

# Management Deed

Conrad Funds Management Limited (the  
*Manager*)

CFML Lending Limited (*CFML Lending*)

8 February 2018



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## MANAGEMENT DEED

Date: *8 February* 2018

## PARTIES

**Conrad Funds Management Limited** (the *Manager*)

**CFML Lending Limited** (*CFML Lending*)

## BACKGROUND

- A CFML Lending has been established by the Manager to invest in a range of loans secured by Mortgages, with any surplus capital invested in New Zealand registered bank cash investments and short-term deposits.
- B The Manager is the manager of the Mortgage Fund, a managed fund established under the Conrad Investment Scheme (the *Mortgage Fund*) pursuant to the Governing Document.
- C All shares in CFML Lending are held on account of the Mortgage Fund by the Custodian of the Mortgage Fund.
- D CFML Lending wishes to appoint the Manager to provide the Services for CFML Lending.
- E The Manager has agreed to provide the Services to CFML Lending on the terms set out in this Deed.
- F The parties wish to enter into this Deed to record the terms of their respective obligations to each other.

## THE PARTIES AGREE as follows:

### 1 DEFINITIONS AND CONSTRUCTION

#### 1.1 Defined terms

Unless otherwise defined in this Deed, all capitalised terms shall have the meaning given to them in the Information Memorandum.

In this Deed, unless the context requires otherwise:

*Business Day* means a day, other than a Saturday, Sunday or public holiday, on which banks are open for general banking business in Auckland, New Zealand;

*Commencement Date* means the date of this Deed;

*Custodian* means Conrad Investment Trust Limited;

*Governing Document* means the Conrad Funds Management Schemes Governing Document between the Manager and the Supervisor dated on or about the date of this Deed;



*Information Memorandum* means the Conrad Funds Management Limited Information Memorandum for the offer of units in the Mortgage Fund dated on or about the date of this Deed;

*Mortgage Fund* has the meaning given to it in Background B;

*Policies* means those policies maintained by the Manager relevant to the Mortgage Fund which are summarised in section 5 of the SIPO;

*Services* means the services referred to in Schedule 1 and such other services as the parties may agree from time to time;

*SIPO* means the Conrad Investment Scheme Statement of Investment Policy and Objectives dated on or about the date of this Deed which covers the Mortgage Fund; and

*Supervisor* means Covenant Trustee Services Limited.

## 1.2 **Construction**

In the construction of this Deed, unless the context requires otherwise:

*Business Days*: anything required by this Deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;

*Clauses and Schedules*: a reference to a clause or a schedule is to a clause or schedule of this Deed, and a reference in a schedule to a clause is a reference to a clause in that schedule, and the schedules form part of this Deed;

*Documents*: a reference to any document, including this Deed, includes a reference to that document as amended or replaced from time to time;

*Headings*: headings appear as a matter of convenience and do not affect the construction of this Deed;

*Including*: A reference to including or similar words includes a reference to "without limitation";

*Parties*: a reference to a party to this Deed or any other document includes that party's personal representatives/successors and permitted assigns;

*Related Terms*: where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

*Singular, Plural and Gender*: the singular includes the plural and vice versa, and words importing one gender include the other genders;

*Writing*: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.



## 2 TERM AND APPOINTMENT

- 2.1 This Deed commences on and with effect from the Commencement Date and continues until terminated in accordance with clause 5.
- 2.2 With effect from the Commencement Date, CFML Lending appoints the Manager to provide the Services, and the Manager agrees to provide the Services to CFML Lending, in accordance with the terms of this Deed.

## 3 MANAGER'S OBLIGATIONS

- 3.1 The Manager must:
- (a) not amend this Deed without the consent of the Supervisor;
  - (b) provide the Services:
    - (i) in accordance with its duties, obligations and restrictions as the Manager of the Mortgage Fund, as if the Manager were performing the Services as the Manager of the Mortgage Fund and the investments of CFML Lending were the investments of the Mortgage Fund; and
    - (ii) at all times in compliance with all applicable laws;
  - (c) maintain full and complete records of all of the transactions relating to the provision of the Services;
  - (d) permit CFML Lending and the Supervisor to monitor the performance of the Services;
  - (e) undertake the investment of CFML Lending's assets only in accordance with the terms of the SIPO; and
  - (f) ensure CFML Lending complies at all times when performing the Services with the Policies, and the directions from CFML's Investment & Product Committee.
- 3.2 The Manager may delegate the performance of all or any of the Services. The Manager may agree with such delegate the fees that may be charged as the Manager may consider suitable, provided that the Manager shall:
- (a) take all reasonable steps to ensure that those Services are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
  - (b) take all reasonable steps to monitor the performance of those Services.
- 3.3 The Manager acknowledges that it will receive fees directly from the Mortgage Fund in relation to its provision of the Services.

