

**Form 603**

**Corporations Act 2001**  
**Section 671B**

**Notice of initial substantial holder**

To Company Name/Scheme      Irongate Group (ASX: IAP), the stapled group comprised of Irongate Property Fund I and Irongate Property Fund II

ACN/ARSN      ARSN 162 067 736  
 ARSN 644 081 309

**1. Details of substantial holder (1)**

Name      360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust

ACN/ARSN (if applicable)      ACN 647 354 050

The holder became a substantial holder on      29/1/2021

**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid stapled securities comprising a unit in Irongate Property Fund I and a unit in Irongate Property Fund II	56,128,379	56,128,379	9.18%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	Holder of relevant interest	56,128,379 fully paid stapled securities

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	56,128,379 fully paid stapled securities

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non cash	
360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	29/1/2021	\$1.40 per stapled security acquired under agreement attached at Annexure A		56,128,379 fully paid stapled securities

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
360 Capital IG Pty Ltd as trustee of 360 Capital IG Trust	Level 8, 56 Pitt Street, Sydney NSW 2000

**Signature**

print name      Kimberley Child      capacity      Company Secretary

sign here



date      29/01/2021

**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (8) If the substantial holder is unable to determine the identity of the person ( eg. if the relevant interest arises because of an option) write "unknown".  
Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (9)

# Annexure A

**This is Annexure A of 20 pages referred to in the Form 603 Notice of Initial Substantial Holder signed by me and dated 29 January 2021.**

**The copy of the agreement attached is a true copy.**

**Signed by:**

A handwritten signature in black ink, appearing to be 'Kim Child', written over a horizontal line.

**Kim Child  
Company Secretary  
Date 29 January 2021**

# Unit sale agreement

Investec Bank Limited

Seller

360 Capital IG Pty Limited (ACN 647 354 050) as trustee of the 360 Capital IG Trust

Buyer

Clayton Utz  
Lawyers  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 838/17005/0000

## Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	General rules of interpretation .....	3
<b>2.</b>	<b>Sale and purchase of Units.....</b>	<b>4</b>
<b>3.</b>	<b>Completion and settlement .....</b>	<b>4</b>
<b>4.</b>	<b>Substantial Holder Notice .....</b>	<b>4</b>
<b>5.</b>	<b>Further payment.....</b>	<b>5</b>
5.1	Relevant occurrences .....	5
5.2	Adjustment .....	5
<b>6.</b>	<b>Warranties.....</b>	<b>6</b>
6.1	Warranties.....	6
6.2	Reliance .....	6
6.3	Indemnity for breach of Warranty .....	6
6.4	Adjustment .....	7
<b>7.</b>	<b>Notices .....</b>	<b>7</b>
7.1	How notice to be given.....	7
7.2	When notice taken to be received .....	8
<b>8.</b>	<b>Entire agreement .....</b>	<b>8</b>
<b>9.</b>	<b>General.....</b>	<b>8</b>
9.1	Amendments .....	8
9.2	Assignment .....	8
9.3	Consents .....	8
9.4	Counterparts .....	9
9.5	Costs .....	9
9.6	Further acts and documents .....	9
9.7	Stamp duties.....	9
9.8	Operation of indemnities .....	9
9.9	Severance .....	9
9.10	Waivers.....	10
9.11	Payment without withholding or deduction unless required by law..	10
9.12	Foreign resident CGT withholding.....	10
<b>10.</b>	<b>Trustee Capacity .....</b>	<b>11</b>
<b>11.</b>	<b>Governing law and jurisdiction.....</b>	<b>12</b>
	<b>Schedule 1 Seller Warranties .....</b>	<b>13</b>
	<b>Schedule 2 Buyer Warranties.....</b>	<b>15</b>

## Unit sale agreement

---

**Date**

29 January 2021

**Parties**

**Investec Bank Limited** of 100 Grayston Drive, Sandown, Sandton, 2196, South Africa (**Seller**)

**360 Capital IG Pty Limited (ACN 647 354 050)** as trustee of the **360 Capital IG Trust** of 56 Pitt Street, Sydney, New South Wales 2000 (**Buyer**)

**Background**

- A. The Seller owns the Units, being approximately 9.18% of the issued units of the Trust.
- B. The Seller wishes to sell the Units and the Buyer wishes to buy the Units on the terms and conditions of this agreement.

