

La Trobe Australian Credit Fund

CONSTITUTION

La Trobe Financial Asset Management Limited
ABN 27 007 332 363 ("the RE")

La Trobe Financial Services Pty Limited
ABN 30 006 479 527 ("the Investment Manager")

The Members as they are constituted
from time to time of the
La Trobe Australian Credit Fund ("the Members")

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CONSTITUTION

The Constitution, which was originally made on 16 June 1999 is replaced by this Constitution which is made on 24 December 2004.

PARTIES

La Trobe Financial Asset Management Limited ABN 27 007 332 363 a public company incorporated in the State of Victoria, and having its registered office at Level 25, 333 Collins Street, Melbourne, Victoria, Australia 3000 (**"the RE"**); and

La Trobe Financial Services Pty Limited ABN 30 006 479 527) a company incorporated in the State of Victoria and having its registered office at Level 25, 333 Collins Street, Melbourne, Victoria, Australia 3000 (**"the Investment Manager"**); and

The Members as they are constituted from time to time of the Scheme being all those persons who apply for and are accepted as Members of the Scheme (**"the Members"**)

RECITALS TO CONSTITUTION

- A. The parties intended that the original Constitution establish a managed investment scheme to be known as the **La Trobe Australian Credit Fund** for the purpose of enabling Members to invest in Investments and Conforming Mortgage Investments as defined by the Constitution. The Scheme was established by the original Constitution on 16 June 1999 ("the Original Constitution").
- B. The RE applied to ASIC to have the Scheme registered as a managed investment scheme pursuant to the Law. The Scheme was registered on 16 June 1999 and was issued with Australian Registered Scheme Number 088 178 321.
- C. The RE wished to obtain a responsible entity's licence from ASIC which when issued would allow it, amongst other things, to deal in interests in a managed investment scheme. The RE first obtained a Securities Dealer's Licence in 1999, and on 1 October 2002 was issued with Australian Financial Services Licence Number 222213, which authorises it to operate the Scheme.
- D. Upon registration the RE first issued Prospectuses and then Product Disclosure Statements to invite Members to participate in the Scheme. By applying to invest through a Product Disclosure Statement a person becomes a Member and agrees to be bound by this Constitution.
- E. The RE is the responsible entity of a managed investment scheme which offers Members a fixed or variable interest, a fixed or variable term investment, investments secured by a registered mortgage over real property and investments in cash, bank bills and term deposits.
- F. This Constitution is made with the intent that the benefits and obligations hereof will ensure not only to the RE but also to the extent provided herein to every person who is or becomes a Member from time to time of the Scheme registered under Chapter 5C of the Corporations Act 2001 as a managed investment scheme.
- G. The RE and the Investment Manager amend the original Constitution pursuant to its clause 21, and intend that the rights, benefits and obligations on all parties will continue under this Constitution.

1. Definitions & Interpretations

1.1 In the interpretation of this Constitution, its Recitals and any Schedules, the words and phrases set out below shall, unless the context otherwise requires, have the meanings respectively assigned to them namely:

12 Month Term Account means the investment option offered by the RE by way of a Product Disclosure Statement which allows Applicants to have their Application Money invested in the Authorised Investments of the 12 Month Term Account;

90 Day Notice Account means the investment option offered by the RE by way of a Product Disclosure Statement which allows Applicants to have their Application Money invested in the Authorised Investments of the 90 Day Notice Account;

Applicant means anyone who submits an application for an interest in the Scheme, on the Product Disclosure Statement Registration Form, in accordance with the Product Disclosure Statement;

Application Form means an application form attached to a Supplementary Product Disclosure Statement for an interest in a Conforming Mortgage Investment and an authorisation for investment of some or all of the Application Money in that Conforming Mortgage Investment;

Application Money means the amount received from an Applicant including capital and other monies when lodging a Registration Form or an Application Form in respect of the interest applied for in accordance with the Product Disclosure Statement or Supplementary Product Disclosure Statement;

Approved Insurer means an insurer with a claims payment rating of at least "A" who is engaged in the business of providing Mortgage Indemnity Insurance, or Mortgage Cashflow Insurance, or the business of issuing Policies of Fire Insurance coverage;

Approved Valuer means:

- (a) a person who is a member of the Australian Property Institute and who is a registered valuer within the meaning of the Valuers Act 2003 (NSW) or a corresponding enactment of a State or Territory of the Commonwealth of Australia approved by the RE being a valuer who:
 - (i) has not and whose partner has not acted as a valuer, agent or broker in relation to the acquisition of the property to be valued or in relation to the acquisition by the RE of the mortgage thereon being an acquisition by the RE other than pursuant to or for the purposes of this Constitution;
 - (ii) is independent of the RE, the Investment Manager and the Borrower; and
 - (iii) has professional indemnity and similar insurances for an amount not less than \$1,000,000, (with \$1,000,000 automatic reinstatement right), for residential securities, and \$2,000,000 for non-residential securities; or
- (b) any other person who, in the RE's opinion, is an appropriately accredited and qualified valuer where the details of that valuer's accreditation are disclosed in a SPDS signed by the relevant member;

ASIC means the Australian Securities and Investments Commission;

Assets means Cash, Investments and all Conforming Mortgage Investments which comprise the Scheme Property;

Auditor means the person or firm for the time being appointed as such under clause 12.5 which must be external to the RE, its servants and its agents and the Investment Manager;

Authorised Investments means collectively the Authorised Investments of the Classic 48 hour Account, the 90 Day Notice Account, the 12 Month Term Account, the Select Investment Account and the High Yield Credit Account;

Authorised Investments of the 12 Month Term Account means the investments defined in clause 3.12;

Authorised Investments of the 90 Day Notice Account means the investments defined in clause 3.12;

Authorised Investments of the Classic 48 hour Account means the investments defined in clause 3.12;

Authorised Investments of the High Yield Credit Account means an investment in any one or more of the following:

- (a) cash, term deposits, bills of exchange or negotiable certificates of deposit issued by an Australian authorised deposit taking institution;
- (b) an investment offered by an AFS licensed entity with principal repayment linked to a pool of residential and commercial mortgages, where the RE reasonably expects the investment to be repaid in full within five (5) years;
- (c) bonds issued by an Australian state or federal government;
- (d) bonds issued by an Australian financial institution; and
- (e) an investment in a debt not secured by a mortgage, including unsecured corporate debts and corporate debts secured by registered security interests only

Authorised Investments of the Select Investment Account means Conforming Mortgage Investments made available to Members by way of an SPDS;

Authorised Officer means:

- (a) in the case of the Custodian or the Sub-Custodian, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them;
- (b) in the case of the RE or Investment Manager, each director and secretary of the RE or Investment Manager and any other person appointed by the RE or Investment Manager to act as an Authorised Officer for the purpose of this Constitution;

Authorised Representative means an authorised representative appointed by the RE pursuant to the Law who has offered an interest in the Scheme to a Member or referred the Member to the RE;

AVM means an Automated Valuation Model, being a service which provides real estate property valuations using an algorithm based computer program;

Bank means an authorised deposit-taking institution or banking business as defined in Section 5 of the Banking Act 1959 (Cth) as amended and in force for the time being with an approved Long Term Rating of 'A' or higher as issued by a recognised Rating Agency;

Borrower means any person who applies to the Scheme to borrow Members' funds and who is approved by the RE and the term "Borrower" shall include a mortgagor under a Mortgage;

Business Day means any day (not being a Saturday or a Sunday) on which trading banks are open for business in Melbourne, Victoria;

Cash includes cheques and bank cheques;

Certificate of Mortgage Investment means the certificate or other document (such as an investor statement) issued by the RE acknowledging the Member's investment in the Scheme issued in accordance with clause 5.1;

Classic 48 hour Account means the investment option offered by the RE by way of a Product Disclosure Statement which allows Applicants to have their Application Money invested in the Authorised Investments of the Classic 48 hour Account;

Compliance Committee means the committee formed, if required by the Law, pursuant to Part 5C.5 of the Law;

Compliance Manual means a manual or suite of manuals outlining the RE operational standards to comply with the Law;

Compliance Plan means the Plan being a comprehensive plan adopted by the RE in respect of the Scheme as required by Section 601HA of the Law as amended from time to time;

Conforming Mortgage Investment means a Mortgage which:

- (a) conforms with the requirements, terms and conditions set out in clauses 4.2, 4.3 and 4.4; and
- (b) in respect of which the documents referred to in clause 4.5 have been lodged with the Sub-Custodian; and
- (c) complies with the requirements of the National Consumer Credit Protection Act 2009 and its subordinate legislation, and the National Consumer Credit Code where applicable; and
- (d) meets the requirements disclosed in the applicable SPDS from time to time;

Constitution means this document including any Schedule, Annexure or Amendments to it;

Custodian means the RE or a corporation nominated and appointed by the RE under clause 2.3. Where the RE does not act as Custodian, then the appointed corporation must:

- (a) be a corporation independent of the Investment Manager carrying on the business of a trustee company or having the business of banking as its principal business in the country in which it has been appointed custodian (or is wholly-owned subsidiary of such a corporation);
- (b) (i) where the corporation has issued share capital - have shareholders' funds of at least one hundred million dollars (\$100,000,000) at the time of the appointment (or, where a Custodian does not have the required level of shareholders' funds, the Custodian is a wholly-owned subsidiary of a corporation which has the required level of shareholders' funds or is a Related Corporation of the Custodian and which has also guaranteed to the RE the performance by the Custodian of its obligations under the appointment); and
(ii) in any other case - where the corporation is a Related Corporation of the RE and the RE is satisfied that the corporation has sufficient assets to perform its duties as Custodian and in respect of which the Custodian has guaranteed the performance of its obligations under the appointment to the RE pursuant to an agreement entitled Custody Agreement entered into between the Custodian and the RE pursuant to ASIC's Policy Statement governing the appointment of custodians to managed investment schemes; and
- (c) agree to be bound by the terms of this Constitution whenever relevant and accept and submit to the non-exclusive jurisdiction of the courts of Victoria and where appropriate, the Federal Courts of the Commonwealth of Australia, in relation to any cause of action or matter in relation to the appointment of acting as Custodian or this Constitution;

Defaulting Mortgage means a mortgage under which the mortgagor is in default for more than sixty (60) consecutive days, in accordance with its terms;

Development Loan means a loan to fund the construction of a non-residential use building on mortgaged property which is to be drawn down before or during completion of the building;

EDR means any external dispute resolution scheme approved by ASIC and of which the RE is a member, or such other financial industry complaints resolution organisation of which the RE is required to be a member by virtue of it holding an Australian Financial Services Licence or an Australian Credit Licence;

Event of Default has the meaning given to that term in clause 14.1;

Excess Servicing Expense means the amount of interest and fee income above the amount of the RE's expenses as defined and paid under the Investment Management Agreement, together with any excess cash flow emanating from the RE's operations at the end of each calendar month, and is to be paid to the Investment Manager.

Extraordinary Resolution means in relation to the Scheme, a resolution:

- (a) of which notice as required by the Law has been given; and
- (b) that has been passed by at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy);

Financial Requirements means the Net Tangible Assets requirements as set out clause 8.7 and the professional insurance requirements of clause 8.8 or as stipulated by ASIC from time to time but meaning the following:

- (a) Net Tangible Assets shall mean in accordance with the Law total tangible assets of the RE including any guarantee approved by ASIC, less any adjusted liabilities as shown in the latest accounts of the RE lodged with ASIC.
- (b) Adjusted Liabilities shall mean total liabilities as shown in the latest financial report lodged with ASIC plus the following adjustments:
 - (i) amounts owing from any Associate which are not adequately secured;
 - (ii) amounts owing from any managed investment scheme or trust in respect of which the RE or an Associate may exercise any form of power or control and which are not adequately secured;
- (c) Associate has the meaning set out in the Law;
- (d) An amount is "adequately secured" if it is secured by:
 - (i) an enforceable charge over securities for which there exists an active market and the market value of these securities always equals not less than 105 per cent of the particular amount owing; or
 - (ii) a registered first mortgage over real estate that has a fair market valuation at least equal to the amount owing;
- (e) An "Active Market" is taken to exist for:
 - (i) securities, promissory notes or bills of exchange traded in a recognised market in which independent, bona fide offers to buy and sell are regularly made so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and where payment will be received within the customary period; and
 - (ii) any security which ASIC has approved in writing;

Financial Year means a year ending on 30 June, or that part of such a year occurring at the commencement or termination of the Scheme governed by this Constitution;

High Yield Credit Account means the investment option offered by the RE by way of a Product Disclosure Statement which allows Applicants to have their Application Money invested in the Authorised Investments of the High Yield Credit Account, or in managed portfolios of Authorised Investments of the High Yield Credit Account;

Insolvency Event means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) a receiver or receiver and manager is appointed in respect of any part of a body corporate and that appointment is not revoked within 7 days of the appointment being made; or
- (d) a body corporate enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, or is otherwise wound up or dissolved; or
- (f) a body corporate is or states that it is insolvent; or
- (g) as a result of the operation of the Law, a body corporate is taken to have failed to comply with a statutory demand; or
- (h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event of default described in the Law; or
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or
- (j) a person becomes an insolvent under administration as defined in the Law or action is taken which could result in that event; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Insurance Policies means in relation to each mortgage investment with a loan to value ratio above 80%:

- (a) the Lenders Mortgage Insurance (Indemnity Insurance); and
- (b) the Mortgage Cashflow Insurance (Timely Payment Cover - TPC);

Interest means a Member's individual legal interest in the Scheme or any Conforming Mortgage Investment;

Investment means all Authorised Investments excluding Conforming Mortgage Investments;

Investment Manager means the Investment Manager appointed by the RE, from time to time, pursuant to the Investment Management Agreement setting out the rights and obligations of the Investment Manager between the RE and the Investment Manager dated on or about the date of the Original Constitution;

Investment Management Agreement means the agreement so entitled dated on or about the date of the Original Constitution between the RE and the Investment Manager and all amendments to that agreement;

Investment Manager's Minimum Service Fee has the meaning given to it in the Investment Management Agreement;

Investment Option means any one of the Classic 48 hour Account, the 90 Day Notice Account, the 12 Month Term Account, the Select Investment Account or the High Yield Credit Account, as the case requires;

Land means:

- (a) land anywhere within Australian States or Territories and includes lots and common property into which any land is subdivided in accordance with the appropriate enactment of any State or Territory of the Commonwealth; or
- (b) land which is not situated within an Australian State or Territory where the location of the land is clearly identified in a Supplementary Product Disclosure Statement signed by the relevant Member or Members;

Law means the Corporations Act 2001 and its subordinate legislation;

Lenders Mortgage Insurance means a contract of insurance issued by an Approved Insurer and given in favour of the RE in respect of a Mortgage and which provides that the insurer will pay the net loss on the loan secured by the Mortgage after the proceeds of the sale of the repossessed property, over which the Mortgage was granted, have been applied to:

- (a) the outstanding loan principal;
- (b) the unpaid interest on such principal;
- (c) all reasonable and necessary legal costs and expenses;
- (d) any reasonable and necessary costs and expenses incurred in repairing and maintaining the property prior to its sale (provided costs in excess of \$1,000 have been agreed in advance by the insurer);
- (e) any necessary real estate agent's sale commissions;
- (f) any outstanding Taxes in respect of the property securing the Mortgage; and
- (g) any outstanding premiums payable under the Policy of Fire Insurance in respect of the Mortgage

or provides for equivalent or, in the opinion of the RE, superior insurance cover on terms and provisions satisfactory to the RE;

Liquid has the same meaning as in the Law;

Maturity Date means, in relation to a Conforming Mortgage Investment, the day on which scheduled principal and interest of that Conforming Mortgage Investment falls due for payment as determined under each Conforming Mortgage Investment;

Member means a person or body corporate who for the time being is registered in the Register as having lodged the Minimum Investment, and the term "Member" shall include the RE in relation to investments made through the Classic 48 hour Account, the 90 Day Notice Account and the 12 Month Term Account in Conforming Mortgage Investments;

Minimum Investment means the amount of \$1, or such other amount as the RE may prescribe from time to time.

