust as necessary including but not limited to action against any Connected Persons related to the Trustee in relation to any transactions or agreements entered into by the Trustee in its capacity as trustee of the Trust with such persons, provided that the Trustee shall have

discretion to refrain from taking actions or commencing proceedings after consultation with the Manager if it considers in its absolute discretion that such action is not in the best interests of the Holders.

## **27. Removal or Retirement of Trustee**

### **27.1 Retirement of Trustee**

27.1.1 The Trustee shall not be entitled to retire voluntarily except upon the appointment (with, for so long as the Trust is authorised by the SFC, the prior written consent of the SFC) of a new Trustee whose appointment is subject to the prior approval of the SFC. The retirement of the Trustee shall take effect at the same time as the new Trustee takes up office as the trustee of the Trust.

27.1.2 In the event of the Trustee desiring to retire it shall give notice in writing to that effect to the Manager and the Manager shall use its best endeavours to appoint another person (duly qualified and approved as may be required by the Code and the law for the time being applicable to this Deed) as the new trustee of the Trust in the place of the retiring Trustee, upon and subject to such corporation entering into a deed supplemental hereto the retiring Trustee and the Manager providing for such appointment. If no new trustee is appointed by the Manager as aforesaid within a period of three (3) months after the date of receipt by the Manager of the Trustee's notice of retirement, the Trustee shall be entitled to appoint such person selected by it (duly qualified and approved as aforesaid) as the new Trustee on the same basis as aforesaid.

### **27.2 Removal of Trustee**

27.2.1 The Trustee may be removed by prior notice in writing to the Trustee by the Manager in any of the following events:

27.2.1.1 if the Trustee goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Manager) or if a receiver is appointed over any of its assets or if a judicial manager is appointed in respect of the Trustee (or any such analogous process occurs or any analogous person is appointed in respect of the Trustee);

27.2.1.2 if the Trustee ceases to carry on business; or

27.2.1.3 if the Holders by a Special Resolution duly pass at a meeting of Holders held in accordance with the provisions contained in schedule 1 of this Deed and of which not less than twenty-one (21) calendar days' notice has been given to the Trustee and the Manager shall so decide.

27.2.2 In any of such events the Manager shall (with, for so long as the Trust is authorised by the SFC, the prior written consent of the SFC) appoint another person (duly approved as may be required by the law for the time being applicable to this Deed) as the new trustee of the Trust and the Trustee shall upon receipt of notice by the Manager execute such deed as the Manager shall reasonably require under the common seal of the Trustee and shall thereafter ipso facto cease to be the trustee of the Trust.

### **27.3 Effect of Removal**



- 27.3.1 On retirement pursuant to clause 27.1 or removal pursuant to clause 27.2, the Trustee shall vest the Deposited Property in the new trustee, and give the new trustee all books, documents, records and any other property held by or on behalf of the Trustee relating to the Trust.
- 27.3.2 On retirement pursuant to clause 27.1 or removal pursuant to clause 27.2 the retiring Trustee shall be discharged and shall no longer be liable for any matter hereunder except as to acts or occasions occurring prior to such retirement or removal, and the new trustee shall thereupon undertake and perform all duties and be entitled to all rights and compensations as Trustee under this Deed or any other supplemental deed.
- 27.3.3 Any costs and expenses incurred in connection with the removal or retirement of the Trustee under this clause 27 shall be payable out of the Deposited Property. On retirement or removal of the Trustee, the Trustee shall be entitled to receive all fees and other moneys accrued up to and including the date of termination, calculated in accordance with clauses 11.4 and 11.6. If notwithstanding such retirement or removal, the Trustee is required to perform any of the obligations under this Deed, the Constitutive Documents, the Code or any applicable laws and regulations until a new trustee is duly appointed, the Trustee shall be entitled to receive such fees and expenses in accordance with clauses 11.4 and 11.6 up to and including the actual date of appointment of the new trustee.
- 27.3.4 Clause 12.3 shall continue in full force and effect as regards the Trustee notwithstanding the retirement or removal of the Trustee.

## **28. Removal or Retirement of Manager**

### **28.1 Removal of Manager**

- 28.1.1 The Manager shall be subject to removal by prior notice in writing given by the Trustees in any of the following events:
- 28.1.1.1 if the Manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Trustee) or if a receiver is appointed over any of its assets or a judicial manager is appointed in respect of the Manager (or any such analogous process occurs or any analogous person is appointed in respect of the Manager);
  - 28.1.1.2 if the Manager ceases to carry on business;
  - 28.1.1.3 if the Manager fails or neglects after reasonable notice from the Trustee to carry out or satisfy any material obligation imposed on the Manager by this Deed;
  - 28.1.1.4 if an Ordinary Resolution is passed in accordance with clause 1.2 of schedule 1 of this Deed, to remove the Manager (the Manager and its Associates may vote on such resolution and be counted in the quorum for the purpose of such resolution);
  - 28.1.1.5 if the SFC withdraws its approval of the Manager to act as the manager of the Trust; or