**Operative provisions**

---

### 1. Definitions and interpretation

#### 1.1 Definitions

In this agreement:

**Adjustment** means the payments referred to in clause 5.2.

**Aggregate Purchase Price** means \$78,579,730.60 as adjusted in accordance with clause 5.2.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in section 12 of the Corporations Act.

**ASX** means as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by it.

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532.

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales.

**Buyer Warranties** means the warranties set out in Schedule 2.

**Completion** means the completion of the sale and purchase of the Units in accordance with clause 3.

**Completion Date** means the date of this agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CGT Declaration** means a declaration (in the Australian Taxation Office preferred form NAT 74879-06.2016 available on the Australian Tax Office website) from the Seller that the Shares are not “indirect Australian real property interests” for the purposes of the Tax Act.

**Effective** means, when used in relation to a Trust Scheme, the coming into effect of the relevant unit holder resolutions required in order to effect the Trust Scheme.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**Government Agency** means any government, governmental, semigovernmental, administrative, fiscal or quasi-judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**GST** has the meaning given in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Income Accrual Amount** means an amount per Unit equal to 4.461 cents (or where a different distribution amount has been announced in respect of a relevant six monthly distribution period, that distribution amount) multiplied by X divided by 180 where X is the number of days that have elapsed since the last distribution record date for the Trust.

**Indemnified Losses** means, in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses, penalties and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement), but excludes any indirect or consequential loss or damage.

**Purchase Price** means \$1.40 per Unit.

**Regulatory Approval** means any approval from a Regulatory Authority in Australia or any other place and any other formal or informal approval of a Regulatory Authority to the transaction contemplated by this agreement, a Trust Scheme or Takeover Bid or any aspect thereof.

**Regulatory Authority** means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Sale** has the meaning given in clause 2.

**Seller Warranties** means the warranties set out in Schedule 1

**Settlement Date** means the day which is two business days after the Completion Date or otherwise in accordance with the ASX Settlement Operating Rules.

**Takeover Bid** means a takeover bid under Chapter 6 of the Corporations Act to acquire at least 20% of the issued units of the Trust.

**Tax** means any tax, levy, charge, excise, GST, impost, rates, duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Government Agency and includes any interest, fine, penalty, charge, fee, expenses or any other such amount imposed by any fiscal Government Agency on or in respect of any of the above.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth), as the context requires.

**Third Party** means a person other than the Buyer and any Associate of the Buyer.

**Trust** means Irongate Group (ASX: IAP), the stapled group which comprises Irongate Property Fund I (ARSN 162 067 736) and Irongate Property Fund II (ARSN 644 081 309).

**Trust Scheme** means a trust scheme as contemplated by Guidance Note 15 issued by the Takeovers Panel entitled "Trust Scheme Mergers".

**Units** means the 56,128,379 stapled securities in the Trust held by the Seller.

**Value** means in relation to any consideration (including the Purchase Price) at any time:

- (a) if all or any part of the consideration is a cash sum in A\$, that A\$ value;
- (b) if the consideration is a cash sum denominated in a currency other than Australian dollars, the value of the consideration will be based on its Australian dollar equivalent applying the WM/Reuters Closing Spot Exchange Rate published at 4pm London time on the date that is 2 Business days before the date that the payment obligation arises;
- (c) in respect of a relevant occurrence as set out in clause 5, if all or any part of the consideration is in listed securities, the 5 day volume weighted average price of the securities in the period immediately prior to the occurrence of the relevant occurrence.

**Warranties** means the Seller Warranties and the Buyer Warranties.

## 1.2 General rules of interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;



- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to this agreement is to this agreement as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body; if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (j) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (k) a reference to \$, A\$ or dollar is to Australian currency; and
- (l) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

---

## 2. Sale and purchase of Units

On Completion the Seller must sell and the Buyer must buy the Units for the Aggregate Purchase Price free from all Encumbrances (the **Sale**).

---

## 3. Completion and settlement

The Buyer and the Seller must procure that the Sale is effected on the Completion Date and settled on the Settlement Date in accordance with the ASX Settlement Operating Rules at the Aggregate Purchase Price. By no later than 2.00pm on the Settlement Date, the Buyer must arrange for the payment to the Seller in cleared funds via DvP settlement of an amount equal to the Aggregate Purchase Price.