Minimum Subscription means the amount required before the RE can proceed to settlement of a Conforming Mortgage Investment;

Month means a calendar month;

Mortgage means:

- (a) any instrument registered or registrable as a legal mortgage in respect of Land and improvements thereon securing a primary obligation of any person to pay any sum or sums; and
- (b) the making of a loan upon the security (whether by way of mortgage or otherwise) of Real Property where a certificate from an independent solicitor is available to the RE which certifies that the title is in order, the mortgage is registered or will be registered and that the buildings on the property are insured and where the principal amount of the loan is either not more than four-fifths of the value of the Real Property as disclosed by a valuation from an Approved Valuer (which valuation shall be available to the RE and which valuation shall have been made within three (3) months prior to the date upon which a loan is made) or in relation to which there is appropriate Insurance Policies or where appropriate disclosure has been made in an SPDS where the principal amount of the loan exceeds four-fifths of the value of the Real Property; and
- (c) the purchase of any mortgage security complying with the requirements of sub-clause (b) hereof where a valuation of the mortgage security shall have been amended within six (6) months prior to the date of acquisition of that mortgage security and where the right title and interest of the mortgagee in the loan, the security and any insurance contracts or policies relating thereto are assigned or transferred by the mortgagee to the RE;

Mortgage Balance means, in respect of a Mortgage, the amount outstanding in respect of that Mortgage from time to time;

Mortgagee means, in respect of all mortgages held by the Scheme, the lender of record as registered in the Mortgage as provided in clause 4.1;

Mortgage Payment Date means, in respect of a Mortgage, the date on which interest is due in accordance with its terms;

National Consumer Credit Code means the National Consumer Credit Code as defined under the National Consumer Credit Protection Act 2009 (Cth);

Outstanding Claims Paid means, in relation to a Conforming Mortgage Investment, the aggregated value of claims paid but not repaid in respect of Insurance Policies in relation to Mortgages.

Policy of Fire Insurance means, in relation to the property on which a Mortgage is secured which consists of buildings or other improvements of an insurable nature, an insurance policy issued by an Approved Insurer for the full insurable value of the relevant property, insuring against loss or damage by fire, storm and tempest and such other risks as the RE may in its sole discretion from time to time require and on which the interest of the RE or other party as provided in clause 4.1 under this Constitution is endorsed as mortgagee and in the case of a lot comprised in a building units plan or a group titles plan registered under the Building Units and Group Titles Act 1980 (Qld) or the corresponding enactment of any other State or Territory of the Commonwealth of Australia provided that at least 90% (by dollar value) of all insurance policies are issued by an insurance company or companies whose claims paying ability is rated not lower than "A-" by a recognised Rating Agency at the time the insurance policy is issued.

Priority Expenses mean the fees being:

- (a) the Custodian's and any Sub-Custodian's fees and expenses
- (b) the following ranking equally:
 - (i) Investment Manager's Minimum Service Fee;
 - (ii) Capital amounts due to Members; and
 - (iii) any amounts due to the Investment Manager for collection fees and charges, title fees and insurance premiums.

Product Disclosure Statement means a Product Disclosure Statement as defined in the Law and issued by the RE for the Scheme;

Ratings Agency means Standard & Poor's, Moodys Investor Services Australia, or any other recognised ratings agency approved by the RE;

Real Property means land (including tenements and hereditaments corporeal and incorporeal and every estate and interest therein whether vested or contingent freehold or leasehold and whether at law or in equity) wheresoever situated and including any equity of redemption, any fixtures to land and any property to be used in association with any land or fixtures that the RE may from time to time consider to be calculated directly to enhance the value of or render profitable any land or fixtures;

Register means the register of Members maintained by the Investment Manager pursuant to clause 5.4;

Registration Form means an application for registration in the Scheme attached to the Product Disclosure Statement;

Related Corporation includes a related body corporate as defined in the Law and in relation to the RE means a company that is legally or commercially related to it;

Resolution means a resolution of the Members.

Responsible Entity means the company for the time being named in ASIC's records of the Scheme's registration as the responsible entity of the Scheme and referred to in this document as the RE;

Retail Client means a retail client as defined in the Law;

Scheme means a managed investment scheme to be known as the La Trobe Australian Credit Fund or such other name as the RE determines from time to time;

Scheme Property means:

- (a) contributions of money or money's worth to the Scheme;
- (b) any Conforming Mortgage Investment; and
- (c) money that forms part of the Scheme Property under the provisions of the Law; and
- (d) money borrowed or raised by the RE for the purposes of the Scheme or any Conforming Mortgage Investment; and
- (e) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and
- (f) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d);

SCO means the Senior Compliance Officer of the RE;

Security Property means any Real Property offered by a Borrower as security for an approved Conforming Mortgage Investment in the Scheme or in any Conforming Mortgage Investment;

Select Investment Account means the investment option offered by the RE by way of a Product Disclosure Statement and a Supplementary Product Disclosure Statement which allows Applicants to have their Application Money invested in the Authorised Investments of the Select Investment Account, or in managed portfolios of Authorised Investments of the Select Investment Account

Settlement Date means the date on which the RE invests in, or the date on which the RE proposes to invest in, a Conforming Mortgage Investment;

Special Resolution means in relation to the Scheme, a resolution:

- (a) of which notice as required by the Law has been given, and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution;

Sub-Custodian means a corporation nominated and appointed by the RE under clause 2.3 to act as Sub-Custodian;

Sub-Custodian Agreement means any agreement so entitled between the RE and an entity appointed to hold the physical documents relating to the Scheme Property, and all amendments to that agreement;

Supplementary Product Disclosure Statement or SPDS means a document supplementary to the Product Disclosure Statement and prepared in accordance with the Law which will disclose from time to time particulars of each Conforming Mortgage Investment as they become available as detailed in clause 3.7;

Taxes means taxes, levies, imposts, deductions, charges, withholding tax and duties imposed by any authority (including, without limitation, stamp and transaction duties)(together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of a person;

Timely Payment Cover (TPC) means a contract of insurance given in favour of the RE in respect of a Mortgage and which provides that on the Borrower being in default under the loan secured by the Mortgage for a period of thirty (30) days or greater, that the TPC provider will pay within fourteen (14) days of the Investment Manager lodging a claim for the Members of the relevant Conforming Mortgage Investment, the full monthly repayments payable on the Mortgage for a minimum period of twelve (12) months, monthly in arrears, or which provides equivalent or, in the opinion of the RE, superior insurance cover on terms and provisions satisfactory to the RE;

Transaction Documents means:

- (a) this Constitution;
- (b) the Investment Management Agreement;
- (c) any Sub-Custodian Agreement
- (d) any Product Disclosure Statement and Supplementary Product Disclosure Statement; and
- (e) all other agreements or deeds referred to or envisaged by the documents in (a) to (d) inclusive.

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- (a) a reference to any agreement, deed or document (and, where applicable, any of its provisions) is a reference to that agreement, deed or document as amended, varied, notated, supplemented or replaced from time to time;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, trustees, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the Law and, if not inconsistent with those accounting standards and the Law, generally accepted accounting principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
- (i) a reference to any thing is a reference to the whole and each part of it and a reference to a group of persons (including, without limitation, the RE) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (j) if an act prescribed under this Constitution to be done by a party on or by a given day is done after 4.00 pm (Melbourne time) on that day, it is to be taken to be done on the following day;
- (k) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (l) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (m) a reference to this Constitution includes a reference to any applicable schedule; and
- (n) reference to clauses are references to clauses of this Constitution.

1.3 Headings in this Constitution are inserted for convenience only and do not affect the interpretation or construction of this Constitution.

2. Declaration of Trust

Name of the Scheme

2.1 The Scheme is called the *La Trobe Australian Credit Fund* or by such other name as the RE determines from time to time.

Declaration of Trust

2.2 The RE declares that it holds the Scheme Property on trust for the Members.

2.3 The RE may appoint:

- (a) a Custodian as agent to hold all Scheme Property; or
- (b) a Sub-Custodian as agent to hold all of the physical documents relating to Scheme Property, including Conforming Mortgage Investments.

2.4 The Custodian if so appointed under clause 2.3 shall hold the Scheme Property as agent of the RE on terms and conditions as detailed in a custody agreement with the RE, and the Sub-Custodian if so appointed under clause 2.3 shall hold all Conforming Mortgage Investment and other security documents as agent of the RE for the term of the Conforming Mortgage Investments and other Investments on terms and conditions as detailed in a Sub-Custodian Agreement.

Binding on All Parties

2.5 This Constitution is binding on the RE, the Investment Manager, the Custodian, the Sub-Custodian and on all Members.

2.6 By executing the Registration Form the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

Term of Scheme

2.7 This Constitution shall commence on the date of the Original Constitution and, unless sooner determined, the Scheme constituted or established pursuant to this Constitution shall terminate and be wound up on the 80th anniversary of the day the Scheme began.

Termination of Scheme by RE

2.8 If on any date during the continuance of this Constitution there are no outstanding Investments or Conforming Mortgage Investments and there are no other moneys which are or will become (either upon a contingency or otherwise) payable by the RE to any Member, in accordance with this Constitution, then the RE may by notice in writing to the Members terminate the Scheme.

Members not to interfere

2.9 Except as is expressly provided in this Constitution, the interest of a Member in the Assets does not confer on the Member any right to interfere with the rights or powers of the RE, the Investment Manager, the Custodian or the Sub-Custodian under this Constitution or to exercise any rights, powers or privileges in respect of any Conforming Mortgage Investment of which they are not a member. Members do not have any interest in the Assets as a whole.

Inspection of Constitution - Confidentiality

2.10 The Investment Manager must not disclose the terms of or give a copy of this Constitution to any person other than:

- (a) the Members; or
- (b) the Custodian; or
- (c) the Sub-Custodian; or
- (d) a person who, in the ordinary course of the business of the Investment Manager, the Custodian, or the Sub-Custodian who has access to the papers and records of the RE, on the basis that the person will make no further disclosure,

unless required to do so by law.

Any person who is not entitled to inspect or receive a copy of this Constitution according to the terms of this Constitution (including, without limitation, clause 2.10) may not make any statement or issue any report based on the contents of this Constitution, or rely on the contents of this Constitution, without the written consent of the RE.

- 2.11 A copy of the Constitution is to be made available for inspection by Members at the registered office of the RE during normal business hours.

3. Interests in Conforming Mortgage Investments

Summary of Scheme Activities

- 3.1 Investment in the Scheme by a Member follows the process set out below:
- (a) The first stage involves the Member applying for registration on a Registration Form and being accepted into the Scheme. The Member is required to indicate in the Registration Form into which Investment Option the Application Money is to be invested and in what proportions;
 - (b) If the Member selects either the Classic 48 hour Account, the 90 Day Notice Account, the 12 Month Term Account or the High Yield Credit Account, the Member is not required to complete any further documents. The Application Money will be invested according to the Member's directions;
 - (c) If the Member selects the Select Investment Account, the Application Money is invested in the Conforming Mortgage Investment once the Minimum Subscription has been reached. Until such time as the Minimum Subscription has been reached, the Application Money will be invested on behalf of the Member in the Classic 48 hour Account or the 90 Day Notice Account.
- 3.2 Each Conforming Mortgage Investment will be for a fixed term as shall be determined by the RE in its discretion.
- 3.3 Each Conforming Mortgage Investment must be individually approved by the RE before being offered to Members and will commence on the date it is settled by the RE and will subsequently expire on the date it is "paid out" or "matured" at the end of each Conforming Mortgage Investment's fixed term.
- 3.4 The RE will offer Members a fixed or variable interest, fixed term investment secured by a Mortgage over Real Property.

Payment to Members

- 3.5 Interest is paid to Members by cheque or by direct credit to their nominated financial institution's account. For Members who choose the Select Investment Account, interest will be paid to them over the term of each investment, or for existing mortgages transferred or assigned to the RE in accordance with clause 4.1 as agreed to by Members in each Conforming Mortgage Investment, and only whole cents are to be paid. Any remaining fraction becomes Scheme Property.
- 3.6 Cheques not presented within six (6) months may be cancelled and treated as a further investment to the Scheme made on the first business day after the RE is credited with the amount of the cancelled cheque.