- 28.1.1.6 for good and sufficient reason(s), the Trustee states in writing that a change in management company is desirable in the interest of the Holders.
- 28.1.2 Upon the occurrence of any of the events referred to in clause 28.1.1 the Manager shall upon notice by the Trustee as aforesaid ipso facto cease to be the Manager and the Trustee shall (with, for so long as the Trust is authorised by the SFC, and with the prior written consent of the SFC) by writing under its seal appoint some other corporation upon and subject to such corporation and the Manager entering into such deed or deeds as the Trustee may consider or be advised to be necessary or desirable to be entered into by such corporation in order to secure the due performance of its duties as manager of the Trust which deed shall, inter alia, provide that the word "Spring" (or in Chinese shall be 春泉) or any variation thereof shall not thereafter form part of the name of the Trust.
- 28.1.3 If the removal of the Manager is effected at the written request of Holders pursuant to clause 28.1.1.4, the Manager shall have the right to deliver to the Trustee, within fourteen (14) calendar days of the date of its removal, a written representation addressed to the Holders ("**Manager's Letter of Representation**") concerning its removal. The Trustee shall, at the cost and expense of the Trust, send or procure the sending of a copy of the Manager's Letter of Representation to each Holder.
- 28.1.4 In the event that a general meeting of the Holders is convened for the purpose of considering the removal of the Manager, the Manager may at the costs and expenses of the Trust, issue a Manager's Letter of Representation to each Holder prior to the general meeting, and to table a copy of the Manager's Letter of Representation at the general meeting.
- 28.1.5 In addition and without prejudice to clause 9.6, the Trustee shall be entitled to, at its absolute discretion, act or rely upon any opinion or advice of any professional advisers, relevant expert or third party service providers (including without limitation, any banker, legal adviser or company secretary) that the Trustee deems necessary in connection with:
- 28.1.5.1 any actions or omissions of the Trustee to give effect to this clause 28.1; or
- 28.1.5.2 any other matters in respect of or arising from a removal of the Manager under this clause 28.1. The Trustee may, at its absolute discretion, also engage any professional adviser, relevant expert or third party service providers to perform any actions for or on behalf of the Trustee under this clause 28.1. The fees, costs and expenses of any professional advisers, relevant expert or third party service providers engaged under this clause 28.1 shall be paid out of the assets of the Trust.
- 28.1.6 Nothing in this clause 28.1 shall prejudice the right of the Trustee contained in this Deed to terminate the Trust in any of the events in which in accordance with the provisions of this Deed the right of terminating the Trust is vested in the Trustee.

## 28.2 Retirement of Manager

- 28.2.1 The Manager may retire as manager of the Trust at any time after giving 60 days' written notice, or any other period of notice as agreed to by the Trustee, to the Trustee provided that, and subject to:
- 28.2.1.1 the Manager selecting a new manager being duly qualified under the Code, licensed under the SFO, and acceptable to the Trustee, the SFC and the SEHK; and
  - 28.2.1.2 the requirement in the Code that such retirement will not adversely affect the interests of the Holders in any material respect.
- 28.2.2 The retirement of the Manager under clause 28.2.1 will not be effective until the appointment of the new manager is effective pursuant to a deed of retirement and appointment among the Trustee, the Manager and the new manager.
- 28.2.3 The retiring Manager shall be absolved and released from all further obligations hereunder (but without prejudice to the rights of the Trustee or of any Holder, former Holder or other person in respect of any act or omission prior to such retirement).
- 28.2.4 The Trustee shall inform the SFC forthwith of any proposal or decision to remove the Manager. Upon the retirement or dismissal of the Manager, the Trustee shall appoint a new manager for the Trust as soon as possible, subject to the prior approval of the SFC.

### **28.3 Manager's Holding of Units**

Upon any removal or retirement, the removed or retiring Manager shall remain entitled to all Units which it holds or is deemed to hold and to be registered in the Register in respect thereof and thereafter to have and exercise all rights of a Holder of such Units.

### **28.4 Notice to Holders**

The Trustee shall, as soon as practicable, after the appointment of the new Manager, give notice in writing to the Holders specifying the name and address of the office of the new Manager.

### **28.5 Costs of Removal**

Any costs and expenses incurred in connection with the removal or retirement of the Manager under this clause 28 shall be payable out of the Deposited Property.

## **29. Termination of the Trust**

### **29.1 Term and Termination**

- 29.1.1 The Trust shall terminate in the event that:
- 29.1.1.1 the Units are not listed on the SEHK by 31 December 2014 or such later date as may be agreed by the Manager and the Trustee; or
  - 29.1.1.2 for any reason, there is no Manager under the Trust for a period of more than sixty (60) calendar days or such longer period as the Trustee considers appropriate. Otherwise, the Trust shall continue until the expiration of eighty (80) years less one day from the date of commencement of the Trust as contemplated by clause 2.3 or until it

is terminated in accordance with this clause 29 or merged in accordance with clause 30.

29.1.2 Subject to clause 29.1.1, the termination of the Trust shall require specific prior approval by Special Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed unless the Trust is wound up by a court order or is otherwise terminated by the operation of law. Where the proposal to terminate the Trust as aforesaid is recommended by the Manager, the Manager and Connected Persons related to it shall abstain from voting if they hold interests in the Units and if their interest (at the sole determination, of the Trustee) in terminating the Trust is different from, that of all other Holders. The Trustee shall have no liability for any consequence arising out of such termination recommended by the Manager and approved by Special Resolution in the absence of fraud, bad faith, wilful default or negligence. The Manager shall inform Holders as soon as reasonably practicable of the intention to terminate the Trust by way of announcement.

## **29.2 Announcement**

29.2.1 An announcement with respect to the termination of the Trust shall be made as soon as reasonably practicable in accordance with clause 24.

29.2.2 The Manager shall serve on the Holders, within 15 Business Days of the announcement referred to in clause 29.2.1, a circular convening an extraordinary general meeting containing the following information:

29.2.2.1 the rationale for the termination of the Trust;

29.2.2.2 the effective date of the termination;

29.2.2.3 the manner in which the Deposited Property is to be dealt with;

29.2.2.4 the procedures and timing for the distribution of the proceeds of the termination and for the completion of the liquidation of assets of the Trust;

29.2.2.5 a valuation report of the Trust prepared by an Approved Valuer which is dated not more than three months before the, date of the circular;

29.2.2.6 the alternatives available to Holders;

29.2.2.7 the estimated costs of the termination and who is expected to bear such costs; and

29.2.2.8 such other material information that the Manager determines that the Holders should be informed of.