---

## 4. Substantial Holder Notice

Within 2 Business Days of Completion, the Buyer must lodge a Notice of Change of Interests of Substantial Holder (ASIC Form 604) with the Trust and the ASX in accordance with the requirements of the Corporations Act.

## 5. Further payment

### 5.1 Relevant occurrences

Subject to Completion occurring, if before the date that is 6 months after the date of this agreement:

- (a) a Trust Scheme made by the Buyer or an Associate of the Buyer, pursuant to which the Buyer, or any of its related bodies corporate, proposes to acquire all of the units in the Trust, becomes Effective and the Value per Unit offered under that Trust Scheme is greater than the Purchase Price; or
- (b) a Takeover Bid made by the Buyer or an Associate of the Buyer becomes unconditional and the Value per Unit offered under that Takeover Bid is greater than the Purchase Price; or
- (c) the Buyer disposes of some or all of the Units to a Third Party for all cash consideration other than when the Buyer disposes of the Units to a Third Party pursuant to a Trust Scheme or by accepting a Takeover Bid.

then:

- (d) the Buyer must notify the Seller of the relevant occurrence; and
- (e) the parties must perform the relevant Adjustment.

### 5.2 Adjustment

- (a) If the parties are required to perform an Adjustment under clause 5.1(e), the parties agree that, in respect of an occurrence of the nature described in:
  - (i) clause 5.1(a), within 5 Business Days of the occurrence, the Buyer must pay to the Seller a cash sum per Unit subject to the Trust Scheme in A\$ equal to the difference in Value between the Purchase Price and the Value per Unit offered under the relevant Trust Scheme, less the Income Accrual Amount in respect of all such Units and less the amount of all adjustment payments which have previously been paid to the Seller under this clause 5.2;
  - (ii) clause 5.1(b):
    - A. the Seller will have the option to notify the Buyer, within 3 Business Days of the occurrence, that it wishes to purchase the Units from the Buyer for a cash sum per Unit subject to the Takeover Bid equal to the Purchase Price plus the Income Accrual Amount in respect of all such Units;
    - B. if the Seller provides notification to the Buyer that complies with clause 5.2(a)(ii)A, then the Buyer must sell the Units to the Seller for the amount determined in accordance 5.2(a)(ii)A of all such Units free from Encumbrances;
    - C. the Seller must accept the offer made by the Buyer under the Takeover Bid in respect of the Units within 5 Business Days of

the occurrence and undertakes that it will not subsequently withdraw that acceptance if a right of withdrawal accrues to the Buyer;

- (iii) clause 5.1(c), within 5 Business Days of the disposal, the Buyer must pay to the Seller a cash sum per unit in A\$ equal to 50% of the difference in Value between the Purchase Price and the amount determined in accordance with the following, being the amount equal to the Value per Unit received by the Buyer on disposal of the Units less the Income Accrual Amount in respect of all such Units and less the amount of all adjustment payments which have previously been paid to the Seller under this clause 5.2.

---

## **6. Warranties**

### **6.1 Warranties**

- (a) The Seller warrants to the Buyer that each Seller Warranty is true and correct as at the date of execution of this agreement and as at the time immediately prior to Completion.
- (b) The Buyer warrants to the Seller that each Buyer Warranty is true and correct as at the date of execution of this agreement and as at the time immediately prior to Completion.

### **6.2 Reliance**

The parties acknowledge that the Buyer has entered into this agreement in reliance on the Seller Warranties.

### **6.3 Indemnity for breach of Warranty**

- (a) Without limiting any other remedy available to the Buyer, the Seller indemnifies the Buyer against, and must pay to the Buyer on demand:
  - (i) the amount of, any Indemnified Loss suffered or incurred by the Buyer arising out of or in connection with the breach of any Seller Warranty; and
  - (ii) an amount equal to, any additional tax assessable on the Buyer arising out of or in connection with its receipt of a payment under this clause 6.3 or otherwise arising out of or in connection with the breach of any Seller Warranty.
- (b) Without limiting any other remedy available to the Seller, the Buyer indemnifies the Seller against, and must pay to the Seller on demand:
  - (i) the amount of, any Indemnified Loss suffered or incurred by the Seller arising out of or in connection with the breach of any Buyer Warranty; and
  - (ii) an amount equal to, any additional tax assessable on the Seller arising out of or in connection with its receipt of a payment under this

clause 6.3 or otherwise arising out of or in connection with the breach of any Buyer Warranty.