Supplementary Product Disclosure Statements

- 3.7 Details of the Scheme are contained in the Product Disclosure Statement and, for Conforming Mortgage Investments which form part of the Select Investment Account will be supplemented by information contained in a Supplementary Product Disclosure Statement.
- 3.8 Each Supplementary Product Disclosure Statement need only be given to the potential Members of the relevant Conforming Mortgage Investment, but all potential Members must be given a copy of the current Product Disclosure Statement.

Interests in an Investment Option

- 3.9 A Member's interest in an Investment Option shall be as a tenant in common with all other Members in that Investment Option in the proportion to which their Application Money accepted and allocated into the particular Investment Option bears to the total value of the particular Investment Option which has been selected by the Member.
- 3.10 Each Member has a beneficial interest only in the specific and particular Assets determined in accordance with this Constitution, in which they have invested. Members do not have any interest in the Assets as a whole.
- 3.11 A Member must not:
 - (a) interfere with any rights or powers of the RE, the Investment Manager, the Custodian or the Sub-Custodian;
 - (b) exercise a right in respect of an Asset, lodge a caveat or other notice affecting an Asset or otherwise claim any interest in any particular Asset;
 - (c) require an Asset to be transferred to the Member; or
 - (d) vote on a matter of a Conforming Mortgage Investment in which the Member does not have any interest.

Authorised Investments of the Classic 48 hour Account, 90 Day Notice Account and 12 Month Term Account

- 3.12 Moneys held by the RE in the Classic 48 hour Account, 90 Day Notice Account and 12 Month Term Account may only be invested in the following manner:
 - (a) in any one or more of the following:
 - (i) cash, term deposits, bills of exchange or negotiable certificates of deposit issued by an Australian authorised deposit taking institution;
 - (ii) an investment offered by an AFS licensed entity with principal repayment linked to a pool of residential and commercial mortgages, where the RE reasonably expects the investment to be repaid in full within five (5) years;
 - (iii) bonds issued by an Australian state or federal government;
 - (iv) bonds issued by an Australian financial institution; and
 - (b) in Conforming Mortgage Investments.

Acquiring Interest in Scheme

- 3.13 The Minimum Investment is required to register in the Scheme. The consideration to be paid by a Member to acquire the Member's interest in the Scheme is the amount, equal to or greater than the Minimum Investment, which the Member chooses to invest.
- 3.14 (a) Application for registration in the Scheme may only be accepted on receipt of a completed Registration Form; and
- (b) The RE may, in its absolute discretion, reject an application to become a Member or to make further investment in a Conforming Mortgage Investment in whole or in part, without reason.
- 3.15 (a) Where the RE has accepted an Applicant's Application Form for the Select Investment Account, the Application Money shall be deposited into the Classic 48 hour Account or the 90 Day Notice Account on behalf of the Member until it is allocated to a particular Conforming Mortgage Investment; and
- (b) Application Moneys accepted for investment in either the Classic 48 hour Account, 90 Day Notice Account, the 12 Month Term Account or the High Yield Credit Account will be invested in the selected Investment Option immediately.
- 3.16 Where a Member's Application Money has been directed for investment in the Select Investment Account, but is held in the Classic 48 hour Account or the 90 Day Notice Account prior to settlement of the Conforming Mortgage Investment, any interest earned on the Application Money will be paid to the Member monthly in arrears, or with the return of the Application Money in the event that the investment in the Select Investment Account does not proceed, or upon withdrawal by the Member in accordance with clause 20.
- 3.17 The RE may deduct from any amount to be paid to a Member or received from a Member, any money due and unpaid by the Member and any amount of Tax (or an estimate of it) which the RE is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the RE considers should be deducted.

Investment in a Conforming Mortgage Investment

- 3.18 The RE shall prepare a Supplementary Product Disclosure Statement for each proposed Conforming Mortgage Investment in the Select Investment Account that details:
- (a) A summary of the loan application;
- (b) Particulars of the Borrower;
- (c) Particulars of the purpose of the loan, including term of loan and maturity date;
- (d) Particulars of the security taken by the RE over the assets of the Borrower;
- (e) Subject to clause 4.4(b), pertinent extracts from the valuation of the Real Property over which a Mortgage is to be taken including a summary of the valuation calculation; and
- (f) Other criteria specified from time to time by the RE in the Product Disclosure Statement.
- 3.19 Each Supplementary Product Disclosure Statement must include an Application form.

3.20 In the case of investments in the Select Investment Account:

- (a) allocation by the RE of Members' funds to a Conforming Mortgage Investment may only be made after a Member has selected the Conforming Mortgage Investment by the execution of the Application Form attached to a SPDS;
- (b) The RE shall set a Minimum Subscription for each of the Conforming Mortgage Investments which generally equates to the loan amount required by the Borrower under the Conforming Mortgage Investment;
- (c) Once the Minimum Subscription has been received by the RE that particular Conforming Mortgage Investment is closed;
- (d) Application Moneys received after the Minimum Subscription has been received are to be invested in the Classic 48 hour Account or the 90 Day Notice Account until subject to clause 3.1 the Member selects another Conforming Mortgage Investment; and
- (e) Once the Minimum Subscription has been received by the RE the Members' funds shall be redeemed from the Classic 48 hour Account or the 90 Day Notice Account and contributed to the selected Conforming Mortgage Investment.

No Investment with Associates

- 3.21 (a) Subject to clause (b) below, the Investment Manager and the RE each covenant that no moneys available for investment under this Constitution shall be invested in or lent to the RE or the Investment Manager or to any person (other than a Bank or corporation declared pursuant to the Law to be an authorised dealer in the short term money market) who is related to or associated with (within the meaning contained in the Law) the RE or the Investment Manager.
- (b) Clause 3.21(a) does not apply to an investment in the High Yield Credit Account where the investment involves an investment in a related body corporate or associated entity of the RE, and is an Authorised Investment of the High Yield Credit Account.

Investment Manager to Manage Investments

- 3.22 Subject to both the RE and the Investment Manager duly observing and performing the obligations on their part expressed or implied in this Constitution, and so long as there shall be no outstanding Event of Default, the Investment Manager, on behalf of the RE, shall manage the Investments and the Conforming Mortgage Investments pursuant to this Constitution with full and complete power of management.

Bank Accounts

- 3.23 The RE shall maintain such bank accounts as are necessary for the efficient management of the Scheme and to comply with the requirements of the Law.

4. Conforming Mortgage Investments

Mortgages in favour of the RE

4.1 Mortgages will be written:

- (a) in the name of the RE, a Related Corporation of the RE or a Custodian appointed under clause 2.3;
- (b) if the Member is a Retail Client and the RE in its absolute discretion so determines, in the name of the Member, or the Member's trustee, or
- (c) in the case of the RE being appointed by a Members meeting, to be the replacement Responsible Entity in the name of the previous Responsible Entity.

However, subject to this clause 4, the RE may transfer or assign, or cause to be transferred or assigned, Conforming Mortgage Investments to or from the RE at its discretion.

If Mortgages are written in the name of the Member or Member's trustee, then they must be held by the RE on the following conditions:

- (a) physical custody of all security documents must be held by the RE as Custodian, by the Sub-Custodian or a Custodian appointed under clause 2.3; and
- (b) the Member, where applicable, must grant a power of attorney to the RE which permits the RE to execute any document, including a Transfer of Mortgage, to enable the RE to transfer the Mortgage to the RE at any time.

Terms and Conditions of Mortgages

4.2 Each Mortgage must be a Conforming Mortgage Investment and must be upon the following terms and conditions:

- (a) the term of the Mortgage shall be determined by the Responsible Entity in its discretion;
- (b) the value of the Mortgage shall not exceed 80% of the valuation of the Real Property to be secured by an Approved Valuer, unless the relevant Members approve a value exceeding 80% by completing an Application Form, where that value is disclosed in a Supplementary Product Disclosure Statement;
- (c) unless otherwise disclosed in a Supplementary Product Disclosure Statement, interest shall be payable by Borrowers not less frequently than six monthly in arrears. This sub-clause does not apply where:
 - (i) the Classic 48 hour Account invests in a pool of Conforming Mortgage Investments; and
 - (ii) the RE reasonably believes that the pool of loans will generate borrower derived interest payments not less frequently than six monthly in arrears;
- (d) the principal amount payable pursuant to a single Mortgage shall not exceed:
 - (i) in respect of the Classic 48 hour Account, 12 Month Term Account, Select Investment Account and High Yield Credit Account, \$25,000,000 in all capital city areas, \$5,000,000 in major regional centres, and \$1,500,000 in all other areas unless the relevant Members approve of a principal exceeding these amounts by signing a Supplementary Product Disclosure Statement which discloses the principal amount. Furthermore, in the case of a Mortgage in the Classic 48 hours Account or the 12 Month Term Account, the principal amount of the Mortgage must not in any event exceed 10% of the total Scheme Property for that Option; and
 - (ii) in respect of the 90 Day Notice Account, the greater of 5% of the total Scheme Property of the 90 Day Notice Account or \$50,000,000;

- (e) the rate of interest provided for in the Mortgage to be paid by the Borrower shall be:
 - (i) a fixed rate reverting to a variable rate upon expiration of the applicable fixed rate period as determined by the Mortgagee; or
 - (ii) a variable rate with the option to convert to a fixed rate as referred to in sub-paragraph (i);
 but always shall be at least the net investment rate paid to the Member as specified in the Supplementary Product Disclosure Statement, plus the Investment Manager's Minimum Service Fee;
- (f) the loan shall otherwise comply with the terms and conditions in the Product Disclosure Statement and the relevant Supplementary Product Disclosure Statement. Where there is any inconsistency between the provisions of these clauses 4.2, 4.3 and 4.4, the Supplementary Product Disclosure Statement and the Product Disclosure Statement, the terms of the Supplementary Product Disclosure Statement shall prevail;
- (g) (i) Subject to clause (g)(ii) below, where a Mortgage is to be transferred or assigned to the RE subject to this clause 4, the Mortgage cannot be a Defaulting Mortgage.
- (ii) A Mortgage to be transferred or assigned to the RE may be a Defaulting Mortgage if the Mortgage:
 - A. is transferred or assigned as part of a portfolio of Mortgages which includes non-Defaulting Mortgages;
 - B. is to be a Select Investment Account investment in the La Trobe Australian Credit Fund; and
 - C. the investors in the mortgage will have no entitlement to income or capital from other Investments in the La Trobe Australian Credit Fund.
- (h) the loan must comply with the requirements of the National Consumer Credit Code where applicable.

Mortgage Insurance

- 4.3 (a) Subject to clause 4.3(b), in respect of each Conforming Mortgage Investment which has a loan to value ratio above 80%, the RE must have the benefit of the Insurance Policies.
- (b) A Conforming Mortgage Investments that exceeds four-fifths of valuation will not require the benefit of Insurance Policies if this has been disclosed to Members in a Supplementary Product Disclosure Statement.

Valuation Methods

- 4.4 (a) Subject to clause 4.4(b), the Real Property to be used as security for each Conforming Mortgage Investment, prior to approval by the RE and the issuing of a Supplementary Product Disclosure Statement or the conduct by the RE of a sale as mortgagee in possession, must be valued by an Approved Valuer and the valuation must be delivered and held by the RE in accordance with clause 4.6(f).

Re-valuation of Scheme Property is required only when:

- (i) an increase to an existing loan amount is sought and the current valuation held is more than six (6) months old; or
- (ii) subject to the matters contained in clause 4.7, a mortgage loan term has expired and is to be renewed; or
- (iii) obtaining Mortgagee in Possession for the purpose of setting a reserve price for the sale.

Should a subsequent valuation reveal that the balance of the outstanding Mortgage is more than eighty percent (80%) of the value of the property, this does not constitute a breach of the Constitution, or an Event of Default.

- (b) The Real Property to be used as security for a Conforming Mortgage Investment need not be valued as required by clause 4.4(a) if:
 - (i) the Board of the RE so approves;
 - (ii) the relevant Supplementary Product Disclosure Statement discloses that a valuation will not be obtained; and
 - (iii) the Member correspondingly consents by signing the Application Form to the fact that no valuation will be obtained.

Security Document Sub-Custodian

- 4.5 Where a Sub-Custodian has been appointed, the RE must deliver to or cause to be delivered to the Sub-Custodian the following documents in respect of each Conforming Mortgage Investment (unless the Sub-Custodian has already taken delivery of such documents in any capacity):
- (a) the instrument or instruments of mortgage as registered and the instrument or instruments of title (if any) to the subject Real Property, a transfer or assignment of the Mortgage in favour of the Mortgagee, and any further documents required for the purpose of registration of the Mortgage; and
 - (b) a Solicitor's certificate by an independent solicitor to the RE certifying as follows:
 - (i) in the case of a Mortgage which is registered, that the Mortgage is a valid and enforceable legal mortgage according to its terms;
 - (ii) in the case of a Mortgage which is not registered, that such Mortgage will be duly stamped and capable of immediate registration as a legal mortgage and is valid and enforceable according to its terms;
 - (iii) if the Mortgage is currently registered in a name which is not the RE, that the transfer of the Mortgage in favour of the RE will be duly capable of immediate registration;
 - (iv) such other facts, information or opinions as the RE or the Sub-Custodian may reasonable require; and
 - (v) an undertaking by the independent solicitor to the RE addressed to the Investment Manager undertaking to lodge for registration such documents, if any, as require registration to enable the Mortgagee to become registered as the legal mortgagee of the subject Real Property and to pay the registration fees payable on the lodgement of such documents; and
 - (c) the Insurance Policies in respect of the Mortgage issued to the RE as Mortgagee; and
 - (d) an Investment Manager's certificate dated and signed by an Authorised Officer of the Investment Manager stating the following and warranting, having made due and proper enquiries, the correctness thereof:
 - (i) no breach or default on the part of the Borrower under the Mortgage has occurred and is continuing at the date of the certificate and that the Mortgage is in full force and effect;
 - (ii) the outstanding liability of the Borrower under the Mortgage in respect of the principal sum secured thereby is the amount provided for in the Mortgage or such lesser amount as stated in the certificate;
 - (iii) the Insurance Policies are in full force and effect;
 - (iv) the Policy of Fire Insurance is in full force and effect;

(v) unless already in the name of the RE, the transferor of the Mortgage has good title to the Mortgage and that the Mortgage is free from encumbrances and may be transferred into the name of the RE; and

(vi) the Mortgage complies with the requirements of clause 4.2;

4.6 The Investment Manager must additionally maintain on each Borrower's loan file the following additional documents in respect of each Conforming Mortgage Investment available for inspection by the Auditor:

(a) The application for the loan;

(b) Credit rating analysis of the borrower from an independent credit reference association unless such an analysis is not required under the terms of any SPDS;

(c) Accepted Letter of Offer;

(d) Solicitor's Instructions to attend settlement;

(e) A Policy of Fire Insurance with respect to the Real Property on which the Conforming Mortgage Investment is secured, and on which the interest of the Mortgagee is noted; and

(f) A valuation of the Real Property on which the Conforming Mortgage Investment is secured, being a valuation:

(i) which is acceptable to the RE;

(ii) which, subject to this clause 4.6, is made within 6 months before the date on which financial accommodation is provided under the Mortgage;

(iii) which is made by an Approved Valuer or, subject to the approval by the Board of the RE:

- the most recent municipal valuation of the land and improvements thereon, provided the loan the subject of the Conforming Mortgage Investment does not exceed forty percent (40%) of the municipal valuation; or
- an AVM valuation provided by a third-party AVM provider;

(iv) which is addressed to the Investment Manager and, where the valuation is to be relied upon in respect of a first mortgage (but not a second or subsequent mortgage), containing a statement to the effect that the valuation can be relied upon by the RE for the purpose of taking a mortgage over the property;

(v) where the loan is currently a registered mortgage, and will be transferred to the RE in accordance with clause 4.5, the valuation may be dated more than six (6) months before the date on which the mortgage is delivered to the Sub-Custodian; and

(vi) which the Sub-Custodian has no duty to verify.