## **29.3 Effect of Termination**

29.3.1 Upon the Holders' approval of the termination of the Trust at the extraordinary general meeting convened under clause 29.2.2, no further Units shall be created, issued, cancelled or sold. No transfer of Units may be registered and no other change to the Register may be made without the sanction of the Trustee following the announcement referred to in clause 29.2.1. No further investments may be

made by the Trust upon its termination and the obligations of the Trustee, the Manager and the Approved Valuer shall continue until the later of the completion of the liquidation of the assets of the Trust or termination of the Trust.

- 29.3.2 Upon approval of the proposal to terminate the Trust at the extraordinary general meeting convened under clause 29.2.2, the Trustee shall oversee the realisation of the Investments by the Manager (which the Manager shall effect as soon as practicable) and shall ensure that the Manager shall repay any outstanding borrowings effected by or for the account of the Trust (together with any interest thereon but remaining unpaid) and shall ensure the proper discharge of all other obligations and Liabilities of the Trust. Unless otherwise permitted by the SFC, all Investments shall be disposed of through public auction or any form of open tender or by such other means as the SFC may agree. The disposal shall be conducted at arm's length and conducted in the best interests of the Holders and in accordance with market practice for the sale of comparable property. The disposal price shall be the best available price obtained through public auction or open tender or such other method as may be permitted by the SFC. Subject as aforesaid, such sale and repayment shall be carried out and completed in such manner and within such period after the termination of the Trust as the Manager in its absolute discretion deems advisable provided that, unless otherwise permitted by the Code or the SFC or as a result of legal proceedings, such period may not exceed twenty four months and where it exceeds 12 months, it must be in the interests of Holders and Holders shall be informed by way of announcement. Subject to clause 29.3.3 any net cash proceeds derived from the sale or realisation of such Investments shall (at such time or times as the Trustee shall deem convenient) be distributed to the Holders pro rata to the number of Units held or deemed to be held by them respectively at the date of the termination of the Trust provided that if the liquidation of the Trust exceeds six (6) months from the date of termination of the Trust, an interim distribution shall be made in respect of any net proceeds derived from the sale or realisation of Investments at the end of each six month period, following the date of termination of the Trust, in which net proceeds are derived from any sale or realisation of Investments. Upon completion of the liquidation of the Trust, an one-off distribution shall be made to Holders.
- 29.3.3 The Trustee or the Manager shall be entitled to retain any moneys in its hands under the provisions of this clause 29.3 to the extent required, in its absolute discretion, to make full provision for all costs, charges, expenses, claims and demands incurred, made or apprehended by the Trustee or the Manager (being either in connection with or arising out of the liquidation of the Trust or otherwise properly payable out of the Trust in accordance with this Deed).
- 29.3.4 Upon the completion of the liquidation of the assets of the Trust, the following shall be prepared:
- 29.3.4.1 a Manager's review and comment on the performance of the Trust and an explanation as to how the Investments have been disposed of and the transaction prices and major terms of disposal;
  - 29.3.4.2 a Trustee's report that the Manager has managed and liquidated the assets of the Trust in accordance with the Code and the provisions of this Deed;
  - 29.3.4.3 financial statements of the Trust which shall be distributed to Holders by the Manager within three (3) months of completion of the

liquidation of the assets of the Trust and a copy filed with the SFC;  
and

29.3.4.4 an Auditors' report.

29.3.5 Immediately prior to the termination of this Deed, the Trustee shall (following issuance of the Manager's review pursuant to clause 29.3.4) dispose of the remaining assets of the Trust. Following such disposal and the distribution of the net proceeds (if any) thereof, the Trust shall terminate.

## **30. Merger AND TAKEOVER of the Trust**

### **30.1 Approval of Merger**

30.1.1 The merger of the Trust shall require specific prior approval by Special Resolution at a meeting to be convened by the Manager in accordance with schedule 1 of this Deed. Where the proposal to merge the Trust is recommended by the Manager, the Manager and Connected Persons related to it shall abstain from voting if they hold interests in the Units and if their interest (at the sole determination of the Trustee) in merging the Trust is different from that of all other Holders. Where upon such merger the Trustee retires, any deed effecting the merger by which the Deposited Property and liabilities of the Trust are so merged shall include indemnification of the Trustee to its satisfaction. The Trustee shall cease to be liable for obligations and Liabilities of the Trust subsisting at the time of merger to the extent such obligations and Liabilities are subsequently discharged from and out of the merged entity, and shall have no other liability for the consequences arising out of any merger of the Trust recommended by the Manager and approved by Special Resolution other than any liability arising from the fraud, wilful default, bad faith or negligence of the Trustee or breach of any constitutive document of the Trust (including the Trust Deed), breach of the Code, or other applicable rules or regulations. The Manager shall inform Holders as soon as reasonably practicable of the intention to merge the Trust by way of announcement.

30.1.2 The Manager shall serve on the Holders within 15 Business Days of the announcement referred to in clause 30.1.1, a circular convening an extraordinary general meeting containing the following information:

30.1.2.1 the rationale for the merger of the Trust;

30.1.2.2 the effective date of the merger;

30.1.2.3 the manner in which the Deposited Property is to be dealt with;

30.1.2.4 the procedures and timing for the issuance or exchange of new Units arising from the merger;

30.1.2.5 a valuation report of the Trust prepared by an Approved Valuer which is dated not more than three months before the date of the circular;

30.1.2.6 the alternatives available to Holders;

30.1.2.7 the estimated costs of the merger and the bearer of such costs; and

- 30.1.2.8 such other material information that the Manager determines that the Holders should be informed of.