- (c) The maximum liability of the Seller for any breach of Seller Warranty or the sale, and purchase of the Units, is limited to an amount equal to the Aggregate Purchase Price.
- (d) The maximum liability of the Buyer for any breach of Buyer Warranty or the sale, and purchase of the Units, is limited to an amount equal to the Aggregate Purchase Price and any amount payable in accordance with clause 5.

## 6.4 Adjustment

- (a) Any payment made to the Buyer for a breach of a Seller Warranty will be treated as an adjustment in the Aggregate Purchase Price.
- (b) Any payment made to the Seller for a breach of a Buyer Warranty will be treated as an adjustment in the Aggregate Purchase Price.

---

## 7. Notices

### 7.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
  - (i) if to the Seller:
 

Address: 100 Grayston Drive, Sandown, Sandton, 2196, South Africa

Email: [IPILegal@investec.co.za](mailto:IPILegal@investec.co.za)

cc: [alon.kruger@investec.co.za](mailto:alon.kruger@investec.co.za); and [della.levinsohn@investec.co.za](mailto:della.levinsohn@investec.co.za)
  - (ii) if to the Buyer:
 

Address: Level 8, 56 Pitt Street, Sydney New South Wales, 2000

Email: [james.storey@360capital.com.au](mailto:james.storey@360capital.com.au)

cc: [kim.child@360capital.com.au](mailto:kim.child@360capital.com.au)
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached

to an email that states that the attachment is a communication under this agreement; and

- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with clause 7.1(c).

## **7.2 When notice taken to be received**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 7, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

---

## **8. Entire agreement**

To the extent permitted by law, this agreement constitutes the entire agreement between the parties in relation to its subject matter including the sale and purchase of the Units and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

---

## **9. General**

### **9.1 Amendments**

This agreement may only be varied by a document signed by or on behalf of each party.

### **9.2 Assignment**

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party.

### **9.3 Consents**

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

## 9.4 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

## 9.5 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses and the Buyer must pay any costs and expenses of the Trust in connection with negotiating, preparing, executing and performing this agreement.

## 9.6 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

## 9.7 Stamp duties

The Buyer:

- (a) must pay all stamp duties, other duties and similar taxes, together with any related fees, penalties, fines, interest or statutory charges, in respect of this agreement, the performance of this agreement and each transaction effected or contemplated by or made under this agreement; and
- (b) indemnifies the Seller against, and must pay to the Seller on demand the amount of, any Indemnified Loss suffered or incurred by the Seller arising out of or in connection with any delay or failure to comply with clause 9.7(a).

## 9.8 Operation of indemnities

Without limiting any other provision of this agreement, the parties agree that:

- (a) each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement;
- (b) subject to 9.1(c) and 9.1(d), it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement;
- (c) they must take reasonable actions to mitigate any loss that may give rise to a claim under or in relation to or arising out of this document; and
- (d) they must not omit to take any reasonable action that would mitigate any loss that may give rise to a claim under or in relation to or arising out of this document.

## 9.9 Severance

If any provision or part of a provision of this agreement is held or found to be void, unacceptable, invalid or otherwise unenforceable (whether in respect of a particular party or generally) by the Takeovers Panel or a court, it will be deemed to be severed to the extent

that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## 9.10 Waivers

Without prejudice to any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

## 9.11 Payment without withholding or deduction unless required by law

- (a) The Buyer agrees to make all payments under this agreement in full without set-off or counterclaim, and without any deduction or withholding for or on account of Tax unless such deduction or withholding is required by law.
- (b) If the Buyer is required to make any withholding, deduction or payment for or on account of Tax (including under subdivision 14-D of Schedule 1 of the Tax Act), but such amount has not been deducted from the Aggregate Purchase Price:
  - (i) the Seller agrees to indemnify the Buyer against, and must pay to the Buyer on demand, an amount equal to any withholding, deduction or payment for or on account of Tax required to be made by the Buyer; and
  - (ii) on receipt of such amount from the Seller, the Buyer must pay, or procure the payment of, the full amount of the withholding or deduction, or the payment, for or on account of Tax to the appropriate Government Agency under the applicable law.
- (c) If a payment is made to a Government Agency to which clause 9.11(b) applies, the Buyer must provide to the Seller within 5 Business Days a receipt (or other evidence satisfactory to the Seller acting reasonably) showing the relevant payment to the applicable Government Agency.