New Valuation not required in certain circumstances

4.7 If any current Conforming Mortgage Investment, which is not a Defaulting Mortgage, is to be discharged with the proceeds of a further or new Mortgage granted by the Mortgagee, the RE is not required to obtain a new valuation provided that:

(a) there is no increase in the Mortgage Balance;

(b) the Insurance Policy in respect of the Conforming Mortgage Investment is reconfirmed; and

(c) the valuation held by the RE in relation to the Mortgage is dated not more than eighteen (18) months before the date that the new or further Mortgage is delivered to the Sub-Custodian.

Conforming Mortgage Investments and transfers to be registered

- 4.8 Unless a Conforming Mortgage Investment has already been registered, the RE must register, or cause it to be registered, as a legal mortgage in the Mortgagee's name. Each Conforming Mortgage Investment delivered to the Sub-Custodian and each such Conforming Mortgage Investment must be lodged for registration no later than five (5) days after settlement, in accordance with the Solicitor's certificate referred to in clause 4.5(b).

5. Issue of Certificates of Mortgage Investment

Investment Certification

- 5.1 The RE agrees to periodically deliver to the Member a Certificate of Mortgage Investment:
- (a) setting out each Authorised Investment with which the Member is associated; and
 - (b) in relation to any Select Investment Account investment, confirming that the total Investments which are held by the RE are sufficient to fully complete the purposes of the Conforming Mortgage Investment for that Member's Investment, with which that Certificate of Mortgage Investment is associated or that a detailed additional disclosure has been made in the Supplementary Product Disclosure Statement signed by the Member as to the risks of non-completion of the security.
- 5.2 The RE shall not accept any further Investments if:
- (a) there is an Event of Default by the RE;
 - (b) the RE is in breach of any covenant, condition or obligation binding on it under or pursuant to this Constitution;
 - (c) the RE has given notice in writing to terminate this Scheme in accordance with clause 2.7 or clause 2.8;
 - (d) Total Defaulting Mortgages greater than three (3) months in arrears by dollar value of the RE exceed 15% of all Conforming Mortgage Investments;
 - (e) the Investment Manager is in breach of its obligations under clause 13 of this Constitution; or
 - (f) the Certificate of Mortgage Investment is not in the form required by the Compliance Manual, as amended.
- 5.3 The RE must notify Members in writing as soon as it discovers that any of the circumstances identified in clause 5.2 exists.
- 5.4 The RE must deliver a Certificate of Mortgage Investment to the relevant Member(s) no later than thirty (30) days following the day on which a Select Investment Account loan is settled.

Register

- 5.5 The Investment Manager will maintain or cause to be maintained with respect to each Investment and Conforming Mortgage Investment, a register of Members which will record with respect to each:
- (a) the name and address of the Member;
 - (b) the original face value of the Investment and Conforming Mortgage Investment held by the Member, and the identification of the Investment by series, class and tranche as applicable;
 - (c) the date on which the Certificates of Mortgage Investments were first registered in the Member's name;
 - (d) where relevant, the date on which the Certificate of Mortgage Investments are transferred to another person; and
 - (e) any other relevant information which the Investment Manager or RE elects or is required by law to record.

Certificates of Mortgage Investment

- 5.6 Each Certificate of Mortgage Investment issued by the RE in accordance with this Constitution shall comply with the provisions of this clause 5.

Identification

- 5.7 Each Certificate of Mortgage Investment shall be identified by the RE by a number or code, and must be in the form specified in the Compliance Manual of the Scheme as amended from time to time.

Maturity Dates

- 5.8 The RE shall determine in respect of each Conforming Mortgage Investment within the Select Investment Account the Maturity Date for the Conforming Mortgage Investments. The RE shall notify the Member in writing of the Maturity Date. The Maturity Date for a particular Conforming Mortgage Investment must not exceed thirty-one (31) years from the issue date of the Certificate of Mortgage Investment.
- 5.9 All Certificates of Mortgage Investment need not have the same Maturity Date but otherwise must contain the same terms and conditions.

Terms of Certificates of Mortgage Investment

- 5.10 The RE may in its absolute discretion determine, and the relevant Certificate of Mortgage Investment terms may specify, that the Certificates of Mortgage Investment be issued in book entry form only, in which case the Register will be conclusive evidence of entitlement under the respective Certificates of Mortgage Investment, and Certificates of Mortgage Investment will not be issued. In the alternative, the relevant Certificate of Mortgage Investment terms may specify that the Certificates of Mortgage Investment be issued in full registered, certified form by the Investment Manager.

6. Covenants by the Investment Manager

Loan to Valuation Ratio

- 6.1 The Investment Manager covenants that it will not permit a Conforming Mortgage Investment to be settled unless it is in accordance with clause 4.2.

Mortgage Security

- 6.2 The Investment Manager covenants that all Conforming Mortgage Investments are registrable first or second mortgage securities, unless notified and consented to individually by Members through a Supplementary Product Disclosure Statement.

Conduct Business Properly

- 6.3 The Investment Manager will use its best endeavours to carry on and conduct its business in a proper and efficient manner and will ensure that the Scheme is carried on and conducted in a proper and efficient businesslike manner and act at all times in the best interests of the RE.

Payment of Monies to Members

- 6.4 The Investment Manager will pay to the Member any monies that under this Constitution are payable by the RE to the Member upon the required repayment date.

Value of Certificates of Mortgage Investments to Conforming Mortgage Investments

- 6.5 The Investment Manager covenants that the face value of Certificates of Mortgage Investment outstanding at any time will not exceed the value of Conforming Mortgage Investments.

Accounts and Records

6.6 The Investment Manager on behalf of the RE will:

- (a) keep such accounts, books and records for the administration of this Constitution and correctly record and explain transactions entered into in pursuance of the Scheme, including but not limited to all mortgage payments made and all payments in respect of Insurance Policies and Policies of Fire Insurance;
- (b) make available to the Auditor for inspection all such accounts, books and records of the Scheme and kept by the RE however compiled, recorded or stored and shall provide to the Auditor full and free access to any premises at which such accounts, books and records may be held and to the books, computers or other data storage medium whereby the same are compiled, recorded or stored;
- (c) give to the Auditor such oral or written information as the Auditor requires with respect to all matters directly relating to the Scheme;
- (d) make available, or ensure that there is made available, to the Auditor such details as the Auditor requires with respect to all matters directly relating to the Scheme;
- (e) keep books of account and records of all payments made by Borrowers under Conforming Mortgage Investments which records shall include provision for identification of any Borrower who is in default under any Conforming Mortgage Investment; and
- (f) provide to the Auditor such information as each of the Investment Manager and the RE shall respectively require to enable them to carry out their respective duties and obligations under this Constitution.

No Assignment or Retirement by Investment Manager

6.7 The Investment Manager shall not seek to be discharged from its obligations under this Constitution nor shall it transfer or assign or seek to transfer or assign its rights and obligations. The Investment Manager shall not seek to retire from or be removed or replaced under this Constitution.

Appointment of Agents and Advisers

6.8 Without in any way affecting the generality of its power, the Investment Manager, in carrying out its duties and obligations under this Constitution, may:

- (a) appoint by writing or otherwise any person to be an agent of the RE as the Investment Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the RE) as it thinks fit and by power of attorney appoint any person to be attorney or agent of the Investment Manager for such purposes and with such powers and authorities as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the RE of documents bearing facsimile signatures of the RE or of the attorney or agent either with or without proper manuscript signatures of its officers.
- (b) subject to the operation of the Law, and in circumstances where the Investment Manager is acting within the powers granted to it by the RE, the Investment Manager shall be liable for all acts or omissions of any such attorney, agent, sub-delegate or sub-agent as if such acts or omissions were the Investment Manager's own acts or omissions and shall be responsible for their remuneration; and
- (c) the power of delegation contained in this clause shall not include the power to issue Certificates of Mortgage Investment or any other form of marketable securities other than in the name of the RE; and
- (d) appoint and engage any Approved Valuers, solicitors, barristers, accountants, surveyors, contractors, qualified advisers and other persons necessary, usual, desirable or convenient for the purpose of exercising its powers and performing its obligations.

Comply with Acts

6.9 The Investment Manager and RE in carrying out their duties and obligations under this Constitution shall comply with all laws that may have application to either of them in the administration of this Constitution.

Further Assurances

6.10 The Investment Manager will perform all such acts and execute and deliver all such documents and instruments as shall be necessary to give effect to the terms of this Constitution.

Restrictions on RE's Activities

- 6.11 So long as there exists any outstanding Investments held by the RE in the Investment Options or while any Conforming Mortgage Investment remains outstanding, the RE shall not without the prior written approval of the Members or ASIC:
- (a) carry on any business other than the origination and management of Conforming Mortgage Investments and Investments as envisaged in this Constitution and in respect of that business shall not engage in any activity or do anything whatsoever except:
 - (i) originate Conforming Mortgage Investments;
 - (ii) manage Investments;
 - (iii) own Scheme Property and exercise its rights in respect of the Mortgages;
 - (iv) exercise its rights and perform its obligations under the Constitution and the Transaction Documents;
 - (v) preserve and/or enforce any of its rights under the Transaction Documents; and
 - (vi) perform any act incidental to or necessary in connection with (i), (ii), (iii) or (iv) above;
 - (b) use, invest or dispose of (including by way of sale, mortgage, charge, pledge, lieu or encumbrance of whatsoever nature) any of its property or assets other than as provided in or contemplated by the Transaction Documents;
 - (c) pay any dividend or make any other distribution to its shareholders except out of the amounts paid or payable to the RE in accordance with this Constitution;
 - (d) incur or give any guarantee in respect of any indebtedness for borrowed money other than under the Certificates of Mortgage Investment or the Transaction Documents as contemplated by the Transaction Documents;

- (e) consolidate or merge with any other person or convey or transfer its properties or assets substantially as an entirety to any person unless:
 - (i) the person (if other than the RE) formed or surviving such consolidation or merger or which acquired by conveyance or transfer the properties and assets of the RE substantially as an entirety shall be a person incorporated and existing under the laws of Australia and shall expressly assume, by a deed supplement to this Constitution, in a form satisfactory to the Members, the due and punctual payment of principal and/or interest on the Certificates of Mortgage Investment and the performance of every covenant of this Constitution on the part of the RE to be performed or observed;
 - (ii) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;
 - (iii) the RE shall have received a legal opinion stating that such consolidation, merger, conveyance or transfer and such supplement deed comply with this paragraph and that all conditions precedent (other than paragraph (iv) below) in this paragraph have been complied with; and
 - (iv) the Board is satisfied that the interests of the Members will not be materially prejudiced by such consolidation, merger, conveyance or transfer.
- (f) permit the validity or effectiveness of this Constitution to be amended, terminated or discharged or permit any party to any of the Transaction Documents whose obligations form part of the security to be released from such obligations, except as may be permitted by this Constitution or the Transaction Documents; or
- (g) have an interest in any bank account except as provided for in or contemplated by this Constitution or the Transaction Documents.

Notify Rating Agency of Changes

6.12 Where the RE has first obtained a 'Rating' on the Scheme and its underlying Conforming Mortgage Investments, the RE may give an approved Rating Agency not less than 10 Business Days notice of its intention to enter into any instrument to materially alter, modify or add to:

- (a) this Constitution in accordance with clause 21; or
- (b) the terms of any Insurance Policies.

Maintain rating

6.13 Where the RE has first obtained a 'Rating' on the Scheme and its underlying Conforming Mortgage Investments, the RE shall use its best endeavours to, where relevant, maintain the rating of the Scheme and its Certificates of Mortgage Investment as issued by the RE.

Compliance with Transaction Documents

6.14 The Investment Manager shall use its best endeavours to procure the RE's compliance with its obligations under the Transaction Documents.

