



## ASX Release / Media Release

11 November 2010

### **MIRVAC GROUP AMENDMENT TO CONSTITUTION – MIRVAC LIMITED AND MIRVAC PROPERTY TRUST**

Pursuant to Listing Rule 15.4.2, Mirvac Group [ASX: MGR] (“Mirvac”) advises that Mirvac Limited ACN 003 280 699, has amended the Company’s Constitution on 11 November 2010. The Constitution was lodged with the Australian Securities and Investments Commission today.

Pursuant to Listing Rule 15.4.2, Mirvac advises that Mirvac Funds Limited ACN 002 561 640, as Responsible Entity of Mirvac Property Trust (“MPT”) ARSN 086 780 645, has amended MPT’s Constitution by Amending Deed Poll dated 11 November 2010. The Amending Deed Poll was lodged with the Australian Securities and Investments Commission today.

Attached are:

- 1) the Mirvac Limited Consolidated Constitution;
- 2) the Mirvac Property Trust Amending Deed Poll; and
- 3) the Mirvac Property Trust Consolidated Constitution.

Yours faithfully

A handwritten signature in cursive script that reads 'Sonya Harris'.

**Sonya Harris**  
General Counsel / Company Secretary

MALLESONS STEPHEN JAQUES

# Mirvac Limited Constitution

Mirvac Limited (ACN 003 280 699)

A Company Limited by Shares

Adopted 4 November 2004

Amended 11 November 2010

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Ref: KJB/SEH

# Mirvac Limited Constitution

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# Mirvac Limited Constitution

## General terms

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### **1 Share capital and variation of rights**

#### **1.1 Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue or cancel shares at any time and on any terms and conditions;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Stapling Provisions the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

#### **1.2 Issue of further shares - no variation**

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act or, while the Company remains on the official list of ASX, the Listing Rules.

#### **1.3 Preference Shares**

The Company may issue preference shares and any issued shares may be converted into preference shares if the rights of the holders of the preference shares are as set out in schedule 1 or approved in accordance with the Corporations Act.

The Directors may not allot or issue a preference share unless there is an allotment or issue at the same time and on the same terms of a MPT Unit to the same person to form a Mirvac Group Stapled Security.

#### **1.4 Variation of rights - preference shares**

Where the Company proposes to issue preference shares or to convert issued shares into preference shares and those preference shares are to rank in priority to preference shares already issued, unless expressly permitted by the conditions of issue of the preference shares already issued, the issue or conversion is taken to be a modification of the rights attached to the preference shares already issued.

### **1.5 Redeemable preference shares**

Subject to article 1.3 and the Corporations Act, the Company may issue redeemable preference shares. The Directors may determine the terms and conditions of redemption before the issue of the shares.

The Director may not allot or issue a redeemable preference share unless there is an issue at the same time and on the same terms of a MPT Unit to the same person to form a Mirvac Group Stapled Security.

### **1.6 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares held under the Corporations Act except that:

- (a) a quorum is constituted by at least three persons who, between them, hold or represent one-third of the issued shares of the class; and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

### **1.7 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

### **1.8 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

### **1.9 No share buy-backs without MPT Unit redemption**

The Company may not buy back or cancel its shares unless the MPT Manager redeems the corresponding MPT Units as well.

### **1.10 Payment of commission**

The Company may exercise the power to pay commission conferred by the Corporations Act if:

- (a) the rate or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Corporations Act; and
- (b) the commission does not exceed 10% of the price at which the Shares in respect of which the commission is paid are issued.

### **1.11 Satisfaction of commission**

The commission may be satisfied by the payment of cash or by the allotment of fully or partly paid Shares or other securities or partly by the payment of cash and partly by the allotment of fully or partly paid Shares or other securities.

### **1.12 Brokerage**

The Company may, on any issue of Shares, also pay such brokerage as is lawful.

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## **2 Mirvac Group Stapled Security issues**

### **2.1 Paramountcy**

The provisions of this Part 2 apply notwithstanding the provisions of Part 1.

### **2.2 Stapling**

Each share will be Stapled to one MPT Unit to form a Mirvac Group Stapled Security.

While Stapling applies, the number of issued shares must equal the number of issued MPT Units at that time.

### **2.3 Registration**

The Mirvac Group Stapled Securities must be registered in the Mirvac Group Stapled Security Register and subject to articles 1.7 and 1.8, the Company must issue a certificate, or a holding statement in accordance with the requirements of the CHES system, in respect of the Mirvac Group Stapled Securities, identifying the Mirvac Group Stapled Securities to which the certificate relates.

### **2.4 No issue without corresponding issue of MPT Units**

The Directors may not allot or issue a share or an option to acquire a share unless there is an issue at the same time of a MPT Unit or an option to acquire a MPT Unit on the same terms to the same person to form a Mirvac Group Stapled Security.

### **2.5 Shares to remain Stapled**

Subject to article 23.11, each issued share will remain Stapled for so long as those shares remain on issue.

The Directors and the Company must not do any act, matter or thing (and must refrain from doing any act, matter or thing) if to do so (or refrain from doing so, as the case may be) would result directly or indirectly in any share no longer being Stapled to an MPT Unit to form a Mirvac Group Stapled Security. In particular, the Directors and the Company must not re-organise any shares unless at the same time there is a corresponding re-organisation of MPT Units that are Stapled to those shares to form Mirvac Group Stapled Securities so that the person holding shares holds an equal number of MPT Units. For the purposes of this article 2.5, the term “re-organise” has the meaning given in Listing Rules 7.18 to 7.24 (inclusive) and the term “re-organisation” has a corresponding meaning and includes any consolidation, division, cancellation, subdivision, buy back or reduction of any share capital.

## **2.6 Mirvac Group Stapled Security Register**

The Directors must maintain or cause to be maintained the Mirvac Group Stapled Security Register which records the names and addresses of the Members, the number of shares held, the number of MPT Units held by the Members and any additional information required by the Corporations Act, the Listing Rules or by the Directors from time to time. The Directors may establish and maintain a Register jointly with the register of MPT Unitholders provided for in the MPT Constitution.

The Mirvac Group Stapled Security Register will, for so long as Stapling applies, be deemed to constitute part of the Register of Members, and in this case all other provisions of this Constitution applicable to the Register of Members will apply only to any part of the Register of Members kept in addition to the Mirvac Group Stapled Security Register.

## **2.7 Amendment to Stapling Provisions**

Without limitation to the provisions of this Constitution or the Corporations Act, no Stapling Provision (including this article 2.7) may be deleted or amended without the approval of a special resolution of the MPT Unitholders.

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# **3 Lien**

## **3.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

### **3.3 Lien on distributions**

A lien on a share under articles 3.1 or 3.2 extends to all distributions in respect of that share, including dividends.

### **3.4 Exemption from articles 3.1 or 3.2**

The Directors may at any time exempt a share wholly or in part from the provisions of articles 3.1 or 3.2.

### **3.5 Lien on Units**

The Company has a first and paramount lien on all MPT Units registered in the name of the Member of all money payable to the Company under articles 3.1, 3.2 and 3.3 and the lien extends to all income entitlements or other distributions payable to the Member in respect of those Units.

### **3.6 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.7 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **3.8 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

### **3.9 Sale under lien**

Subject to article 3.10, the Company may sell or cause to be sold, in any manner the Directors think fit, any share or MPT Unit on which the Company has a lien.

### **3.10 Limitations on sale under lien**

A share or MPT Unit on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable;
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or MPT Unit or the person entitled to the share or MPT Unit by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists; and
- (c) the Company has, not less than 14 days before the date of sale, given the MPT Manager notice in writing that it proposes to exercise its lien on a MPT Unit.

### **3.11 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 3.9, the Company or its nominee may receive the consideration, if any, given for the share or MPT Unit so sold and may execute or cause to be executed a transfer of the share or MPT Unit sold in favour of the purchaser of the share or MPT Unit, or do all such other things in consultation with the MPT Manager as may be necessary or appropriate for it to do to effect the transfer. Any transfer of a share resulting from a sale under this article 3.11 may only be made if there is a simultaneous transfer of a MPT Unit to the same purchaser (or vice versa in the case of a transfer of a MPT Unit).

The purchaser is not bound to see to the application of the purchase money.

### **3.12 Irregularity or invalidity**

The title of the purchaser to the share or MPT Unit is not affected by any irregularity or invalidity in connection with the sale or disposal of the share or MPT Unit.

### **3.13 Proceeds of sale**

The proceeds of a sale under article 3.9 must be applied by the Company in consultation with the MPT Manager in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **4 Calls on shares**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Members' liability**

Each Member must upon receiving not less than 14 days notice specifying the time or times and place of payment, pay to the Company by the time or times and at the place so specified the amount called on that Member's shares. The notice must specify:

- (a) the name of the Member;
- (b) the number of Shares held by the Member;
- (c) the amount of the call;
- (d) the due date for payment of the call;
- (e) the consequences of non-payment of the call;
- (f) the taxation deductions applicable (if any) and how they may be applied for;
- (g) market details regarding the Shares and any other Shares in the Company as required by the Listing Rules; and
- (h) such other information as required by the Listing Rules.

### **4.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

#### **4.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.8 Differentiation between shareholders as to calls**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

#### **4.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum.

#### **4.10 Partly Paid Mirvac Group Stapled Security**

Notwithstanding any other provision of this article 4:

- (a) any call or other treatment of any amount unpaid on a share must only be made at the same time, to the same extent and in the same manner as a call for payment of an unpaid amount on a MPT Unit;
- (b) any amount paid pursuant to any call will be allocated towards the payment of any unpaid amounts on any share or MPT Unit, wholly and at the absolute discretion of the Directors; and
- (c) no share may be issued which is partly paid unless a MPT Unit is issued as partly paid in the same proportion.



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## **5 Transfer of shares**

### **5.1 Forms of instrument of transfer**

Subject to the Listing Rules and to this Constitution, shares in the Company are transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

### **5.2 Execution and delivery of transfer**

If an instrument of transfer is:

- (a) used to transfer a share in accordance with article 5.1(b); and
- (b) left for registration at the share registry of the Company, accompanied by any information the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

### **5.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share and a transfer of a share does not pass the right to any dividends declared on the share until registration.

### **5.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

### **5.5 Power to refuse to register**

If permitted to do so by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's Operator sub-register; or
- (b) refuse to register a transfer of other shares in the Company to which paragraph (a) does not apply.

### **5.6 Obligation to refuse to register**

The Directors must :

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company being registered on the CS Facility's sub-register; or
  - (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,
- if:
- (c) the Listing Rules require the Company to do so;
  - (d) article 5.10(b) requires the Directors not to register the transfer; or
  - (e) the transfer is in breach of the Listing Rules or a Restriction Agreement.

### **5.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under articles 5.5 and 5.6 the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of a share they must give written notice of the request or refusal to the holder of the share, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.

### **5.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for such period as the Directors determine, subject to the requirements of applicable law.

### **5.9 Refusal to register**

If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### **5.10 Effect of Stapling**

- (a) A transfer of a share will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this Part 5 or Part 6, as the case may be, the transfer relates to or is accompanied by a transfer or a copy of a transfer of the MPT Unit to which the share is Stapled in favour of the same transferee.
- (b) Subject to the applicable Operating Rules and the Listing Rules, the Directors must not register a transfer of a share unless a MPT Unit is also to be transferred, or are capable of transfer, simultaneously.
- (c) A transfer of a share which is not accompanied by a transfer referred to in article 5.10(a) or a copy of such a transfer of a MPT Unit to which the share is Stapled will be taken to authorise the Company as agent for the transferor to effect in accordance with the provisions of

the MPT Constitution, a transfer of that MPT Unit to which the share is Stapled to the same transferee.

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## **6 Transmission of shares**

### **6.1 Transmission of shares on death of holder**

If a Member who does not own shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **6.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **6.3 Death of joint owner**

If a Member who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **6.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

## **6.5 Stapling**

Notwithstanding any other provision of this Constitution, no person may become a registered holder of shares under this Part 6 unless that person is also entitled to become the registered holder of MPT Units to which those shares are Stapled.

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## **7 Forfeiture of shares and MPT Units**

### **7.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call (with respect to a share or an MPT Unit) on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice on the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

### **7.2 Contents of notice**

The notice referred to in article 7.1 must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares together with an equal number of MPT Units will be liable to be forfeited. If the shares and/or the MPT Units are officially quoted by ASX, the notice must contain such other information as is required by the Listing Rules (or by ASX under the Listing Rules).

### **7.3 Forfeiture for failure to comply with notice**

Any share (together with an equal number of MPT Units) in respect of which the notice under article 7.1 has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

### **7.4 Dividends and distributions included in forfeiture**

A forfeiture under article 7.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and MPT Units, and not actually paid or distributed before the forfeiture.

### **7.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act and Listing Rules:

- (a) a share or MPT Unit forfeited under article 7.3 may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit; and
- (b) a share forfeited under article 7.3 (together with the MPT Unit) may be sold or otherwise disposed of as a fully paid share (together with the MPT Unit) at a price for the share determined by the Directors (with the balance of the sale price of the Mirvac Group Stapled Security being allocated to the MPT Unit).

#### **7.6 Notice of forfeiture**

If any share is forfeited under article 7.3 notice of the forfeiture must be given to the Member holding the share or MPT Unit immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

#### **7.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share or MPT Unit which they are entitled to forfeit on any terms they think fit and any surrendered share or MPT Unit is taken to be a forfeited share or MPT Unit. While Stapling applies a share may not be surrendered unless the MPT Unit are also surrendered.

#### **7.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share or MPT Unit, the forfeiture of that share or MPT Unit may be cancelled on such terms as the Directors think fit.

#### **7.9 Effect of forfeiture on former holder's liability**

A Member whose shares and MPT Units have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and ceases to be a MPT Unitholder and loses all entitlement to dividends and other distributions or entitlements on the shares or MPT Units; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the rate of 10% per annum from the date of forfeiture and also reasonable expenses of sale, but the former Member's liability ceases if and when the Company receives payment in full of all such money and, if applicable, interest and expenses in respect of forfeited shares.