## 4 CFML LENDING'S OBLIGATIONS

- 4.1 CFML Lending:
- (a) must not amend this Deed without the consent of the Supervisor;



- (b) must do all things that are reasonably necessary to enable the Manager to provide the Services in accordance with this Deed;
- (c) directs the Manager to undertake the investment of CFML Lending's assets only in accordance with the terms of the SIPO;
- (d) directs the Manager to ensure CFML Lending complies with the Policies at all times when performing the Services ;
- (e) directs the Manager to arrange for all returns on CFML Lending's investments to be transferred to the Revenue Account for the Mortgage Fund in accordance with the terms of the Governing Document, the Information Memorandum and the SIPO;
- (f) directs the Manager to assist with the administration of the issuance of the shares in CFML Lending, calls to be made and shares to be redeemed or repurchased, and to facilitate the investment of the Mortgage Fund in shares in CFML Lending and the withdrawal of funds for the purpose of all share redemptions;
- (g) must report and provide information to the Manager, the Supervisor and (where required by law or a direction of the Manager or the Supervisor) the Financial Markets Authority, to the extent, and within the timeframes, reasonably required by the Manager, the Supervisor or the Financial Markets Authority (as the case may be);
- (h) upon request by the Supervisor, must provide access to the Supervisor to all records relating to the Mortgage Fund that are held by it for the purpose of clause 12.1(c) of the Governing Document; and
- (i) directs the Manager to arrange, on CFML Lending's behalf, for loans and/or facilities from Co-Investors for additional lending, as the Manager thinks desirable in the interests of the operation of the Mortgage Fund.

## 5 TERMINATION

5.1 Subject to obtaining the prior approval of the Supervisor, a party may terminate this Deed with immediate effect by notice in writing to the other party if:

- (a) the other party materially breaches a provision of this Deed and fails to rectify that breach within 20 Business Days from the date of written notice from the non-defaulting party (which notice must specify the breach and state that the breach is required to be remedied); or
- (b) the other party enters into, or steps are taken to have the other party enter into, liquidation, receivership, administration, statutory management, administration or any arrangement with its creditors, the other party becomes unable to pay its debts as they become due or otherwise becomes insolvent.

5.2 This Deed shall terminate with automatic effect in the event that the Mortgage Fund is wound up in accordance with the terms of the Governing Document.



## 6 INDEMNITY AND LIMITATION OF LIABILITY

- 6.1 Subject to the proper performance of the Manager of its duties, and except as otherwise provided at law:
- (a) neither the Manager, nor its directors or officers, will be liable to CFML Lending in relation to any liability that may be claimed against, suffered, sustained or incurred by CFML Lending at any time arising out of or in connection with, directly or indirectly, the performance by the Manager of its obligations under this Deed, unless the same is due to that person's own dishonesty or gross negligence; and
  - (b) the Manager shall be indemnified out of CFML Lending's assets from and against any and all losses, costs, and expenses incurred by the Manager in performing any of its duties or responsibilities, or exercising or purporting to exercise any of its powers, pursuant to this Deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed.

## 7 GENERAL

- 7.1 **Further assurances:** Each party must do all things and execute all further documents as reasonably necessary to give full effect to this Deed.
- 7.2 **Assignment:** A party shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Deed, without the prior written consent of the other party (not to be unreasonably withheld).
- 7.3 **Amendments:** An amendment to this Deed is effective only to the extent that it is made in writing, executed by both parties and approved by the Supervisor.
- 7.4 **Severance:** If any provision of this Deed is void, illegal or otherwise unenforceable, it will be severed to the extent permitted by law without affecting any other provision of this Deed, and, if reasonably practicable, will be replaced by another provision of economic equivalence which is not so void, illegal or unenforceable.
- 7.5 **Contract and Commercial Law Act 2017:** This Deed shall be enforceable for the benefit of the Supervisor from time to time, except that, for the purposes of the proviso to section 12 of the Contract and Commercial Law Act 2017, the benefit so extended to the Supervisor is intended to be limited by, and enforceable subject to, the rights of the parties under this Deed to discharge benefits or obligations as provided in this Deed without the consent of the Supervisor, other than as so provided.
- 7.6 **Governing law:** This Deed shall be governed by and construed in accordance with New Zealand law.
- 7.7 **Counterparts:** This Deed may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart will be




7.8 **Delivery:** Without limiting any other mode of delivery, this Deed may be delivered by each of the parties to this Deed by:

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this Deed, executed by that party, into the custody of the other party or its solicitors; or
- (b) transmission, in electronic form by any means of electronic communication (including email of a scanned copy) to the other party or its solicitors, by that party, its solicitors or any other person authorised in writing by that party, of an original of this Deed, executed by that party, and the parties hereby consent to such form of delivery.

**EXECUTED** and delivered as a deed

Signed on behalf of **Conrad Funds Management Limited** by:

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director

Signed on behalf of **CFML Lending Limited** by:

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director



## SCHEDULE 1

### Services

The Manager will be responsible for managing the day to day operations of CFML Lending's business, including providing the following Services:

1. Identifying potential borrowers who would meet the loan criteria in the Credit Policy, with the objective that CFML Lending's assets are invested in accordance with the SIPO;
2. Carrying out credit checks on all loan applicants in their home jurisdictions;
3. Performing an Income/Repayment capability test in relation to each loan in accordance with the Credit Policy;
4. Assessing whether compliance with the requirements of the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) and the Responsible Lending Code is required in relation to each loan applicant, and, if applicable, ensuring all disclosure and other obligations required to be complied with under the CCCFA, the Responsible Lending Code, the Fund Manager's Credit Policy and any other applicable documentation are complied with in relation to loan applicants (if applicable);
5. Ensuring all loans comply with the Mortgage Fund's SIPO, the Mortgage Fund's Information Memorandum and the Policies;
6. Ensuring CFML Lending complies with all applicable laws in relation to its business;
7. Assisting with the administration of all share issuances and calls necessary to raise CFML Lending's loan amounts, and with all share redemptions to facilitate the withdrawal of funds from the Mortgage Fund;
8. Conducting customer due diligence on all loan applicants as CFML Lending's agent;
9. Overseeing the preparation and execution of all loan and mortgage documentation with each borrower's solicitors in relation to settlement and registration of the Mortgages, and processing all borrower credit approvals prior to documentation being prepared;
10. Monitoring of deployed Mortgage funds and interest payments, including Arrears Management in accordance with the Arrears Management Policy and associated reporting, and implementation of credit control procedures in accordance with the Credit Policy;
11. Electronic maintenance of all borrower records, including the input and maintenance of all data and documentation;
12. Managing CFML Lending's bank accounts and payments, including all dividends, the receipt of all share subscription amounts and calls, the payment of all share redemption or repurchase payments, and the payment of all taxes;



13. Arranging, on CFML Lending's behalf, for loans and/or facilities from Co-Investors for additional lending, as the Manager thinks desirable in the interests of the operation of the Mortgage Fund;
14. Managing CFML Lending's tax obligations;
15. Attending to any changes to loan repayment and interest arrangements, including bank account changes, deferred payments etc.;
16. Enforcing the terms of the Mortgages as appropriate;
17. Arranging for the valuation of loans secured by Mortgages by the Valuation Panel in accordance with the requirements of the Information Memorandum and the SIPO, including where the Manager considers CFML Lending has or is likely to suffer a loss on realisation of secured properties;
18. Managing the amount of loans approved and the level of cash and bank deposits held by CFML Lending in accordance with the SIPO;
19. Operating and maintaining CFML Lending's Mortgage Working Account and the Mortgage Repayment Account;
20. Arranging for all returns on CFML Lending's investments to be transferred to the Revenue Account for the Mortgage Fund in accordance with the terms of the Governing Document, the Information Memorandum and the SIPO;
21. Reporting to CFML Lending and its board of directors on the operations of its business, and providing all information required for CFML Lending to report to the Manager (as manager of the Mortgage Fund), the Supervisor and (where required by law or a direction of the Manager or the Supervisor) the Financial Markets Authority, to the extent, and within the timeframes, reasonably required by the Manager, the Supervisor or the Financial Markets Authority (as the case may be); and
22. Upon request by the Supervisor, providing access to the Supervisor to all records relating to the Mortgage Fund that are held by it for the purpose of clause 12.1(c) of the Governing Document;
23. Reconciling CFML Lending's share register and investments with the Custodian's records, as reasonably required by the Custodian;
24. Arranging for the preparation of all financial reports and statements and AML/CFT compliance and auditing; and
25. Such other services as the Supervisor shall reasonably require the Manager to perform (by written notice to the parties) for the proper performance of the Mortgage Fund.