7. Management of Conforming Mortgage Investments

Investment Manager to Manage Conforming Mortgage Investments

- 7.1 Subject to the provisions of this Constitution, the Investment Manager shall exclusively manage the Conforming Mortgage Investments and all moneys paid or payable under or pursuant to the Conforming Mortgage Investments with full and complete power of management, and in pursuance thereof, but without limiting the generality of the foregoing, the Investment Manager shall perform, fulfil and carry out the following responsibilities and obligations:
- (a) the collection, recording and banking of all moneys paid or payable under or pursuant to the Conforming Mortgage Investments including overdue amounts and the payment of such moneys to the RE as provided for in the Constitution;
 - (b) the supervision of the maintenance and renewal of all Insurance Policies;
 - (c) the liaison with Borrowers of Conforming Mortgage Investments including the answering of enquiries from time to time;
 - (d) the arrangement of discharges of Conforming Mortgage Investments including the calculation of payouts in accordance with the Conforming Mortgage Investment terms and the provision of the same to the Borrower thereunder and liaison with the Sub-Custodian for the purposes of the execution of the release of relevant security documents held and settlement thereof;
 - (e) the provision of reports to the Approved Insurer or relevant Ratings Agency with respect to defaults under Conforming Mortgage Investments at the times and in the manner provided for in the Insurance Policies;
 - (f) the monitoring and actively making of arrangements with respect to the recovery of overdue amounts and/or the exercise of power of sale pursuant to Conforming Mortgage Investments;
 - (g) the provision of information with respect to the Conforming Mortgage Investments to enable the RE to meet any reporting obligations imposed upon it by statute or pursuant to this Constitution;
 - (h) liaison with the Approved Insurer regarding accounts in arrears and making timely claims on the Approved Insurer under the Lenders Mortgage Insurance;
 - (i) ensuring that the fire, flood and natural disaster insurance policy remains current for every property and that such insurance is provided by an Approved Insurer;
 - (j) investing surplus cash and advising the Board on the investment of surplus cash;
 - (k) paying creditors in accord with the Priority Expenses requirements;
 - (l) producing monthly management and financial accounts for the RE reports and Agenda for the quarterly RE Board meetings and annual audited financial accounts for the RE;
 - (m) producing reports required by the relevant Ratings Agency, Custodian, Sub-Custodian, Australian Taxation Office, Members, ASIC and other regulatory bodies;
 - (n) establishing and maintaining a registered office, and all equipment, stationery and other materials, requisites and facilities as may be necessary for the efficient functioning of the RE;
 - (o) providing quarterly reports to the Custodian or Sub-Custodian in accordance with clause 10 of this Constitution;
 - (p) carrying sufficient operational risk insurances, as to Professional Indemnity, Fidelity, Mortgage Impairment as required by the Law from time to time; and
 - (q) attending to all other matters specified by the Investment Management Agreement.

Proposal by Investment Manager to RE

- 7.2 Following a Borrower's default, the Investment Manager may at its discretion make proposals in writing to the RE for the exercise by the RE of its powers under a Mortgage including, without limitation, with respect to the re-negotiation of the terms of the loan with the Borrower, waiver of an event of default, exercise of power of sale, appointment of a receiver or foreclosure.

Moneys to be Banked to Accounts

- 7.3 The Investment Manager shall credit directly to the Scheme, all moneys collected by it as manager of the Conforming Mortgage Investments not later than the next Business Day after the date of receipt by the Investment Manager.

Investment Manager to Act Properly and Efficiently

- 7.4 The Investment Manager shall perform its functions, rights and obligations in respect of the Conforming Mortgage Investments in a proper and efficient businesslike manner.

Investment Manager's Liability Limited

- 7.5 Subject to the Law provided the Investment Manager is acting within the powers granted to it by the RE the Investment Manager shall not in any event be liable to the Members to any greater extent than the coverage afforded by any professional indemnity insurance carried by the Investment Manager except to the extent that any loss may be attributed to the Investment Manager's own direct act of deceit or intentional neglect.

Each Member accepts any loss whatsoever which may result from a Mortgage default except where such loss results from the direct negligence, default, or dishonesty of the Investment Manager.

Investment Manager not Liable for Loss

- 7.6 Except to the extent that any loss is attributable to the Investment Manager's own direct act of deceit, neglect or default, the Investment Manager shall not be responsible for any loss incurred by any Member by reason of any negligent act or mistake of the RE or any of its agents or by reason of any error or discrepancy in any information, documents, forms or lists supplied to the RE, or other party or any of its agents whether or not any error in any such information, documents, forms or lists is reproduced by that party in any step taken by it pursuant thereto.

8. Covenants by the RE

RE's duties to Members

- 8.1 It is acknowledged that the RE, in carrying out its obligations and duties under this Constitution and in exercising any discretion under this Constitution, at all times must act in what the RE in its reasonable discretion perceives to be reasonable having regard to the best interests of the Members as a whole and its fiduciary obligations as RE.

Appointment of Adviser

- 8.2 The RE, for the purpose and in the course of carrying out and performing the duties on its part under this Constitution, may appoint and engage any Approved Valuers, solicitors, barristers, accountants, surveyors, contractors, qualified advisers and other persons necessary or desirable for such purpose who the RE has no reason to believe is not expert in relation to the matters upon which they are consulted and the RE shall not be liable for anything done or suffered by it in good faith in reliance upon the opinion or advice of such persons.

Solicitor for RE

- 8.3 The solicitor to act on behalf of the RE in the transfer of any Mortgage to the RE, or on the exercise by the RE of any of its powers under this Constitution, shall be a solicitor who is independent of the Investment Manager, the Custodian and the Sub-Custodian.

Diligence and Vigilance if default under Conforming Mortgage

- 8.4 The RE will exercise all due diligence and vigilance in protecting the interests of Members on the occurrence of a Defaulting Mortgage.

RE Liability Limited to Fund

- 8.5 The RE shall not in any event be liable to the Members to any greater extent than the Assets except to the extent that any loss may be attributed to the RE's own act of deceit, neglect or default.

Statutory Interference

- 8.6 The RE shall not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of Australia or any State or Territory thereof, or of any ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgement of any court, the RE shall be hindered prevented or forbidden from doing or performing.

Financial Requirements

8.7 Net Tangible Assets

The RE shall continuously maintain the mandatory Net Tangible Assets (**NTA**) required by the Law.

In addition to the mandatory NTA requirement described above, the RE will have access to sufficient financial resources to meet ongoing Scheme related cash requirements, which would arise under reasonably foreseeable circumstances, for a minimum of three months.

8.8 Operation Risk Coverage

The RE will maintain appropriate professional indemnity insurance and insurance against fraud of its officers and of agents. This must cover claims up to, and in aggregate, \$5 million, or the value Assets, whichever is less.

9. Power of RE

RE's Powers

- 9.1 The RE has all the powers:

- (a) of a natural person to invest and borrow on security of the Scheme Property;
- (b) in respect of the Scheme and the Scheme Property that it is possible under the Law to confer on a RE;
- (c) as though it were the absolute owner of the Scheme Property and acting in its personal capacity; and
- (d) necessary for fulfilling its obligations under this Constitution and under the Law.

- 9.2 The RE must only invest Members' funds in any Conforming Mortgage Investment if:

- (a) the type of Real Property offered for security is acceptable to the RE;
- (b) a Mortgage must be able to be registered on the Security Property offered for the Conforming Mortgage Investment;
- (c) the value of the Real Property must be established in accordance with the valuations policy of the RE;
- (d) when assessing whether or not to approve a Conforming Mortgage Investment the RE must not invest Members' funds in a Conforming Mortgage Investment where the loan-to-valuation (LTV ratio) is higher than eighty (80%) per centum of the independent sworn valuation from an Approved Valuer delivered to and held by the RE except where a higher LTV ratio has been disclosed in a Supplementary Product Disclosure Statement and agreed to by Members;

- (e) the serviceability of the Borrower must be established to the satisfaction of the RE unless disclosed otherwise in a Supplementary Product Disclosure Statement and agreed to by Members;
- (f) whenever a Conforming Mortgage Investment involves a Development Loan, the RE shall ensure it has included amongst its officers or employees persons with relevant project management experience who are competent to manage loans of this kind; and
- (g) where applicable, there has been execution of Application Forms attached to the relevant Supplementary Product Disclosure Statement by the Members.

9.3 Subject to the provisions of this Constitution, the RE shall have all powers over and in respect of the Conforming Mortgage Investments and Investments which it could exercise as if it were the absolute and beneficial owner thereof and acting in its personal capacity PROVIDED THAT, except as provided in clause 19, such powers shall be exercisable only pursuant to the proposals of the Investment Manager as provided in this Constitution. Without affecting the generality of the foregoing, the RE shall be deemed to have full and absolute powers:

- (a) to exercise a charge granted over the assets of the RE;
- (b) to bring legal proceedings to enforce the Mortgage, to own and dispose of any property obtained upon enforcement of the Mortgage and to distribute proceeds in accordance with this Constitution;
- (c) of purchase and sale for Cash or upon terms;
- (d) of instituting, prosecuting, compromising and defending legal proceedings;
- (e) of attending and voting at meetings;
- (f) of paying all outgoings reasonable and properly incurred in connection with this Constitution which are not otherwise payable by the RE out of its own funds;
- (g) of entering into and enforcing contracts;
- (h) of doing such other things as may appear to the RE to be incidental to any or all of the above powers; and
- (i) of giving the Investment Manager a direction under the Investment Management Agreement.

Proposals by Investment Manager to RE

9.4 Unless an Event of Default has occurred and is continuing, the Investment Manager may at its discretion on behalf of the Members make proposals in writing to the RE for the exercise by the RE of the powers conferred on the RE under clause 9.

Exercise of Powers in accordance with Proposals

9.5 in the opinion of the RE compliance with a proposal by the Investment Manager would be prejudicial to the interests of the Members, the RE shall comply with the proposals and exercise its powers accordingly.

RE's discretion on recovery actions

9.6 Subject to the RE's duties at law and under this Constitution, all decisions as to whether or not, and how to, fund, and how to, fund, prepare for, commence, continue, pursue and settle any action for the recovery of any amount from any Borrower or any other person may be made by the RE in its sole discretion. In no circumstances will the RE be required to contribute any of its own funds to any such action.

10. Reports to the Board and Others

Reports to the Board

10.1 The Investment Manager will produce and deliver reports to the RE Board as frequently as the Board meets and substantially in the form set out in the RE's Compliance Manual, and the Solvency Test Certificate of the RE's Compliance Manual.

Quarterly Reports to the RE

10.2 The Investment Manager will on behalf of the RE within fourteen (14) days after the end of each financial quarter during the continuance of this Constitution furnish to the RE a report in writing dated and signed by an Authorised Officer of the RE as to the following:

- (a) whether there exists at the date of the report any default or, in the reasonable opinion of the Investment Manager, any event likely to lead to any default by the RE, under this Constitution;
- (b) whether the RE has observed, performed and complied with all the material obligations of the RE under this Constitution, and if not, giving particulars of the failure so to do;
- (c) details of any default under any Conforming Mortgage Investment and the action taken and proposed to be taken with regard to the same;
- (d) such other information as the RE may reasonably require; and
- (e) whether the covenants contained in clauses 6.11 and 6.14 have been complied with.

Half Yearly Reports from Auditor

10.3 The RE must deliver a reply to the Auditor's half-yearly management letter to the Board within sixty (60) days of receipt.

Notification of Event of Default

10.4 Forthwith upon the happening of any Event of Default in relation to the RE under this Constitution, the Investment Manager and the RE shall by notice in writing inform the Custodian, the Sub-Custodian, the Members, Auditor and relevant regulatory authority of such Event of Default.

Reports to Rating Agency

10.5 The Investment Manager and the RE covenant to furnish to the relevant Rating Agency such reports and information as the Rating Agency may reasonably require from time to time.

Reports to regulating authorities

10.6 The Investment Manager on behalf of the RE shall make all such reports and shall provide all such information to any relevant regulatory or other authority as may be required or requested by such authority even if the provision of such report or information so required or requested is not a legally enforceable obligation of the RE.

11. Complaints Procedures

Complaints Procedures

- 11.1 Complaints may be made by Members in writing or by telephone to the RE's Authorised Representative or to the RE.
- 11.2 If a Member submits to the RE a written complaint alleging that it has been adversely affected by a breach of the Law or this Constitution or a breach of trust on the part of the RE in its management or administration of the Scheme, the RE must engage its internal dispute resolution policy and:
- (a) must acknowledge in writing receipt of the complaint as soon as practicable and in any event within fourteen (14) days from receipt;
 - (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Investment Manager as appropriate to handle complaints;
 - (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
 - (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach of duty (if any); and
 - (e) must communicate to the Member as soon as practicable and in any event not more than thirty (30) days after receipt by the RE of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint (if any).
- 11.3 Where the RE believes it has either resolved the complaint, or it has not resolved the complaint but believes it can do nothing more to satisfy the Member, and the Member feels their complaint has still not been satisfactorily resolved, the Member must be referred to the relevant EDR for mediation. Generally, an EDR adopts a three stage approach in resolving complaints as follows:-
- (a) stage 1: initial opportunity for the Member to resolve complaints;
 - (b) stage 2: complaints review, investigation and conciliation;
 - (c) stage 3: independent determination of complaints by adjudicator.

- 11.4 In acknowledging or resolving complaints, the Authorised Representative or RE must make a written response including:-
- (a) the name, title and contact details of the Authorised Representative or the officer of the RE actually handling the complaint;
 - (b) a summary of the Authorised Representative's or RE's understanding of the complaint;
 - (c) details of the Authorised Representative's or RE's offer for resolution of the complaint and relevant time frame; and
 - (d) where the complaint is not fully dealt with in the letter an estimate of time required for the RE to resolve the complaint.
- 11.5 The relevant officer of the RE must record full details of each Member complaint and resolution thereof in the Members Complaints Register including:-
- (a) the person responsible for resolving the complaint;
 - (b) the name of the Member making the complaint;
 - (c) the nature of the complaint;
 - (d) the product service or department in respect of which the complaint was made;
 - (e) the actual time required to resolve the complaint;
 - (f) the actual resolution of the complaint; and
 - (g) recommendations for changes to products disclosures systems or processes to ensure similar complaints do not arise in the future.
- 11.6 The Members Complaints Register should be reviewed by the SCO as part of an ongoing review process to determine whether recommendations for change arising from resolved Member complaints have been effectively incorporated in the compliance program and the Compliance Plan.
- 11.7 If a Member's complaint cannot be resolved to the satisfaction of the Member then the Member may:-
- (a) refer the matter to arbitration or the courts; or
 - (b) take whatever other action is open to the Member under the law.
- 11.8 The RE must disclose the details of its complaints resolution procedure to all Members.