## **30.2 Effect of Merger**

- 30.2.1 Upon the Holders' approval of the merger of the Trust, no further Units shall be created, issued, cancelled or sold. No transfer of Units may be registered and no other change to the Register may be made without the sanction of the Trustee following the announcement referred to in clause 30.1.1.
- 30.2.2 Upon the completion of the merger of the Trust, the following shall be prepared:
  - 30.2.2.1 a Manager's review and comment on the performance of the Trust and an explanation, as to how the Investments have been accounted for in the merged scheme;
  - 30.2.2.2 a Trustee's report that the Manager has managed and merged the Trust in accordance with the Code and the provisions of this Deed;
  - 30.2.2.3 financial statements of the Trust which shall be distributed to Holders by the Manager within three (3) months of the completion of the merger and a copy filed with the SFC; and
  - 30.2.2.4 an Auditors' report.
- 30.2.3 Any merger pursuant to this clause 30 may only take effect upon the successor entity assuming responsibility for the performance and discharge of all obligations and Liabilities of the Trust subsisting at the time of merger.
- 30.2.4 If the Trust is involved in any takeover, amalgamation or restructuring, the provisions of the Takeovers Code shall be complied with at all times and the Trustee and the Manager shall as soon as practicable consult with the SFC on the manner in which such activities could be carried out so that it is fair and equitable to all Holders. For the avoidance of doubt, if the Trustee or the Manager receives a takeover offer in respect of the Trust, then the Manager at its sole discretion will be responsible for determining the nature, content, extent and timing of the response to the takeover offer, while at all times complying with the Takeovers Code and any other applicable rule or regulation.

## **31. Modification of Trust Deed**

### **31.1 Approval of Modification**

The Trustee and the Manager shall be entitled by deed supplemental hereto and, if so required, with the prior approval of the SFC to modify, alter or add to the provisions of this Deed in such manner and to such extent as they may consider expedient for any purpose provided that unless the Trustee shall certify in writing that in its opinion such modification, alteration or addition:

- 31.1.1 does not materially prejudice the interests of the Holders, does not to any material extent release the Trustee, the Manager or any other person from any liability to the Holders and does not increase the costs and charges payable from the Deposited Property; or
- 31.1.2 is necessary to comply with fiscal or other statutory or official requirements (whether or not having the force of law), including, without limitation,

requirements under the SFO, the Code, the Listing Rules and any other applicable rules of any other relevant Specified Stock Exchange on which the Trust may be listed; or

31.1.3 is necessary to correct a manifest error;

no such modification, alteration or addition shall be made without the sanction of a Special Resolution of a meeting of Holders duly convened and held in accordance with the provisions contained in schedule 1 of this Deed, provided also that no such modification, alteration or addition shall impose upon any Holder any obligation to make any further payments in respect of his Units or to accept any liability in respect thereof.

## **31.2 Notice to Holders**

The Manager shall as soon as practicable after any modification, alteration or addition to the provisions of this Deed (in this clause 31, the "**Amendment**") give notice of the Amendment to the Holders, unless the Amendment is not in the opinion of the Manager (after consultation with the Trustee) of material significance. All fees, costs and expenses incurred by the Trustee or the Manager in connection with any such document supplemental to this Deed (including expenses incurred in the holding of a meeting of Holders, if necessary) shall be paid out of the Deposited Property.

## **32. Auditors**

### **32.1 Appointment of Auditors**

The Auditors shall be appointed by the Manager. The Auditors shall be qualified under the Professional Accountants Ordinance (Cap. 50 of the Laws of Hong Kong) for appointment as an auditor of a company in Hong Kong and independent of the Manager and the Trustee.

### **32.2 Voluntary Retirement**

The Auditors may voluntarily retire by notice in writing to the Manager. Upon the retirement of the Auditors, the Manager shall appoint other Auditors in their place.

### **32.3 Removal by Manager**

The Manager may from time to time remove the Auditors and appoint other Auditors in their place.

### **32.4 Removal by Special Resolution**

The Auditors may be removed, and other Auditors appointed, by a Special Resolution passed at a meeting of Holders duly convened and held in accordance with the provisions of schedule 1 of this Deed.

### **32.5 Fees of Auditors**

The fees (including disbursements) of the Auditors in connection with the audit of the Accounts shall be paid out of the Deposited Property.

### **32.6 Costs of Removal**

Any costs and expenses incurred in connection with the removal or retirement of the Auditors under this clause 32 shall be payable out of the Deposited Property.



**33. Provision of Information**

The Manager and the Trustee shall, if requested to do so by any competent department or authority of the government or administration or regulatory body of Hong Kong and any other relevant jurisdiction (and whether or not required by law so to do), provide such department or authority with such facilities as it may require to inspect the Register and with such information regarding the Deposited Property or this Deed as may be requested by such department or authority. Neither the Manager nor the Trustee shall incur any liability to any Holder as a result of the provision of such facilities or information.

**34. Severability**

If any provision or part of a provision of this Deed or the schedules or its application to any party, shall be, or be found by any court or authority of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this Deed or the schedules, all of which shall remain in full force and effect.

**35. Third Party rights**

A person who is not a party to this Deed may not enforce its terms, except that each Holder may enjoy the benefit of and enforce the terms of this Deed subject to the provisions of this Deed.

**36. Governing Law and jurisdiction**

This Deed shall in all respects be governed by, and construed in accordance with, the laws of Hong Kong. The Manager, the Trustee and each Holder hereby submit to the non-exclusive jurisdiction of the courts of Hong Kong.

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## **SCHEDULE 1: MEETINGS OF HOLDERS**

### **1. Convening of Meetings and Conduct of Meeting**

- 1.1 The Manager shall at least once in every calendar year convene a general meeting of the Holders as the Annual General Meeting thereof in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it. The Annual General Meeting shall be held at such time and place as the Manager shall appoint and not less than 20 clear Business Days' notice in writing thereof shall be given to the Holders. The following provisions of this schedule 1 shall apply as well to the Annual General Meeting as to other meetings unless the context otherwise requires.
- 1.2 The Trustee or the Manager may respectively (and the Manager shall at the request in writing of not less than two Holders registered as together holding not less than 10% of the Units for the time being in issue and outstanding) at any time convene a meeting of Holders at such time or place in Hong Kong (subject as hereinafter provided) as the party convening the meeting may think fit and propose resolutions for consideration at such meeting. The Manager shall determine the classification of the business of such meeting as special or ordinary in accordance with the Code and the following provisions of this schedule 1 shall apply thereto.
- 1.3 At any meeting of Holders, the Manager or a person nominated by the Manager (if present) shall be the Chairman of the meeting.