#### **7.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company and MPT Unit have been forfeited in accordance with this Constitution on the date stated in the

statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and MPT Unit.

#### **7.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share and MPT Unit on any sale or disposition of the share and MPT Unit and may execute or otherwise effect a transfer of the share and MPT Unit in favour of the person to whom the share and MPT Unit are sold or disposed of and is not obliged to ensure that any part of the money which the person has paid for the share or the MPT Unit is paid to the former holder of the share.

#### **7.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and MPT Unit and is not bound to see to the application of any money paid as consideration.

#### **7.13 Irregularity or invalidity**

The title of the transferee to the share and MPT Unit is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share and MPT Unit under this Part 7.

#### **7.14 Forfeiture applies to non-payment of instalment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

#### **7.15 Forfeiture of a MPT Unit**

Where a MPT Unit is to be forfeited under this Part 7, Directors must consult the MPT Manager in taking action under articles 7.5 and 7.11.

#### **7.16 Stapling**

Each Member acknowledges the terms of clauses 28.5 to 28.7 of the MPT constitution. The terms of those clauses reflect the intention that a MPT Unit and share should remain Stapled to form a Mirvac Group Stapled Security. In particular, each Member acknowledges that under clause 28.7 of the MPT constitution in certain circumstances a share may be forfeited or sold or otherwise disposed by the Company as the case may be.

The Member authorises the MPT Manager and the Company to take whatever action they consider necessary to give effect to the term of those clauses including selling, signing an instrument of transfer or otherwise disposing of a share so as to ensure that a share remains Stapled to a MPT Unit to form a Mirvac Group Stapled Security.

While Stapling applies each Member authorises the Company to take whatever action it considers necessary in its absolute discretion necessary to give effect to any sale or disposal of a MPT Unit under this Constitution.

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## **8 General meetings**

### **8.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **8.2 Convening general meeting**

The Directors may:

- (a) convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act; and
- (b) while Stapling applies, convene a meeting of Members in conjunction with a meeting of the MPT Unitholders and, subject to the Corporations Act, make such rules for the conduct of such a meeting as they think fit.

### **8.3 Notice of general meeting**

Notice of a meeting of Members must be given in accordance with Part 18 and the Corporations Act.

### **8.4 Calculation of period of notice**

In computing the period of notice under article 8.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting. This article does not apply to a meeting convened in accordance with the Corporations Act by a single director, by Members or by the Directors on the request of Members or to a meeting convened by a court.

### **8.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be:

- (a) published in a daily newspaper circulating in Australia;
- (b) given to ASX; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

## **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

## **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

## **8.9 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the notice convening the meeting.

## **8.10 Proxy, attorney or Representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **8.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any



resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **8.12 Stapling**

While Stapling applies, the auditor of MPT may attend and speak at any general meeting.

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# **9 Proceedings at general meetings**

## **9.1 Membership at a specified time**

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on (or a component of Mirvac Group Stapled Securities quoted on) ASX at a specified time before the meeting are taken to be held at the time of the meeting by the persons who hold them at the specified time. The determination must be made and published in accordance with the Corporations Act.

## **9.2 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in Part 9 means a person who is a Member, a proxy, attorney or a Representative of that Member.

## **9.3 Number for a quorum**

Subject to article 9.6, three Members present in person or by proxy, attorney or Representative are a quorum at a general meeting. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted;
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

## **9.4 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **9.5 Quorum and time**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and

- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **9.6 Adjourned meeting**

At a meeting adjourned under article 9.5(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **9.7 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

## **9.8 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## **9.9 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

#### **9.10 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **9.11 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **9.12 Declaration of results**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **9.13 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **9.14 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment must be taken immediately;
- (c) the demand may be withdrawn; and

- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **9.15 Equality of votes – casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, then the chairman of the meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

#### **9.16 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

#### **9.17 Voting on a poll for partly paid shares**

Subject to article 9.21 and the terms on which shares are issued, if a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is determined as follows:

$$\frac{A \times B}{C} = D$$

where:

A is the number of those shares held by the Member;

B is the amount paid on each of those shares excluding any amount:

- (a) paid or credited as paid in advance of a call; and
- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;

C is the issue price of each of those shares; and

D is the number of votes the Member has.

### **9.18 Fractions disregarded for a poll**

On the application of article 9.17, disregard any fraction which arises.

### **9.19 Joint shareholders' vote**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register counts.

### **9.20 Vote of shareholder of unsound mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

### **9.21 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

### **9.22 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

### **9.23 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

#### **9.24 Directors entitled to notice of meeting**

A Director is entitled to receive a notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

#### **9.25 Proxy form while Stapling applies**

While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the MPT Units which they hold.

#### **9.26 Meetings by technology**

A meeting of the shareholders or any class of shareholders may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

#### **9.27 Joint Meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of MPT Units and, unless the Corporations Act requires otherwise, the Directors may make such rules of the conduct of such meetings as the Directors determine.

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## **10 The Directors**

### **10.1 Number of Directors**

The number of Directors is to be not less than three nor more than:

- (a) ten; or
- (b) any lesser number determined by the Directors (but the number must not be less than the number of Directors in office at the time the determination takes effect).

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **10.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

### **10.3 Rotation of Directors**

At each annual general meeting one-third of the Directors for the time being or, if their number is not three nor a multiple of three, the number nearest to but not more than one-third of the Directors must retire from office.

A Director (other than the Managing Director) must retire from office at the conclusion of the third annual general meeting after the Director was last elected or re-elected (as the case may be), even if his or her retirement results in more than one-third of all Directors retiring from office.

In determining the number of Directors to retire, no account is to be taken of a Director who only holds office until the conclusion of the meeting in accordance with article 10.8 or the Managing Director who is exempted from retirement by rotation in accordance with article 12.28.

#### **10.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

#### **10.5 Directors to retire**

The Directors to retire at any annual general meeting in accordance with article 10.3 must be those who have been longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

#### **10.6 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **10.7 Eligibility for election as Director**

Except for a person who is eligible for election or re-election under article 10.4 or 10.8 a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least:

- (a) in the case of a person recommended for election by the Directors, 20 business days before the general meeting; and
- (b) in any other case, 35 business days before the general meeting or such later period as required under the Listing Rules or the Corporations Act.

#### **10.8 Casual vacancy**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with article 10.1.

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting. This provision does not apply to one Managing Director nominated by the Directors under article 12.28.

## **10.9 Remuneration of Directors**

The Directors are to be remunerated for their services as Directors as follows:

- (a) the amount of the remuneration of the Directors is a yearly sum not exceeding the sum from time to time determined by the Company in general meeting. (The notice convening the general meeting must include the proposal to increase the Directors' remuneration and specify both the amount of the increase and the new yearly sum proposed for determination);
- (b) the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the fees are to be provided wholly in cash unless the Directors, with the agreement of the Director concerned, determine that part is to be satisfied in the form of non-cash benefits (including the issue or purchase of shares in the Company or the grant of options to subscribe for such shares);
- (d) in making a determination under paragraph (c), the Directors may fix the value of any non-cash benefit;
- (e) the Directors' fees accrue from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided; and
- (f) this article 10.9 does not apply to the remuneration of a Managing Director or any other Director appointed under article 12.26.

## **10.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 10.9.

## **10.11 Expenses**

A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

## **10.12 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;



- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor; and
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors.
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article 10.12 is also a reference to each Related Body Corporate of the Company.

### **10.13 Signing documents**

A Director is not disqualified because of a material personal interest from signing or participating in the execution of a document by or on behalf of the Company.

### **10.14 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) is not present personally or by proxy or represented by an Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
- (d) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of compensation or damages payable to the Director in respect of the termination of the

Director's appointment as a Director or of an appointment terminating with that as a Director.

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## **11 Powers and duties of Directors**

### **11.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting. To the extent permitted by law, while Stapling applies, the Directors may have regard to the interests of MPT Unitholders and must act in the best interests of the Mirvac Group as a whole constituted by the Company and MPT rather than only the interests in the Company.

### **11.2 Specific powers of Directors**

Without limiting the generality of article 11.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **11.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **11.4 Provisions in power of attorney**

A power of attorney granted under article 11.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **11.6 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

## **11.7 Powers of delegation**

The powers of delegation expressly or impliedly conferred by this constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

## **11.8 Directors may issue certain securities**

Any debentures, debenture stock, bonds, notes or other securities or debt instruments may be issued at the discretion of the Directors at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise.

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# **12 Proceedings of Directors**

## **12.1 Directors' meetings**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

## **12.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

## **12.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote. Their decision is for all purposes a decision of the Directors.

## **12.4 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

## **12.5 Chairman's casting vote**

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

## **12.6 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

## **12.7 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

## **12.8 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

## **12.9 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

## **12.10 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 10.9.

## **12.11 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

## **12.12 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

## **12.13 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

## **12.14 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote

if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **12.15 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is three or any greater number determined by the Directors from time to time.

#### **12.16 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 10.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **12.17 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

#### **12.18 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 12.17; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

#### **12.19 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of at least one Director and such other persons as they think fit.

#### **12.20 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 12.19 must exercise those powers in accordance with any directions of the Directors.

#### **12.21 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or

- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **12.22 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **12.23 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

In the event of an equality of votes the chairman of the meeting has a casting vote unless only two members of the Committee are present and entitled to vote at the meeting on the question.

#### **12.24 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are then in Australia and entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

#### **12.25 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### **12.26 Appointment of Managing and Executive Directors**

The Directors may:

- (a) appoint one or more of their number to the office of Managing Director or as an Executive Director or to any other office, except auditor, or employment under the Company for the period and on the terms they think fit;
- (b) subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Managing Director or Executive Director from that office and appoint another Director to that office.

### **12.27 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be:

- (a) a Director; or
- (b) employed by the Company.

### **12.28 One Managing Director exempt from retirement by rotation**

One Managing Director, nominated by the Directors, is exempt from the election requirement under article 10.8 and from retirement by rotation and is not counted under article 10.3 for determining the number of Directors to retire by rotation.

### **12.29 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

### **12.30 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

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## **13 Secretary**

### **13.1 Appointment of Secretary**

There must be at least one Secretary of the Company who is to be appointed by the Directors.

### **13.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **13.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

#### **13.4 Secretary to attend meetings**

A Secretary is entitled to attend all meetings of the Directors and all general meetings of the Company and may be heard on any matter.

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### **14 Seals**

#### **14.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

#### **14.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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### **15 Inspection of records**

#### **15.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

#### **15.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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### **16 Dividends and reserves**

#### **16.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

#### **16.2 No interest on dividends**

Interest is not payable by the Company on a dividend.



### **16.3 Reserves and profits carried forward**

The Directors may:

- (a) before paying any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied; and
- (b) carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

### **16.4 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

### **16.5 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of a Member, all sums of money (if any) presently payable by that Member to the Company or MPT Manager on account of calls or otherwise in relation to shares in the Company or MPT Units.

### **16.6 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate; and
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

#### **16.7 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under article 16.6, the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors' opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

#### **16.8 Payment by cheque and receipts from joint holders**

A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

#### **16.9 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

#### **16.10 Election to reinvest dividend**

Subject to the Listing Rules, the Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company on such terms and conditions as the Directors think fit. The Directors may at any time on notice to the Members or class of Members terminate or suspend any reinvestment plan granted to Members or a class of Members under this article.

While Stapling applies, the Directors must not grant to Members or any class of Members any right to reinvest cash dividends unless at the same time an offer to issue an identical number of MPT Units to those persons has been made. The offeree must be precluded from accepting any offer other than an offer for equal number of shares and MPT Units. The Directors may make provisions governing the amount of the reinvested dividends to be used to subscribe for shares in the Company and the amount to be used to subscribe for MPT Units taking into account the issue price of the MPT Units under the MPT Constitution.

#### **16.11 Election to accept shares in lieu of dividend**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that Members may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

The provisions of the second paragraph of article 16.10 apply (with such changes as may be necessary) to this article 16.11. While Stapling applies, no shares may be issued to a Member under this article 16.11 unless the Member also receives an equal number of MPT Units.

#### **16.12 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

#### **16.13 Simultaneous dividends and distributions**

The Directors may, in their absolute discretion, and notwithstanding any other provision in this Part 16, declare or pay a dividend or distribution, whether interim, final or otherwise, or delay in the making of any such declaration or payment, in order to ensure that the declaration or payment of any distribution to MPT Unitholders is made at the same time as a declaration or payment of a dividend or distribution by the Company.

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## **17 Capitalisation of profits**

### **17.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **17.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 17.1 are:

- (a) in paying up any amounts unpaid on shares and, while Stapling applies, any MPT Units held by Members;
- (b) subject to article 17.4, in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

### **17.3 Effecting the resolution**

The Directors may do all things necessary to give effect to the resolution under article 17.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned;

- (c) fix the value of specified assets; or

- (d) vest property in trustees.

#### **17.4 Issue of further shares while Stapling applies**

While Stapling applies, the Directors must not resolve to issue any shares to Members under this Part 17 unless, at the same time as the issue, an identical number of MPT Units are issued to those Members.

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### **18 Service of documents**

#### **18.1 Document includes notice**

In this Part 18, a reference to a document includes a notice.

#### **18.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by any other means permitted by the Corporations Act.

#### **18.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

#### **18.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

If a notice of meeting is given to a Member under section 249J(3)(cb) of the Corporations Act, the document is taken to have been given on the day following the day on which the Member is notified that the notice of meeting is available.

## **18.5 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

## **18.6 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this Part to the person from whom that person derives title prior to registration of that person's title in the Register.

## **18.7 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission or by any other means permitted by the Corporations Act on a particular date is prima facie evidence that the document was so sent on that date.

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# **19 Winding up**

## **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

## **19.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

## **19.3 Notice to MPT Manager**

On or before commencement of a winding up of the Company in accordance with this Part 19, the liquidator must give the MPT Manager written notice that the Company is to be wound up. Notwithstanding any other terms of this Constitution, should MPT be terminated under the provisions of the MPT Constitution, the Stapling Provisions will cease to apply.