12. Accounts and Audit

Accounts to be kept

- 12.1 The Accounts of the Scheme must be prepared in accordance with generally accepted accounting principles and must be audited and reported on as required by the Law.
- 12.2 The Investment Manager on behalf of the RE shall, having regard to their separate functions, keep or cause to be kept true records of all sums of money received and applied in pursuance of this Constitution and the matters in respect of which such receipt and application take place and each shall furnish to the other any information necessary for this purpose or as shall be otherwise necessary for the due performance of their respective obligations under this Constitution PROVIDED THAT the Investment Manager may establish and maintain a centralised accounting system for the purpose of recording such sums and matters in which event it shall not be necessary for the RE to keep or cause to be kept separate records of such sums and matters.
- 12.3 The Investment Manager shall ensure that it prepares quarterly management accounts (such reports being prepared as at the end of June, September, December and March in each year) and audited annual accounts for and on behalf of the RE.

Accounts at Registered Office

- 12.4 The RE shall keep at the registered office of the Investment Manager, in the State of Victoria, books of account based on the records referred to in clause 12.2 in such manner as will enable true and fair accounts of the administration of this Constitution from time to time to be prepared and conveniently and properly audited in accordance with this Constitution.

Auditor

- 12.5 The RE shall from time to time appoint an Auditor and a separate Compliance Plan Auditor to perform the functions required by this Constitution. The Compliance Plan Auditor may be from the same Audit Firm of the Auditor of the RE or of the Investment Manager but may not be an officer or servant (or the partner of an officer or servant) of the RE or Investment Manager. Every such Auditor shall be a chartered accountant registered as an auditor pursuant to the Law or firm of chartered accountants at least one member of which is so registered.

Remuneration of Auditor

- 12.6 The remuneration of the Auditor shall be fixed by the RE and shall be payable by the RE.

Retirement of Auditor

- 12.7 Subject to the Law, the Auditor may retire upon the expiration of one (1) month's notice to the RE PROVIDED THAT the Auditor shall not retire within a period of three (3) months before or after the end of a Financial Year without the consent of the RE.

Removal of Auditor

- 12.8 Subject to the Law, the Auditor may at any time be removed from office by the RE.

Vacancy in office of Auditor

- 12.9 Subject to the Law, any vacancy in the office of Auditor shall be filled by the RE appointing an auditor who has the qualifications described in clause 12.5.

Half Year Audit Review

12.10 The Auditor shall carry out a half-year audit or review (as at December each year) of the accounts, books and records of the Scheme, in accordance with the Law and the relevant Accounting Standard.

The RE must deliver a copy of such half-yearly audit or review to the Board and the Investment Manager within 60 days after completion of December each year.

Auditor's Certificate

12.11 At the time of preparing the account statements in accordance with clause 12 in respect of each Financial Year, the accounts kept shall be examined by the Auditor. The RE shall ensure that the Auditor shall certify:

- (a) that he has conducted the audit;
- (b) whether or not he has obtained all the information and explanations he has required;
- (c) whether or not the accounts and the statements are in his opinion properly drawn up so as to give a true and fair view of the profit or loss and state of affairs of the Scheme;
- (d) whether or not the RE has complied with the covenants contained in the Constitution;
- (e) whether or not the Register is in his opinion properly drawn up to give a true account of the Members; and
- (f) whether or not there has been any change in accounting policy or practice in relation to the preparation of the account or statement,

and a copy of his certificate shall appear on all printed copies of such account.

Spot Audit

12.12 Whenever the RE in its reasonable opinion considers it necessary or desirable, the RE may request the Auditor to carry out an unscheduled spot audit of the accounts, books and records of the Investment Manager and the RE relating to the matters referred to in clause 12.11 and the Auditor shall carry out such audit. The RE will send a copy of such report to ASIC as soon as possible after receipt of it if required by the Law to do so.

Auditor to Check Assets and Liabilities of the Scheme

12.13 The RE shall ensure that the Auditor shall from time to time at his discretion make such "spot checks" or other examinations as the Auditor thinks fit of the Assets and Liabilities for the time being constituting the Scheme.

Audit Report

12.14 Without limiting the duties and responsibilities of the Auditor, the Auditor shall report in writing to the Custodian, the Sub-Custodian and the RE any non-compliance with the provisions of this Constitution of which the Auditor becomes aware or ought to have become aware in the course of performing the duties of the Auditor as referred to in clauses 12.10 and 12.12. The RE will send a copy of such report to ASIC as soon as possible after receipt of it if it is required by the Law to do so.

13. Dealings with Conforming Mortgage Investments

Origination of Conforming Mortgage Investments

- 13.1 The Investment Manager warrants to the RE, for the RE's benefit and for the benefit of the Members whose investment is to be secured by the Conforming Mortgage Investment, that as of the date on which a Mortgage is originated:
- (a) the Mortgage loan is a legal, valid, and binding obligation of the Borrower, enforceable according to its terms to the extent permissible by law;
 - (b) the Mortgage loan is secured by a valid and enforceable mortgage over Real Property;
 - (c) where the Constitution requires it, a Lenders Mortgage Insurance Policy covering the Mortgage Loan is in full force and effect, with a coverage amount not less than the principal balance (from time to time) of the Mortgage Loan;
 - (d) a Policy of Fire Insurance covering the Security Property is in full force and effect, with a coverage amount not less than the replacement value of the building(s) situated thereon;
 - (e) there is no requirement for any future advances under the Mortgage not disclosed to the Members subscribing to the relevant Conforming Mortgage Investment; and
 - (f) the Mortgage complies with all applicable laws.

Payment in Respect of Breach

- 13.2 The Investment Manager covenants that, within thirty (30) days after the discovery or determination that:
- (a) the Investment Manager has failed to comply with any relevant requirements of any insurance policies relating to a Mortgage, or any proper instructions given to it in writing by the RE or relevant Insurer; or
 - (b) a Mortgage does not comply with the covenants given by the Investment Manager under clause 6.1;

and in the opinion of the RE the breach materially and adversely affects the interests of the Members, then the Investment Manager will cure or cause to be cured the breach notwithstanding the rights and remedies the RE has under the Investment Management Agreement between the parties.

The satisfaction or enforcement of this clause 13.2 will be the exclusive remedy for a breach of clause 13.1, provided, however, that the RE also may seek indemnification from the Investment Manager, to the extent permitted by law, for any civil penalties arising from a violation of applicable consumer lending law, due to action solely of the Investment Manager.

14. Default

Events of Default

14.1 It is an Event of Default under this Constitution if any of the following events occur (each an **“Event of Default”**):

- (a) the failure by the RE to meet and maintain the Financial Requirements (not being a failure attributable to administrative oversight which shall have been rectified within fourteen (14) days of such failure);
- (b) the breach of or a failure to perform on the part of the RE of any material covenant, condition or obligation binding on it under or pursuant to any Transaction Document and, where the breach or failure is capable of remedy, the failure on the part of the RE to remedy the breach or failure within a period of fourteen (14) days after being given notice specifying the breach or failure and requiring the remedy thereof;
- (c) an Insolvency Event in respect of the RE; and
- (d) if any of the representations or warranties made by the RE under any Transaction Document is materially false and misleading when it is made or repeated and, in respect of a representation or warranty made by the RE, that representation or warranty when made or repeated has a materially adverse impact on the RE's interests.

Notice

14.2 Upon the occurrence of an Event of Default or an event which, if not rectified within the permitted time frame, will constitute an Event of Default:

- (a) the RE must promptly notify the Custodian, the Sub-Custodian, the Members, ASIC and, where applicable, an approved Rating Agency of full details of the Event of Default or event; and
- (b) the RE may at its discretion require Borrowers to pay all amounts due to the RE to an independent trustee appointed by the RE.

Proposals by Members to RE

14.3 A Member may, during the continuance of an Event of Default, make proposals in writing to the RE for the exercise by the RE of the powers conferred on the RE by this Constitution.

Exercise of Powers in accordance with Proposals

14.4 Unless in the opinion of the RE compliance with a proposal made by the Member pursuant to clause 14.3 would be prejudicial to the interests of the Members, the RE shall comply with the proposals and exercise its powers accordingly.

Receipt of RE is a Good Discharge

14.5 A person paying monies to or otherwise dealing with the RE is not obliged to make inquiries regarding:

- (a) whether an Event of Default has occurred or whether a power which the RE is purporting to exercise is exercisable, or the propriety or regularity of the exercise of such power; or
- (b) the application of any moneys so paid,

and the receipt of the RE shall be a good discharge on behalf of the RE.

Holder Entitlements Rank Equally Unless Otherwise Specified

14.6 Subject to clause 9.6, the entitlements of each Member having an interest in a Conforming Mortgage Investment, and the amount due in the Event of Default rank equally and, if the Conforming Mortgage Investment funds are insufficient to meet them in full, they shall be paid pari passu from the Scheme in respect of each Conforming Mortgage Investment.

Payments from Scheme

14.7 Payments by the RE to a Member out of the Scheme shall be made only upon the production to the RE of the Certificate of Mortgage Investment by the Member of it together with evidence satisfactory to the RE.

Certificate of Amount Paid

14.8 The Investment Manager shall issue to the RE a certificate as to the amount paid to each Member pursuant to this clause 14 and such certificate shall be prima facie evidence of the amount so paid.

Appointment of Receiver

14.9 The RE may at any time after the happening of any Event of Default:

- (a) appoint any person or any two or more persons jointly or severally or jointly and severally to be a receiver or receiver and manager ("**Receiver**") of the Scheme or any part thereof;
- (b) remove any Receiver and in the case of the removal, retirement or death of any Receiver, may appoint another in his place; and
- (c) fix the remuneration of any Receiver.

Every Receiver shall be the agent of the RE and the RE alone shall be responsible for his acts and defaults.

15. Winding up the Scheme

Winding Up the Scheme

15.1 The Scheme shall only be wound up in accordance with the Law and this Constitution.

15.2 The RE must wind up the Scheme in the following circumstances:-

- (a) if the term of the Scheme as detailed in this Constitution has expired;
- (b) the Members pass an Extraordinary Resolution directing the RE to wind up the Scheme;
- (c) a Court makes an order directing the RE to wind up the Scheme pursuant to the Law;
- (d) the Members pass an Extraordinary Resolution to remove the RE but do not at the same time pass an Extraordinary Resolution choosing a company to be the new responsible entity that consents to becoming the Scheme's RE.

15.3 (a) If the RE considers that the purpose of the Scheme:

- (i) has been accomplished; or
- (ii) cannot be accomplished,

it may take steps to wind up the Scheme.

- (b) If the RE wishes to wind up the Scheme pursuant to 15.3(a), the RE must give to the Members and to ASIC a notice in writing:
 - (i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished;
 - (ii) informing the Members of their rights to take action under the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on any Extraordinary Resolution Members propose about the winding up of the Scheme; and
 - (iii) informing the Members that the RE is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the RE giving the notice to the Members;
 - (c) If no meeting is called within that 28 days to consider the proposed winding up, the RE may wind up the Scheme.
- 15.4 (a) The RE may wind up the Scheme in accordance with this Constitution and the Law if the RE is permitted by the Law to wind up the Scheme.
- (b) An order to wind up the Scheme pursuant to the Law may be made on the application of:
- (i) the RE; or
 - (ii) a director of the RE; or
 - (iii) a Member; or
 - (iv) ASIC.
- 15.5 The RE shall not accept any further applications for an interest in the Scheme or invest any Members' funds in a Conforming Mortgage Investment at a time after the RE has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.
- 15.6 The RE shall manage the Scheme until such time as all Conforming Mortgage Investment terms have expired notwithstanding the fact that the winding up procedures have commenced.
- 15.7 The RE shall use its best endeavours to ensure that all Members' funds are redeemed at the expiration of each Conforming Mortgage Investment and returned to the Members together with any income earned from the Conforming Mortgage Investment and not distributed less any expenses of the Scheme payable by the Member.
- 15.8 If on completion of the winding up of the Scheme, the RE or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the RE or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to ASIC to be dealt with pursuant to the Law.
- 15.9 If at any time the Scheme is operated while it is unregistered the following interested parties may apply to the Court to have the Scheme wound up
- (a) ASIC;
 - (b) The RE; or
 - (c) A Member.
- 15.10 The RE must ensure that the final accounts of the Scheme following the winding-up are audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the RE.

16. RE's right to fees and Expenses

RE's Right to Fees and Expenses

16.1 The RE is entitled to be paid fees from Scheme Property in accordance with this clause 16.

16.2 All costs, charges, and expenses incurred by the RE in relation to the proper performance of its duties in respect of the Scheme are payable or reimbursable out of the Scheme Property to the extent that such reimbursement is not prohibited by the Law. This includes expenses connected with:

- (a) this Constitution, any supplemental deed and the formation of the Scheme;
- (b) the preparation, review, distribution and promotion of any Product Disclosure Statement or offering memorandum in respect of the promotion of the Scheme;
- (c) the acquisition, disposal, insurance, custody, sale and any other dealing with Scheme Property;
- (d) any proposed acquisition, disposal, sale or other dealing with an Investment;
- (e) the administration or management of the Scheme or its Assets and Liabilities;
- (f) convening and holding meetings of Members and the implementation of any Resolutions;
- (g) communications with Members;
- (h) Taxes and financial institution fees;
- (i) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the RE, including overheads and other expenses payable to related companies of the RE for staff, equipment and leased premises;
- (j) preparation, audit and lodgement of the taxation returns and accounts of the Scheme including the Auditor's fees;
- (k) termination of the Scheme and the retirement or removal of the RE and the appointment of a replacement;
- (l) any court proceedings, arbitration or other dispute concerning the RE including proceedings against the RE, except to the extent that the RE is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause must be repaid;
- (m) the compliance committee established by the RE in connection with the Scheme (if any), including any fees paid to or insurance premiums in respect of compliance committee members;
- (n) while there is no compliance committee, any costs and expenses associated with the board of directors of the RE carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of the Law;
- (o) the preparation, implementation, amendment and audit of the Compliance Plan;
- (p) complying with any law, and any request or requirement of ASIC;
- (q) preparation, stamping, execution and printing of this Constitution and any deed amending this Constitution;
- (r) fees payable to any Ratings Agency;

- (s) preparing, printing and posting accounts, cheques and all other documents or making payments to Members;
- (t) fees payable to Austraclear Limited or any other securities system, holding property of the Scheme;
- (u) preparing and dealing with Applications, requests for redemptions, transfers or switching;
- (v) establishing and maintaining the Register;
- (w) establishing and maintaining the accounting and investment recording systems of the Scheme; and
- (x) development and operation of computer facilities, salaries and costs relating to the matters set out in the paragraphs above.