### **2. Notice of Meetings**

- 2.1 The Manager and the Trustee shall be entitled to receive notice of and to attend at any such meeting. Any director or other duly authorised representative and the solicitors of the Trustee and any director and the secretary and the solicitors of the Manager (and any other person authorised in that behalf by the Manager) may attend and speak at the meeting.
- 2.2 Without prejudice to the requirements mentioned in paragraph 1.1 of this schedule 1, not less than 10 clear Business Days' (excluding the date on which the notice is served or deemed to be served and date of the notice) notice of every meeting (other than an Annual General Meeting) shall be given to the Holders in accordance with the Code and, where applicable, the Listing Rules and in the manner provided in this Deed. The notice shall specify the place, day and hour of meeting and the terms of any resolution to be proposed thereat. A copy of the notice shall be sent by post to the Trustee, unless the meeting is convened by the Trustee in which case a copy of the notice shall be sent by post to the Manager. The accidental omission to give notice to or the non-receipt of notice by any of the Holders shall not invalidate the proceedings at any meeting. In this paragraph 2.2, Holders means the persons who were Holders on the date falling seven (7) days before the notice under paragraph 3 of this schedule 1 was sent, but excluding any persons who are known not to be Holders at the time of the meeting or at any other relevant time. Where a meeting is adjourned, this paragraph 2.2 applies as if the reference to the notice given under this paragraph 2.2 was a reference to the notice of the adjourned meeting given under paragraph 4.1 of this schedule 1.

### **3. Quorum and Voting**

- 3.1 At any meeting of Holders, two or more Holders present in person or by proxy registered as holding together not less than 10% of the Units for the time being in issue and outstanding shall form a quorum for the transaction of business, except for the purpose of passing a Special Resolution. The quorum for passing a Special Resolution shall be two or more Holders present in person or by proxy registered as holding together not less than 25% of the Units in issue and outstanding. The quorum for an adjourned meeting shall be such number of Holders who are present in person or by proxy, regardless of the number of units held by them. No business

shall be transacted at any meeting unless the requisite quorum is present at the commencement of business. Separate proxies shall, for the avoidance of doubt, be permitted but the number of proxies appointed by any one Holder (other than HKSCC Nominees Limited (or any successor thereto) or a recognised clearing house (within the meaning of the SFO) or its nominees) shall not exceed two.

- 3.2 Holders shall be prohibited from voting their own Units at, or being counted in the quorum for, a meeting at which they have a material interest in the business to be conducted and that interest is different from the interests of other Holders (as determined by: (a) the Manager (where the Holder(s) concerned is (are) not Connected Persons related to the Manager); or (b) the Trustee (where the Holder(s) concerned is (are) Connected Persons related to the Manager); if appropriate, in its absolute opinion) including an issue of new Units where a Holder may increase his holdings of Units by more than his pro rata share. Nothing contained in this paragraph 3.2 shall prevent a person whose interest is different as aforesaid from acting in the capacity of a proxy and voting on a resolution where a specific direction to vote in favour of, or against, the resolution is given by the appointor.
- 3.3 At any meeting a resolution put to the meeting shall be decided on a poll and the result of the poll shall be deemed to be the resolution of the meeting.
- 3.4 On a poll every Holder who is present in person or by proxy shall have one vote for every Unit of which he is the Holder provided such Units are fully paid up. Votes passed by a Holder in contravention of the Code or Listing Rules shall not be counted.
- 3.5 In the case of joint Holders the vote of the senior who tenders a vote whether in person or by proxy, shall be acceptable to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.
- 3.6 On a poll votes may be given either personally or by proxy.
- 3.7 The instrument appointing a proxy shall be in writing, under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under the common seal or under the hand of an officer or attorney so authorised. An instrument of proxy may be in the following form or in any other form which the Trustee shall approve:

*"I/We* ◆ *of* ◆ *being a Holder of Units of and in the Trust known as*  
*Spring Real Estate Investment Trust hereby appoint* ◆ *of* ◆ *as*  
*my/our proxy to vote for me/us and on my/our behalf* ◆ *Units at the meeting of*  
*Holder(s) of Units of and in the said Trust to be held on the* ◆ *day of* ◆  
◆ *and at any adjournment thereof.*

*As witness my hand this* ◆ *day of* ◆ *20* ◆ *"*

- 3.8 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power of attorney or authority shall be deposited at such place as the Manager or the Trustee may in the notice convening the meeting director, or if no such place is appointed then at the registered office of the Registrar, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date stated in it as the date of its execution, except for an adjourned meeting which is an adjournment of an original meeting held within 12 months from such date, or for a poll demanded at such an original meeting or adjourned meeting. Delivery of an instrument appointing a proxy shall not preclude a Holder from attending and

voting at the meeting and, in such event, the instrument appointing the proxy shall be deemed to be revoked, a person appointed to act as a proxy need not be a Holder.