## **19.4 Shares issued on special terms**

Articles 19.1, 19.2 and 19.3 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **20 Indemnity and insurance**

### **20.1 Indemnity**

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **20.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **20.3 Contract**

The Company may enter into an agreement with a person referred to in articles 20.1 and 20.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **21 Restricted Securities**

### **21.1 Disposal during Escrow Period**

Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

## **21.2 Breach of Restriction Agreement or Listing Rules**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **21.3 Interpretation - Restricted Securities**

In this Part 21, the expressions “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

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# **22 Small Holdings**

## **22.1 Divestment Notice**

If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this article after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

## **22.2 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.



### **22.3 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

### **22.4 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this Part but unless the Relevant Shares are sold within six weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

### **22.5 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

### **22.6 Conclusive evidence**

A statement in writing by or on behalf of the Company under this Part 22 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this Part 22 is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

### **22.7 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this Part. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to

the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this Part 22.

## **22.8 Payment of proceeds**

Subject to article 22.9, where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and
- (b) any certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this article is at the risk of the Member to whom it is sent.

## **22.9 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this article, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

## **22.10 Remedy limited to damages**

The remedy of a Member to whom this article applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

## **22.11 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this article, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and

- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

#### **22.12 12 month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 22.13).

#### **22.13 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this article to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 22.12 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

#### **22.14 Stapling**

While Stapling applies, no sale of Relevant Shares may occur unless, at the same time as those Relevant Shares are sold, an identical number of MPT Units are redeemed or sold.

#### **22.15 Interpretation - Small Holdings**

In this Part, these meanings apply unless the contrary appears:

**Divestment Notice** is a notice given under article 22.1 to a Small Holder or a New Small Holder.

**Market Value** in relation to a Share or Mirvac Group Stapled Security is the closing price on a Trading Platform of the Share or Mirvac Group Stapled Security.

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding** is a holding of Shares (or while Stapling applies, Shares comprised in a holding of Mirvac Group Stapled Securities) created after the date on which this article came into effect by the transfer of a parcel of Shares (or while Stapling applies, Mirvac Group Stapled Securities) the aggregate Market Value of which at the time the transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of securities as provided under the Listing Rules.

**Relevant Period** is the period specified in a Divestment Notice under articles 22.1 and 22.2.

**Relevant Shares** are the Shares specified in a Divestment Notice.

**Shares** are shares in the Company all of the same class.

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding.

**Small Holding** is a holding of Shares (or while Stapling applies, Shares comprised in a holding of Mirvac Group Stapled Securities) the aggregate Market Value of which holding at the relevant date is less than a marketable parcel of securities as provided under the Listing Rules.

**Trading Platform** has the same meaning as in the ASX Operating Rules (as amended or replaced from time to time).

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## 23 Definitions and Interpretation and Stapling generally

### 23.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 12.6.

**ASX** means ASX Limited.

**Committee** means a committee of Directors constituted under article 12.19.

**Company** means Mirvac Limited (ACN 003 230 699).

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this constitution.

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

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a person appointed as an executive director under article 12.26.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

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

**Managing Director** means a person appointed as a managing director under article 12.26.

**Member** means a person entered in the Register or the Mirvac Group Stapled Security Register (as the case may be) as the holder of shares in the capital of the Company.

**Mirvac Group** means the Company and MPT while the shares and MPT Units are Stapled.

**Mirvac Group Stapled Security** means one share and one MPT Unit, Stapled to each other.

**Mirvac Group Stapled Security Register** means the register of Mirvac Group Stapled Securities to be established and maintained in accordance with article 2.6.

**MPT** means the registered managed investment scheme known as the “Mirvac Property Trust” (ARSN 086 780 645).

**MPT Constitution** means the trust deed dated 9 April 1987 in relation to MPT, as amended, which now binds Mirvac Funds Limited as responsible entity of MPT.

**MPT Manager** means Mirvac Funds Limited (ACN 002 561 640) in its capacity as responsible entity of MPT.

**MPT Unit** means a fully paid ordinary unit in MPT.

**MPT Unitholder** means a person shown in the register of MPT members or the Mirvac Group Stapled Security Register (as the case may be) as the holder of a MPT Unit.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 15% per annum.

**Register** means the register of Members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**Related Body Corporate** has the same meaning as related body corporate has in the Corporations Act.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Restriction Agreement** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

**Secretary** means a person appointed under article 13.1 as secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**share** means a fully paid ordinary share in the capital of the Company.

**Stapled** means the linking together of shares and MPT Units on a one to one basis so that one may not be transferred, or otherwise dealt with, without the other in accordance with this Constitution and the MPT Constitution and which is quoted on the ASX jointly as a “Stapled Security” or such other terms as the ASX permits.

**Stapling** means the process that results in shares and MPT Units being and remaining Stapled to each other.

**Stapling Provisions** means the provisions of this Constitution relating to, referring to or connected with Stapling and, for avoidance of doubt, includes without limitation those provisions relating to, referring to or connected with Stapling contained in articles 1.3, 1.5, 1.9, 2, 3.5, 3.9 to 3.13, 4.10, 5.6(e), 5.10, 6.5, 7.3 to 7.13, 7.15, 7.16, 8.2(b), 8.12, 9.25, 9.27, 11.1, 16.10, 16.11, 16.13, 17.4, 19.3, 22.14, 22.15, 23.1, 23.9 to 23.12 (inclusive) and Schedule 1 article 1(i) and **Stapling Provision** has a corresponding meaning.

**State** means the State or Territory in which the Company is for the time being registered.

## 23.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(regulations)** a reference to a law includes regulations and instruments made under that law;
- (e) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;

- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### **23.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### **23.4 Listing Rules interpretation**

In this constitution, unless the contrary intention appears the expressions “Takeover Bid”, “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

### **23.5 Headings and articles**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into articles as indicated by its Contents.

### **23.6 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

### **23.7 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian and the amount payable will be converted from Australian currency in any manner, at any time and at any exchange rate as the Directors think fit; and

- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member's shares are registered and any other matters as the Directors consider appropriate.

### **23.8 Application of Listing Rules**

In this Constitution a reference to the Listing Rules only applies while the Company is on the official list of ASX.

While the Company is on the official list of ASX:

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

### **23.9 Application of Stapling Provisions**

If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the Operating Rules of a CS Facility, the Corporations Act or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.



### **23.10 Listing and consistency with MPT Constitution**

The Directors must use every reasonable endeavour to procure that Mirvac Group Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to Mirvac Group Stapled Securities in the MPT Constitution.

### **23.11 Intentions concerning issue and transfer of Mirvac Group Stapled Securities**

The shares are intended to be Stapled to MPT Units in the ratio of one share to one MPT Unit. It is the intention of the Company in adopting this Constitution (and as more specifically set out in this Constitution) that:

- (a) the Members shall be identical to the MPT Unitholders;
- (b) as far as the law permits, a share and an MPT Unit which are Stapled together shall be treated as one security;
- (c) no transfer of a share is to occur without an MPT Unit being transferred at the same time from the same transferor to the same transferee; and
- (d) no share is to be issued unless an MPT Unit is issued at the same time to the same person.

### **23.12 Suspension of Stapling Provisions**

Subject to the Corporations Act, the Listing Rules and approval by a special resolution of MPT Unitholders, the Directors may determine that the Stapling Provisions will cease to apply provided that at the same time the MPT Manager also suspends the Stapling Provisions in the MPT Constitution. If the Directors do so, they may at a later time give notice that the application of the Stapling Provisions is to recommence provided the MPT Manager gives simultaneously the same notice to MPT Unitholders.

## Schedule 1 - Rights attaching to preference shares

### 1 Terms of preference shares

The Company may issue preference shares under article 1.3 on the following terms:

- (a) each preference share confers on the holder a right to receive a preferential dividend at the rate and on the basis decided by the Directors under the terms of issue;
- (b) in addition to the preferential dividend, each preference share may participate with the ordinary shares in any amount payable as a dividend if, and to the extent that, the Directors decide under the terms of issue;
- (c) the preferential dividend is cumulative unless, and to the extent that, the Directors decide otherwise under the terms of issue;
- (d) each preference share confers on its holder:
  - (i) the right to the preferential dividend in priority to the payment of any dividend on any other class of shares; and
  - (ii) the right in a winding up or on redemption to payment in cash in priority to any other class of shares of:
    - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
    - (B) any amount paid on the share;
- (e) unless otherwise decided by the Directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this schedule;
- (f) to the extent the Directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only;
- (g) a preference share does not entitle its holder to vote at any general meeting of the Company except:
  - (i) on a proposal:

- (A) to reduce the share capital of the Company;
  - (B) that affects rights attached to the share;
  - (C) to wind up the Company; or
  - (D) for the disposal of the whole of the property, business and undertaking of the Company;
- (ii) on a resolution to approve the terms of a buy back agreement;
  - (iii) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (iv) during the winding up of the Company; and
  - (v) in any other circumstances, the Directors determine at the time of issue;
- (h) each preference share confers on its holder the same rights as those conferred by the Constitution upon the holders of ordinary shares in relation to receiving notices of general meetings, reports, balance sheets and accounts and of attending and being heard at all general meetings of the Company; and
  - (i) while Stapling applies, when a preference share is issued or allotted, a MPT Unit is issued or allotted to the same person at the same time and on the same terms as the preference share.

## 2 **Foreign Currency**

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

## 3 **Conversion to ordinary shares**

A preference share which, in accordance with its terms of issue, may be converted into an ordinary share will, at the time of conversion and without any further act, have the same rights as a fully paid ordinary share and rank equally with other fully paid ordinary shares on issue. This is subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion. In addition, the terms of issue of the preference share may provide for the issue of additional ordinary shares on conversion as determined by the Directors.

# Amending deed poll

Mirvac Property Trust ARSN 086 780 645

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Mirvac Funds Limited ACN 002 561 640

**(Responsible Entity)**

MinterEllison

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L A W Y E E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
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# Amending deed poll

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# Details

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Date 11 November 2010

## Parties

Name Mirvac Funds Limited in its capacity as responsible entity of the Mirvac Property Trust ARSN 086 780 645  
ACN 002 561 640  
Short form name **Responsible Entity**

## Background

- A The Responsible Entity is the responsible entity of the registered managed investment scheme known as the Mirvac Property Trust ARSN 086 780 645 (**Trust**). The Trust was established pursuant to a trust deed dated 9 April 1987, as subsequently amended from time to time (**Constitution**).
- B Clause 21.1 of the Constitution provides that subject to the *Corporations Act 2001* (Cth) (**Corporations Act**), the Responsible Entity may by deed amend the Constitution.
- C Under paragraph 601GC(1)(a) of the Corporations Act, the constitution of a registered scheme may be modified by a special resolution of members of the Trust.
- D At a meeting held on 11 November 2010, members of the Trust approved a special resolution to make the amendments to the Constitution contained in this deed.
- E The amendments to the Constitution contained in this deed will take effect when a copy of this deed is lodged with ASIC.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Definitions

In this deed:

- (a) **Effective Time** means the date and time on which a copy of this deed is lodged with ASIC in accordance with subsection 601GC(2) of the Corporations Act; and
- (b) unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.

### 1.2 Interpretation

Clause 1.2 of the Constitution applies to this deed as though that clause was set out in full.

## 2. Amendment of the Constitution

On and from the Effective Time, the Constitution is amended as follows:

- (a) clause 4.6 is amended by inserting a new subparagraph (f) as follows:

'The Manager may structure an offer made under clause 4.5 in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief) despite anything else in clause 4.5, clause 4.6 and clause 4.7.';
- (b) clause 4.8(c) is amended by deleting the words '(other than this clause 4.8)' and inserting in their place the words '(other than an issue under this clause 4.8 at a price set by the Manager in accordance with applicable Relief) or an issue under clause 4A.'; and
- (c) clause 31 is amended by replacing the reference to 'Australian Stock Exchange Limited' with 'ASX Limited'.

## 3. No redeclaration etc

The Manager confirms that it is not, by **clause 2** of this deed:

- (a) redeclaring the Trust;
- (b) resettling the Trust;
- (c) causing the transfer, vesting or accruing of property in any person; or
- (d) entering into a new constitution.

## 4. Governing law and jurisdiction

This deed is governed by the laws of New South Wales, Australia. The Responsible Entity irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from those courts.

# Signing page

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**EXECUTED** as a deed poll.

**Executed by Mirvac Funds Limited** in accordance with section 127 of the *Corporations Act 2001* in the presence of:

\_\_\_\_\_  
Signature of director

Nicholas R. Collishaw  
\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

Sonya L. Harris  
\_\_\_\_\_  
Name of director/company secretary (print)



# **Consolidated Constitution of the Mirvac Property Trust (ARSN 086 780 645) as at 11 November 2010**

**Responsible Entity:**

**Mirvac Funds Limited (ACN 002 561 640)**

Note: This is a consolidated version of the Trust Deed of the Mirvac Property Trust (formerly Mirvac Split Trust) dated 9 April 1987 (**Original Trust Deed**), incorporating the amendments that have subsequently been made to the Original Trust Deed.

This document is not a legally binding document. Reference should be made to the Original Trust Deed and each subsequent amending deed.

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# Constitution of the Mirvac Property Trust (ARSN 086 780 645)

## Operative provisions:

### 1 Name of Trust

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- 1.1 The Trust is called the Mirvac Property Trust or by such other name as the Manager determines from time to time<sup>1</sup>.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

### 2 Assets held on trust

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- 2.1 The Trustee declares that it will hold the Assets that constitute the Trust upon Trust for the Unitholders and act in the interests of the Unit Holders on and subject to the terms and conditions of this deed<sup>2</sup>.
- 2.2 Any Asset held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires<sup>3</sup>.

### 3 Units and Options

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#### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 A Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities.
- 3.3 A Unit does not confer an interest in a particular Asset.