## 9.12 Foreign resident CGT withholding

- (a) The Seller declares on the date of this agreement that, for the period commencing on the date before the date of this agreement and ending on the date 6 months after the date of this agreement, the Units are “membership interests” in the Trusts but are not “indirect Australian real property interests”, in each case for the purposes of the Tax Act.
- (b) The Buyer acknowledges the declaration in clause 9.12(a) and, subject to the Seller complying with clause 9.12(c) (if relevant), that no payment will be required to be

made under subdivision 14-D of Schedule 1 of the Tax Act in respect of the sale and purchase of the Units or any Adjustments.

- (c) If Completion or any Adjustment occurs on a date 6 months or more after the date of this agreement, the Seller undertakes to deliver to the Buyer at or before Completion or the Adjustment (as is relevant) an executed CGT Declaration which covers (at least) the period from and including the date which is 6 months after that date of this agreement until and including the Completion Date or the date of the Adjustment (as is relevant).
- (d) The Seller agrees to indemnify the Buyer against, and must pay to the Buyer on demand, an amount equal to any payment required to be made by the Buyer under subdivision 14-D of Schedule 1 to the Tax Act in respect of the sale and purchase of the Units or any Adjustments, to the extent the Buyer has not deducted or withheld an amount for or on account of, or otherwise been compensated by the Seller for, such payment.

---

## 10. Trustee Capacity

- (a) This clause 10 applies notwithstanding any other provision of this agreement.
- (b) The Buyer enters into this agreement only in its capacity as Buyer of the 360 Trust and in no other capacity. A liability arising under or in connection with this agreement is limited to and can be enforced against the Buyer only to the extent to which it can be satisfied out of property of the 360 Trust out of which the Buyer is actually indemnified for the liability.
- (c) The limitations of the Buyer's liability contained in this clause 10 extend to all liabilities and obligations of the Buyer in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- (d) The parties acknowledge and agree that, no other party to this agreement may make a claim against the personal assets of the Buyer or against the Buyer in its personal capacity or seek to sue the Buyer in any capacity other than as Buyer of the 360 Trust, including seeking the appointment of a receiver (except in relation to property of the 360 Trust), a liquidator, an administrator or any similar person to the Buyer as the Buyer entity or prove in any liquidation, administration or arrangement of or affecting the Buyer (except in relation to property of the 360 Trust).
- (e) The provisions of this clause 10 shall, subject to clause 10(f), not apply to any obligation or liability of the Buyer to the extent that it is not satisfied because under the constitution establishing the 360 Trust or by operation of law there is a reduction in the extent of the Buyer's indemnification out of the assets of the 360 Trust, as a result of the Buyer's failure to properly perform its duties as Buyer. For these purposes, it is agreed that the Buyer cannot be regarded as having failed to properly perform its duties as Buyer to the extent to which any failure by the Buyer to satisfy its obligations or breach of representation or warranty under this agreement has been caused or contributed to by a failure by any other party to fulfil its obligations under this agreement or any other act or omission of any other



party.

- (f) Nothing in this clause 10 shall make the Buyer liable to any claim for an amount greater than the amount which the other parties would have been able to claim and recover from the assets of the 360 Trust in relation to the relevant liability if the Buyer's right of indemnification out of the assets of the 360 Trust has not been prejudiced by the Buyer's failure to properly perform its duties.
- (g) The Buyer is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Buyer's liability is limited in the same manner as set out in clauses 10(a) – 10(f) of this agreement.
- (h) In this clause 10, the following definitions apply:
  - (i) **Buyer** means 360 Capital IG Pty Limited (ACN 647 354 050); and
  - (ii) **360 Trust** means 360 Capital IG Trust.

---

## 11. Governing law and jurisdiction

- (a) This agreement is governed by the law applying in New South Wales.
- (b) Each party irrevocably submits to the non exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 11.