- 3.9 An instrument of proxy may be in the usual common form or in any other form which the Trustee shall approve, including for the avoidance of doubt, a two-way form.
- 3.10 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal (or revocation of the proxy or of the power of attorney or other authority under which the proxy was signed) or the transfer of the Units in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received at the place appointed for the deposit of proxies (or if no such place is appointed at the registered office of the Registrar before the commencement of the meeting or adjourned meeting at which the proxy is used).
- 3.11 Any Holder being a corporation may by resolution of its directors (or other governing body) authorise any person to act as its representative at any meeting of Holders and a person so authorised shall at such meeting be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual Holder.
- 3.12 HKSCC Nominees Limited (or any successor thereto) may appoint more than one proxy or corporate representative to attend and vote at Holders' meetings as if they were individual Holders and such representatives shall not be required to produce any documents of title or notarised authorisation in respect of such appointment. Where a Holder is a recognised clearing house (within the meaning of the SFO) or its nominee(s), it may authorise such person or persons as it thinks fit to act as its representative(s) or proxy(ies) at any Holders' meeting or any class of Holders provided that, if more than one person is so authorised, the authorisation or proxy form must specify the number and class of Units in respect of which each such person is so authorised. The person so authorised will be entitled to exercise the same power on behalf of the recognised clearing house as that clearing house or its nominee(s) could exercise if it were an individual Holder.
- 3.13 Where any Holder is under the Code required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such Holder in contravention of such requirement or restriction shall not be counted. Also, without limiting the above, votes passed by a Holder in contravention of the Code, the Listing Rules and/or any other applicable rules shall not be counted.

#### **4. Adjourned Meetings**

- 4.1 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to such day and time not being less than fifteen (15) calendar days thereafter and to such place as may be appointed by the Manager or the Trustee, if appropriate, and, at such adjourned meeting, the Holders present in person or by proxy shall be a quorum (irrespective of the number of Holders present or number of Units they hold) for transaction of business and any proxy for the original meeting shall be valid for 12 months from the date named in it as the date of its execution (unless the relevant proxy otherwise specifies).

#### **5. Minutes of Meetings**

Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by or on behalf of the Manager at the Trust's expense and any such minute as aforesaid if purporting to be signed by the Chairman of the meeting shall be conclusive 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 passed.

## **SCHEDULE 2: CERTIFICATES**

### **1. Form and Execution of Certificates**

Certificates shall be prepared by or on behalf of the Trustee or the Registrar (if appointed) in such form and manner as may be authorised by the Trustee or the Registrar (if appointed), and the signature of the Trustee or the Registrar (if appointed) to be inserted on each Certificate shall either be autographic, facsimile or affixed by some mechanical means under the control of the Trustee or the Registrar (if appointed) or its duly authorised agent or delegate. No Certificate shall be of any force or effect until so signed. Certificates so signed shall be valid and binding notwithstanding that the person whose signature appears thereon as a duly authorised signatory of the Trustee or the Registrar (if appointed) may have ceased to be so authorised.

### **2. Delivery of Certificates**

The Trustee or the Registrar (if appointed) shall sign and deliver Certificates in such denominations as may be required for Units which have been agreed to be issued and for which one or more Certificates have been, requested by the relevant Holder and for such purpose shall be entitled to rely on a declaration in writing by or on behalf of the Manager as to the Units from time to time agreed to be issued and the request for Certificates (if appropriate). Notwithstanding this, the Trustee or the Registrar (if appointed) shall deliver any such Certificates only against payment or transfer to the Trustee or the Registrar (if appointed) of the cash or other consideration received by the Trust in respect of the issue of the Units concerned (except for (i) Units issued for nil consideration pursuant to the terms of an Incentive Scheme; or (ii) Units issued for consideration other than cash in any circumstances permitted under this Deed and the Code). The Trustee or the Registrar (if appointed) shall also from time to time sign and deliver Certificates required to be issued pursuant to any provision of this Deed upon due compliance with the conditions applicable thereto.

### **3. Issue, Exchange, Cancellation and Replacement of Certificates**

3.1 The Trustee or the Registrar (if appointed) shall not be obliged to issue more than one Certificate to each Holder. Nevertheless, and upon paying such fee as the Trustee or the Registrar (if appointed) may from time to time determine, any Holder may apply to the Trustee or the Registrar (if appointed) to exchange his Certificate (if any) or all of his Certificates for one or more Certificates of such authorised denominations as he may require representing the same aggregate number of Units. Before any such exchange as aforesaid is carried out, the Holder shall surrender to the Trustee or the Registrar (if appointed) for cancellation the Certificate or Certificates to be exchanged and shall pay to or to the order of the Trustee or the Registrar (if appointed) all moneys (if any) payable hereunder in respect of the issue of the new Certificate or Certificates.

3.2 In case any Certificate shall become mutilated or defaced, the Trustee or the Registrar (if appointed) may in its discretion issue to the person entitled thereto in exchange for and upon surrendering for cancellation the mutilated or defaced Certificate a new Certificate. In case any Certificate shall be lost, stolen or destroyed, the Trustee or the Registrar (if appointed), may in its discretion issue to the person entitled thereto a new Certificate in lieu thereof. No such new Certificate shall be issued unless the applicant shall previously have:

3.2.1 (in the case of loss, theft or destruction) furnished to the Trustee or the Registrar (if appointed) evidence satisfactory to the Trustee or the Registrar (if appointed) of the loss, theft or destruction of the original Certificate;

3.2.2 paid all expenses incurred in connection with the investigation of the facts by the Trustee or the Registrar (if appointed);

- 3.2.3 (in the case of defacement or mutilation) produced and surrendered to the Trustee or the Registrar (if appointed) for cancellation the defaced or mutilated Certificate; and
- 3.2.4 (if required by the Trustee or the Registrar (if appointed) so to do) furnished to the Trustee or the Registrar (if appointed) such indemnity or bond as the Trustee or the Registrar (if appointed) may require.

The Trustee or the Registrar (if appointed) shall not incur any liability for any action by the Trustee or the Registrar (if appointed) which is taken under this schedule 2 (other than any liability resulting from the fraud, wilful default, bad faith or negligence of the Trustee or the Registrar (if appointed)).

- 3.3 Every Certificate issued under the provisions of this paragraph 3 shall be in the name of the Holder of the Units represented by the Certificate surrendered, lost, stolen or destroyed.
- 3.4 All mutilated or defaced Certificates surrendered pursuant to this paragraph 3 shall be cancelled forthwith by the Trustee or the Registrar (if appointed).
- 3.5 Upon a transfer of Units or upon exchange or upon a distribution in respect of any Unit by the Holder with the like requirements as are set out in paragraph 3.2 of this schedule 2.