16.3 The RE shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties including:

- (a) Investment establishment application fees;
- (b) In relation to the structuring or packaging of Conforming Mortgage Investment proposals;
- (c) In relation to Investment management;
- (d) In relation to the rollover of a Conforming Mortgage Investment;
- (e) In relation to due diligence enquiries of Conforming Mortgage Investments generally;
- (f) In relation to the sale of real estate related to mortgagee in possession sale of any underlying Conforming Mortgage Investment;
- (g) In relation to the promotion and management of the Investments;
- (h) In relation to the appointment of any Custodian pursuant to a custody agreement and any Sub-Custodian pursuant to a Sub-Custody Agreement;
- (i) Legal fees and outgoings in relation to settlement, rollover, default or recovery of loans;
- (j) Legal counsel fees;
- (k) Search fees including property searches, company, bankruptcy, CRAA searches and any other searches which may be necessary to enable location, identification and/or investigation of Borrowers and guarantors;
- (l) Valuation fees;
- (m) Independent experts' or consultants' fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners and engineers;
- (n) Property report/property consultants' fees;
- (o) Process servers' fees;
- (p) Private investigators' fees;
- (q) Fees in relation to the marketing and packaging of Security Properties for sale;
- (r) Real estate agents' sales commissions;
- (s) Costs of maintenance of mortgage securities;

- (t) Outstanding accounts relating to Security Properties such as council rates;
 - (u) Locksmith for changing locks of Security Properties as appropriate;
 - (v) Insurance (property and contents);
 - (w) Removalists for removal of Borrowers' property as appropriate;
 - (x) Security guards to attend Security Properties as appropriate;
 - (y) Building and/or property inspection report fees - i.e. building, town planning experts and the like;
 - (z) all ASIC charges;
 - (aa) all Taxes;
 - (bb) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;
 - (cc) all costs and expenses incurred in producing the Product Disclosure Statement and Supplementary Product Disclosure Statements;
 - (dd) reasonable costs incurred in protecting or preserving all Security Properties;
 - (ee) all liability incurred as the result of any act or omission of any agent appointed by the RE to do anything it is authorised to do in connection with the Scheme whether or not such agent acted fraudulently or outside the scope of his/her authority or engagement; and
 - (ff) any liability, loss, cost, expense or damage arising from the lawful exercise by the RE, the Custodian and the Sub-Custodian of their rights under the Power of Attorney contained in clause 19.
- 16.4 In the event that the RE has not performed its duties, the lack of entitlement to payment of fees pursuant to 16.1 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the RE is not entitled to be paid fees and expenses for work properly performed.
- 16.5 In the event of any dispute regarding the payment of fees and expenses, the RE shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the RE shall be repaid forthwith upon the identification of the overpayment.
- 16.6 The RE is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution and the Law.
- 16.7 In clause 16.2, "costs, charges and expenses" includes internal expenses of the RE incurred in connection with matters referred to (including without limitation, costs of appointing and maintaining staff employed in connection therewith) and amounts paid by the RE to related bodies corporate for services provided to an Investment Manager in connection with the Scheme where the cost, charges and expenses referable to the task performed or service provided by the related body corporate would have been reimbursable under this clause 16 had they been incurred by the RE.
- 16.8 As some of the expenses incurred by the RE will relate to the Scheme in general, and some will be incurred only in respect of a particular Conforming Mortgage Investment, any expenses incurred by the Scheme are to be appropriately allocated between Conforming Mortgage Investments, or if ascertainable allocated to the specific Conforming Mortgage Investment which caused the expense to be incurred.

New Fees or Charges

16.9 If the RE notifies Members that it proposes to charge an additional fee pursuant to this Constitution for a particular service provided to a Member, then the RE is entitled to that fee provided thirty (30) days notice of the commencement of that fee has been given to affected Members.

Investment Management Fee

16.10 The RE is entitled to a monthly Investment Management fee of up to 1.25% per annum of the total principal sum invested in Investments, calculated daily and paid monthly.

16.11 In relation to Conforming Mortgage Investments, the RE is entitled to charge a monthly management fee being the difference between the gross proceeds of the investment received by the RE and the investment rate paid by the RE to Members which, subject to clause 4.2(d), but in any event, will not exceed 5% per annum of the total principal sum so allocated, calculated daily and paid monthly.

17. Retirement, Removal and Replacement of RE

Retirement

17.1 Subject to clause 17.6, if the RE seeks to be discharged from its obligations under this Constitution, it may retire from office upon giving not less than six (6) months notice in writing (or such shorter notice as the RE may approve) to the Members of its intention so to do.

17.2 If the RE retires or is removed, its successors as RE must, unless otherwise approved by the retiring RE, change the name of the Scheme to a name that does not imply an association with the retiring RE or its business.

Changing the RE

17.3 The RE may retire as RE as permitted by the Law.

17.4 The RE must retire when required by the Law.

Removal

17.5 The RE covenants that it will forthwith retire from office if requested so to do in any of the following circumstances:

- (a) the breach of or a failure to perform on the part of the RE of any covenant, condition or obligation binding on it under or pursuant to this Constitution and (where the breach or failure is capable of remedy) the failure on the part of the RE to remedy the breach or failure within a period of fourteen (14) days after being given notice specifying the breach or failure and requiring the remedy thereof;
- (b) the presentation of a petition or the passing of a resolution for the winding up of the RE or the making of an order for the winding up or dissolution without winding up of the RE, except where the winding up is for the purpose of reconstruction or amalgamation and the scheme for reconstruction or amalgamation has the RE's prior written consent;
- (c) the appointment of a receiver of the whole or any part of the assets of the RE (and for the purposes of this provision the assets of the RE shall not include the assets of any other Scheme in respect of which the RE acts as trustee) and, if such appointment is contested in good faith, such appointment is not terminated or withdrawn within 21 days after the appointment is made;
- (d) the suspension of payment generally by the RE or the RE ceases to carry on its business or is unable to pay its debts as defined in the Law;
- (e) without the prior consent in writing of the Members, the entry by the RE into any arrangement, reconstruction or composition with its creditors or any of them; or
- (f) pursuant to the provisions of any Act or Ordinance for the time being in force within the Commonwealth of Australia or any State or Territory thereof, the placing of the RE under official management.

Appointment of New RE

- 17.6 On the retirement of the RE pursuant to clause 17.1 or 17.5, the RE shall nominate and appoint in its stead a reputable responsible entity nominated by the RE and approved by the Members PROVIDED THAT:
- (a) in the case of voluntary retirement pursuant to clause 17.1, if the RE shall not have so nominated a new responsible entity by the due date of retirement, the RE may nominate a reputable responsible entity as new responsible entity but if the RE cannot find such a new responsible entity to accept office, the RE shall not so retire prior to the expiry of twelve (12) months; and
 - (b) in the case of compulsory retirement pursuant to clause 17.5, if the RE shall fail to retire and execute a Constitution appointing a new responsible entity within the period of fourteen (14) days of being requested so to do by the new responsible entity as aforesaid, the Members may by deed remove the RE from office and appoint a reputable new responsible entity approved by the Members as new responsible entity in accordance with this Constitution.

Vesting of Fund in New Responsible Entity

- 17.7 The RE shall on retirement or removal as aforesaid do all such acts and things and execute all such documents as may be required to vest the Scheme Property in such new responsible entity and shall deliver to such new responsible entity the accounts, books, documents, records and other property whosoever relating to the Scheme Property. Notice of such retirement or removal and appointment shall be given by the RE, at its own cost, and the new responsible entity to:
- (a) the insurers under the Insurance Policies;
 - (b) the respective insurers under the Policies of Fire Insurance; and
 - (c) such other persons, if any, as the RE and the new responsible entity shall nominate.

Covenants by New Responsible Entity

- 17.8 Every new responsible entity appointed on the retirement or removal of any former RE shall, subject to the Law:
- (a) undertake to be bound by all the covenants on the part of the RE herein from the date thereof and from such date the new responsible entity shall and may thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the RE herein as fully as though such new responsible entity had been originally named as a party hereto; and
 - (b) agree to indemnify the retiring RE against all claims and liability in respect of which the retiring RE would have been entitled to be indemnified out of the Scheme Property had the retiring RE not retired PROVIDED THAT the new responsible entity shall not in any event be liable to the retiring RE to any greater extent than the Scheme Property.

Upon appointment of the new responsible entity as aforesaid, the retiring RE shall be absolved and released from all further obligations under this Constitution (save and except those arising from any antecedent breach or neglect of duty by the retiring RE).

Discharge of Retiring RE

- 17.9 Subject to the Law the retiring RE shall be entitled to settle with the new responsible entity the amount of any sum payable by either party to the other under the provisions of this Constitution and to give or accept from the new responsible entity a discharge which shall be conclusive and binding upon the new responsible entity and in particular even though a new responsible entity is appointed in its place, the retiring RE may make such arrangements as it thinks fit for its discharge from any existing liability and any liability which might thereafter arise under the provisions of this Constitution and in accordance with such arrangements any such discharge shall be conclusive and binding as aforesaid except in the case of fraud or breach of duty imposed by statute or rule of law.

Costs of Retirement and Removal

17.10 In the case of the voluntary retirement of the RE pursuant to clause 17.1, the new responsible entity and the retiring RE shall each pay its own costs and expenses of and incidental to the retirement of the RE and the costs of the appointment of a new responsible entity shall be borne by the new responsible entity.

In the case of the compulsory retirement of the RE pursuant to clause 17.5 the RE shall bear and pay all of the costs and expenses of and incidental to such retirement and the appointment of a new responsible entity.

18. Indemnity and Liability

Indemnity and Liability

18.1 The RE is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

- (i) otherwise than in accordance with this Constitution and its duties under the Law; and
- (ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case to the extent permitted by the Law the liability of the RE in relation to the Scheme is limited to the Scheme Property, from which the RE is entitled to be, and is in fact, indemnified.

18.2 In particular, the RE is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by the Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the RE;
- (b) it acted as required by the Law; or
- (c) it relied in good faith upon any signature, marking or documents.

18.3 In addition to any indemnity under any Law, the RE has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.

Compliance Committee

18.4 If any member of a Compliance Committee established by the RE in connection with the Scheme incurs a liability in that capacity in good faith, the Compliance Committee member is entitled to be indemnified out of the Scheme Property to the extent permitted by the Law.

Generally

18.5 Subject to the Law, if the RE or its Investment Manager acts in good faith and without default, negligence or breach of duty or breach of trust, it is not responsible to the other or to Members for any loss suffered in respect of the Scheme. The liability of the Investment Manager to Members and to others in relation to the Scheme is in any case limited to the Assets of the Scheme.

18.6 The Member accepts any loss whatsoever which may arise from a Conforming Mortgage Investment default except where such loss results directly from the negligence, default or dishonesty of the RE or the Investment Manager.

18.7 The RE is not liable to account to any Member for any payments made by the RE in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia or Taxes or other statutory charges.

19. Powers of Attorney

Powers of Attorney

- 19.1 Each Member by executing the Registration Form or the transfer by which it acquires its interest in the Scheme appoints the RE, the Custodian and the Sub-Custodian and any director, officer, attorney or substitute, nominated by either the RE, the Custodian or the Sub-Custodian severally for this purpose, as its attorney and agent with the right at any time to:
- (a) do everything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Scheme in relation to any Conforming Mortgage Investment and the Scheme Property;
 - (b) complete any Mortgage and any security document provided by the Borrower;
 - (c) appoint substitutes and otherwise delegate its powers (including this power of delegation);
 - (d) execute any Mortgage and all other documents required by the Mortgagee in respect of any Conforming Mortgage Investment;
 - (e) execute any document or take any action necessary to protect the interests of the Mortgagee in respect of each Conforming Mortgage Investment;
 - (f) in the event of default by a mortgagor where the Mortgagee may have the right to exercise its power of sale pursuant to any mortgage and/or the Property Law Act 1958 (Vic) or a corresponding enactment of a State or Territory of the Commonwealth of Australia then execute any contract for sale of property offered as security, transfer, lease, easement or any document required to register any dealings and complete the sale of such property offered as security under any Conforming Mortgage Investment and the subject of the exercise of any power of sale;
 - (g) deal with any Security Property under any Conforming Mortgage Investment;
 - (h) incur any debts in relation to any Security Property and generally managing the Security Property on behalf of the Mortgagee and the exercise by the Mortgagee of its rights pursuant to the Property Law Act 1958 (Vic) or a corresponding enactment of a State or Territory of the Commonwealth of Australia; and
 - (i) after any Event of Default has occurred do everything that the Borrower may lawfully authorise an agent to do in relation to any mortgage and under any security.
- 19.2 At the request in writing of either the RE or the Sub-Custodian the Member must execute the separate Powers of Attorney in a form reasonably required by the RE or the Sub-Custodian appointing the RE and/or the Sub-Custodian as its attorney for the purpose of this clause.
- 19.3 Any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- 19.4 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under this Power of Attorney.

20. Members' Rights to Withdraw from the Scheme

Members' Right to Withdrawal

- 20.1 Members have no rights to withdraw from the Scheme, wholly or partly, otherwise than in accordance with this Constitution.
- 20.2 A Member who wishes to make a request to withdraw some or all of the Member's funds from the Scheme may do so in any manner or form approved by the RE from time to time and, while the Scheme is Liquid, the RE must give effect to that request within the time and in the manner set out in this clause 20.
- 20.3 A Member may not withdraw a withdrawal request unless the RE agrees.

While Scheme is Liquid

- 20.4 Clauses 20.5, 20.6 and 20.7 apply only while the Scheme is Liquid.
- 20.5 A Member has the following withdrawal rights:
- (a) a Member has the right to withdraw from the Classic 48 hour Account by giving written notice to the RE. Subject to any existing rights of a Member, the RE will satisfy a withdrawal notice within 12 months after it receives the notice or at such earlier time as the RE may determine is reasonably practicable having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members;
 - (b) Member has the right to withdraw from the 90 Day Notice Account by giving written notice to the RE. Subject to any existing rights of a Member, the RE will satisfy a withdrawal notice within 12 months after it receives the notice or at such earlier time as the RE may determine is reasonably practicable having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members;
 - (c) subject to sub-clause 20.5(e), a Member has the right to withdraw from the 12 Month Term Account only:
 - (i) upon the expiry of the minimum investment period of twelve (12) months after the Application Moneys have been lodged with the Scheme; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 20.7.
 - (d) subject to sub-clause 20.5 (e), a Member has the right to withdraw from the High Yield Credit Account only:
 - (i) upon the expiry of the minimum investment period of four (4) years after the Application Moneys have been lodged with the Scheme; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 20.7.
 - (e) The RE may provide alternative periodic withdrawal arrangements for Members whose investment in the Scheme exceeds \$250,000 or such other amount specified in the Product Disclosure Statement. For the avoidance of any doubt, no periodic withdrawal will be given effect to by the RE at any time when the Scheme is not Liquid.
- 20.6 A Member has no right to withdraw from the Select Investment Account prior to the maturity date of the Member's investment in that Option except in the discretion of the RE in the circumstances set out in clause 20.7.
- 20.7 The RE may in its absolute discretion consider a withdrawal request prior to the maturity date from a Member in respect of the Member's investment in the 12 Month Term Account, the Select Investment Account or the High Yield Credit Account where the Member through unforeseen and exceptional circumstances requires access to funds but only where the RE can locate a substitute Member to take the place of the withdrawing Member and only where the withdrawal occurs or is to occur while the Scheme is Liquid. The RE will charge a withdrawal fee in these circumstances of up to 2.00% of the funds being withdrawn with a minimum withdrawal fee of \$500, or such other amount as the Member consents to in writing. The RE may in its complete discretion agree to waive the withdrawal fee in whole or in part.

When Scheme is not Liquid

- 20.8 Clauses 20.9, 20.10, 20.11 and 20.12 apply while the Scheme is not Liquid.
- 20.9 While the Scheme is not Liquid, a Member may withdraw from the Scheme in accordance with the terms of any current withdrawal offer made by the RE in accordance with the provisions of the Law regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Scheme.
- 20.10 The RE is not at any time obliged to make a withdrawal offer.
- 20.11 A withdrawal offer made by the RE will be communicated to the Members or the relevant class of Members by such means as the RE reasonably considers appropriate and effective. Without limitation, the RE may use any one or more of the following modes – letter, email, fax or publication on the RE’s or the Scheme’s website.
- 20.12 If the RE receives a withdrawal request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time it makes the withdrawal offer.

Whether or not the Scheme is Liquid

- 20.13 Clauses 20.14, 20.15, 20.16, 20.17, 20.18, 20.19, 20.20, 20.21 and 20.22 apply whether or not the Scheme is Liquid.
- 20.14 The RE may withhold or suspend any right of Members to withdraw, in whole or in part, from the Scheme or from any one or more of the Investment Options, while and for as long as the RE is reasonably of the view that it is necessary to do so in order for the RE to comply with its obligations under the Law, including, but not limited to, its obligation to treat Members holding interests of the same class equally, and Members who hold interests of different classes fairly.
- 20.15 The RE may deduct from the proceeds of a withdrawal or money paid pursuant to a withdrawal offer any money due to it by the Member. If compliance with a withdrawal request or acceptance of a withdrawal offer would result in a Member having less than the current Minimum Investment amount, the RE may treat the withdrawal request or acceptance as relating to the entire interest of the Member in the Scheme, and may charge a withdrawal fee of 2.00% of the funds being withdrawn with a minimum fee of \$500. The RE may in its complete discretion agree to waive the withdrawal fee in whole or in part.

Classic 48 hour Account– Cash management and capital provisioning

- 20.16 If at any time during a calendar month notices of withdrawal or acceptances of withdrawal offers (“Withdrawals”) have been received by the RE in respect of the Classic 48 hour Account which Withdrawals, in the aggregate, would exceed the cash available to the RE for withdrawals from the Classic 48 hour Account such that an insufficient amount of cash is or would be available to satisfy all Withdrawals, then from that time onwards the RE will satisfy the Withdrawals proportionately in accordance with the following formula:

$$\frac{\text{The amount of money available to satisfy the particular Withdrawals}}{\text{Total of all amounts Members request to withdraw}} \times \text{The amount a Member has requested to withdraw}$$

A Member who receives a proportionate withdrawal according to the above formula will have the outstanding withdrawal balance redeemed in the month(s) thereafter, subject to cash constraints and again subject to the above formula if relevant. Withdrawals from any one month will be met completely prior to satisfaction of Withdrawals received in subsequent months, gaining priority as a class according to the time of the RE receiving the Withdrawal.

20.17 The RE will operate a provisioning policy in respect of the Classic 48 hour Account to address potential and actual losses of Member capital invested in the Classic 48 hour Account. The objective of the policy will be to effect an appropriately equitable distribution of any such capital losses amongst all Members in the Classic 48 hour Account. As a result, withdrawals and redemptions of Member funds from the Classic 48 hour Account will be adjusted to reflect an appropriate allocation of any provision balances (in proportion to the total capital in the Classic 48 hour Account) existing at the time of withdrawal or redemption.

90 Day Notice Account – Cash management and capital provisioning

20.18 If at any time during a calendar month notices of withdrawal or acceptances of withdrawal offers (“Withdrawals”) have been received by the RE in respect of the 90 Day Notice Account which Withdrawals, in the aggregate, would exceed the cash available to the RE for withdrawals from the 90 Day Notice Account such that an insufficient amount of cash is or would be available to satisfy all Withdrawals, then from that time onwards the RE will satisfy the Withdrawals proportionately in accordance with the following formula:

$$\frac{\text{The amount of money available to satisfy the particular Withdrawals}}{\text{Total of all amounts Members request to withdraw}} \times \frac{\text{The amount a Member has requested to withdraw}}{\text{Total of all amounts Members request to withdraw}}$$

A Member who receives a proportionate withdrawal according to the above formula will have the outstanding withdrawal balance redeemed in the month(s) thereafter, subject to cash constraints and again subject to the above formula if relevant. Withdrawals from any one month will be met completely prior to satisfaction of Withdrawals received in subsequent months, gaining priority as a class according to the time of the RE receiving the Withdrawal.

20.19 The RE will operate a provisioning policy in respect of the 90 Day Notice Account to address potential and actual losses of Member capital invested in the 90 Day Notice Account. The objective of the policy will be to effect an appropriately equitable distribution of any such capital losses amongst all Members in the 90 Day Notice Account. As a result, withdrawals and redemptions of Member funds from the 90 Day Notice Account will be adjusted to reflect an appropriate allocation of any provision balances (in proportion to the total capital in the 90 Day Notice Account) existing at the time of withdrawal or redemption.

12 Month Term Account – Cash management and capital provisioning

20.20 If at any time during a calendar month notices of withdrawal or acceptances of withdrawal offers (“Withdrawals”) have been received by the RE in respect of the 12 Month Term Account which Withdrawals, in the aggregate, would exceed the cash available to the RE for withdrawals from the 12 Month Term Account such that an insufficient amount of cash is or would be available to satisfy all Withdrawals, then from that time onwards the RE will satisfy the Withdrawals proportionately in accordance with the following formula:

$$\frac{\text{The amount of money available to satisfy the particular Withdrawals}}{\text{Total of all amounts Members request to withdraw}} \times \frac{\text{The amount a Member has requested to withdraw}}{\text{Total of all amounts Members request to withdraw}}$$

A Member who receives a proportionate withdrawal according to the above formula will have the outstanding withdrawal balance redeemed in the month(s) thereafter, subject to cash constraints and again subject to the above formula if relevant. Withdrawals from any one month will be met completely prior to satisfaction of Withdrawals received in subsequent months, gaining priority as a class according to the time of the RE receiving the Withdrawal.

20.21 The RE will operate a provisioning policy in respect of the 12 Month Term Account to address potential and actual losses of Member capital invested in the 12 Month Term Account. The objective of the policy will be to effect an appropriately equitable distribution of any such capital losses amongst all Members in the 12 Month Term Account. As a result, withdrawals and redemptions of Member funds from the 12 Month Term Account will be adjusted to reflect an appropriate allocation of any provision balances (in proportion to the total capital in the 12 Month Term Account) existing at the time of withdrawal or redemption.

Exit Price

20.22 The exit price payable to a Member upon withdrawal of a Member's investment from the Scheme, if such withdrawal is permitted in accordance with the terms of this clause 20, will be:

- (a) in the case of an investment in the Classic 48 hour Account – an amount equal to the Member's initial investment, less the Member's proportion of any provisions for capital loss made by the RE under the policy referred to in clause 20.17 above;
- (b) in the case of an investment in the 90 Day Notice Account – an amount equal to the Member's initial investment, less the Member's proportion of any provisions for capital loss made by the RE under the policy referred to in clause 20.19 above,
- (c) in the case of an investment in the 12 Month Term Account – an amount equal to the Member's initial investment, less the Member's proportion of any provisions for capital loss made by the RE under the policy referred to in clause 20.21 above,

and in each case:

- (d) PLUS the Member's entitlement to interest accrued up to the effective date of withdrawal; and
- (e) LESS any withdrawal fee or other amount deducted by the RE in accordance with this Constitution and in compliance with the Law.

21. Amendment of Constitution

Amending of Constitution

21.1 This Constitution may be modified or repealed or replaced with a new Constitution:

- (a) by Special Resolution of the Members; or
- (b) by the RE if the RE reasonably considers the change will not adversely affect Members' rights.

21.2 In the event the RE wishes to change the Constitution the RE must:

- (a) lodge with ASIC a copy of the modification or the new Constitution;
- (b) lodge with ASIC a consolidated copy of the Scheme's Constitution if the ASIC directs it to do so;

provided however that the modification, or repeal and replacement cannot take effect until the copy has been lodged.

21.3 The RE must send a copy of the Scheme's Constitution to a Member within seven (7) days if the Member:

- (a) asks the RE in writing for the copy; and
- (b) pays any fee (up to the amount prescribed by the Law) required by the RE.

Notices

- 21.4 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.
- 21.5 In addition to any other method of service provided by law, the Notice must be:
- (a) sent by post, postage prepaid, to the address for the Member in the Register;
 - (b) sent by facsimile to the facsimile number of the Member; or
 - (c) otherwise delivered at the address of the Member as is subsequently notified to the RE.
- 21.6 A Notice must be treated as given and received:
- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (b) if sent by facsimile before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.
- 21.7 Despite clause 21.6(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.
- 21.8 A Notice sent or delivered in a manner provided by clause 21.5 must be treated as validly given to and received by the party to which it is addressed even if:
- (a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - (b) the notice is returned unclaimed.
- 21.9 Any Notice by a party may be given and may be signed by the solicitor for the party.
- 21.10 Any Notice to a party may be given to solicitor for the party by any of the means listed in clause 21.5 to the solicitor's business address or facsimile number as the case may be.

Meetings of Members

- 21.11 The RE may at any time convene a meeting of Members, and must do so if required by the Law.
- 21.12 Subject to this clause 21 and the Law, the RE may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.
- 21.13 The quorum for a meeting of Members is two (2) Members present in person or by proxy together holding at least 10% of a Conforming Mortgage Investment beneficially, unless the Conforming Mortgage Investment has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.
- 21.14 If a quorum is not present within fifteen (15) minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
 - (b) otherwise - adjourned to such place and time as the RE decides.
- At any adjourned meeting, those Members present in person or by proxy constitute a quorum.
- 21.15 Subject to the Law the RE may appoint a person to chair a meeting of Members.
- 21.16 The decision of the RE Chairman on any matter relating to the conduct of the meeting is final.

21.17 The RE Chairman has power to adjourn a meeting for any reason to such place and time as the Chairman thinks fit.

21.18 A Resolution binds all Members, whether or not they were present at the meeting.

21.19 No objection may be made to any vote cast unless the objection is made at the meeting.

Proxies

21.20 A Member may be represented at a meeting by proxy. Proxies are governed by the Law. The RE is not obligated to enquire whether a proxy has been validly given. A proxy expires after 12 months. A proxy is still valid after it is revoked or after the Member who gave it dies or becomes under a legal disability, unless the RE has received written notice of that fact before the meeting at which the proxy is used.

Representatives

21.21 A body corporate may be represented at a meeting by a person appointed in the manner provided in the Law. The RE may accept a certificate under the Law as evidence of the person's appointment. The person may exercise on the body's behalf the same powers as the body could if it were a natural person and the body is taken to be present at the meeting in person.

Other attendees

21.22 The RE, the Investment Manager and the Auditor may attend and speak at any meeting, or invite any other person to attend and speak.

Instructions in Writing

21.23 All instructions, consents, requests, proposals and notices required by this Constitution to be given by the RE or the Investment Manager to the other of them shall be given in writing and signed by a duly authorised person on behalf of the party giving the same.

Governing Law

21.24 The rights, liabilities and obligations interest of the RE, the Investment Manager and the Members shall be governed by the law of the State of Victoria and any proceedings to enforce such rights, liabilities or obligations may be taken in the Courts of that State.

EXECUTED as a Deed.

RESPONSIBLE ENTITY

**THE COMMON SEAL by LA TROBE
CAPITAL & MORTGAGE CORPORATION**

LIMITED ABN 27 007 332 363 was hereunto affixed
in accordance with its Constitution in the presence of:

.....
Director

.....
Name and address

.....
Director

.....
Name and address

INVESTMENT MANAGER

**THE COMMON SEAL of LA TROBE
FINANCIAL SERVICES PTY LTD**

ABN 30 006 479 527 was hereunto affixed in accordance
with its Constitution in the presence of:

.....
Director

.....
Name and address

.....
Secretary

.....
Name and address

MELBOURNE • SYDNEY • SHANGHAI • HONG KONG



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