#### Options

- 3.4 Subject to the provisions of this constitution, the Manager may create and issue Options on such terms and conditions as the Manager determines.
- 3.5

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<sup>1</sup> See Corporations Regulation 5C.1.02

<sup>2</sup> See section 601FC(2) of the Corporations Act

<sup>3</sup> See section 601FC(1)(i)

- (a) Subject to this constitution, the Corporations Act (and the conditions of any applicable Relief) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:
- (i) for consideration (as permitted under any applicable Relief) or no consideration; and
  - (ii) on the basis that the Application Price for a Unit to be issued on exercise of the Option is:
    - (A) for Options issued pursuant to pari passu offers to all existing Members (subject to clause 3.5(b)), the Application Price determined by the Manager provided that the Application Price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 90%; or
    - (B) an Application Price in accordance with clauses 4.8. or 4.12,

and otherwise on terms and conditions and with such entitlements as determined by the Manager.

- (b) Subject to the Listing Rules and the conditions of any applicable Relief, if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.

### 3.6

- (a) An Option Holder may exercise an Option during the exercise period for the Option by giving notice to the Manager in accordance with the terms and conditions of issue of the Option together with payment in full of the exercise price (being the Application Price for the Unit to be issued following the exercise of the Option).
- (b) On exercise of an Option, the Option Holder is entitled to subscribe for and be issued such number of Units as provided for in the terms and conditions of issue of the Option.

3.7 Upon the termination of the Trust, an Option Holder is entitled to repayment of the issue price paid by the Option Holder for the issue of any Option which has not been exercised, unless the terms and conditions of issue of the Option provide otherwise.

3.8 Subject to clause 3.7, an Option does not confer on an Option Holder any interest in the Trust or any right to participate in any distribution of the income or capital of the Trust.

## **Rights attaching to Units and Options**

- 3.9 A Member holds a Unit subject to this constitution and the rights, restrictions and obligations attaching to that Unit. An Option Holder holds an Option subject to this constitution and the terms and conditions of issue of the Option.

## **Fractions of Units**

- 3.10 Fractions of a Unit may not be issued.
- 3.11 Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue, redemption or creation by consolidation or division of a fraction of one Unit, the number of Units to be issued, redeemed or recorded in the Register as a result of consolidation or division may be rounded down respectively to the nearest whole Unit as determined by the Manager.

## **Consolidation and division of Units and Options**

- 3.12 Units and Options may be consolidated or divided in any proportion as determined by the Manager<sup>4</sup>.
- 3.13 While Stapling applies, Units and Options may only be consolidated or divided if the related Stapled Shares and Options over Stapled Shares are also consolidated or divided at the same time and to the same extent.

## **Transfer of Units and Options**

- 3.14 Subject to clause 3.15, Members may transfer Units and, subject to the relevant terms and conditions of issue, Options.
- 3.15 While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.16 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and be presented, if the Manager requires, for Registration duly stamped.
- 3.17 A transfer is not effective until Registered.
- 3.18 Subject to the Listing Rules while the Listing Rules apply<sup>5</sup>, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially

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<sup>4</sup> Refer Listing Rules, Chapter 7 – reorganisations of capital

<sup>5</sup> Listing Rule 8.10 restricts the Manager's ability to prevent proper ASTC transfers, but allows for a holding lock in certain specified circumstances.



Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.15.

- 3.19 While Stapling applies and subject to the Corporations Act and the Listing Rules:
- (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities and any provision of clauses 3.14 to 3.18 of this constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
  - (b) a reference in clauses 3.14 to 3.18 inclusive to a "Unit" will be deemed to be a reference to a Stapled Security.

### **Joint tenancy**

- 3.20 Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

### **Death, legal disability of Member**

- 3.21 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's or Option Holder's name.
- 3.22 A person who becomes entitled to a Unit or an Option because of the death, bankruptcy, insanity or other disability of a Member or Option Holder is entitled to receive and may give a discharge for all money payable in respect of the Unit or Option but is not entitled to receive notices of or to attend or vote at any meetings of Members or Option Holders until that person is Registered as the holder of the Unit or Option.

### **Number of Units and Options**

- 3.23 While Stapling applies and except as provided for in clause 30A, the number of issued Units at any time must equal the number of issued Stapled Shares.
- 3.24 While Stapling applies, the number of issued Options at any time must equal the number of issued options over Stapled Shares.

### **Register**

- 3.25 The Manager must keep a Register of all Members and Option Holders as the Corporations Act requires. While Stapling applies,

the Register will comprise a single register which records details of the members of the Trust and the Stapled Company.

## Stapling

### 3.26 While Stapling applies:

- (a) the Manager may not issue Units unless the applicants for the Units are contemporaneously offered identical numbers of Stapled Shares which will be Stapled to the Units offered;
- (b) the Manager may not issue Options unless Option Holders are contemporaneously offered options over identical numbers of Stapled Shares which will be Stapled to the Units issued pursuant to the Options when they are exercised; and
- (c) any offer of Units or Options may only be accepted if the offeree accepts that offer of Units or Options, as well as the contemporaneous offer of Stapled Shares or options over Stapled Shares referred to in clause 3.26(a) and (b) as the case may be.

## 4 Application Price for Units<sup>6</sup>

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### 4.1 Subject to clauses 4A, 19.1 and clause 30A.2(a), a Unit must only be issued at an Application Price:

- (a) subject to clauses 4.1 (b), (c), (d), (e), (f), (g) and (h), while Units are Officially Quoted, equal to the weighted average Market Price of Units during the 5 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated;
- (b) subject to clauses 4.1 (c), (d), (e), (f), (g) and (h), while Units are Officially Quoted as part of a Stapled Security, in accordance with clause 4.4;
- (c) in the case of a rights issue, in accordance with clause 4.5;
- (d) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.8;
- (e) in the case of reinvestment of income, in accordance with clauses 4.10 and 4.11;
- (f) in the case of a Unit issued upon the exercise of an Option, determined in accordance with clause 3.5(a) or clauses 4.1(a), (b) or (g);
- (g) in the case of a Unit issued pursuant to an Employee Security Plan, determined in accordance with clause 4.12 or 4.13; and

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<sup>6</sup> Required to be included by Section 601GA(1)(a)

- (h) in the case of a Unit issued pursuant to a Purchase Plan, determined in accordance with clause 4.14; and
- (i) in all other cases, calculated as:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Number of Units in issue}}$$

- 4.2 Subject to clause 4.10, each of the variables in clause 4.1(i) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
  - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager, whichever happens later.
- 4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

#### **Determination of Application Price where Stapled Securities are issued**

- 4.4
- (a) Where clause 4.1(b) applies, a Stapled Security must only be issued at an application price for the Stapled Security equal to the weighted average Market Price of Stapled Securities during the 5 Business Days immediately prior to the date on which or as at which the application price for the Stapled Security is to be calculated.
  - (b) In each case where a Stapled Security is issued the Manager must determine what part of the application price of the Stapled Security is to represent the Application Price of the Unit.
- For these purposes, the percentage that the Application Price of a Unit bears to the application price of a Stapled Security must equal the percentage that the net tangible assets of the Trust bears to the net tangible assets of the Mirvac Group by reference to the last annual accounts of the Trust and the Mirvac Group respectively.

#### **Rights issues**

- 4.5 The Manager may at any time offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right or entitlement is renounceable);
- (b) where Units are Officially Quoted as part of a Stapled Security and it is proposed to issue Stapled Securities at an application price less than the weighted average Market Price of a Stapled Security during the five Business Days immediately prior to the date on which or as at which the application price is to be calculated, the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share is not less than 80% of the application price of the Stapled Security which would otherwise apply except in relation to the:
  - (i) November 2008 Offer where:
    - (A) the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share is not less than 50% of the application price of the Stapled Security which would otherwise apply; and
    - (B) where the application price for the Stapled Securities is determined by a pre-launch cornerstone process; and
  - (ii) June 2009 Offer where the application price for Stapled Securities will be \$1.00. This price, being the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share, is not less than 50% of the application price of the Stapled Security which would otherwise apply under clause 4.4(a), determined as at the date of announcement of the June 2009 Offer;
- (c) in all other cases where Units are Officially Quoted, where, following an offer of Units on a pro rata basis, it is proposed to issue Units at an Application Price less than the average Market Price of Units during the 5 Business Days immediately prior to the date on which or as at which the application price is to be calculated, the relevant Application Price is not less than 80% of the Application Price which would otherwise apply;
- (d) where Units are not Officially Quoted, the Application Price is not less than 80% of the Application Price calculated in accordance with clause 4.1(i); and

- (e) while Stapling applies, the same Members are contemporaneously offered identical numbers of Stapled Shares which will be Stapled to the Units offered,

but, subject to the Listing Rules, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia<sup>7</sup>.

While Stapling applies, any offer of Units under this clause 4.5 may only be accepted if the offeree accepts that offer of Units, as well as the contemporaneous offer of Stapled Shares referred to in paragraph (e) of this clause. A person to whom the right or entitlement is renounced shall be regarded as an offeree.

## Terms of pro rata issues

### 4.6

- (a) Any offer made under clause 4.5 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.5, provided that the Manager may adjust any entitlement to accord with the Listing Rules. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units (or Stapled Securities, in the case of clause 4.5(b)) offered for subscription under clause 4.5 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that:
- (i) the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members; or
  - (ii) where Stapled Securities are Officially Quoted, the aggregate of the relevant Application Price for the Units and the application price for the Stapled Shares is not less than that at which the Stapled Securities were originally offered to the holders of Stapled Securities.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.5 (or Stapled Securities in the case of clause 4.5(b)), such underwriter may take up any Units (or Stapled Securities in the case of clause 4.5(b)) not subscribed

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<sup>7</sup> Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

for by Members (or holders of Stapled Securities in the case of clause 4.5(b)).

- (d) The Manager may structure the Entitlement Offer component of the November 2008 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.
- (e) The Manager may structure the June 2009 Entitlement Offer component of the June 2009 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.
- (f) The Manager may structure an offer made under clause 4.5 in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief) despite anything else in clause 4.5, clause 4.6 and clause 4.7.

#### 4.7

- (a) Notwithstanding the provisions of clauses 4.5 and 4.6, if:
  - (i) Units are to be issued in the circumstances contemplated by clauses 4.5 and 4.6; and
  - (ii) the issue is to be renounceable; and
  - (iii) one or more of the Members is resident or domiciled outside Australia,

the Manager (subject to any approval required from the ASX having been obtained) may elect that the Units to be offered or issued or both are only to be offered or issued or both to either:

  - (A) Members resident or domiciled in Australia; or
  - (B) Members resident or domiciled in Australia and New Zealand,

and that they are not to be offered or issued or both to Members in other countries.
- (b) Where the Manager makes an election under clause 4.7(a), then:
  - (i) the Manager must procure that a number of Units (corresponding to the number that would have been offered to those Members but for the Manager's election under this clause 4.7) are offered to a nominee (which may be the Manager) provided that while Stapling applies, that nominee is

contemporaneously offered an identical number of Stapled Shares which will be Stapled to those Units; and

- (ii) the Manager must use its best endeavours to procure that the nominee sells the rights in respect of those Units (and if applicable, Stapled Shares) and (after deducting the nominee's reasonable costs and expenses) remits the balance of the funds received by it for those rights to those Members (in proportion to the number of Units including if applicable the number of Stapled Shares that would have been offered to those Members but for the Manager's election under this clause 4.7).

## Placements and other issues

### 4.8

- (a) While Units or Stapled Securities are Officially Quoted, the Manager may at any time issue Units or Stapled Securities to any person, whether by way of a placement or otherwise, at a price and on terms determined by it, provided that the Manager complies with the Listing Rules applicable to the issue and the terms of any applicable ASIC relief and provided that while Stapling applies, an offer of Units under this clause 4.8 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Stapled Shares as required to be made under clause 3.26.

- (ba) Without limiting clause 4.8(a), where:

- (i) the Manager proposes an institutional placement of Stapled Securities as part of the November 2008 Offer; and
- (ii) the application price of the Stapled Securities under the institutional placement is determined on or about the same time as the application price for Stapled Securities under the Entitlement Offer, through a pre-launch cornerstone process,

then the application price of the Stapled Securities under the institutional placement must be the same as the application price of Stapled Securities under the Entitlement Offer.

- (bb) Without limiting clause 4.8(a), where:

- (i) the Manager proposes an institutional placement of Stapled Securities as part of the June 2009 Offer; and

- (ii) the application price of the Stapled Securities under the institutional placement will be \$1.00. This price is the same as the application price of Stapled Securities under the June 2009 Entitlement Offer.
- (bc) Without limiting clause 4.8(a), where:
- (i) the Manager proposes an institutional placement of Stapled Securities as part of the April 2010 Offer; and
  - (ii) the application price of the Stapled Securities under the institutional placement will be \$1.40.
- (b) Without limiting the operation of clause 4.5 or the generality of clause 4.8(a), the Manager may at any time issue Units or Stapled Securities to any person, whether by way of a placement or otherwise, at a price and on terms determined by it:
- (i) in accordance with any Relief; and
  - (ii) where the issue, together with any Related Issue in the previous year does not, immediately before the issue, comprise more than 15% of all issued Units or Stapled Securities.
- (c) In clause 4.8(b), **Related Issue** does not include an issue in accordance with clause 4 (other than an issue under this clause 4.8 at a price set by the Manager in accordance with applicable Relief or an issue under clause 4A) or an issue approved or ratified by Members:
- (a) by a special resolution, where both of the following apply:
    - (i) votes are only cast in respect of Units or Stapled Securities (**Eligible Interests**)
      - (A) that are held by a Member who:
        - (I) will not acquire any of the Units or Stapled Securities that are to be issued; or
        - (II) did not acquire any of the units or Stapled Securities previously issued; or
      - (B) that are held by a Member for the benefit of another person who:
        - (I) will not obtain beneficial ownership of any of the Units or



Stapled Securities that are to be issued; or

(II) did not obtain beneficial ownership of any of the Units or Stapled Securities previously issued; and

(ii) the value of the Eligible Interests held by Members who vote represents at least 25% of the total value of Eligible Interests;

(b) unless the Manager reasonably considers that the issue will not adversely affect the interests of Members in another class (if any) – Members in that other class approve or ratify the issue by a resolution satisfying in respect of that other class, paragraph (a); and

(c) any notice convening a meeting to vote on the issue contains particulars of the use to be made, or the use that has been made, of the money raised by the issue.

#### 4.9 [Deleted]

### Reinvestment

4.10 The Application Price payable for each Unit upon reinvestment of distributions is the Application Price as determined by the Manager, provided that:

(a) while Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment of distributions (if any) is calculated in accordance with clause 4.1(i) as at the first Business Day after the end of the Distribution Period to which the distribution relates less such discount, if any, not exceeding 20% as the Manager may determine;

(b) while Units are Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is not less than 80% of the weighted average Market Price of Units for the 5 Business Days following the end of the Distribution Period to which the distribution relates.

4.11 While Stapling applies, clause 4.10 will not apply and the Application Price payable for each Stapled Security upon reinvestment of distributions is the arithmetic average of the daily volume weighted average price of fully paid Stapled Securities traded on the ASX for the five day trading days commencing on the third trading day after the books closing date less such discount, if any, not exceeding 5% as the Manager may determine.

## **Employee Security Plan**

- 4.12 While Units are Officially Quoted, the Manager may at any time issue Units, Options or rights to Units or any of these to any Employee for no consideration pursuant to an offer under any Employee Security Plan.
- 4.13 While Units are Officially Quoted as part of a Stapled Security, the Manager may at any time issue Units pursuant to an offer under any Employee Security Plan to any Employee at a price being that part of the application price for each Stapled Security of which each Unit is a component determined by the Manager where the Stapled Security is issued at an application price equal to the volume weighted average Market Price of Stapled Securities during the 5 Business Days immediately prior to:
- (a) the date the Stapled Security is issued pursuant to the offer; or
  - (b) if the Stapled Security is issued on exercise of an Option under an Employee Security Plan, the date of the offer of the Option.

## **Purchase Plan**

- 4.14 Without limiting the provisions of this constitution and subject to the Corporations Act, the Manager may issue Units at an Application Price determined by the Manager (being a price other than the Application Price calculated in accordance with this clause 4) under a Purchase Plan.

## **4A Issue of Units as Bid Consideration**

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### **Manager may issue Stapled Securities as Bid Consideration**

4A.1 While Stapling applies, the Manager may issue a Stapled Security as consideration, or part of the consideration, to acquire securities or financial products of a target entity under an off-market bid made in accordance with Chapter 6 of the Corporations Act ("**Bid Consideration**").

### **Application price of Stapled Securities issued as Bid Consideration**

4A.2 The Manager may issue a Stapled Security which is, or forms part of, the Bid Consideration at an application price which is equal to the weighted average Market Price of Stapled Securities during the 5 Business Days immediately prior to the date on which the public announcement of the off-market bid, or any revised off-

market bid, for securities or financial products of the target entity is first made by the Manager or by an associate of the Manager in relation to the off-market bid.

In this case the Manager must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit. This determination must be made in accordance with the requirements of clause 4.4 relating to the apportionment of the application price of Stapled Securities.

### **Satisfaction of obligation to make payment or transfer property**

- 4A.3 The Manager must accept the transfer of securities or financial products of the target entity, which are the subject of an acceptance of an offer under the off-market bid ("**Offer**"), in satisfaction of the obligation to make payment or transfer property for either:
- (a) the application price for Stapled Securities, in the event that only Stapled Securities comprise the Bid Consideration; or
  - (b) the application price for Stapled Securities, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Stapled Securities and other consideration.

## **5 Application procedure**

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### **Application form**

- 5.1 An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.
- 5.2 While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Stapled Shares.

### **Payment**

- 5.3 Without limiting clause 4A, payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
  - (a) accompany the application;
  - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or

- (c) comprise a reinvestment of distribution in accordance with clause 8.22.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimburseable out of the Assets or payable by the Member concerned, as the Manager decides.

### **Manager may reject**

- 5.4 Subject to clause 5.5, the Manager may reject an application in whole or in part without giving any reason for the rejection.

### **Manager must reject**

- 5.5 While Stapling applies, the Manager must reject an application for Units if the applicant does not apply at the same time for an identical number of Stapled Shares or if an identical number of Stapled Shares will not be issued to the applicant at the same time as the issue of Units to the applicant.

### **Minimum amounts**

- 5.6 The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time.

### **Issue date**

- 5.7 Units are taken to be issued when:
  - (a) the Manager accepts the application; or
  - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager, whichever happens later.

### **Uncleared funds**

- 5.8 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

### **Income entitlement of Units**

- 5.9 Except as otherwise expressly provided in this constitution, the Manager may in its discretion issue Units on terms that such Units:

- (a) participate fully in the allocation of the Distribution Amount in respect of the Distribution Period in which they are issued;
- (b) do not entitle the holder of such Units to receive a share of the Distribution Amount in respect of the Distribution Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a share of the Distribution Amount in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distribution Amount to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

## 6 No redemption of Units

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- 6.1 The Manager is not obliged to redeem Units.

### **Restriction on issue and redemption of Units**

- 6.2 No Units may be issued or redeemed after the 80th anniversary from the day before the Trust commenced if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

## 7 Valuation of assets

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### **Periodic valuations**

- 7.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.<sup>8</sup>
- 7.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 7.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value<sup>9</sup>.
- 7.4 While Units are not Officially Quoted, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Manager

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<sup>8</sup> See section 601FC(j) for Manager's obligations concerning valuation

<sup>9</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

must be capable of resulting in a calculation of the Application Price that is independently verifiable.

## 8 Income and distributions to Members

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### Distributable income

#### 8.1

The Manager must determine the Net Operating Income and the Distribution Amount for each Distribution Period.

#### 8.2

- (a) The Net Operating Income of the Trust is the income (calculated on the basis of ordinary concepts, excluding any capital gains) less fees, costs, losses, Taxes, depreciation and any accumulated losses carried forward from a previous Distribution Period.
- (b) For the purposes of determining the Net Operating Income of the Trust the Manager may determine whether any receipt, profit, gain, payment, loss, outgoing, provision or reserve or any sum of money or investment in a Distribution Period is or is not to be treated as being on income or capital account and whether and the extent to which any provisions and reserves need to be made for the Distribution Period.
- (c) Subject to clause 8.2(d) and unless the Manager determines otherwise, the Distribution Amount for a Distribution Period is the Taxable Period Income for that Distribution Period.
- (d) The total of the Distribution Amounts for any Financial Year shall be determined by the Manager and shall equal:
  - (i) the Taxable Annual Income; or
  - (ii) the Net Operating Income less the management fee calculated under clause 18.3 plus the Net Capital Gain,or any amount between those two amounts.

### Distribution Amount

#### 8.3

At the end of each Distribution Period the Members are presently entitled to shares of the Distribution Amount in the proportions set out in clause 8.8 of this constitution.

#### 8.4

- (a) The Manager shall keep separate accounts of the different categories and sources of income that relate to different types

of investments of the Trust and the costs, charges and expenses attributable to each of those types of income.

- (b) The Manager shall advise each Member of its share of Taxable Period Income and any tax credits attributable to each Member and such advice shall include reference to the categories or sources of that Taxable Period Income and the share of those categories or sources to which each Member is entitled.

### **Distribution Account**

- 8.5 The Distribution Amount in respect of a Distribution Period is to be transferred to a special account designated a Distribution Account. Any amount in the Distribution Account does not form part of the Trust but must be held by the Manager on trust for Members as at the close of business on the last Business Day of the Distribution Period. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.
- 8.6 If any income is received in a Distribution Period when, in the opinion of the Manager, it is not practicable to distribute it in the distribution for that Distribution Period, it may be treated by the Manager as having accrued during the next following Distribution Period and be distributed accordingly.

### **Equalise Distributions**

- 8.7 Notwithstanding the above provisions, the Manager may withhold from the Distribution Account during the first Distribution Period or if income and capital are distributed quarterly during any of the first 3 quarters of any Financial Year or if income and capital are distributed monthly or two-monthly during any month prior to the last month or any two months prior to the last two-month period in any Financial Year as the case may require, such part of the Distribution Amount in respect of a Distribution Period, Quarter, month or two-month period, as the case may be, as the Manager deems sufficient to ensure that the amount distributed in respect of each Distribution Period, Quarter, month or two-month period, as the case may be, in that Financial Year will be the same or as close to the same as practicable. The Manager will hold such withheld moneys to the credit of a reserve for equalising the amounts to be distributed from the Distribution Account in accordance with this clause 8. Any income earned as a result of the investment of such reserve will form part of the Trust.

## Participation in Distribution of Income

- 8.8 At the end of each Distribution Period a Member is entitled to receive a distribution of the amount (if any) credited to the Distribution Account in accordance with the following formula:

$$A \times \frac{B}{C}$$

Where:

- A = the amount standing to the credit of the Distribution Account;
- B = the aggregate of the number of Units held by the Member at the end of the Distribution Period which are entitled to share fully in the Distribution Amount for the relevant Distribution Period plus, if the Member holds at the end of the Distribution Period Units issued during that Distribution Period which have a proportionate entitlement to share in the Distribution Amount in accordance with clause 5.9, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- C = the aggregate of the total number of Units in issue entitled to share fully in the Distribution Amount for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate entitlement to share in the Distribution Amount in accordance with clause 5.9, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the end of the Distribution Period,

provided that the Manager may from time to time and at any time in its discretion declare a distribution on account of the anticipated Distribution Amount (if any) for that Distribution Period and specify the date as at which the books are to close for the purpose of determining the entitlement to that distribution. The distribution must be paid within 3 months of that date. The distribution so declared shall reduce the entitlements accruing pursuant to this clause 8.8 by an equal amount.

## Deduction of Tax

- 8.9 The deduction of the following amounts from the Distribution Account is authorised:
- (a) Tax which is paid or payable by the Manager on account of or in respect of the Member on the amount of the net income of the Trust otherwise distributable to that Member;
  - (b) if it is determined by the Manager, a charge made by a person on account of Tax imposed on the deposit in an account of



the Trust or of the Manager of all amounts received from that Member during the relevant Distribution Period or any Tax imposed on the Manager in respect of the receipt by the Manager of those amounts; and

- (c) if it is determined by the Manager, a charge made by a person on account of Tax imposed on or in respect of the debiting in an account of the Trust of the amount of net income of the Trust otherwise distributable to that Member,

and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

### **Distribution of Income**

- 8.10 Subject to any deductions made under clause 8.9 and provided that a Member (being entitled to do so) has not given notice to the Manager that the Member's entitlement to income for each Unit (or part of it) is to be reinvested under clause 8.22 at the end of the then current Distribution Period, the Manager will distribute to each Member the Member's entitlement to the Distribution Amount in accordance with clause 8.8 within two months of the last Business Day of the Distribution Period.
- 8.11 If the Member's entitlement to the Distribution Amount includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent shall no longer form part of that Member's entitlement and shall be transferred out of the Distribution Account and included in the Net Operating Income in the next succeeding Distribution Period.

### **Adjustments to Capital Reserve Accounts**

- 8.12 Subject to this constitution the Manager from time to time may transfer capital of the Trust to the Distribution Account for the purpose of enabling a distribution to Members of the Distribution Amount determined in accordance with clauses 8.1 and 8.2.
- 8.13 Where a transfer of capital referred to in clause 8.12 occurs then the amount of capital so transferred shall be from the Reserve Account.

### **Capital Reserves and Bonus Issues**

- 8.14 Any realised capital gains of the Trust must be separated from the other income of the Trust and credited to the Reserve Account.
- 8.15 The Manager may distribute to the Members from time to time by way of cash or other Assets of the Trust as at a date determined by

the Manager an amount equal to so much of the net realised gains credited to the Reserve Account as determined by the Manager. The Manager must debit the Reserve Account with the amount so distributed. Where Assets of the Trust other than cash are distributed under this clause the identity of the recipients and the nature of the Assets of the Trust other than cash distributed shall be at the discretion of the Manager.

- 8.16 The distribution of cash or other Assets to each Member under clause 8.15 is to be calculated in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

- A = the amount of cash and the value of Assets determined by the Manager to be distributed from the Reserve Account;
- B = the number of Units held by the Member on the date of calculation;
- C = the total number of Units in issue on the date of calculation.

- 8.17 Any amount standing to the credit of the Reserve Account may be capitalised by a determination of the Manager. Subject to clause 8.18, if the Manager determines that an amount shall be capitalised, Members shall be entitled to receive bonus Units.

While Stapling applies, the Manager may not determine to capitalise an amount under this clause 8.17 unless contemporaneously with the increase in the number of Units, the Members subscribe for or purchase an identical number of Stapled Shares which when issued or acquired (respectively) are then Stapled to the additional Units issued. The Manager may make provision for and make payment on behalf of Members of the subscription or purchase price for all or part of such Stapled Shares out of the amount standing to the credit of the Reserve Account and which is otherwise available to be capitalised.

- 8.18 The number of additional Units created under clause 8.17 must not be less than the number calculated in accordance with the following formula:

$$\frac{A}{B}$$

Where:

- A = the amount standing to the credit of the Reserve Account;

$$B = \frac{C - A}{U}$$

Where:

C = the amount standing to the credit of the capital account;

A = as defined above in this clause 8.18; and

U = the number of Units in issue at the date of capitalisation;

and each Unit created upon the capitalisation must be issued at the same price determined by the Manager which may be less than the Application Price on that date.

8.19 Each Member shall be entitled to the same proportion of the total number of bonus units created as the total number of Units held by that particular Member at the date of capitalisation bears to the total number of Units in issue at the date of capitalisation. Following capitalisation:

- (a) the number of Units in issue will increase accordingly;
- (b) the Manager must cause the Register to be amended and take any other steps which the Manager considers necessary to amend the records of the Trust to reflect the capitalisation;
- (c) the Manager may ignore fractions and round each Member's entitlement to the nearest whole Unit (a fraction of a half shall be rounded down to the nearest whole unit);
- (d) the sum capitalised in accordance with clause 8.17 must be debited to the Reserve Account and thereafter be treated in the same manner as funds subscribed by Members to the Trust; and
- (e) the additional Units created will rank for distribution of income and for all other purposes from a date determined by the Manager.

## Stapling

8.19A While Stapling applies, the Manager may not make a distribution by way of bonus Units under clause 8.19 unless at the same time as the increase in the number of Units, the Members are also issued an identical number of Stapled Shares which when issued are then Stapled to the additional Units issued. The Manager may provide for and pay on behalf of Members all or part of the subscription or purchase price for such Stapled Shares out of the amount available to be distributed.

## **Member Reinvestment**

- 8.20 A Member is entitled, if the right of reinvestment of income has been offered under a prospectus or by notice in writing to all Members or both, by giving notice in writing to the Manager (in the form determined by the Manager) to request that the Manager retain and reinvest in Units the money or part of the money the Member is entitled to receive under clause 8.8.
- 8.21 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period cancel any notice given under clause 8.20. The Member is entitled to give a further notice under clause 8.20 at any time in respect of any subsequent Distribution Period provided that the Manager has not previously cancelled the right of reinvestment of income. The Manager may by notice in writing to all Members, posted or otherwise sent on or before the last day of any relevant Distribution Period cancel any right of reinvestment of income. The Manager may at any time and from time to time re-offer the right of reinvestment of income to all Members by notice in writing or prospectus or both.
- 8.22 In the event that a notice under clause 8.20 has been given to the Manager by a Member not later than the last day of the relevant Distribution Period and has not been cancelled by the Member under clause 8.21 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member in respect of the relevant Distribution Period to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in Units.
- 8.23 If the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member cancels the relevant notice under clause 8.21 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the Distribution Period current at the date of cancellation.
- 8.24 Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and when sufficient for the purpose the aggregated amount will be applied in the purchase of a new Unit for issue to the Member in accordance with the relevant provisions of this clause 8.

## **Restriction on reinvestment**

- 8.25 While Stapling applies, no reinvestment under clause 8.20 may occur unless at the same time as Members are issued with additional

Units, Members are issued with an identical number of Stapled Shares which are then stapled to the additional Units issued. The Manager may provide for and pay on behalf of Members all or part of the application money for such Stapled Shares out of the amount otherwise available for reinvestment.

### **Notice of Reinvestment**

- 8.26 Where a Member has made a request under clause 8.20, the Member is to be provided by the Manager with a notice to the effect that the whole or part of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Trustee under clause 8.9. The notice is to be given by the Manager upon the issue of the Units.
- 8.27 The Member is to be provided with a Certificate (if required) for the Units. The Units will be deemed to be issued on a date determined by the Manager.
- 8.28 For all purposes the net income to be distributed to a Member is deemed to have been received by the Member on a reinvestment of that income in Units under the terms of clause 8.

### **Monthly Distributions**

- 8.29 The Manager, upon giving the Members in the Trust notice of its intention not less than 10 Business Days before the end of the month, may distribute to each Member every month, the Member's entitlement to the net income of the Trust calculated on the last day of the month and otherwise in accordance with clause 8. The Manager must distribute the Member's entitlement within 10 Business Days of the last day of the month. If the Manager distributes each Member's entitlement under this clause 8.29 then subject to this clause 8.29, the provisions of clause 8 will apply subject to the word "month" being substituted for the word "Distribution Period" wherever appearing.

### **Two-Monthly Distributions**

- 8.30 The Manager, upon giving the Members in the Trust notice of its intention not less than 10 Business Days before the end of the month, may distribute to each Member every second month, the Member's entitlement to the net income of the Trust calculated on the last day of every second month and otherwise in accordance with clause 8. The Manager must distribute the Member's entitlement within 10 Business Days of the last day of every second month. If the Manager distributes each Member's entitlement under this clause 8.30 then subject to this clause 8.30, the provisions of clause 8 will

apply except that , the word "Distribution Period" wherever appearing in this clause 8 shall mean a period of 2 months.

### **Effect of Transfer or Transmission of Units**

- 8.31 Upon the registration of any transfer or transmission of Units in the Trust from any person (including the Manager) the transferor's interest in any income standing to the credit of the Distribution Account which has not been reinvested under clause 8.22 at the date of transfer will be credited to the account of and must pass to the Member in whose name the Units become registered.

### **Distribution on Termination**

- 8.32 Notwithstanding any other provision to the contrary contained in this constitution, on the Termination Date the Distribution Amount must be transferred to the Distribution Account. For the purpose of this clause 8.32, clause 8 shall operate as if the Termination Date was the last day of the Distribution Period current at the Termination Date.

### **Refund of Surplus Capital**

- 8.33 Subject to this constitution, the Manager may, at a time determined by the Manager, pay amounts representing part of the capital of the Trust to Members.
- 8.34 In determining the amount to be paid under clause 8.33 at any time, the Manager must take into account (to the extent it is able) the Manager's reasonable estimate of any amounts expected to become payable under clause 20.3 on a winding up of the Trust.
- 8.35 The Manager shall send to each Member a notice in relation to the proposed payment, including the following details:
- (a) the amount proposed to be paid as determined under clause 8.34; and
  - (b) the amount to be paid to the Member, calculated in accordance with the following formula:

$$A \times \frac{B}{C}$$

where:

- A = the amount determined under clause 8.35(a);
- B = the number of Units held by the Member at the close of business on the date determined under clause 8.33;
- C = the total number of Units in issue at the close of business on the date determined under clause 8.33.

- 8.36 On the date determined under clause 8.33, the amount determined under clause 8.34 to be paid to Members is to be transferred to a special account designated a Surplus Capital Account. Any amount in the Surplus Capital Account does not form part of the Trust but must be held by the Manager on trust pending payment to the Members in accordance with clause 8.37. The Manager may invest any moneys standing to the credit of the Surplus Capital Account pending disbursement and any income therefrom will form part of the Trust.
- 8.37 The Manager must pay the amount calculated in accordance with clause 8.35(b) to each Member from the Surplus Capital Account. The payment must be sent on or before the date being 10 Business Days after the date determined under clause 8.33.

### **Stapled Security Reinvestment Plan**

- 8.38 While Stapling applies, notwithstanding clauses 8.20 to 8.28, but subject to clause 4.11 and clause 29, if the Manager agrees with the Stapled Company to implement a reinvestment plan in relation to dividends and income in relation to Stapled Shares and the Units (a "Plan") a Member may apply to the Manager to have reinvested in Units the money or part of the money the Member is entitled to receive under clause 8.8 in accordance with the terms of the Plan subject to the following provisions:
- (a) the Manager may prescribe the application form for participation in the Plan;
  - (b) the Plan must permit a Member to cancel the participation of the Member in the Plan and to vary the participation of the Member in the Plan on reasonable grounds;
  - (c) the Manager may determine a Member's eligibility to participate in the Plan and may limit the number of a Member's Units that may participate in the Plan in accordance with the Listing Rules;
  - (d) if the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction may either be held by the Manager without interest until the next distribution when it will be added to the amount of the distribution to that Member or paid to the Member without interest;
  - (e) where income is reinvested pursuant to the Plan, the Manager will advise the Member at the time when each distribution is made of the number of Units issued to the Member, the amount of income applied to the purchase of such Units and the amount of income (if any) not so applied;

- (f) application for participation in the Plan will be automatically cancelled upon transfer of the Units to which an application relates and in such other circumstances reasonably determined by the Manager (where an application relates to a number of Units that is more than the number of units transferred, the Manager may determine whether the application has been cancelled in respect of any Units that remain held by the Member);
- (g) subject to the Corporations Act and the Listing Rules, the Manager shall not be obliged to issue a certificate for Units issued under the Plan;
- (h) for all purposes the net income to be distributed to a Member under this clause 8.38 is deemed to have been received by the member on a reinvestment of that income in Units under the Plan (and for the purposes of clause 5.3(c) comprises a reinvestment of a distribution in accordance with clause 8.22); and
- (i) the Manager may suspend the Plan's operation in respect of any distribution or cancel the Plan without prior notice at any time.

8.39 No reinvestment under clause 8.38 may occur unless at the same time as Members are issued with additional Units, Members are issued with an identical number of Stapled Shares which are then Stapled to the additional Units.

## 9 Payments

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- 9.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 9.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 9.3 Where the Manager attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 9.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 9.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.



- 9.6 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

## 10 Powers of the Manager

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### General powers

- 10.1 Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

### Contracting powers<sup>10</sup>

- 10.2 Without limiting clause 10.1 but subject to clause 10.3, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities<sup>11</sup>.

### Borrowing

- 10.3 The Manager must not incur a borrowing in respect of the Trust if to do so would, at the time of incurring the borrowing, cause the total borrowings of the Trust to exceed 60 % of the value of the Assets determined in accordance with clause 7.

### Investment powers

- 10.4 Without limiting clause 10.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>12</sup>

### Power of delegation<sup>13</sup>

- 10.5 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

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<sup>10</sup> Required to be included by Section 601GA(3)

<sup>11</sup> Refer Listing Rule 13.2 - the total liabilities of a listed trust must not exceed 60% of its total tangible assets.

<sup>12</sup> Subject to Section 601FC(4)

<sup>13</sup> See also Section 601FB.

- 10.6 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 10.7 The agent or delegate may be an associate of the Manager.<sup>14</sup>

### **Exercise of discretion**

- 10.8 The Manager may in its absolute discretion decide how and when to exercise its powers.

### **Underwriting**

- 10.9 Subject to the Corporations Act, the Manager may enter into an arrangement with a person (including an associate of the Manager) to underwrite the subscription or purchase of Units on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

### **Principal investment policy**

- 10.10 The principal investment policy of the Manager in relation to the Trust is investment in real property and the making of such other investments with the Assets which in the Manager's opinion are not from time to time required for that purpose. The Manager must not vary the principal investment policy of the Trust unless notice is given to Members within such period before the variation takes effect as is adequate in the reasonable opinion of the Manager to enable Members to dispose of their units if they see fit.

## **11 Retirement of Manager<sup>15</sup>**

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### **Voluntary retirement**

- 11.1 The Manager may retire as the responsible entity of the Trust as permitted by law<sup>16</sup>.

### **Compulsory retirement**

- 11.2 The Manager must retire as the responsible entity of the Trust when required by law<sup>17</sup>.

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<sup>14</sup> Subject to Part 5C.7

<sup>15</sup> Refer to Listing rule 3.16.2(a)

<sup>16</sup> See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

<sup>17</sup> See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

**New responsible entity**

- 11.3 Any replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

**Release**

- 11.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.<sup>18</sup>

**Retirement benefit**

- 11.5 The Manager may not accept a payment or benefit in connection with its retirement without any such approval as may be required by law.

**12 Notices to Members<sup>19</sup>**

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- 12.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member or Option Holder must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option Holder at the Member's or Option Holder's physical or electronic address last advised to the Manager for delivery of notices.
- 12.2 A cheque payable to a Member or Option Holder may be posted to the Member's or Option Holder's physical address or handed to the Member or Option Holder or a person authorised in writing by the Member or Option Holder<sup>20</sup>.
- 12.3 In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option Holder first named in the Register.
- 12.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law<sup>21</sup>, the Manager may determine<sup>22</sup>

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<sup>18</sup> See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

<sup>19</sup> While the Trust is Listed, notices to Members must be copied to ASX - refer Listing Rule 3.17.

<sup>20</sup> See Clause 15.3(c)

<sup>21</sup> See Section 601FC(1)(d)

<sup>22</sup> See Section 252G(4)

the time at which other forms of communication will be taken to be received.

- 12.5 While Stapling applies, the Register will comprise a single register which records details of the Members of the Trust and members of the Stapled Company.

## 13 Notices to the Manager

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- 13.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 13.2 The notice is effective only at the time of receipt.
- 13.3 The notice must bear the actual, facsimile or electronic signature of the Member or Option Holder or a duly authorised officer or representative of the Member<sup>23</sup> or Option Holder unless the Manager dispenses with this requirement.

## 14 Meetings of Members

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### Corporations Act

- 14.1 The Manager may at any time convene a meeting of Members or Option Holders, and must do so if required by the Corporations Act.<sup>24</sup>

### Manager may determine

- 14.2 Subject to this clause 14, the Corporations Act<sup>25</sup> and the Listing Rules, the Manager 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<sup>26</sup>.

### Quorum

- 14.3 The quorum for a meeting of Members is 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

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<sup>23</sup> See Clause 15.3(c)

<sup>24</sup> Refer Part 2G.4

<sup>25</sup> Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

<sup>26</sup> Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

**No quorum**

- 14.4 If a quorum is not present within 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 Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

**Chairman**

- 14.5 Subject to the Corporations Act<sup>27</sup> the Manager may appoint a person to chair a meeting of Members.
- 14.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

**Other attendees**

- 14.7 While Stapling applies, the Manager, the Auditor, the directors of the Stapled Company and the manager and auditor of the Stapled Trust may attend and speak at any meeting, or invite any other person to attend and speak.

**Adjournment**

- 14.8 The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

**Proxies and voting**

- 14.9 Subject to clause 14.11, the provisions of the Corporations Act governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust<sup>28</sup>.
- 14.10 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act<sup>29</sup>.
- 14.11 While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Stapled Shares which they hold.

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<sup>27</sup> Refer Part 2G.4 and Section 601FC(1)

<sup>28</sup> This provision is included for completeness - the law operates of its own force.

<sup>29</sup> Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

**Resolutions binding**

- 14.12 A Resolution binds all Members, whether or not they were present at the meeting.
- 14.13 No objection may be made to any vote cast unless the objection is made at the meeting.

**Non-receipt**

- 14.14 If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

**Joint meetings**

- 14.15 While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Stapled Shares, subject to the Corporations Act, the Manager may make such rules for the conduct of such meetings as the Manager determines.

**Option Holders**

- 14.16 The provisions of this clause relating to meetings of Members also apply to meetings of Option Holders with any necessary modifications.

**15 Rights and liabilities of Manager**

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**Holding Units**

- 15.1 The Manager and its associates may hold Units in the Trust and Stapled Shares in any capacity<sup>30</sup>.

**Other capacities**

- 15.2 Subject to the Corporations Act<sup>31</sup>, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member;
  - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member or

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<sup>30</sup> See Section 601FG, Section 253E and Part 5C.7

<sup>31</sup> Refer Part 5C.7, and see also Listing Rule 10.1

retaining for its own benefit any profits or benefits derived from any such contract or transaction;

- (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
- (d) lending money to or borrowing money from or providing or receiving guarantees or security from the Stapled Company or any of their associates.

### **Manager may rely**

#### 15.3 The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

### **Manager's duties in relation to Stapling**

#### 15.4 Subject to the Corporations Act and any ASIC relief and notwithstanding that Units are stapled to Stapled Shares or any other provisions of this constitution, while the Units are Stapled:

- (a) the Manager's duties and obligations to Members will be owed to Members only in their capacity as holders of Units and not as holders of Stapled Shares;
- (b) the Manager must act in the best interests of Members, having regard to their interests as stapled security holders in the Mirvac Group as a whole, comprising interests in the Trust and the Stapled Company, and, if there is a conflict

between the Members' interests and its own interests, give priority to the Members' interests;

- (c) in the performance of its duties and the exercise of its powers under this constitution, the Manager will have no obligation to consider the effect of its acts or omissions on the Stapled Company or the Stapled Shares; and
- (d) the Manager will have no obligation to consider or monitor the performance by the Stapled Company, the officers of the Stapled Company of any obligations they may have to Members.

## 16 Limitation of liability and indemnity in favour of Manager

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### Limitation on Manager's liability

- 16.1 If the Manager acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 16.2 The liability of the Manager to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

### Indemnity in favour of Manager

- 16.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust<sup>32</sup>.
- 16.4 To the extent permitted by the Corporations Act<sup>33</sup>, the indemnity under clause 16.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 16.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

## 17 Liability of Members

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### Liability limited

- 17.1 Subject to clauses 17.3 and 17.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

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<sup>32</sup> See Section 601GA(2)

<sup>33</sup> See Sections 601FB(2) and 601GA(2)



- 17.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 17.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or omission, or as a result of an act or omission requested by the Member or former Member.
- 17.4 Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 17.3 applies.

### **Recourse**

- 17.5 In the absence of a separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

### **Restrictions on Members**

- 17.6 A Member:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
  - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
  - (c) may not require an Asset to be transferred to the Member.

## **18 Remuneration and expenses of Manager**

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### **Application fee**

- 18.1 The Manager is entitled in respect of each application for Units in the Trust which it accepts to a fee of 6% of the application money or value of the assets contributed to the Trust by an applicant for Units. This amount is payable to the Manager at the time the Units are issued and the number of Units to be issued must be calculated after this fee is deducted.
- 18.2 The Manager is not entitled to an application fee unless the relevant Unit is issued pursuant to:
- (a) clause 4.6 to a person other than the Member to which the relevant Units were originally offered under clause 4.5;
  - (b) clause 4.8; or
  - (c) a prospectus which indicates that the Manager is entitled to receive an application fee.

## Management fee

- 18.3 The Manager is entitled to a management fee of the lesser of:
- (a) 0.75% per annum of the value of the Assets calculated in accordance with clause 7; and
  - (b) 1.0% per annum of the Net Asset Value,
- calculated on the last Business Day of each Quarter and payable in arrears on the last Business Day of each Quarter or at such other times as the Manager determines, from the date the Trust commences to the date of final distribution in accordance with clause 20.3.
- 18.4 The determination of which method in clause 18.3(a) or 18.3(b) results in the lesser fee shall be made in respect of the whole of the relevant Quarter.

## Waiver of fees

- 18.5 The Manager may:
- (a) accept lower fees than it is entitled to receive under this constitution;
  - (b) waive in whole or in part the payment of any application fee; or
  - (c) defer payment for any period.

Where payment is deferred, the fee accrues daily until paid.

## Expenses

- 18.6 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust<sup>34</sup> are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes the following and expenses connected with the following:
- (a) this constitution and the formation of the Trust;
  - (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or Stapled Shares;
  - (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
  - (d) any proposed acquisition, disposal or other dealing with an investment;

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<sup>34</sup> Refer Section 601GA(2)(b)

- (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
- (f) the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
- (g) underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (i) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (k) preparation and audit of the taxation returns and accounts of the Trust;
- (l) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (m) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager 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 18.6(m) must be repaid;
- (n) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums<sup>35</sup> in respect of Compliance Committee Members;
- (o) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees

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<sup>35</sup> See Section 601JG

paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;

- (p) the preparation, implementation, amendment and audit of the compliance plan; and
- (q) complying with any law, and any request or requirement of the ASIC.

In this clause 18, the term "expense" includes:

- (i) internal expenses of the Manager (including costs of appointing and maintaining staff in connection with the Trust); and
- (ii) amounts paid by the Manager to related bodies corporate for services provided to the Manager in connection with the Trust where the expenses referable to such service would have been reimburseable under this clause 18.6 had they been incurred by the Manager.

## **GST**

- 18.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this agreement (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 18.8 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including, without limitation, any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
  - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with the proper performance of the Manager's duties under this constitution

(including, without limitation, the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

- 18.9 An amount may only be paid or reimbursed out of the Assets under clauses 18.6 and 18.7 if it relates to the proper performance of the Manager's duties.

## 19 Duration of the Trust

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### Initial settlement

- 19.1 The Manager, after the execution of the original trust deed, lodged with the Trustee \$1,000 for investment by the Trustee (so far as it extended) in Authorised Investments of the Trust. The beneficial interest in the Trust Fund constituted by the payment to the Trustee of the sum of \$1,000 was divided into 500 Growth Units and 500 Income Units which were issued to the Manager.

### Termination

- 19.2 The Trust terminates on the earliest of:
- (a) [deleted];
  - (b) a date which the Members determine by special resolution;
  - (c) the Date of Delisting, unless clause 22 applies; and
  - (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law<sup>36</sup>.
- 19.3 Notwithstanding clause 19.2 of this constitution, if at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Manager may summon a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Trust shall be wound up.

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<sup>36</sup> See Part 5C.9 on winding up

## 20 Procedure on termination

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### Realisation of Assets

- 20.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

### Audit of winding up

- 20.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

### Distribution following termination

- 20.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), meeting the expenses (including anticipated expenses) of the termination and satisfying distributions of income, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.
- 20.4 Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 20.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

## 21 Amendments to this constitution

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### Manager may amend

- 21.1 Subject to the Corporations Act<sup>37</sup>, the Manager may by deed amend this constitution.

### Statutory requirements

- 21.2 If the Corporations Act or a condition of any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency.

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<sup>37</sup> See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

Clause 21.1 does not apply to provisions deemed by this clause 21.2 to be incorporated in the constitution.

- 21.3 If the Manager is of the opinion that as a result of clause 21.2 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

## **Listing Rules**

- 21.4 While Units are Officially Quoted:
- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
  - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
  - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
  - (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
  - (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.
- 21.5 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 21.4 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

## **22 Procedure upon removal or suspension from official list of the ASX**

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### **Manager's obligations upon delisting**

- 22.1 If the Trust is Delisted the Date of Delisting will be the Termination Date unless within 90 days after removal of the Trust from the official List of the ASX or 150 days after the commencement of the

suspension of the Units from trading by the ASX (whichever is the earlier) or such longer period as the ASIC or any delegate of the ASIC permits, the Manager has convened a meeting of Members to consider all of the following:

- (a) a proposal to restructure the Trust (unless the ASIC or any delegate of the ASIC directs that no such proposal need be considered);
- (b) replacing the Manager;
- (c) terminating the Trust;
- (d) any proposal which the ASIC or a delegate of the ASIC directs should be considered; and
- (e) any proposals which the Manager determines.

## **Voting procedure**

22.2 Notwithstanding anything contained in clause 14, where a meeting is convened by the Manager under clause 22.1:

- (a) any proposal considered by the meeting of Members will only be accepted if agreed to by 75% (by value) of the Members voting (in person or by proxy) at the meeting;
- (b) a quorum for the meeting shall be 25% (by value) of the Members eligible to vote (in person or by proxy) at the meeting;
- (c) if it is determined by the Manager to use such a system, where a vote is taken in relation to any proposal before the meeting a preferential voting system may be employed whereby Members will be required to rank the alternatives available in relation to a proposal before the meeting in order of preference and votes will be redistributed on a preferential basis provided that:
  - (i) the preferential voting system is fully explained in the notice convening the meeting;
  - (ii) the Manager confirms that in the given circumstances such a voting system is in its opinion in the interests of the Members;
  - (iii) the Auditor acts as independent scrutineer at the meeting;
  - (iv) the Register is up to date at the time of the vote in order to assist in the counting of votes and the allocation of the preferences; and



- (d) any notice of meeting sent to Members shall contain a provision urging Members to attend and vote at the meeting and must contain adequate notice of:
  - (i) any matters to be considered at the meeting;
  - (ii) any resolutions to be put at the meeting; and
  - (iii) a summary of information relating to those matters and resolutions that is determined by the Manager to be relevant to the decision of a Member on how to vote at the meeting; and
- (e) 25% (by value) of Members eligible to vote at the meeting must do so, in person or by proxy.

- 22.3 Neither the Manager nor its associates will exercise any power to vote attached to a Unit held by or on behalf of the Manager or its associates at a meeting convened under clause 22.1.
- 22.4 Subject to the other provisions of this clause 22, meetings convened pursuant to this clause shall be convened and conducted in accordance with the terms of clause 14 and the Corporations Act.
- 22.5 If before a meeting convened under clause 22.1 is held an alternative manager asks the Manager for information that will assist the alternative manager to make an informed decision whether to offer to manage the Trust in place of the Manager, the Manager will as soon as practicable, and not later than 14 days prior to the meeting (or if the request is made less than 14 days prior to the meeting, as soon as practicable) give the information to the alternative manager:
- (a) if in the reasonable opinion of the Manager the alternative manager is a suitable replacement for the Manager and has made the request in good faith; and
  - (b) if the alternative manager agrees in writing to use the information solely for the purpose of making an informed decision whether to offer to manage the Trust.

## 23 Compliance committee

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If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act<sup>38</sup>.

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<sup>38</sup> See section 601JF

## 24 Complaints

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If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 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 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 (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager 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.

## 25 Restricted Securities

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25.1 Clause 25.2 only operates:

- (a) while Units are Officially Quoted; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

25.2 During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

## 26 Small holdings

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- 26.1 Subject to the provisions of this clause 26, while Units are Officially Quoted the Manager may in its discretion from time to time sell or redeem any Units held by a Member (or while Stapling applies, any Units forming part of a Stapled Security holding of a Member) which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- 26.2 The Manager may only sell or redeem Units under this clause 26 on one occasion in any 12 month period.
- 26.3 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26.
- 26.4 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.3; or
  - (b) if, within the 6 weeks allowed by clause 26.4(a), the Member advises the Manager that the Member wishes to retain the Units.
- 26.5 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.6 The Manager or the purchaser of the Units must pay the costs of the sale as the Manager decides.
- 26.7 The proceeds of the sale or redemption will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.8 The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 26.
- 26.9 While Stapling applies, no redemption or sale under this clause 26 may occur unless, at the same time as Units are redeemed or sold, an identical number of Stapled Shares are also redeemed or sold (as the case may be).

27 Deleted

28 Deleted

29 Stapling

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### **Paramourncy of Stapling provisions**

- 29.1 Subject to clauses 21.2, 21.4 and clause 30A, the provisions of this constitution relating to Stapling prevail over all other provisions of

this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

### **Consistency with constitution of Stapled Company**

- 29.2 The Manager undertakes to use every reasonable endeavour to procure that Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to Stapled Securities in the constitution of the Stapled Company.

### **Stapling - general intention**

- 29.3 The Units are intended to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share. The intention is that the Members shall be identical to the holders of Stapled Shares and that, so far as the law permits, a Unit and a Stapled Share which are Stapled together shall be treated as one security.

### **Suspension of Stapling provisions**

- 29.4 Subject to the Corporations Act, the Listing Rules and approval by special resolution of the Members and the members of the Stapled Company respectively, the Manager may determine that the Stapling provisions will cease to apply. If it does so, it may at a later time give notice that the application of the provisions is to recommence.

### **Consequences of Stapling - forfeiture**

- 29.5 Each Member acknowledges that they will have no voting rights and no entitlement to a distribution declared but not paid where a Unit is forfeited under Article 7 of the constitution of the Stapled Company.
- 29.6 Each Member acknowledges that it will cease to be a Member in the Trust in respect of a Unit where that Unit is forfeited under Article 7 of the constitution of the Stapled Company.
- 29.7 Each Member acknowledges the terms of Articles 3 and 7 of the constitution of the Stapled Company and agrees to be bound by those articles. The terms of those articles reflect the intention that a Unit should remain Stapled to a Stapled Share. In particular, each Member acknowledges that:
- (a) Article 3 imposes a lien on a Unit in the circumstances described in that article and that under that article the Stapled Company in certain circumstances will have the right to sell or otherwise dispose of a Unit; and
  - (b) under Article 7 a Unit, in the circumstances described in that article, may be forfeited and sold or otherwise disposed of by the Company.

The Member authorises the Company and the Manager to take whatever action they consider necessary to give effect to the provisions of those articles including selling, signing an instrument of transfer or otherwise disposing of a Unit so as to ensure that a Unit held by a Member remains Stapled to a Stapled Share.

### **Manager's authority**

29.8 While Stapling applies, each Member authorises the Manager to take whatever action it considers necessary to give effect to any disposal of a Unit and a Stapled Share.

### **Effect of termination on stapling**

29.9 Upon winding up of the Stapled Company, Stapling will cease to apply.

## **30 Deed of Co-operation**

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30.1 To the maximum extent that the Corporations Act (as modified by any exemption or declaration issued by the Commission) permits and notwithstanding any other provisions of this constitution except clauses 21.2 and 21.4, the Manager may do everything necessary or convenient to give effect to the terms of the Deed of Co-operation and any transactions pursuant to the Deed of Co-operation.

## **30A Restructure**

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### **Implementation of Proposal**

30A.1 The Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

### **Express powers of Manager**

30A.2 Without limiting clause 30A.1 and despite any other provision of this constitution, the Manager has power to:

- (a) issue Units to MCT Unit Holders in accordance with the Simplification Implementation Deed with the Application Price for the issue of each Unit being one MCT Unit to be satisfied by the transfer by the relevant MCT Unit Holder of one MCT Unit to the Manager in accordance with the Simplification Implementation Deed;
- (b) after the issue of Units under clause 30A.2(a), consolidate every two Units held by a Unit Holder into one Unit and

Staple each Unit to a Stapled Share in the ratio of one Unit to one Stapled Share; and

- (c) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

### **Manager's limitation of liability**

30A.3 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly and indirectly, from the Manager doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of the Proposal.

### **Stapling Provisions**

30A.4 Except as provided for in Clause 30A.5, the Stapling Provisions do not apply to the transactions contemplated by the Simplification Implementation Deed and the transactions provided for in clause 30A.

30A.5 Immediately after the issue of Units to MCT Unit Holders provided for under clause 30A.2(a) and the consolidation of Units provided for under clause 30A.2(b) the Units are to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share and the Stapling Provisions will apply to the Stapled Security.

### **Definitions**

30A.6 In this clause 30A the following words have these meanings unless the contrary intention appears:

**MCT** means the Mirvac Commercial Trust ARSN 086 763 760 constituted under the MCT Constitution.

**MCT Unit** means a unit in MCT.

**MCT Unit Holder** means the holder of a MCT Unit on the Record Date and includes joint holders.

**MCT Constitution** means the trust deed dated 30 June 1975 which governs the MCT (as amended).

**Proposal** the transactions contemplated and described in the Notice of Annual and General Meetings and Explanatory Memorandum in relation to the Trust dated 20 September 2001.

**Record Date** means the Record Date as that term is defined in the Simplification Implementation Deed.

**Simplification Implementation Deed** means the deed made between Mirvac Limited ACN 003 280 699, Mirvac Funds Limited

ACN 002 561 640 in its capacity as responsible entity of the Mirvac Property Trust ARSN 086 780 645 and Mirvac Funds Limited ACN 002 561 640 in its capacity as responsible entity of the Mirvac Commercial Trust ARSN 086 763 760 dated 20 September 2001 in relation to the Proposal (as amended).

**Stapling Provisions** means any provision of this constitution relating to, referring to, or connected with, Stapling.

## 30B Instalment Receipts

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### Status of Instalment Receipts

30B.1 An Instalment Receipt Holder is bound by this constitution as a person claiming through a Member as a party to this constitution but who is not a Member.

### Rights attaching to Instalment Receipts

30B.2 Subject to the Corporations Act and any Relief, the Manager may do all things to facilitate the existence of the Instalment Receipts.

30B.3 An Instalment Receipt may be issued on such terms and conditions as set out in the Security Trust Deed.

30B.4 An Instalment Receipt does not confer an interest in a particular Asset or any right to participate in any distribution of income or capital of the Trust, including any determination of the Trust.

30B.5 Instalment Receipt Holders only have those rights conferred on them by this constitution and the Security Trust Deed.

30B.6 Units which are held by the Security Trustee subject to the Security Trust Deed rank equally with all other Units on issue.

30B.7 Each Instalment Receipt Holder undertakes not to exercise any voting rights attaching to their Instalment Receipts under Part 2G.4 of the Corporations Act (and expressly authorises the Manager to disregard any vote cast in breach of such undertaking) but to exercise any voting rights in respect of their Instalment Receipts (if they do exercise such voting rights) solely as expressly provided in the Security Trust Deed.

30B.8 The Manager will act in the best interests of the Instalment Receipt Holders as members of the registered scheme constituted by the Trust by acting in the best interests of the Members.

30B.9 If an Instalment Receipt Holder submits to the Manager or the Security Trustee a complaint alleging that the Instalment Receipt Holder has been adversely affected in relation to the management or administration of the Trust, the Manager will apply the process set out under clause 24 as if the Instalment Receipt Holder were a Unit Holder.

**Definitions**

31.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

**Application Price:** the Unit price calculated or determined in accordance with clauses 4, 4A, 19.1 or 30A.2.

**April 2010 Offer:** means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 7 April 2010 involving:

- (a) an institutional placement of Stapled Securities; and
- (b) a Purchase Plan.

**ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

**ASX:** ASX Limited.

**Auditor:** the auditor of the Trust.

**Authorised Investment:** has the meaning as it was set out in this deed at the time the Trust commenced.

**Business Day:**

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; or
- (b) for the purposes of clause 4, a day on which the ASX is open for trading.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Trust.

**Date of Delisting:** whichever is the first to occur of the following:

- (a) the date upon which the Manager receives notification from the ASX of the removal of the Trust from the official list of the ASX; or
- (b) where the Units are suspended from trading by the ASX for a continuous period of 60 days, the date following the expiration of that 60 day period.

**Deed of Co-Operation:** the deed with that name dated 15 June 1999 between, amongst others, the Stapled Company, the Manager and



various subsidiaries of the Stapled Company, as amended or replaced from time to time.

**Delisted:** the removal of the Trust from the official list of the ASX or the suspension of the Units from trading by the ASX for a continuous period of more than 60 days.

**Distribution Account:** The account established under clause 8.5.

**Distribution Amount:** the amount, if any, determined by the Manager in accordance with clause 8.2(c) and (d).

**Distribution Calculation Date:** the last day of each Quarter and such other days as the Manager designates.

**Distribution Period:**

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**Employee:**

- (a) a "Permanent Employee" as defined in Division 13A of the *Income Tax Assessment Act 1936* (Cth); or
- (b) such other permanent or full-time or part-time employee of the Mirvac Group or a person entitled to participate in accordance with the rules of any relevant Employee Security Plan (including a director of the Mirvac Group) as the Manager may from time to time determine.

**Employee Security Plan:** any employee security plan, employee option plan or employee rights plan pursuant to which Stapled Securities will be issued or transferred, or rights to receive Stapled Securities will be granted, to Employees.

**Financial Year:**

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and

- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

**Growth Unit:** has the same meaning as it was set out in this deed at the time the Trust commenced.

**GST:** a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**Income Unit:** has the same meaning as it was set out in this deed at the time the Trust commenced.

**Instalment Receipt** means an instalment receipt which evidences the beneficial ownership of an Instalment Receipt Holder in one Stapled Security, where that Stapled Security is held on a separate trust by the Security Trustee for the Instalment Receipt Holder's beneficial interest and WSL's security interest under the Security Trust Deed.

**Instalment Receipt Holder** means a person who is registered on the register created under the Security Trust Deed as the holder of one or more Instalment Receipts from time to time.

**June 2009 Offer:** means the fund raising to be undertaken by the Manager described in an announcement to the ASX on or about 4 June 2009 involving:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional Members and the second being the offer of Stapled Securities to eligible retail Members (together, the **June 2009 Entitlement Offer**). Eligible Members will be invited to participate in the June 2009 Entitlement Offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager. Part or all of the June 2009 Entitlement Offer may be underwritten and Stapled Securities may be issued to underwriters and sub-underwriters. To the extent that Members do not take up their entitlement:
- (i) to the extent applicable, the underwriters and sub-underwriters will seek to place the shortfall; and
  - (ii) the Manager and the Stapled Company may issue the Stapled Securities, to which those Members who did not take up their entitlement were entitled, to other eligible Members; and
- (b) an institutional placement of Stapled Securities.

**Liabilities:** all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any amount

representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

**Listing Rules:** the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

**Manager:** the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

**Market Price:** of a Stapled Security in respect of any Business Day means:

- (a) the last sale price per Stapled Security recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Stapled Security on that Business Day, the mid-point of the bid and offer prices per Stapled Security recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Stapled Security on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

**Market Price:** of a Unit in respect of any Business Day means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

**Member:** the person Registered as the holder of a Unit (including persons jointly Registered).

**Mirvac Group:** the Trust and the Stapled Company.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 7 less the Liabilities.

**Net Capital Gain:** has the meaning contained in Part III A of the Income Tax Assessment Act, 1936 and Part 3-1 of the Income Tax Assessment Act 1997 and in respect of a Distribution Period is to be calculated as if the Distribution Period is a year of income for the purposes of that Act.

**Net Operating Income:** net operating income of the trust calculated in accordance with clause 8.2(a).

**November 2008 Offer:** means the fund raising to be undertaken by the Manager described in an announcement to the ASX on or about 5 November 2008 involving:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional Members and the second being the offer of Stapled Securities to eligible retail Members (together, the **Entitlement Offer**). Members will be invited to participate in the Entitlement Offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager. Part or all of the Entitlement Offer will be underwritten and Stapled Securities will be issued to underwriters and sub-underwriters. To the extent that Members do not take up their entitlement, the underwriters and sub-underwriters will seek to place the shortfall; and
- (b) an institutional placement of Stapled Securities.

**Officially Quoted:** quoted on the official list of the ASX, including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

**Option:** an option granted under this constitution to subscribe for unissued Units.

**Option Holder:** the person Registered in the register of option holders and includes persons jointly Registered or, if no such register is kept, the holder of an Option.

**Purchase Plan:** means an offer to existing Members of interests in the Trust, only available when:

- (a) the Trust is listed on the ASX; and

- (b) the offer is made pursuant to Relief, which may include ASIC Class Order 09/425 as amended, substituted or replaced from time to time.

**Quarter:** a calendar quarter and any period between the end of the last Quarter prior to the date of termination of the Trust and the date of termination of the Trust.

**Register:** the register of Members kept by the Manager under the Corporations Act.

**Registered:** recorded in the Register.

**Registration:** recording in the Register.

**Relief:** a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Manager or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument.

**Reserve Account:** the account established under clause 8.14 which has the following items credited to it:

- (a) upon valuation of an Asset, any increase in the value of the Asset since its previous valuation (on the assumption that previous changes of value have been recorded in the Reserve Account); and
- (b) any realised capital gains (to the extent that adjustments under paragraph (a) have not already recorded such gain);

and which has the following amounts debited to it:

- (c) upon valuation of an Asset, the amount of any decrease in the value of the Asset since its previous valuation (on the assumption that previous changes of value have been recorded in the Reserve Account);
- (d) any realised capital losses (to the extent that adjustments under paragraph (c) have not already recorded such losses); and
- (e) amounts transferred to the Distribution Account for distribution to Members or capitalised for distribution as bonus Units.

**Resolution:**

- (a) a resolution passed at a meeting of Members in the Trust:
- (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or

- (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority<sup>39</sup>.

**Restricted Securities:** has the same meaning as in the Listing Rules.

**Security Trust Deed** means the Security Trust and Subscription Deed in respect of the Instalment Receipts, between the Security Trustee and the WSL dated 10 June 2003, as amended from time to time as it applies at the relevant time.

**Security Trustee** means Westpac Custodian Nominees Limited (ABN 18 002 861 565) or such other party appointed as security trustee under the Security Trust Deed.

**Stapled:** the state that results from Stapling.

**Stapled Company:** Mirvac Limited (ACN 003 280 699).

**Stapled Security:** a Stapled Share and a Unit which are stapled together and registered in the name of the Member.

**Stapled Share:** a share in the Stapled Company.

**Stapling:** the linking together of all the rights and obligations which attach to a Stapled Security.

**Surplus Capital Account:** the account established under clause 8.36.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 ("1936 Act"), the Income Tax Assessment Act 1997 ("1997 Act") or both the 1936 Act and the 1997 Act, as appropriate.

**Taxable Annual Income:** means the net income in relation to the Trust calculated under the provisions of the Tax Act for a year of income.

**Taxable Period Income:** means the net income in relation to the Trust calculated under the provisions of the Tax Act but on the assumption that a Distribution Period is a year of income for the purposes of that Act.

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<sup>39</sup> Circumstances where an extraordinary resolution is required include a vote on amendments to this constitution if necessary (see section 601GA(1)(a)), winding up by Members, and choosing a new responsible entity.

**Termination Date:** the date on which the Trust terminates in accordance with clause 19.2.

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit, the Manager's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager's estimate of the total cost of selling the Assets;

provided that subject to the Corporations Act<sup>40</sup> the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

**Trust:** the trust constituted under or governed by this constitution.

**Trust Fund:** all of the Assets, but subject to the Liabilities.

**Trustee:** the person appointed as trustee of the Trust for the time being and the Manager when acting as Trustee in accordance with the provisions of this deed.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Unit Holder:** has the same meaning as Member.

**User Pays Fees:** any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.

**Valuation Time:** a time at which the Manager calculates Net Asset Value.

**WSL** means Westpac Securities Limited (ABN 39 087 924 221).

## Interpretation

- 31.2 Unless the contrary intention appears, in this constitution:
- (a) terms defined in the Corporations Act are used with their defined meaning;
  - (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;

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<sup>40</sup> See section 601FC(1)(d)

- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

### **Other documents**

- 31.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

### **Constitution legally binding<sup>41</sup>**

- 31.4 This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

### **Governing law**

- 31.5 This constitution is governed by the law of New South Wales.

### **Severance**

- 31.6 If all or part of any provision of this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

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<sup>41</sup> Refer Section 601GB



**Other obligations excluded**

- 31.7 Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

### Finding list

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA	
(1)(a)	4.1 – 4.10
(1)(b)	10.1 – 10.3
(1)(c)	24
(1)(d)	20
(2)	16.3 – 16.5, 18.1 – 18.9
(3)	10.2
(4)(a)	N/A
(4)(b)	N/A
(4)(c)	N/A
601GB	31.4

This list is included to assist the ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
1.1, condition 2	21.4
1.1, condition 5	N/A
15.12.1	3.11
15.12.2	3.15
15.12.3	25
15.13	26
15.14	27 and 28