#### **4. Stamp Duty, Tax and Other Charges**

Before procuring the issue of any Certificate under the provisions of this schedule 2, the Trustee or the Registrar (if appointed) may require from the applicant for the Certificate the payment to it of a sum sufficient in its opinion to cover any stamp duty or other governmental taxes or charges that may be payable in connection with the issue of such Certificate.

#### **5. Registrar**

The Trustee may delegate any or all of its duties and powers under this schedule 2 to the Registrar.

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### **SCHEDULE 3: DISCLOSURE OF INTERESTS**

#### **1. Duty of Disclosure**

1.1 Subject to paragraph 2 below, the provisions of Divisions 2 to 4 of Part XV of the SFO (other than section 328) shall apply to a person who:

1.1.1 is interested in Units, or who acquires an interest in or who ceases to be interested in Units; or

1.1.2 has a short position in Units, or who comes to have or ceases to have a short position in Units, and

accordingly, a duty of disclosure shall arise hereunder in relation to that person on the occurrence of the relevant events described in section 310 of the SFO in the circumstances specified in section 313 of the SFO.

1.2 Subject to paragraph 2 below, the provisions of Divisions 7 to 9 of Part XV of the SFO (other than section 351) shall also apply to each of the Manager itself and a director or chief executive of the Manager who:

1.2.1 is interested in Units, or who acquires an interest in or who ceases to be interested in Units; or

1.2.2 has a short position in Units, or who comes to have or ceases to have a short position in Units, and

accordingly, a duty of disclosure shall also arise hereunder in relation to the Manager and a director or chief executive of the Manager (as the case may be) on the occurrence of the relevant events described in section 341 of the SFO in the circumstances specified in that section.

1.3 Where a duty of disclosure arises hereunder on the occurrence of the relevant events described under section 310 or 341 of the SFO by virtue of the provisions of this schedule 3, the relevant person shall give notice to the Manager and the SEHK in accordance with the provisions of Part XV of the SFO.

1.4 The Manager shall promptly send a copy of any notification received by it to the Trustee.

#### **2. Manner of application of Part XV of the SFO**

2.1 Subject to paragraphs 3 to 5 below, the provisions of Part XV of the SFO (other than sections 328 and 351) and all relevant guidelines and interpretation notes on Part XV of the SFO issued by the SFC from time to time shall have effect, mutatis mutandis, as if:

2.1.1 the Trust is a "listed corporation" for the purposes of Part XV of the SFO;

2.1.2 the "relevant share capital" of such listed corporation are references to:

2.1.2.1 the Units which are issued and outstanding from time to time; and

2.1.2.2 the Units which the Manager has agreed to issue, either conditionally or unconditionally, from time to time;



- 2.1.3 a Unit is a share comprised in the relevant share capital of such listed corporation and the Holder is a holder of a share in the relevant share capital of such listed corporation;
- 2.1.4 a person who is interested in a Unit is interested in a share in the relevant share capital of such listed corporation;
- 2.1.5 the Manager itself is a director of such listed corporation;
- 2.1.6 the directors and chief executive of the Manager are the directors and chief executive respectively of such listed corporation;
- 2.1.7 **"percentage level"** in relation to a notifiable interest, means the percentage figure found by expressing the aggregate number of Units in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of all the Units in issue at the relevant time as published by the Manager and rounding that figure down (if it is not a whole number) to the next whole number;
- 2.1.8 **"percentage level"** in relation to a short position, means the percentage figure found by expressing the aggregate number of Units in which the person has a short position immediately before or (as the case may be) immediately after the relevant time as a percentage of all the Units in issue at the relevant time as published by the Manager and rounding that figure down (if it is not a whole number) to the next whole number; and
- 2.1.9 in addition and without prejudice to any notification required to be given to the SEHK by virtue of the deemed application of Part XV of the SFO, any notification with respect to interests in Units required to be given to the listed corporation by the operation of the relevant provisions in this Deed shall be given by the relevant parties to the Manager and the Manager shall send copies of the notifications received by it to the Trustee promptly.

2.2 A reference to:

- 2.2.1 an interest in Units of a person shall be construed in the same manner as an interest in shares under section 322 of the SFO;
- 2.2.2 a short position in Units of a person shall be construed in the same manner as a short position in shares under sections 308 and 322 of the SFO;
- 2.2.3 an interest in Units of the Manager or a director or chief executive of the Manager (as the case may be) shall be construed in the same manner as an interest in shares under section 346 of the SFO;
- 2.2.4 a short position in Units of the Manager or a director or chief executive of the Manager (as the case may be) shall be construed in the same manner as a short position in shares under sections 308 and 346 of the SFO;
- 2.2.5 the Manager shall not be construed as a controlled corporation of the Trustee for the purposes of section 316 of the SFO solely to the extent and for so long as the Trustee's interests in the Manager arise in its capacity as trustee of the Trust.