## Schedule 1 Seller Warranties

---

### 1. Seller

#### 1.1 Capacity and authorisation

The Seller:

- (a) is a company properly incorporated and validly existing under the laws of South Africa,
  - (b) has the legal right and full power and capacity to:
    - (i) execute and deliver this agreement; and
    - (ii) perform its obligations under this agreement and each transaction effected by or made under this agreement,
- and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.

#### 1.2 Valid obligations

This agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Seller and is enforceable against the Seller in accordance with its terms.

#### 1.3 Breach or default

The execution, delivery and performance of this agreement by the Seller does not and will not result in a breach of or constitute a default under:

- (a) any agreement to which the Seller is party;
- (b) any provision of the constitution of the Seller; or
- (c) any order, judgment or determination of any court or Regulatory Authority by which the Seller is bound.

#### 1.4 Solvency

None of the following events has occurred in relation to the Seller:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Seller or any of its assets or anyone else is appointed who (whether or not an agent for the Seller) is in possession, or has control, of any of the Seller's assets for the purpose of enforcing an Encumbrance;
- (b) an event occurs that gives any person the right to seek an appointment referred to in paragraph (a);
- (c) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the Seller or an event occurs that would give any person the right to make an application of this type;
- (d) the Seller proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;

- (e) the Seller is declared or taken under any applicable law to be insolvent or the Seller's board of directors resolves that the Seller is, or is likely to become at some future time, insolvent; or
  - (f) any person in whose favour the Seller has granted any Encumbrance becomes entitled to enforce any security under that Encumbrance or any floating charge under that Encumbrance crystallises.
- 

## **2. Units**

### **2.1 Ownership**

The Seller is the sole legal and beneficial owner of the Units and has complete and unrestricted power and authority to sell the Units to the Buyer.

### **2.2 Third party rights**

There is no Encumbrance, option, right of pre-emption, right of first or last refusal or other third party right over any of the Units.

## Schedule 2 Buyer Warranties

---

### 1. Buyer

#### 1.1 Capacity and authorisation

The Buyer:

- (a) is a company properly incorporated and validly existing under the laws of Australia,
  - (b) has the legal right and full power and capacity to:
    - (i) execute and deliver this agreement; and
    - (ii) perform its obligations under this agreement and each transaction effected by or made under this agreement,
- and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.

#### 1.2 Valid obligations

This agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Buyer and is enforceable against the Buyer in accordance with its terms.

#### 1.3 No Regulatory Approvals

No Regulatory Approval is required by the Buyer.

#### 1.4 Breach or default

The execution, delivery and performance of this agreement by the Buyer does not and will not result in a breach of or constitute a default under:

- (a) any agreement to which the Buyer is party;
- (b) any provision of the constitution of the Buyer;
- (c) section 606 of the Corporations Act; or
- (d) any order, judgment or determination of any court or Regulatory Authority by which the Buyer is bound.

#### 1.5 Solvency

None of the following events has occurred in relation to the Buyer:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Buyer or any of its assets or anyone else is appointed who (whether or not an agent for the Buyer) is in possession, or has control, of any of the Buyer's assets for the purpose of enforcing an Encumbrance;
- (b) an event occurs that gives any person the right to seek an appointment referred to in paragraph (a);

- (c) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the Buyer or an event occurs that would give any person the right to make an application of this type;
- (d) the Buyer proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
- (e) the Buyer is declared or taken under any applicable law to be insolvent or the Buyer's board of directors resolves that the Buyer is, or is likely to become at some future time, insolvent; or
- (f) any person in whose favour the Buyer has granted any Encumbrance becomes entitled to enforce any security under that Encumbrance or any floating charge under that Encumbrance crystallises.

**Signed** as an agreement.

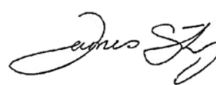
**Executed by 360 Capital IG Pty Limited (ACN 647 354 050) as trustee of the 360 Capital IG Trust** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

**Tony Pitt**

Full name of director



Signature of company secretary/director

**James Storey**

Full name of company secretary/director

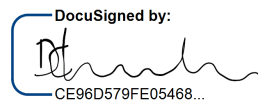
**Executed by Investec Bank Limited:**



Signature of director / Authorised Signatory

**LAWRENCE BARNETT**

Full name of director / Authorised Signatory

DocuSigned by:  
  
 CE96D579FE05468...

Signature of company secretary/director

**Della Levinsohn** Authorised signatory

Full name of company secretary/director