**3. Failure to Notify**

- 3.1 If a person who has a duty of disclosure under this schedule 3 fails to make notification in accordance with the provisions of this schedule 3, irrespective of whether that person is a Holder or not, the Units in which that person is (or is deemed to be) interested in ("**Affected Units**") shall be subject to the provisions in this paragraph 3 below.
- 3.2 When the person interested in the Affected Units is a person other than the Manager, the Manager may, in its absolute discretion, take any or all of the following actions in respect of any or all of the Affected Units:
- 3.2.1 declare that the voting rights attached to any or all of the Affected Units to be suspended (and, upon such declaration, such voting rights shall be suspended for all purposes in connection with the Trust);
  - 3.2.2 suspend the payment of any distributions in respect of any or all of the Affected Units (and, upon such suspension, any such distributions shall be retained in a trust account in the name of (where the person interested in the Affected Units is a person other than the Manager) the Manager, or (where the person the person interested in the Affected Units is the Manager) the Trustee, pending the application of such distributions);
  - 3.2.3 impose an administrative fee of up to HK\$0.10 per Affected Unit for each day of noncompliance from the date on which disclosure is due to be made by the person;
  - 3.2.4 suspend registration and/or decline to register any transfer of part or all of the Affected Units;
- until the provisions of this schedule 3 are fully complied with to the satisfaction of the Manager.
- 3.3 Subject to paragraph 3.5 below, the administrative fee referred to in paragraph 3.2.3 above shall be retained by the Manager for its use as it sees fit. If such fee is not paid by the relevant Holder or any other person, the Manager may (in its absolute discretion) withhold and deduct such fee from any distributions to be made in respect of the relevant Affected Units (and, pending the recovery of such fee, the Manager may (in its absolute discretion) exercise any of its rights set out in paragraph 3.2 above). To the extent that any money is held in the trust account referred to in paragraph 3.2.2 above, the Manager may apply such money against any such fee imposed in respect of the relevant Affected Units.
- 3.4 Subject to paragraph 3.5 below, irrespective of whether any Holder is in default of the provisions of this schedule 3, each Holder shall be bound by the decision of the Manager under this paragraph 3 and each Holder's Units shall be bound by such decision if the Manager declares (in its absolute discretion) that any or all of such Units are (or are deemed to be) Affected Units.
- 3.5 Where the person interested in the Affected Units is the Manager:
- 3.5.1 the Trustee may exercise the powers of the Manager under paragraph 3.2 above in respect of any or all of the Affected Units (and for the avoidance of doubt, any suspension of payment of distribution under paragraph 3.2.2 shall be retained in a trust account in the name of the Trustee);
  - 3.5.2 the Trustee may exercise the powers of the Manager under paragraph 3.3 above to retain the administrative fee for the benefit of the Trust and to take action if the fee is not paid; and

3.5.3 irrespective of whether the Manager is in default of the provisions of this schedule, the Manager shall be bound by the decision of the Trustee under this paragraph 3.5 and its Units shall be bound by such decision if the Trustee declares (in its absolute discretion) that any or all of such Units are (or are deemed to be) Affected Units.

#### **4. Register of Interests**

4.1 The Manager shall keep a register for the purposes of this schedule 3 and it is under a duty to inscribe in the register, against a person's name, the particulars provided pursuant to this schedule 3 and the date of the inscription. Upon the request of the Trustee, the Manager shall make available the contents of the register for inspection by the Trustee and Holders.

4.2 Unless the register is in such form as to constitute an index in itself, the Manager shall keep an index of the names entered in the register which shall (in respect of each name) contain a sufficient indication to enable the information entered against it to be readily found.

4.3 The register and any associated index:

4.3.1 shall be kept at the place at which the Register is kept; and

4.3.2 shall be available for inspection, during such hours as the Register is available for inspection, by Holders without charge. Any such person may require a copy of any such register on payment of such fee as may be prescribed by the Manager from time to time.

#### **5. Investigation of Interests**

5.1 The Trustee and the Manager shall have the same powers and duties to investigate ownership of interests in Units as are conferred on a listed corporation under Division 5 of Part XV of the SFO to investigate ownership of interests in shares.

5.2 The powers and duties referred to in paragraph 5.1 above shall be exercised by or performed solely by the Manager except where the interest or short position (or deemed interested or deemed short position) relates to Units held by or in which the Manager is interested or has a short position, in which case the power shall be exercised by or the duty shall be performed solely by the Trustee.

5.3 Neither the Trustee nor the Manager shall have any liability for any action taken by it pursuant to this schedule 3 in good faith and each Holder shall be bound by the decision taken under paragraph 3 above, including as to whether any or all of such Units are Affected Units.

5.4 Without prejudice to clause 3 of the Deed, each Holder and all persons claiming through or under him (including without limitation, each participant of CCASS to whose account any Units are for the time being credited by Hong Kong Securities Clearing Company Limited) expressly acknowledge and agree to the grant of the rights and powers set forth in this schedule 3 and agree to be bound by any action taken hereunder in good faith.

*- Remainder of Page Intentionally Blank -*

**IN WITNESS WHEREOF** this First Amending and Restating Deed has been entered into the day and year first above written.

**The Manager**

The Common Seal of )  
**SPRING ASSET MANAGEMENT LIMITED** )  
was hereunto affixed )  
in the presence of: )



By:

Handwritten signature of Leung Kwok Hoe, Kevin in blue ink, written over a horizontal line.

Name: **Leung Kwok Hoe, Kevin**

Title: **Director**

By:

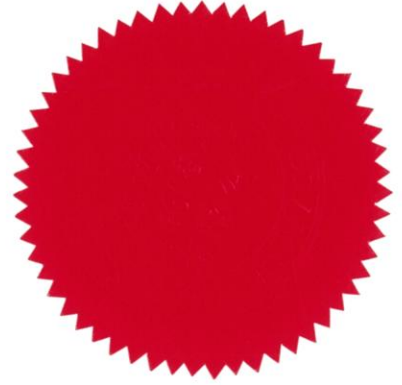
Handwritten signature of Chung Wai Fai in blue ink, written over a horizontal line.

Name: **Chung Wai Fai**

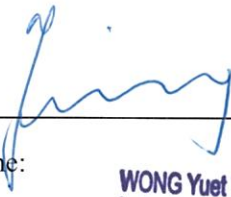
Title: **Director**

**The Trustee**

The Common Seal of )  
**DB TRUSTEES (HONG KONG) LIMITED** )  
was hereunto affixed )  
in the presence of: )



By:

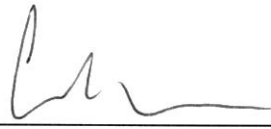


Name:

**WONG Yuet Ki Tina**  
**Authorised Signatory**

Title:

By:



Name:

**LEUNG Fong lo**  
**Authorised Signatory**

Title: