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25 May 2010

MARKET UPDATE

Recommended Acquisition of Westpac Office Trust – Announcement dated 28 April 2010

Mirvac Group and Westpac Funds Management Limited as responsible entity of the Westpac Office Trust ("WOT") have agreed to amend the Scheme Implementation Agreement to update the timetable and refine the mechanics of the trust scheme.

Full details regarding the Offer will be outlined in the explanatory memorandum which is expected to be despatched to eligible WOT investors on or about Tuesday, 22 June 2010.

A copy of the Deed of Amendment to the Scheme Implementation Agreement is attached to this announcement.

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Deed of Amendment to the
Scheme Implementation
Agreement

Mirvac Limited

Mirvac Funds Limited as responsible entity of the
Mirvac Property Trust

Westpac Funds Management Limited as responsible entity
for Westpac Office Trust

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Date	25 May 2010
Parties	<p>1. Mirvac Limited (ABN 92 003 280 699) of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac Limited</i>)</p> <p>2. Mirvac Funds Limited (ABN 70 002 561 640) as responsible entity of the Mirvac Property Trust of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac RE</i>)</p> <p>(In this Deed, Mirvac Limited and Mirvac RE will collectively be referred to as <i>Mirvac</i>)</p> <p>3. Westpac Funds Management Limited (ABN 28 085 352 405) as responsible entity for the Westpac Office Trust (ARSN 103 853 523) of Level 15, 90 Collins Street, Melbourne VIC 3000 (<i>WFML</i>).</p>
Recitals	<p>A Mirvac and WFML are parties to a Scheme Implementation Agreement dated 28 April 2010 (<i>SIA</i>). The SIA relates to a proposal for Mirvac to acquire all of the issued units in the Westpac Office Trust by way of a 'trust scheme' transaction.</p> <p>B It has been agreed that:</p> <p>(a) the Timetable (contained in Schedule 2 to the SIA) is to be amended; and</p> <p>(b) new Mirvac instalment receipts will not be issued under the Scheme.</p> <p>C The proposals set out in Recital B require consequential amendments to the SIA, as set out in the Schedule to this Deed.</p> <p>D The parties to this Deed have agreed to amend the SIA in the manner set out in this Deed, with such amendments to take effect from the Effective Date.</p>

It is agreed as follows.

1. Definitions and Interpretation

1.1 SIA definitions to apply

Subject to clause 1.2, a term that is not defined in this Deed but which is defined in clause 1.1 of the SIA has the same meaning given in the SIA, unless the context requires otherwise.

1.2 Specific defined terms

In this Deed, the following definitions apply unless the context requires otherwise.

Effective Date means the date on which this Deed is executed by all of the parties to this Deed.

1.3 Interpretation

The rules of interpretation contained in clause 1.2 of the SIA apply in this Deed as if those rules of interpretation were set out in this Deed.

2. Amendments

- (a) This Deed takes effect, and the parties agree to be bound by the SIA as amended by this Deed, from the Effective Date.
- (b) On and from the Effective Date, the SIA is amended by:
 - (i) inserting the words that have been underlined; and
 - (ii) deleting the words that have been struck through,as set out in the consolidated version of the SIA attached as the Schedule.

3. Remaining Provisions Unaffected

- (a) Except as specifically amended by this Deed, all terms and conditions of the SIA (including all schedules to the SIA) remain in full force and effect.
- (b) With effect from the Effective Date, the SIA as amended by this Deed is to be read as a single integrated document incorporating the amendments effected by this Deed, as set out in the consolidated version of the SIA contained in the Schedule.

4. Further Assurances

Each party must do anything necessary (including executing agreements, deeds and documents) to give full effect to this Deed and the transactions contemplated by it.

5. Governing Law and Jurisdiction

- (a) This Deed is governed by the laws of New South Wales.
- (b) In relation to it and related non contractual matters each party irrevocably submits to the non exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

6. Corporate Power and Authority

Each party represents and warrants to the others that:

- (a) it is validly incorporated and has the power to carry on its business as it is now being conducted;
- (b) it has full power to enter into and perform its obligations under this Deed;
- (c) it has taken all action which is necessary to authorise the entry into and performance of its obligations under this Deed; and
- (d) this Deed constitutes legal, valid and binding obligations, enforceable in accordance with its terms.

7. Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule

Amendments to Scheme Implementation Agreement

Amended and Restated Scheme
Implementation Agreement

Mirvac Limited

Mirvac Funds Limited as responsible entity of the
Mirvac Property Trust

Westpac Funds Management Limited as responsible entity
for Westpac Office Trust

Allens Arthur Robinson
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Date	28 April 2010
Parties	
1.	Mirvac Limited (ABN 92 003 280 699) of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac Limited</i>)
2.	Mirvac Funds Limited (ABN 70 002 561 640) as responsible entity of the Mirvac Property Trust of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac RE</i>) (In this Agreement, Mirvac Limited and Mirvac RE will collectively be referred to as <i>Mirvac</i>)
3.	Westpac Funds Management Limited (ABN 28 085 352 405) as responsible entity of the Westpac Office Trust of Level 15, 90 Collins Street, Melbourne VIC 3000 (<i>WFML</i>).
Recitals	
A	Mirvac RE proposes to acquire all of the issued units in Westpac Office Trust by way of the Scheme.
B	WFML has agreed to propose the Scheme and issue the Scheme Booklet, at the request of Mirvac. WFML and Mirvac have agreed to implement the Scheme on the terms and conditions of this Agreement.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

In this Agreement, the following definitions apply unless the context requires otherwise. In addition, where a term is not defined in this Agreement but is defined in the Supplemental WOT Deed, the definition in the Supplemental WOT Deed applies unless the context requires otherwise.

AAR means Allens Arthur Robinson of Level 28, Deutsche Bank Place, Corner Phillip & Hunter Streets, Sydney NSW 2000.

Agreed Announcement means the Announcement to be made by each party in the form agreed by Mirvac and WFML.

Announcement means a press release, announcement or other public statement.

ASIC means the Australian Securities and Investments Commission.

ASIC Modifications means, to the extent that such relief is necessary to implement the Scheme:

- (a) a modification of item 7 of section 611 of the Corporations Act, to allow WOT Unitholders other than Mirvac and its associates to vote in favour of the Scheme for the purpose of item 7 of section 611 of the Corporations Act;
- (b) a modification by ASIC of, or exemption by ASIC from, section 601FC(1)(d) of the Corporations Act to permit WFML to treat Ineligible Overseas Unitholders and Ineligible Overseas IR Holders differently when implementing the Scheme by not offering these holders New Mirvac ~~Stapled~~ Securities or the cash alternative and directing these holders to use the sale facility;
- (c) a modification by ASIC of, or exemption from, section 601ED, Divisions 2 to 5A of Part 7.9, section 259C and Chapter 6C of the Corporations Act, and the requirement to hold an Australian financial services licence, in relation to the proposed security sale facility to be established by Mirvac under the Scheme;
- (d) a modification by ASIC of, or exemption from, Divisions 5A of Part 7.9 of the Corporations Act, in relation to the proposed offer to purchase Scheme ~~Securities~~ Units under the Scheme;
- (e) a modification by ASIC of, or exemption from, Parts 7.9 and 7.11 and Chapters 6C and 6D of the Corporations Act, in relation to the ~~new Mirvac~~ instalment receipts over New Mirvac Securities to be issued under the Scheme;
- (f) a modification by ASIC of Chapter 5C of the Corporations Act to apply after the Implementation Date to permit a responsible entity of WOT that is part of the Mirvac Group to give a benefit out of the assets of WOT when the only member of WOT is a member of the Mirvac Group; and
- (g) such other modifications, relief and waivers from ASIC as agreed by the parties.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Listing Rules means the official listing rules of ASX.

ASX Waivers and Confirmations means, to the extent that such relief is necessary to implement the Scheme:

- (a) a waiver from ASX Listing Rule 7.1 to allow New Mirvac Securities to be issued under the Scheme; and
- (b) such confirmations and other waivers from ASX as agreed by the parties.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Business Day means:

- (a) a Business Day as defined in the ASX Listing Rules; and
- (b) a week day on which trading banks are open for business in Sydney, Australia.

Citi means Citi Group Global Markets Australia Pty Limited (ABN 64 003 114 832).

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement by or with any person as a result of which, if that expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a person other than a Mirvac Group entity will:
 - (i) acquire a Relevant Interest in 10% or more of the WOT Units;
 - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all, or a substantial part of, the assets or business of WOT;
 - (iii) otherwise acquire Control of WOT; or
 - (iv) otherwise directly or indirectly acquire, merge or amalgamate with WOT or a substantial part of its assets or business, whether by way of takeover offer, trust scheme, unitholder approval acquisition, capital reduction, unit buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company or trust for WOT or other synthetic merger or any other transaction or arrangement; or
- (b) WOT would be required to abandon or otherwise fail to proceed with the Scheme, by whatever means.

Conditions has the meaning given in clause 3.1.

Confidentiality Deed means the deed of that name entered into by Mirvac and WFML on 22 October 2009.

Control has the meaning given in section 50AA of the Corporations Act.

Controlled Entity means, in relation to a person, any entity (which includes any trust) which the person Controls.

Corporations Act means the *Corporations Act 2001* (Cth) as modified in respect of WOT or the Scheme.

Effective means the coming into effect of the Supplemental WOT Deed pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which WFML lodges the Supplemental WOT Deed with ASIC.

Election Date means 5pm on the date of the Scheme Meeting.

End Date means the earlier of:

- (a) the later of:
 - (i) 31 August 2010; or
 - (ii) if the Scheme Booklet is despatched to Scheme Securityholders after 11 June 2010 for a reason other than delay by Mirvac, the date which is five weeks after the Scheme Booklet is despatched to Scheme Securityholders;
or
- (b) 30 September 2010,

or such other date as the parties may agree in writing.

Exclusivity Period means the period from the date of this Agreement until the earliest of the Implementation Date, the End Date and the date of termination of this Agreement.

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including the Commonwealth Treasurer), ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

Implementation Date means the date which is 2 Business Days after the Record Date or such other date as the parties agree in writing.

Independent Board Committee means the committee of WFML directors who are independent of the Westpac Group, such committee having been established to consider and assess the Scheme and any Competing Proposals.

Independent Expert means an independent expert to be engaged by WFML.

Independent Expert's Report means the report prepared by the Independent Expert stating whether or not, in its opinion, the Scheme (including, to the extent that the Independent Expert determines that it is information relevant to forming its opinion, any payments to be made by Mirvac to Westpac and Westpac Group Related Entities in connection with the Scheme) is fair and reasonable for, and in the best interests of, Scheme Securityholders, and giving reasons for that opinion (and includes any update of such report).

Insolvency Event means, in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (b) **(arrangements)**
 - (i) the entry by the person into a compromise or arrangement with its creditors generally or, if it is a trustee, the creditors of its trust generally; or
 - (ii) the person executes a deed of company arrangement;
- (c) **(winding up)**

- (i) a court makes an order for the winding up of the person; or
 - (ii) the making of an application or order for the winding up or dissolution of the person, other than where the application or order (as the case may be) is set aside within 14 days;
- (d) **(statutory demand)** being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) **(suspends payments)** the person suspends or threatens to suspend payment of its debts or, if it is a trustee, the debts of the trust;
- (f) **(insolvency)** the person is or becomes unable to pay its debts or, if it is a trustee, the debts of its trust, as and when they fall due within the meaning of the Corporations Act or is (or if it is a trustee, its trust is) otherwise presumed to be insolvent under the Corporations Act; or
- (g) **(analogous event)** any analogous event, or event which has substantially similar effect, occurring in relation to that person under the laws of another jurisdiction, provided that:
- (h) where the 'person' is a Mirvac Group entity, any event or circumstance in respect of the person which is fairly disclosed to WFML in the Mirvac Disclosure Materials will not constitute an Insolvency Event in respect of the person for the purposes of this Agreement; and
 - (i) where the 'person' is WFML, any event or circumstance in respect of WFML which is fairly disclosed to Mirvac in the WOT Disclosure Materials will not constitute an Insolvency Event in respect of WFML for the purposes of this Agreement.

Investigating Accountant means an accounting firm to be appointed by Mirvac and WFML to prepare the Investigating Accountant's Report.

Investigating Accountant's Report means the report that is prepared by the Investigating Accountant in relation to the financial information regarding the Merged Group that is prepared by Mirvac from information provided by Mirvac and WFML for inclusion in the Scheme Booklet.

Liabilities means Claims, debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Merged Group means Mirvac Group and the WOT Group, assuming implementation of the Scheme.

Mirvac Deed Polls means the deed polls to be executed by Mirvac in favour of Scheme Securityholders, the forms of which are set out in **Schedule 1** with any alterations or amendments approved in writing by Mirvac and WFML.

Mirvac Disclosure Material means:

- (a) the due diligence information disclosed before the date of this Agreement by or on behalf of Mirvac to WFML at the request of WFML or otherwise pursuant to the Confidentiality Deed; and
- (b) information available on the Public Registers before the date of this Agreement.

Mirvac Group means Mirvac Limited, Mirvac RE and MPT and their respective Controlled Entities (excluding the WOT Group).

Mirvac Indemnified Party means each Mirvac Group entity and its directors, officers, employees and advisers, and any person who is a Representative of Mirvac.

Mirvac Information means the information about the Mirvac Group and the Merged Group which Mirvac provides to WFML for inclusion in the Scheme Booklet, but excludes the WFML Information, Investigating Accountant's Report and the Independent Expert's Report.

Mirvac Material Adverse Change means the occurrence or coming into existence of one or more events or circumstances which, individually or when aggregated with all such events or circumstances, is reasonably likely to have the effect of diminishing:

- (a) the operating profit, excluding mark-to-market movements relating to MPT investment properties and financial derivatives, of the Mirvac Group by \$14 million or more; or
- (b) the consolidated net assets of the Mirvac Group by \$250 million or more, excluding any occurrence or circumstance which was disclosed to ASX before the date of this Agreement or which was fairly disclosed in the Mirvac Disclosure Material.

Mirvac Material Contract means a contract or commitment:

- (a) requiring total payments in excess of \$250 million by the Mirvac Group; and
- (b) entered into by a Mirvac Group entity:
 - (i) that is not consistent with the Mirvac Group's announced strategy as at the date of this Agreement; and
 - (ii) under which a person does not have an unconditional right to terminate within 2 years of entry into the contract or commitment,

but excludes this Agreement.

Mirvac Prescribed Occurrence means the occurrence of any of the following events on or after the date of this Agreement:

- (a) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited converts all or any of its securities into a larger or smaller number of securities;
- (b) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited reduces or resolves to reduce its capital in any way;
- (c) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited:
 - (i) enters into a buy-back agreement; or

- (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act,
 - in relation to shares in Mirvac Limited or interests in MPT;
- (d) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited issues securities (whether as part of a rights issue, placement or otherwise) or grants a performance right or an option over its securities, or agrees to make such an issue or grant such a performance right or option, other than pursuant to any Mirvac Long Term Performance Plan, Employee Incentive Scheme and LTI Plan or currently existing dividend or distribution reinvestment plan (including any issue of securities to any underwriter of such a plan) or security purchase plan;
- (e) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited issues, or agrees to issue, convertible notes or any other security or instrument convertible into securities;
- (f) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited directly or indirectly disposes, or agrees to dispose, of the whole or a substantial part of its business or any single property asset in value exceeding \$100 million;
- (g) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited incurs any additional borrowings or financial indebtedness (other than in the normal course of business) in excess of \$250 million or creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;
- (g) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited makes any change or amendment to its constitution which would adversely affect Mirvac's ability to carry out the transactions that this Agreement or the Scheme contemplates (For the avoidance of doubt, this does not include any amendment to the MPT constitution made by the MPT Supplemental Deed);
- (h) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited agrees to pay, declares, pays or makes, or incurs a liability to pay or make a distribution of income, profits, assets or capital, other than a distribution for the 3 months ending 30 March 2010 in an amount not exceeding \$70 million in aggregate and a distribution for the 3 months ending 30 June 2010 in an amount not exceeding \$80 million in aggregate;
- (i) MPT (acting through Mirvac RE as responsible entity of MPT) or Mirvac Limited:
 - (i) enters into or agrees to enter into a Mirvac Material Contract;
 - (ii) changes the terms of any Mirvac Material Contract;
 - (iii) pays, discharges or satisfies any Liabilities under any Mirvac Material Contract other than in accordance with its terms and consistently with past practice; or
- (j) waives any material Claims or rights under, or waives the benefit of, any provisions of any Mirvac Material Contract; and
- (k) an Insolvency Event occurs in relation to MPT or Mirvac Limited,

but excluding any matter:

- (l) required to be done or procured by a Mirvac Group entity under this Agreement or the Scheme;
- (m) which was disclosed to ASX before the date of this Agreement or which was fairly disclosed in the Mirvac Disclosure Material; or
- (n) the undertaking of which WFML has approved in writing.

Mirvac Stapled Security means one fully paid ordinary unit in MPT stapled to one fully paid ordinary share in Mirvac Limited.

MPT means Mirvac Property Trust (ARSN 086 780 645).

MPT Supplemental Deed means the supplemental deed amending the MPT constitution made on or about the Implementation Date.

New Mirvac Security means a Mirvac Stapled Security to be issued to, or at the direction of, Scheme Securityholders under the Scheme.

Notice of Meeting means the notice convening the Scheme Meeting together with the proxy form for the Scheme Meeting.

Panel Guidance Note means 'Guidance Note 15: Listed Trusts and Managed Investment Scheme Mergers' issued by the Takeovers Panel of Australia, as may be amended from time to time.

Public Registers means the records made available for public inspection by ASIC and ASX.

Record Date means 7pm (Sydney time) on the day that is 4 Business Days after the Effective Date or such other date as may be agreed by the parties in writing.

Related Entities means, in relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representative means:

- (a) in respect of Mirvac:
 - (i) a director, officer or employee of Mirvac; and
 - (ii) an adviser, agent or representative of the Mirvac Group or of a person referred to in sub-paragraph (i) above in respect of the Scheme;
- (b) in respect of WFML:
 - (i) a director of WFML; and
 - (ii) the following individuals: Keith Grayson, Steve Bulloch, Lee Doyle and Andrew Faber; and
 - (iii) an adviser, agent or representative of the WOT Group or of a person referred to in sub-paragraph (i) or (ii) above in respect of the Scheme.

Scheme means the arrangement, in accordance with the Panel Guidance Note, under which Mirvac RE acquires all of the WOT Units, that is facilitated by amendments to the

WOT Constitution as set out in the Supplemental WOT Deed, and that is subject to the Scheme Resolutions being approved by the requisite majorities of WOT Unitholders.

Scheme Booklet means the Scheme Booklet in respect of the Scheme, to be prepared by WFML in accordance with this Agreement, which shall include the Notice of Meeting, Independent Expert's Report, this Agreement, the Supplemental WOT Deed, the Westpac Deed Poll and the Mirvac Deed Polls.

Scheme Consideration means the consideration to be provided by Mirvac in consideration for the acquisition of the Scheme Securities, as described in the Supplemental WOT Deed.

Scheme IR means a WOT Instalment Receipt on issue as at the Record Date.

Scheme IR Holder means a person registered in the WOT Unit Register as the holder of one or more Scheme IRs.

Scheme Meeting means the meeting of WOT Unitholders to be held to consider and, if thought fit, to approve the Scheme Resolutions.

Scheme Resolutions means resolutions of WOT Unitholders to approve the Scheme, being:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the acquisition by Mirvac RE of all the Scheme Units and ~~Scheme IRs and~~ the steps required to implement the Scheme;
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve the amendments to the WOT Constitution as set out in the Supplemental WOT Deed and to authorise WFML to execute and lodge with ASIC the Supplemental WOT Deed to give effect to those amendments; and
- (c) if WFML agrees, a resolution for the retirement of WFML as the responsible entity of WOT,

and such other resolutions necessary to give effect to the Supplemental WOT Deed.

Scheme Security means a Scheme Unit or Scheme IR (or both, as the context requires).

Scheme Securityholder means a Scheme Unitholder or a Scheme IR Holder (or both, as the context requires).

Scheme Unit means a WOT Unit on issue as at the Record Date, ~~excluding a WOT Unit represented by a WOT Instalment Receipt.~~

Scheme Unitholder means a person registered in the WOT Unit Register as the holder of a Scheme Unit.

Security Trust Deed means the Security Trust and Subscription Deed in respect of the WOT Instalment Receipts between WSL and WCN dated 10 June 2003 as amended and restated on 25 August 2005 and subsequently amended and restated on 14 August 2009.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a Competing Proposal which satisfies the criteria in clauses 14.5(a) and 14.5(b).

Supplemental WOT Deed means a deed poll pursuant to which WFML will amend the WOT Constitution to give effect to the Scheme, the form of which is as described in the Agreed Announcement set out in Schedule 3.

Timetable means the indicative timetable in relation to the Scheme, as set out in Schedule 2 or as otherwise may be agreed by the parties in writing.

WCN means Westpac Custodian Nominees Limited (ABN 18 002 861 565) as security trustee in respect of the WOT Instalment Receipts, or any replacement security trustee under the Security Trust Deed.

Westpac means Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Deed Poll means a deed poll to be executed by Westpac in favour of Scheme Securityholders dated on or about the date of this Agreement.

Westpac Group means Westpac and its Controlled Entities from time to time (but excluding WFML in its capacity as responsible entity of WOT).

Westpac Implementation Deed means the deed of that name entered into on or about the date of this Agreement between Westpac, WFML and Mirvac.

Westpac Information means the information that Westpac provides for disclosure in the Scheme Booklet.

WFML Information means all information included in the Scheme Booklet other than the Mirvac Information, the Independent Expert's Report ~~and~~ the Investigating Accountant's Report, the AAR taxation report and the Westpac Information.

WOT means Westpac Office Trust (ARSN 103 853 523).

WOT Constitution means the constitution establishing WOT dated 20 July 2005.

WOT Group means WOT and its Controlled Entities.

WOT Disclosure Material means:

- (a) the due diligence information disclosed before the date of this Agreement by or on behalf of WOT to Mirvac at the request of Mirvac or otherwise pursuant to the Confidentiality Deed; and
- (b) information available on the Public Registers before the date of this Agreement.

WOT Indemnified Party means each WOT Group entity and its directors, officers, employees and advisers, and any person who is a Representative of WFML.

WOT Instalment Receipt means an instalment receipt which evidences beneficial ownership of one (1) WOT Unit, where such WOT Unit is held in the name of WCN or such other trustee under the Security Trust Deed.

WOT Material Adverse Change means the occurrence or coming into existence of one or more events or circumstances which, individually or when aggregated with all such events or circumstances, is reasonably likely to have the effect of diminishing:

- (a) the operating profit, excluding mark-to-market movements relating to investment properties and financial derivatives, of the WOT Group by \$1,600,000 or more; or

- (b) the consolidated net assets of the WOT Group by \$20,300,000 or more, excluding any occurrence or circumstance which was disclosed to ASX before the date of this Agreement or which was fairly disclosed in the WOT Disclosure Material.

WOT Material Contract means a contract or commitment:

- (a) requiring total payments in excess of \$10 million by WOT; and
- (b) entered into by WOT (acting through WFML as responsible entity of WOT) other than in the ordinary course of business and under which a person does not have an unconditional right to terminate within 2 years of entry into the contract or commitment,

but excludes this Agreement.

WOT Prescribed Occurrence means the occurrence of any of the following events on or after the date of this Agreement:

- (a) WOT (acting through WFML as responsible entity of WOT) converts all or any of its units into a larger or smaller number of units;
- (b) WOT (acting through WFML as responsible entity of WOT) reduces or resolves to reduce its capital in any way;
- (c) WOT (acting through WFML as responsible entity of WOT):
- (i) enters into a buy-back agreement; or
- (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act,
- in relation to interests in WOT;
- (d) WOT (acting through WFML as responsible entity of WOT) issues securities (whether by way of a rights issue, placement or otherwise) or grants an option over its units, or agrees to make such an issue or grant such an option;
- (e) WOT (acting through WFML as responsible entity of WOT) issues, or agrees to issue, convertible notes or any other security or instrument convertible into units;
- (f) WOT (acting through WFML as responsible entity of WOT) directly or indirectly disposes, or agrees to dispose, of the whole or a substantial part of its business or any of its properties;
- (g) WOT (acting through WFML as responsible entity of WOT) incurs any additional borrowings or financial indebtedness (other than in the normal course of business) in excess of \$50 million or creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;
- (h) WOT (acting through WFML as responsible entity of WOT) makes any change or amendment to the WOT Constitution other than under the Supplemental WOT Deed;
- (i) WOT (acting through WFML as responsible entity of WOT) agrees to pay, declares, pays or makes, or incurs a liability to pay or make a distribution of income, profits,

assets or capital, other than a distribution for the 3 months ending 30 June 2010 in an amount not exceeding 1.6625 cents per WOT Unit;

- (j) WOT (acting through WFML as responsible entity of WOT):
 - (i) enters into or agrees to enter into a WOT Material Contract;
 - (ii) changes the terms of any WOT Material Contract;
 - (iii) pays, discharges or satisfies any Liabilities under any WOT Material Contract other than in accordance with its terms and consistently with past practice;
 - (iv) waives any material Claims or rights under, or waives the benefit of, any provisions of any WOT Material Contract; or
 - (v) enters into, makes or revokes any tax election or choice, other than a managed investment trust election in accordance with the proposed Tax Laws Amendment (2010 Measures No 1) Bill 2010 (if that bill, including any amendments, become law) (which it may elect without Mirvac's consent);
- (k) an Insolvency Event occurs in relation to WOT;
- (l) a Claim is brought against WOT (other than a frivolous or vexatious Claim) which (in the written opinion of senior counsel appointed by WFML's solicitors) will or is likely to have an adverse effect on WOT in excess of \$10 million; or WFML as responsible entity of WOT becomes the subject of a regulatory investigation or prosecution in relation to WOT which (in the written opinion of senior counsel appointed by WFML's solicitors) will or is likely to have an adverse effect on WOT in excess of \$10 million; and
- (m) a destruction of, or physical damage to any part of:
 - (i) Westpac Place, 275 Kent Street, Sydney or Woolworths NSO, Norwest Business Park, Baulkham Hills, Sydney (collectively, **Key Properties**) in excess of \$150 million, except if the destruction or damage is covered by an insurance policy or policies such that the amount of the destruction or damage less the amount received under the policy is less than \$150 million); or
 - (ii) either of the Key Properties giving any tenant a right to an entire rent abatement or materially vary or terminate the lease, which abatement, variation or termination would result in a WOT Material Adverse Change, except if the loss of rent is covered by an insurance policy or policies such that the amount of the loss less the amount received under the policy would bring the loss under the thresholds stipulated in the definition of WOT Material Adverse Change;

but excluding any matter:

- (n) required to be done or procured by WOT or WFML under this Agreement or the Scheme;

- (o) which was disclosed to ASX before the date of this Agreement or which was fairly disclosed in the WOT Disclosure Material; or
- (p) the undertaking of which Mirvac has approved in writing.

WOT Unit means a fully paid ordinary unit in WOT.

WOT Unitholder means a person who is registered as the holder of one or more WOT Units in the WOT Unit Register from time to time.

WOT Unit Register means either or both (as applicable):

- (a) the register of holders of WOT Units from time to time, as administered by WFML; and
- (b) the register of holders WOT Instalment Receipt Holders from time to time, as administered by WFML.

WSL means Westpac Securities Limited (ABN 39 087 924 221).

1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation. The following rules apply in this Agreement unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (f) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (g) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *dollars* and \$ is to Australian currency.
- (j) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.

- (k) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (m) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (o) A reference to any time is a reference to that time in Sydney, Australia.

1.3 Consents or approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

1.4 Business Day

Except where otherwise expressly provided, where under this Agreement the day on or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

1.5 Joint and several obligations

Unless otherwise specified in this Agreement and subject to clause 17.2:

- (a) a reference to Mirvac is a reference to both Mirvac Limited and Mirvac RE;
- (b) a reference to Mirvac as a party to this Agreement is a reference to both Mirvac Limited and Mirvac RE as parties to this Agreement;
- (c) a right, obligation or liability of Mirvac Limited or Mirvac RE confers that right, or imposes that obligation or liability, jointly and severally on Mirvac Limited and Mirvac RE; and
- (d) a reference to a covenant or representation given by Mirvac Limited or Mirvac RE is a reference to a covenant or representation given jointly and severally by Mirvac Limited and Mirvac RE.

Nothing in this clause 1.5 will operate to limit the liability of Mirvac Limited by reason of clause 17.2.

2. Agreement to proceed with Scheme

2.1 WFML to propose Scheme

WFML agrees to propose and implement the Scheme on and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.

2.2 Mirvac to assist

Mirvac agrees to assist WFML in preparing and implement the Scheme on and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.

3. Conditions to Scheme

3.1 Conditions

The obligations of WFML under clause 7.1(k) do not become binding until each of the following conditions (the **Conditions**) has been satisfied or waived under clause 3.2:

Conditions for the benefit of Mirvac and WFML

- (a) **(ASIC Modifications)** before the commencement of the Scheme Meeting, ASIC has granted the ASIC Modifications on terms agreed by the parties (acting reasonably) or, in respect of any ASIC Modification which has not been granted, has indicated in writing that such a modification is not required;
- (b) **(ASX Waivers and Confirmations)** before the commencement of the Scheme Meeting, ASX has granted the ASX Waivers and Confirmations or, in respect of any ASX waiver or confirmation which has not been granted, has indicated in writing that such a waiver or confirmation is not required;
- (c) **(WOT Unitholder approval)** the Scheme Resolutions are approved at the Scheme Meeting by the requisite majorities of the WOT Unitholders under the Corporations Act and in accordance with the Panel Guidance Note (subject to any exemption or modification granted by ASIC);
- (d) **(judicial advice)** the Supreme Court of New South Wales grants judicial advice under section 63 of the *Trustee Act 1925* (NSW) which confirms that WFML would be justified in convening the Scheme Meeting and proceeding on the basis that amending the WOT Constitution as set out in the Supplemental WOT Deed would be within the powers of alteration conferred by the WOT Constitution and section 601GC of the Corporations Act;
- (e) **(no restraints)** as at 9am on the Effective Date, no temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition restraining or prohibiting the Scheme, which has been enacted, enforced or issued by a Government Agency, is in effect;
- (f) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to WFML which states that, in the Independent

Expert's opinion, the Scheme is fair and reasonable for, and in the best interests of, Scheme Securityholders and the Independent Expert does not change that conclusion before the commencement of the Scheme Meeting;

Conditions for the benefit of Mirvac only

- (g) **(Independent Board Committee)** the Independent Board Committee unanimously recommends that WOT Unitholders approve the Scheme Resolutions and does not change that recommendation or support a Superior Proposal at or before the Scheme Meeting; and no member of the Committee changes his or her recommendation or supports a Superior Proposal at or prior to the Scheme Meeting;
- (h) **(WOT Material Adverse Change)** no WOT Material Adverse Change occurs between and including the date of this Agreement and 9am on the Effective Date;
- (i) **(WOT Prescribed Occurrence)** no WOT Prescribed Occurrence occurs between and including the date of this Agreement and 9am on the Effective Date;
- (j) **(WOT representations and warranties)** each of the representations and warranties given by WFML under clause 12.4 remain true and correct in all respects, in each case at the times set out in clause 12.4;

Conditions for the benefit of WFML only

- (k) **(Mirvac Material Adverse Change)** no Mirvac Material Adverse Change occurs between and including the date of this Agreement and 9am on the Effective Date;
- (l) **(Mirvac Prescribed Occurrence)** no Mirvac Prescribed Occurrence occurs between and including the date of this Agreement and 9am on the Effective Date;
- (m) **(Mirvac representations and warranties)** each of the representations and warranties given by Mirvac under clause 12.1 remain true and correct in all respects, in each case at the times set out in clause 12.1;
- (n) **(ASX quotation)** the New Mirvac Securities ~~and (if applicable) Mirvac instalment receipts~~ have been approved by ASX for official quotation on ASX and, in respect of ~~the~~ such New Mirvac Securities, trading on a deferred settlement basis from the Business Day next following the Effective Date and on a normal settlement basis from the date that is 4 Business Days after the Implementation Date; and
- (o) **(Certificate)** Mirvac provides to WFML a certificate in the form set out in Annexure A and signed by two directors of Mirvac Limited and Mirvac RE on or before the date of despatch of the Scheme Booklet.

3.2 Benefit and waiver

- (a) The Conditions in clauses 3.1(a) to 3.1(f) are for the benefit of each of Mirvac and WFML, and (except in the case of the Condition in clauses 3.1(c) and 3.1(f), which cannot be waived) any breach or non-fulfilment of any of those Conditions may only be waived with the written consent of both Mirvac and WFML.

- (b) The Conditions in clauses 3.1(g) to 3.1(j) are for the sole benefit of Mirvac only, and any breach or non-fulfilment of any of those Conditions may only be waived by Mirvac giving its written consent.
- (c) The Conditions in clauses 3.1(k) to 3.1(o) are for the sole benefit of WFML, and any breach or non-fulfilment of any of those Conditions may only be waived by WFML giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition pursuant to this clause 3.2 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition is itself expressed to be conditional and the other parties accept the conditions, the terms of the conditions apply accordingly. If the other parties do not accept the conditions, the relevant Condition has not been waived.
- (f) If a party waives the breach or non-fulfilment of a Condition, that waiver will not preclude it from suing the other parties for any breach of this Agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event or circumstance.

3.3 Obligations in relation to Conditions

- (a) Each of Mirvac and WFML must use its reasonable endeavours (other than waiver) to ensure and procure that each of the Conditions in clauses 3.1(a) to 3.1(c) is satisfied as soon as practicable after the date of this Agreement and in any event on or before the date (if any) specified for its satisfaction.
- (b) WFML must use its reasonable endeavours (other than waiver) to ensure and procure that each of the Conditions in clauses 3.1(d) and 3.1(g) to 3.1(j) is satisfied as soon as practicable after the date of this Agreement and in any event on or before the date (if any) specified for its satisfaction.
- (c) Mirvac must use its reasonable endeavours (other than waiver) to ensure and procure that each of the Conditions in clauses 3.1(k) to 3.1(o) is satisfied as soon as practicable after the date of this Agreement and in any event on or before the date (if any) specified for its satisfaction.
- (d) Each of Mirvac and WFML must:
 - (i) not take any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other parties;
 - (ii) keep the other parties informed of:
 - (A) any failure to satisfy a Condition; and

- (B) any circumstances which may result in any of the Conditions not being satisfied in accordance with its terms; and
- (iii) promptly advise the other parties of the satisfaction of a Condition.

3.4 Conditions not satisfied

- (a) If any of the Conditions is not satisfied or waived by the date (if any) specified for its satisfaction (or an event occurs which would prevent a Condition being satisfied by the date (if any) specified for its satisfaction), or if the Supplemental WOT Deed has not become Effective by the End Date, then Mirvac and WFML will consult in good faith:
 - (i) with a view to determining whether the Scheme, or a transaction which results in a Mirvac Group entity acquiring all of the WOT Units, may proceed by way of alternative means or methods; or
 - (ii) to extend the date for satisfaction of the relevant Condition or the End Date.
- (b) If the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days after the relevant date, then unless the relevant Condition is waived in accordance with clause 3.2 Mirvac or WFML may terminate this Agreement by notice in writing to the other parties and clause 16.4 shall then have effect.

3.5 Consultation on communications with ASIC and ASX

- (a) To the extent reasonably practicable, each party must consult with the other in advance in relation to all communications (whether written or oral, and whether direct or through agents or advisers) with ASIC in relation to the ASIC Modifications and ASX in relation to the ASX Waivers and Confirmations.
- (b) Without limiting the generality of paragraph (a), each party must:
 - (i) give the other parties drafts of any material written communications to be sent to ASIC in relation to the ASIC Modifications and ASX in relation to the ASX Waivers and Confirmations; and
 - (ii) give the other parties copies of any written communications sent to, or received from, ASIC in relation to the ASIC Modifications and ASX in relation to the ASX Waivers and Confirmations, as soon as reasonably practicable on sending or receiving them (as the case may be).

4. Outline of Scheme

If the Supplemental WOT Deed becomes Effective, the Scheme will be implemented with the result that, on the Implementation Date:

- (a) Mirvac RE will become the registered holder of all of the WOT Units; and
- (b) the Scheme Consideration will be provided to Scheme Securityholders in accordance with the Scheme.

5. Covenants by Mirvac

Subject to the Supplemental WOT Deed becoming Effective, Mirvac covenants in favour of WFML (in its capacity as trustee for each of the Scheme Unitholders) and WCN (in its capacity as [security](#) trustee for each of the Scheme IR Holders) that, in consideration of the performance of WFML of its obligations under the Supplemental WOT Deed, Mirvac will:

- (a) provide the Scheme Consideration to Scheme Securityholders in accordance with the terms of the WOT Constitution as amended by the Supplemental WOT Deed; and
- (b) otherwise perform all of the tasks it is required to perform under the WOT Constitution as amended by the Supplemental WOT Deed.

6. Conduct of business

6.1 WOT Group

From the date of this Agreement up to and including the Implementation Date, WFML must procure that the WOT Group conducts its business in the ordinary course consistent with past practice in substantially the same manner and at the same locations as conducted as at the date of this Agreement, and does not do or fail to do anything which does or could reasonably be expected to result in a WOT Prescribed Occurrence.

except in relation to any matter or course of action:

- (a) required to be done pursuant to, or which is otherwise permitted by, this Agreement or the Scheme;
- (b) fairly disclosed in the WOT Disclosure Material; or
- (c) consented to by Mirvac.

6.2 Mirvac Group

From the date of this Agreement up to and including the Implementation Date, Mirvac must procure that:

- (a) the Mirvac Group conducts its business in the ordinary course in accordance with the Mirvac Group's announced strategy as at the date of this Agreement in substantially the same manner as conducted as at the date of this Agreement, and does not do or fail to do anything which does or could reasonably be expected to result in a Mirvac Prescribed Occurrence;
- (b) without limiting the generality of clause 6.2(a), the Mirvac Group does not:
 - (i) alter MPT's strategy of owning and maintaining Australian investment grade properties;
 - (ii) acquire, or enter into any agreement (or agreements) or give a binding commitment (or commitments) to acquire, a property or business asset not located in Australia or New Zealand whose value exceeds \$250 million; or

- (iii) acquire, or enter into an agreement (or a number of, or separate agreements, or a series of agreements) or give a binding commitment (or a number of separate agreements or a series of commitments) to acquire, any asset or assets whose aggregate value exceeds \$500 million, including by way of a takeover bid or trust scheme transaction,

except in relation to any matter or course of action:

- (c) required to be done pursuant to, or which is otherwise permitted by, this Agreement or the Scheme;
- (d) fairly disclosed in the Mirvac Disclosure Material; or
- (e) consented to by WFML.

7. Implementation steps

7.1 WFML's obligations

WFML must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular WFML must:

- (a) **(commission Independent Expert's Report)** commission the preparation of the Independent Expert's Report and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **(Investigating Accountant)** as expeditiously as practicable, provide any assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (c) **(prepare Scheme Booklet)** prepare and verify the Scheme Booklet in accordance with clause 8;
- (d) **(ASIC modifications)** liaise with Mirvac in applying to ASIC for the ASIC Modifications;
- (e) **(ASX Waivers and Confirmations)** apply to ASX for the ASX Waivers and Confirmations;
- (f) **(liaison with ASIC)** provide an advanced draft of the Scheme Booklet to ASIC for its review and approval and keep Mirvac informed of any matter raised by ASIC in relation to the draft Scheme Booklet (and of any resolution of those matters);
- (g) **(ASX confirmation)** seek confirmation from ASX under ASX Listing Rule 15.1 that it does not object to the proposed amendments to the WOT Constitution as set out in the Supplemental WOT Deed or the Scheme Booklet;
- (h) **(approval of Scheme Booklet)** procure that a meeting of the Independent Board Committee is convened to approve the Scheme Booklet for despatch to Scheme Securityholders;

- (i) **(proxy solicitation)** engage a proxy solicitation firm to encourage Scheme Securityholder participation in the voting of the Scheme at the Scheme Meeting;
- (j) **(Scheme Meeting)** convene the Scheme Meeting, despatch the Scheme Booklet to Scheme Securityholders, hold the Scheme Meeting and put the Scheme Resolutions to WOT Unitholders at the Scheme Meeting, in each case taking all reasonable steps necessary to comply with the Panel Guidance Note, the WOT Constitution, the Corporations Act and the ASX Listing Rules (as applicable); and
- (k) **(implementation of Scheme)** if the Scheme Resolutions are passed by the requisite majorities of WOT Unitholders at the Scheme Meeting:
 - (i) as soon as practicable and by no later than ~~1 Business Day after the Scheme Meeting~~the date of the Second Court Hearing, execute the Supplemental WOT Deed and lodge with ASIC a copy of the executed Supplemental WOT Deed;
 - (ii) close the WOT Unit Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) promptly procure the registration of all transfers of ~~WOT Instalment Receipts and~~ WOT Units to Mirvac RE in accordance with the Scheme; and
 - (iv) promptly do all other things contemplated by or necessary to give effect to the Scheme.

7.2 Mirvac obligations

Mirvac must take all steps reasonably necessary to assist WFML to propose and implement the Scheme as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular Mirvac must:

- (a) **(assist preparation of Independent Expert's Report)** as expeditiously as practicable, provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **(Investigating Accountant)** appoint the Investigating Accountant, and provide any assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (c) **(ASIC modifications)** liaise with WFML in applying to ASIC for the ASIC Modifications;
- (d) **(preparation of Scheme Booklet)** provide all assistance with the preparation and verification of the Scheme Booklet in accordance with clause 8;
- (e) **(approval of Scheme Booklet)** procure that meetings of the boards of Mirvac Limited and Mirvac RE are convened to:
 - (i) consider those sections of the Scheme Booklet that comprise Mirvac Information as being in a form appropriate for despatch to Scheme Securityholders and issuing to WFML a written consent to the despatch of that information in that form to Scheme Securityholders; and

- (ii) approve the issue of the Scheme Consideration in accordance with the Scheme;
- (f) **(Mirvac Deed Polls)** before the despatch of the Scheme Booklet, execute the Mirvac Deed Polls; and
- (g) **(implementation of Scheme)** if the Supplemental WOT Deed becomes Effective, provide the Scheme Consideration in accordance with the Supplemental WOT Deed.

8. Preparation of Scheme Booklet

8.1 WFML to prepare Scheme Booklet

Subject to Mirvac complying with its obligations under clause 8.4, WFML must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this Agreement and otherwise having regard to the Timetable.

8.2 Compliance requirements

WFML must ensure that the Scheme Booklet:

- (a) complies with all applicable laws and regulatory guidance, in particular the requirements of the Corporations Act, the ASX Listing Rules, the Panel Guidance Note and all applicable ASIC regulatory guides; and
- (b) is not misleading or deceptive in any material respect (whether by omission or otherwise),

except that the foregoing obligations in respect of the Mirvac Information is subject to Mirvac complying with its obligations under clause 8.4.

8.3 Responsibility Statement

Without limiting clause 8.2, the Scheme Booklet must include a responsibility statement, in a form to be agreed by the parties, which will contain words to the effect that:

- (a) WFML has provided, and is responsible for, the WFML Information in the Scheme Booklet, and that Mirvac and Westpac Group and their respective directors and officers do not assume any responsibility for the accuracy or completeness of that WFML Information;
- (b) Mirvac has provided, and is responsible for, the Mirvac Information, and that WFML and Westpac Group and their respective directors and officers do not assume any responsibility for the accuracy or completeness of that Mirvac Information except, in the case of WFML and its directors and officers, to the extent that WFML has provided Mirvac with information for the purpose of Mirvac preparing information on the Merged Group;
- (c) Westpac has provided, and is responsible for, the Westpac Information in the Scheme Booklet, and that:

- (i) Mirvac and its directors and officers do not assume any responsibility for the accuracy or completeness of the Westpac Information; and
 - (ii) WFML and its directors and officers do not assume any responsibility for the accuracy or completeness of the Westpac Information; and
 - (iii) Westpac Group and its directors and officers have no involvement in the preparation of any part of the Scheme Booklet other than the Westpac Information, and Westpac Group has not authorised or caused the issue of, and expressly disclaims and takes no responsibility for, any part of the Scheme Booklet other than the Westpac Information;
- (d) the Independent Expert has provided and is responsible for the Independent Expert's Report, and that:
- (i) Mirvac and its directors and officers do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and
 - (ii) WFML and Westpac Group and their respective directors and officers do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (e) the accounting firm that has been engaged by Mirvac to prepare the Investigating Accountant's Report has provided and is responsible for that report, and that:
- (i) Mirvac and its directors and officers do not assume any responsibility for the accuracy or completeness of the Investigating Accountant's Report; and
 - (ii) WFML and Westpac Group and their respective directors and officers do not assume any responsibility for the accuracy or completeness of the Investigating Accountant's Report.

8.4 Mirvac Information

- (a) Mirvac must provide the Mirvac Information and Investigating Accountant's Report to WFML as soon as is reasonably practicable after the date of this Agreement and otherwise having regard to the Timetable, in a form that:
- (i) includes all information regarding the Mirvac Group and the Merged Group that is required by all applicable laws and regulatory guidance including the Corporations Act, the ASX Listing Rules, the Panel Guidance Note and all relevant ASIC regulatory guides;
 - (ii) without limiting the generality of sub-paragraph (i), includes all information that would be required under section 636(1)(g) of the Corporations Act if the Scheme Booklet was a bidder's statement offering the New Mirvac Securities as consideration under a takeover bid; and
 - (iii) is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) Mirvac must provide to WFML such assistance as WFML may reasonably require to adapt the Mirvac Information for inclusion in the Scheme Booklet.

8.5 Review by Mirvac

WFML must make available to Mirvac drafts of the Scheme Booklet, consult with Mirvac in relation to the content of those drafts (including the inclusion of any Mirvac Information and any information solely derived from, or prepared solely in reliance on, the Mirvac Information), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Mirvac and its Representatives on those drafts.

8.6 Dispute as to Scheme Booklet

If, after a reasonable period of consultation and compliance by WFML with its obligations under clause 8.5, Mirvac and WFML, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Mirvac Information (or any information solely derived from, or prepared solely in reliance on, the Mirvac Information), WFML will make such amendments to that information in the Scheme Booklet as Mirvac (acting in good faith) may require; and
- (b) if the disagreement relates to the form or content of the WFML Information, WFML will, acting in good faith, decide the final form of that information in the Scheme Booklet.

8.7 Consent of Mirvac

Without limiting clause 8.6, Mirvac must provide written consent to WFML in relation to the form and context in which any Mirvac Information is included in the Scheme Booklet.

8.8 Verification

WFML must undertake appropriate verification processes in relation to the WFML Information included in the Scheme Booklet, and Mirvac must undertake appropriate verification processes in relation to the Mirvac Information in the Scheme Booklet.

8.9 Supplementary disclosure

- (a) If, at any time between the date of despatch of the Scheme Booklet and the date of the Scheme Meeting, WFML becomes aware either:
 - (i) of new information which, were it known at the time the Scheme Booklet was prepared should have been included in the Scheme Booklet; or
 - (ii) that any part of the WFML Information in the Scheme Booklet is misleading or deceptive in a material respect (whether by omission or otherwise),then, in either case, WFML will advise Mirvac of that information and, if considered by WFML that supplementary disclosure is required, provide supplementary disclosure to Scheme Securityholders.
- (b) If, at any time between the date of despatch of the Scheme Booklet and the date of the Scheme Meeting, Mirvac becomes aware either:
 - (i) of new information which, were it known at the time the Scheme Booklet was prepared should have been included in the Mirvac Information that is included in the Scheme Booklet; or

- (ii) that any part of the Mirvac Information is misleading or deceptive in a material respect (whether by omission or otherwise),

then, in either case, Mirvac will advise WFML of that so that WFML can determine whether supplementary disclosure to Scheme Securityholders is required and if WFML determines that supplementary disclosure is required, Mirvac must provide WFML of supplementary Mirvac Information as soon as reasonably practicable.

- (c) Any supplementary disclosure to Scheme Securityholders in accordance with paragraphs (a) and (b) will be considered to form part of the WFML Information or Mirvac Information (as applicable).

8.10 Co-operation

Each party must ensure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme and to prepare all documents required relating to the Scheme.

9. Access to information

9.1 WFML to give access

From the date of this Agreement and up to and including the Implementation Date, WFML must give Mirvac reasonable access to its records (subject to any existing confidentiality obligations owed to third parties), premises and personnel relating to WOT, and reasonable co-operation for the purpose of:

- (a) the implementation of the Scheme (however this obligation does not require WFML to provide information to Mirvac concerning its directors' and management's consideration of the Scheme);
- (b) Mirvac's understanding of the operations of WOT's business to allow and facilitate the smooth implementation of the plans of the Mirvac Group for that business following the Implementation Date; and
- (c) any other purpose which is agreed in writing between the parties,

subject to the proper performance by the directors and officers of WFML and the WOT Group of their fiduciary duties.

9.2 Information provided subject to confidentiality obligation

All information provided under this Agreement is subject to the terms of the Confidentiality Deed.

10. WFML board recommendations

10.1 Agreed Announcement

The Agreed Announcement must be issued by each of Mirvac and WFML as soon as reasonably practicable following the execution of this Agreement and must state (on the

basis of written statements or resolutions made by the Independent Board Committee) that the Independent Board Committee unanimously recommends that WOT Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is fair and reasonable for, and in the best interests of, Scheme Securityholders.

10.2 Independent Board Committee

- (a) Subject to clause 10.2(b), WFML must use its best endeavours to procure that the Independent Board Committee will:
 - (i) not change, modify or withdraw its recommendations set out in the Agreed Announcement;
 - (ii) state in the Scheme Booklet that the Independent Board Committee unanimously recommends the Scheme and that WOT Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal, and do not change, modify or withdraw those recommendations once made; and
 - (iii) not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so recommended,if (and for as long as) the Independent Expert concludes in the Independent Expert's Report that the Scheme is fair and reasonable for, and in the best interest of, Scheme Securityholders, and does not subsequently change that opinion.
- (b) WFML is relieved of the obligation in clause 10.2(a) if:
 - (i) the Independent Board Committee determines that a Competing Proposal constitutes a Superior Proposal; or
 - (ii) the Independent Board Committee has formed the view acting in good faith that, to satisfy what it considers to be its or any WFML director's fiduciary or statutory duties (having taken appropriate financial and legal advice), the Independent Board Committee:
 - (A) should not continue to recommend that WOT Unitholders vote in favour of the Scheme; or
 - (B) should change, modify or withdraw any recommendations previously made.

10.3 Independent director voting

WFML must use its best endeavours to ensure that, in the absence of the occurrence of an event described in clause 10.2(b) or 10.2(b)(ii), and for as long as the Independent Expert concludes in the Independent Expert's Report that the Scheme is fair and reasonable for, and in the best interest of, Scheme Securityholders, and has not subsequently changed that opinion:

- (a) each WFML director who is on the Independent Board Committee and who has a Relevant Interest in WOT Units or WOT Instalment Receipts and in respect of which they have control over voting rights attaching to such WOT Units or WOT Instalment Receipts:

- (i) intends to vote those WOT Units in favour of the Scheme Resolutions; and
 - (ii) does not change that voting intention; and
- (b) such voting intentions are disclosed in the Scheme Booklet.

11. Announcements

11.1 Restrictions

No party may make an Announcement relating to the subject matter of this Agreement or its termination or make public this Agreement (or any of its terms) unless the Announcement or publication:

- (a) is required by this Agreement;
- (b) has the prior approval of Mirvac and WFML; or
- (c) is required to be made by any applicable law or the ASX Listing Rules.

11.2 Notice of Announcement

If a party is required to make an Announcement under clause 11.1(c), it must, to the extent practicable without that party breaking any applicable law, give to Mirvac and WFML:

- (a) such notice as is reasonable in the circumstances of its intention to make the Announcement; and
- (b) a draft of the Announcement and an opportunity, which is reasonable in the circumstances, to comment on the contents of the draft Announcement,

unless an immediate Announcement is required by the ASX Listing Rules to be made by the party.

12. Representations and warranties

12.1 Mirvac representations and warranties

Mirvac represents and warrants to WFML (on its own behalf and separately as trustee for the WOT Unitholders and for the WOT Indemnified Parties) that:

- (a) as at the date of this Agreement, the date of despatch of the Scheme Booklet, immediately before the commencement of the Scheme Meeting, the Effective Date and the Implementation Date:
 - (i) **(company status)** it is validly incorporated as a company limited by shares under the Corporations Act;
 - (ii) **(MIS status)** MPT is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
 - (iii) **(capacity)** it has full legal capacity and power to:
 - (A) own its property and to carry on its business; and

- (B) enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (iv) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
- (v) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (A) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (B) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (C) enable it to properly carry on its business,
 and it is complying with any conditions to which any Authorisation is subject;
- (vi) **(Agreement effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (vii) **(no contravention)** neither its execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates does or will:
 - (A) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (B) contravene any Authorisation; or
 - (C) contravene its constitution or the MPT constitution;
- (viii) **(no Insolvency Event)** no Mirvac Group entity is affected by an Insolvency Event; and
- (ix) **(due diligence)** Mirvac has taken all reasonable steps to ensure that all due diligence information provided by it or its Representatives to WFML or its Representatives in connection with the Scheme and any other transactions contemplated by this Agreement is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Mirvac Information)** as at the date of despatch of the Scheme Booklet and immediately before the commencement of the Scheme Meeting, all Mirvac Information given to WFML for inclusion in the Scheme Booklet:
 - (i) has been given in good faith and on the understanding that WFML is relying on that information to prepare the Scheme Booklet and propose and implement the Scheme;
 - (ii) includes all information regarding the Mirvac Group and the Merged Group that is required by all applicable laws and regulatory guidance including the Corporations Act, the ASX Listing Rules, the Panel Guidance

Note and all relevant ASIC regulatory guides (including any information withheld from disclosure in reliance on the carve-out in ASX Listing Rule 3.1A);

- (iii) without limiting the generality of sub-paragraph (i), includes all information that would be required under section 636(1)(g) of the Corporations Act if the Scheme Booklet was a bidder's statement offering the New Mirvac Securities as consideration under a takeover bid; and
 - (iv) is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (c) **(continuous disclosure)**
- (i) as at the date of this Agreement neither it nor MPT is:
 - (A) in breach of its continuous disclosure obligations under the ASX Listing Rules; or
 - (B) relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure, except in respect to information relating specifically to the Scheme or other information disclosed to WFML prior to the date of this deed; and
 - (ii) as at the date of despatch of the Scheme Booklet, immediately before the commencement of the Scheme Meeting, the Effective Date and the Implementation Date, neither it nor MPT is:
 - (A) in breach of its continuous disclosure obligations under the ASX Listing Rules; or
 - (B) relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure; and
- (d) **(New Mirvac Securities)** except as provided under the Scheme, the New Mirvac Securities issued as Scheme Consideration will, on their issue:
- (i) be fully paid and free from any mortgages, charges, liens, encumbrances and other security interests; and
 - (ii) rank equally in all respects with all existing Mirvac Stapled Securities.

12.2 Mirvac indemnity

Subject to clause 12.3, Mirvac indemnifies WFML and each WOT Indemnified Party against all Liabilities arising from or in connection with a breach by Mirvac of any of its representations and warranties in clause 12.1.

12.3 Qualification

Mirvac is not liable in respect of any Claim for breach of:

- (a) a warranty in clause 12.1 if the fact, matter or circumstance giving rise to the Claim was:

- (i) disclosed by Mirvac to the party making, or seeking to make, a Claim or its Representatives; or
 - (ii) known to the party making, or seeking to make, a Claim or its Representatives or any other member of the WOT Group,
- before the execution of this Agreement; and
- (b) the warranty in clause 12.1(a)(ix) except to the extent that, as a result of the breach, the Mirvac Disclosure Material fails to disclose a Mirvac Material Adverse Change.

12.4 WFML representations and warranties

WFML represents and warrants to Mirvac (on its own behalf and separately as trustee for each Mirvac Indemnified Party) that:

- (a) as at the date of this Agreement, the date of despatch of the Scheme Booklet, immediately before the commencement of the Scheme Meeting, the Effective Date and the Implementation Date:
 - (i) **(company status)** it is validly incorporated as a company limited by shares under the Corporations Act;
 - (ii) **(MIS status)** WOT is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
 - (iii) **(capacity)** it has full legal capacity and power to:
 - (A) own its property and to carry on its business; and
 - (B) enter into this Agreement and to carry out the transactions that this Agreement contemplates;
 - (iv) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
 - (v) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (A) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (B) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (C) enable it to properly carry on its business,

and it is complying with any conditions to which any Authorisation is subject;
 - (vi) **(Agreement effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

- (vii) **(no contravention)** neither WFML's execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates does or will:
 - (A) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (B) contravene any Authorisation;
 - (C) contravene any undertaking or instrument binding on it or any of its property; or
 - (D) contravene the constitution of WFML or WOT;
- (viii) **(no Insolvency Event)** no WOT Group entity is affected by an Insolvency Event;
- (ix) **(due diligence)** WFML has taken all reasonable steps to ensure that the due diligence information, listed in a separate document to be dated as at the date of this Agreement and initialled by the parties for identification purposes, provided in connection with the Scheme and any other transactions contemplated by this Agreement are not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(WFML Information)** as at the date of despatch of the Scheme Booklet and immediately before the commencement of the Scheme Meeting, all WFML Information in the Scheme Booklet:
 - (i) includes all information regarding the WOT Group that is required by all applicable laws and regulatory guidance including the Corporations Act, the ASX Listing Rules, the Panel Guidance Note and all relevant ASIC regulatory guides; and
 - (ii) is not misleading or deceptive in any material respect (whether by omission or otherwise); and
- (c) **(continuous disclosure)**
 - (i) as at the date of this Agreement, WOT is not in breach of its continuous disclosure obligations under the ASX Listing Rules; and
 - (ii) as at the despatch of the Scheme Booklet, immediately before the commencement of the Scheme Meeting, the Effective Date and the Implementation Date, WOT is not:
 - (A) in breach of its continuous disclosure obligations under the ASX Listing Rules; or
 - (B) subject to clause 14.6, relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure, except in respect of information relating to the strategic review of WOT announced on ASX on 4 February 2010.

12.5 WFML indemnity

Subject to clause 12.6, WFML indemnifies Mirvac, each Mirvac Indemnified Party against all Liabilities arising from or in connection with a breach by WFML of any of its representations and warranties in clause 12.4.

12.6 Qualification

WFML is not liable in respect of any Claim for breach of:

- (a) a warranty in clause 12.4 if the fact, matter or circumstance giving rise to the Claim was:
 - (i) disclosed by WFML to the party making, or seeking to make, a Claim or its Representatives; or
 - (ii) known to the party making, or seeking to make, a Claim or any of its Representatives or any other member of the Mirvac Group, before the execution of this Agreement; and
- (b) the warranty in clause 12.4(a)(ix) except to the extent that, as a result of the breach, the WOT Disclosure Material fails to disclose a WOT Material Adverse Change.

12.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 12.

12.8 Sole remedy

- (a) The sole remedies of either party against the other for a Claim arising in respect of this Agreement will be as set out in this Agreement.
- (b) WFML has no Liability to any member of the Mirvac Group:
 - (i) in connection with the Scheme or the matters the subject of this Agreement or the WFML Disclosure Materials unless the relevant Claim may properly be made under the terms of this Agreement or arises out of a statutory right or other claim which cannot be excluded by contract; or
 - (ii) resulting from or implied by conduct made in the course of negotiations in connection with the Scheme or the matters the subject of this Agreement or the WFML Disclosure Materials, unless the relevant Claim arises out of a statutory right or other claim, neither of which can be excluded by contract.
- (c) Mirvac has no Liability to any member of the WOT Group:
 - (i) in connection with Scheme or the matters the subject of this Agreement or the Mirvac Disclosure Materials unless the relevant Claim may properly be made under the terms of this Agreement or arises out of a statutory right or other claim which cannot be excluded by contract; or

- (ii) resulting from or implied by conduct made in the course of negotiations in connection with the Scheme or the matters the subject of this Agreement or the Mirvac Disclosure Materials, unless the relevant Claim arises out of a statutory right or other claim, neither of which can be excluded by contract.

12.9 Status of representations and warranties

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this Agreement; and
- (c) is given with the intent that Liability under it will not be confined to breaches that are discovered before the date of termination of this Agreement.

13. Release and D&O insurance

13.1 Release of officers

- (a) Subject to section 199A of the Corporations Act and paragraph (b) below, no Representative of Mirvac or WFML is liable for anything done or purported to be done in connection with the implementation of the Scheme.
- (b) Paragraph (a) does not exclude a person from any Liability which may arise from wilful misconduct or a negligent act or omission or an absence of good faith on the part of the person.
- (c) Each party receives and holds the benefit of this release, to the extent that it relates, to its Representatives, as trustee for them.

13.2 Due diligence investigations by Mirvac

- (a) Without prejudice to the rights of Mirvac, including in respect of any representations and warranties given to Mirvac and its Representatives under this Agreement, Mirvac acknowledges on its own behalf and on behalf of each of its Representatives that, before entry into this Agreement, it and its Representatives have undertaken and concluded due diligence investigations in relation to the WOT Group and have conducted discussions with WFML and certain of its Representatives.
- (b) Mirvac acknowledges on its own behalf and on behalf of each of its Representatives that each of WFML and its Representatives (unless otherwise agreed in writing with WFML and its Representatives) makes no representation or warranty in respect of any forward looking information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and Mirvac expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other

considerations that may have determined or influenced the decision of Mirvac to enter into this Agreement).

- (c) Without prejudice to the rights of Mirvac, including in respect of any representations and warranties given to Mirvac and its Representatives under this Agreement, Mirvac acknowledges on its own behalf and on behalf of each of its Representatives that:
 - (i) Mirvac has made its own independent assessment of all information it has received during due diligence;
 - (ii) in relation to forward looking information:
 - (A) there are uncertainties inherent in attempting to prepare the forward looking information and Mirvac is familiar with these uncertainties;
 - (B) Mirvac is taking full responsibility for making its own evaluation of the adequacy and accuracy of all forward looking information (including the reasonableness of any assumptions and contingencies which may affect the forward looking information); and
 - (C) neither WFML nor any of its Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such forward looking information.

13.3 Due diligence investigations by WFML

- (a) Without prejudice to WFML's rights, including in respect of any representations and warranties given to WFML and its Representatives under this Agreement, WFML acknowledges on its own behalf and on behalf of each of its Representatives that before entry into this Agreement, it and its Representatives have undertaken and concluded due diligence investigations in relation to the Mirvac Group and have conducted discussions with Mirvac and certain of its Representatives.
- (b) WFML acknowledges on its own behalf and on behalf of each of its Representatives that Mirvac Limited and its Representatives (unless otherwise agreed in writing with Mirvac and its Representatives) makes no representation or warranty in respect of any forward looking information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and WFML expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of WFML to enter into this Agreement).
- (c) Without prejudice to WFML's rights, including in respect of any representations and warranties given to WFML and its Representatives under this Agreement, WFML hereby acknowledges and agrees on its own behalf and on behalf of each of its Representatives, that:

- (i) WFML has made its own independent assessment of all information it has received during due diligence;
- (ii) in relation to forward looking information:
 - (A) there are uncertainties inherent in attempting to prepare the forward looking information and WFML is familiar with these uncertainties;
 - (B) WFML is taking full responsibility for making its own evaluation of the adequacy and accuracy of all forward looking information (including the reasonableness of any assumptions and contingencies which may affect the forward looking information); and
 - (C) none of Mirvac nor any of their Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such forward looking information.

13.4 Benefit

The acknowledgements, confirmations and agreements given and made by a party on its own behalf and on behalf of its Representatives in this clause 13 are given to the other party on its own behalf and separately as trustee for each of its Representatives.

14. Exclusivity

14.1 No shop

- (a) During the Exclusivity Period, WFML must not, and must ensure that each of its Representatives, does not directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with a view to obtaining an offer, proposal or expression of interest from any person in relation to a Competing Proposal or if to do so may be reasonably likely to lead to a Competing Proposal, or communicate any intention to do any of those things.
- (b) For the removal of doubt, nothing in this clause 14.1 affects, or operates to reduce, the rights of WFML under the remaining provisions of this clause 14.

14.2 No talk

Subject to clause 14.5, during the Exclusivity Period, WFML must not, and must ensure that each of its Representatives does not, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with a view to obtaining an offer, proposal or expression of interest from any person in relation to a Competing Proposal or if to do so may be reasonably likely to lead to a Competing Proposal (including, without limitation, allowing any person other than Mirvac to undertake due diligence investigations on WOT), even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by WFML or any its Representatives; or
- (b) the Competing Proposal has been publicly announced.

14.3 Access to information

Where, in reliance on clause 14.5, WFML, the WOT Group or any member of the WOT Group or any of their Representatives proposes to provide any due diligence information relating to the WOT Group to any person in connection with or for the purposes of a current or future Competing Proposal, it must, to the extent that Mirvac has not previously been provided with the information, provide Mirvac with a complete copy of that information at the same time as it is provided to the third party. Any information provided by WFML to Mirvac under this clause will be provided subject to the terms of the Confidentiality Agreement.

14.4 WFML's response to Rival Bidder and Mirvac's right to respond

- (a) If WFML is permitted by virtue of clause 14.5 to engage in activity that would otherwise breach clauses 14.2 and 14.3, WFML must enter into a confidentiality agreement with the Rival Bidder which is on terms no less onerous to the Rival Bidder than the Confidentiality Deed is to Mirvac, save and except that such confidentiality agreement must allow WFML to be able to comply with and perform its obligations under this clause 14 (including clause 14.4(b)(ii)), unless WFML has entered into a relevant confidentiality agreement with the Rival Bidder prior to the date of this Agreement (in which case WFML must use its best endeavours to amend that confidentiality agreement to allow WFML to comply with its obligations under this clause 14 (including clause 14.4(b)(ii))).
- (b) If WFML receives a Competing Proposal during the Exclusivity Period that it determines to be Superior Proposal and as a result the Independent Board Committee proposes to publicly change or withdraw their recommendation of, or support for, the Scheme, WFML must (unless the Independent Board Committee, acting in good faith and after having obtained advice from Citi and AAR (or such other independent financial advisers or external legal advisers as appointed by WFML from time to time) determine that it would be in breach of their fiduciary or statutory duties to do so):
 - (i) give Mirvac 2 Business Days¹ notice in writing of the proposed change or withdrawal; and
 - (ii) provide Mirvac with all material terms of the Superior Proposal (including details of the price or value, conditions and timing); and
 - (iii) if and to the extent that:
 - (A) such information is not subject to any confidentiality restrictions imposed by the Competing Bidder; or
 - (B) the Competing Bidder has consented to such information being provided to Mirvac,

provide Mirvac with the name of the person making the Superior Proposal (the *Competing Bidder*).

- (c) If WFML gives notice to Mirvac under clause 14.4(b), Mirvac will have the right, but not the obligation, at any time during the period of 2 Business Days following receipt of the notice, to:
- (i) offer to amend the terms of the Scheme;
 - (ii) make a takeover bid for WOT (notwithstanding any term in the Confidentiality Deed); or
 - (iii) propose any other form of transaction,
- (each a *Counterproposal*), and if it does so then WFML and the Independent Board Committee must review the Counterproposal in good faith.
- (d) For the purposes of clause 14.4, each successive modification of any third party expression of interest, offer or proposal in relation to an Competing Proposal will constitute a new Competing Proposal.

14.5 Fiduciary Out

The restrictions in clause 14.2 do not apply to the extent that they restrict WFML or the Independent Board Committee from taking or refusing to take any action (including responding to, entering into discussions and negotiations with, providing information to, or otherwise dealing with any third party) with respect to any proposal that is, or that the Independent Board Committee considers may reasonably be expected to lead to, a Competing Proposal provided:

- (a) the relevant proposal is bona fide and is made in writing by or on behalf of a person that each of the members of the Independent Board Committee reasonably considers is of reputable commercial standing; and
- (b) the Independent Board Committee, acting in good faith and in order to satisfy what the Independent Board Committee reasonably considers to be its statutory or fiduciary duties, determines after taking advice from Citi and AAR (or such other independent financial advisors and external legal advisers appointed by WFML from time to time), that the relevant proposal:
 - (i) is capable of being valued and completed; and
 - (ii) would, if completed substantially in accordance with its terms, be more favourable to the Scheme Securityholders than the Scheme,after taking into account all aspects of the relevant proposal (including its terms and conditions) and the person making it.

14.6 WFML's discussions with a third party

If WFML is permitted by virtue of this clause 14 to engage in activity that would otherwise breach clause 14.2 then, despite anything in this Agreement, the warranty given in clause 12.4(c) does not apply in respect of any such activity.

14.7 Miscellaneous

- (a) Nothing in this clause 14 prevents WFML from:
 - (i) providing information to its Representatives;
 - (ii) providing information to any Government Agency;
 - (iii) providing information to its auditors, advisers, customers, joint venturers, suppliers, lessees and financiers acting in that capacity in the ordinary course of business;
 - (iv) making presentations to brokers, portfolio investors, analysts and others third parties in the ordinary course of business; or
- (b) Each successive modification of a Superior Proposal will be subject to the process in this clause 14.

15. Break fee

15.1 Background

- (a) WFML and Mirvac acknowledge that, if they enter into this Agreement and the Scheme is subsequently not implemented, the Mirvac Group has incurred or will incur significant costs including advisory costs, costs of management time, out of pocket expenses and opportunity costs.
- (b) In the circumstances described in paragraph (a) above, Mirvac has requested that provision be made for the payment described in clause 15.2, without which Mirvac would not have entered into this Agreement.

15.2 Payment of break fee

- (a) Subject to clause 15.3, WFML must pay to Mirvac Limited the amount of \$4,146,527 (**Break Fee**) (which, for the avoidance of doubt, can only be payable once) as compensation for the costs of the Mirvac Group as described in clause 15.1(a) if any of the following occur:
 - (i) this Agreement is terminated under clause 16.2(c) or 16.3(c) (change of Recommendation); or
 - (ii) a Competing Proposal is announced, completed within six months after the date of this Agreement and is a Superior Proposal.
- (b) The payment of the Break Fee by WFML to Mirvac Limited must be made within 5 Business Days after the receipt by WFML of a written demand for payment from Mirvac Limited. The demand may only be made after the occurrence of any of the events in clauses 15.2(a).

15.3 Qualifications

If a Court or the Takeovers Panel determines that the agreement by WFML to pay the Break Fee, or any part of the Break Fee, or the actual payment of the Break Fee or any part of the Break Fee:

- (a) constituted, constitutes, or would constitute a breach of the fiduciary of statutory duties of the WFML board;
- (b) constituted, constitutes or would constitute unacceptable circumstances within the meaning of the Corporations Act; or
- (c) was, or is or would be unlawful for any other reason,

then, to that extent, WFML will not be obliged to pay the Break Fee and Mirvac Limited must refund to WFML any Break Fee payment, or the relevant part, already made.

15.4 Exclusive remedy

Notwithstanding any other provision of this Agreement, where a Break Fee becomes payable by WFML to Mirvac Limited (or would be payable if a demand was made), Mirvac cannot make any Claim against WFML or any WOT Indemnified Party in relation to the event giving rise to the payment of the Break Fee (other than for payment of the Break Fee).

15.5 GST exclusive

- (a) Subject to clause 15.5(b), the Break Fee is exclusive of GST and clause 19.12 applies to any payment of the Break Fee.
- (b) If a Break Fee becomes payable, WFML and Mirvac will seek a private ruling from the ATO to confirm that there is no GST payable in respect of the Break Fee (at WFML's cost). If WFML and Mirvac, having used their best endeavours, are not able to obtain a private ruling from the ATO on those terms within 45 days of the date the Break Fee becomes payable, WFML agrees to pay the Break Fee and GST in respect of the Break Fee.

16. Termination

16.1 Termination events

Without limiting any other provision of this Agreement either party (**non-defaulting party**) may terminate this Agreement by notice in writing to the other party if:

- (a) the End Date has passed before the Scheme has been implemented (other than as a result of a breach by the terminating party of its obligations under this Agreement);
- (b) the required majorities of ~~Scheme Securityholders~~ WOT Unitholders do not approve the Scheme at the Scheme Meeting;
- (c) the Westpac Implementation Deed is terminated; or
- (d) a Court or other Government Agency has issued an order, decree or ruling or taken other action that permanently restrains or prohibits the Scheme and that order, decree, ruling or other action has become final and cannot be appealed.

16.2 Termination by Mirvac

Mirvac may terminate this Agreement at any time before the scheduled time for implementation of the Scheme on the Implementation Date by notice in writing to WFML:

- (a) **(failure of condition)** in accordance with clause 3.4;
- (b) **(material breach)** if:
 - (i) WFML is in material breach of any clause of this Agreement;
 - (ii) Mirvac has given notice to WFML setting out the relevant breach and stating an intention to terminate; and
 - (iii) to the extent that the breach is capable of remedy, WFML does not remedy the breach by the earlier of 5 Business Days after it receives the notice or the scheduled time for implementation of the Scheme on the Implementation Date; or
- (c) **(change of recommendation)** the Independent Board Committee changes, withdraws or modifies its recommendation in relation to the Scheme, or it or any member of that committee, makes a public statement to the effect that the Independent Board Committee or any member of that committee no longer recommends that WOT Unitholders approve the Scheme Resolutions or that it, he or she supports a Superior Proposal.

16.3 Termination by WFML

WFML may terminate this Agreement at any time before the scheduled time for implementation of the Scheme on the Implementation Date by notice in writing to Mirvac:

- (a) **(failure of condition)** in accordance with clause 3.4;
- (b) **(material breach)** if:
 - (i) Mirvac is in material breach of any clause of this Agreement;
 - (ii) WFML has given notice to Mirvac setting out the relevant breach and stating an intention to terminate; and
 - (iii) to the extent that the breach is capable of remedy, Mirvac does not remedy the breach by the earlier of 5 Business Days after it receives the notice or the scheduled time for implementation of the Scheme on the Implementation Date; or
- (c) **(change of recommendation)** the Independent Board Committee changes, withdraws or modifies its recommendation in relation to the Scheme, or it or any member of that committee, makes a public statement to the effect that the Independent Board Committee or any member of that committee no longer recommends that WOT Unitholders approve the Scheme Resolutions or that it, he or she supports a Superior Proposal.

16.4 Effect of termination

- (a) If a party terminates this Agreement pursuant to clause 16.1 or 16.3, all obligations of the parties under this Agreement (other than this clause 16.4, clauses 1, 12, 13, 15, 17, 18 and 19) immediately cease to be of further force or effect.
- (b) The termination of this Agreement does not affect any Claim arising before this Agreement is terminated, that a party may have against another party.

17. Limitation of liability

17.1 WFML limitation of liability

- (a) WFML enters into this Agreement only in its capacity as responsible entity of WOT. In this Agreement:
 - (i) a reference to WFML is a reference to WFML in its capacity as responsible entity of WOT only, and in no other capacity; and
 - (ii) a reference to the undertaking, assets, business, money or any other thing of or in relation to WFML is a reference to such undertaking, assets, business, money or other thing of or in relation to WFML in its capacity as responsible entity of WOT only, and in no other capacity.
- (b) Subject to clause 17.1(c), a liability of WFML arising under or in connection with this Agreement is strictly limited and can only be enforced against the WFML to the extent to which it can be satisfied out of the property of WOT out of which WFML is actually indemnified for the liability.
- (c) The limitation of liability in clause 17.1(b):
 - (i) applies to any obligation or liability of WFML, except to the extent that, under the WOT Constitution or by operation of law, WFML is not entitled to be indemnified out of the assets of WOT including as a result of WFML's fraud, negligence or breach of the WOT Constitution;
 - (ii) extends to all liabilities and obligations of WFML in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement; and
 - (iii) applies notwithstanding any other provision of this Agreement.
- (d) Mirvac may not sue WFML in any capacity other than as responsible entity of WOT, including seeking the appointment of a receiver (except in relation to property of WOT), a liquidator, an administrator or any similar person to WFML or prove in any liquidation, administration or arrangement of or affecting WFML (except in relation to property of WOT) except to the extent specified in clause 17.1(c)(i).
- (e) WFML is not obliged to do or refrain from doing anything under this Agreement (including incurring any liability) unless its liability is limited in the same manner as set out in clauses 17.1(a), (b), (c) and (d).

17.2 Mirvac RE limitation of liability

- (a) Mirvac RE enters into this Agreement only in its capacity as responsible entity of MPT.
- (b) A liability arising under or in connection with this Agreement is limited to and can be enforced against Mirvac RE only to the extent to which it can be and is in fact satisfied out of property of MPT out of which Mirvac RE is actually indemnified for the liability. This limitation of Mirvac RE's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of Mirvac RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (c) The other parties to this Agreement may not sue Mirvac RE in any capacity other than as responsible entity of MPT, including seeking the appointment of a receiver (except in relation to property of MPT) a liquidator, an administrator or any similar person to Mirvac RE or proving in any liquidation, administration or arrangement of or affecting Mirvac RE (except in relation to property of MPT).
- (d) These provisions do not apply to any obligation or liability of Mirvac RE to the extent that it is not satisfied because under the constitution establishing MPT, or by operation of law, there is a reduction in the extent of Mirvac RE's indemnification out of the assets of MPT, as a result of Mirvac RE's failure to perform its duties as responsible entity of MPT.
- (e) Nothing in this clause 17.1(a) shall make Mirvac RE liable to any claim for an amount greater than the amount which Mirvac RE would have been able to claim and recover from the assets of MPT in relation to the relevant liability if Mirvac RE's right of indemnification out of the assets of MPT had not been prejudiced by failure to properly perform its duties.
- (f) Mirvac RE is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless its liability is limited in the same manner as set out in this clause 17.1(a).

18. Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender:
 - (i) to Mirvac Limited or Mirvac RE: Level 26, 60 Margaret Street
Sydney NSW 2000
Attention: The Company Secretary;
 - (ii) to WFML: Level 15

90 Collins Street
Melbourne VIC 3000

Attention: The Company Secretary; and

- (c) will be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, on the third Business Day after the date of posting (if posted to an address in the same country) or on the fifth Business Day after the date of posting (if posted to an address in another country),

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

19. General

19.1 Confidentiality Deed

Each of Mirvac and WFML acknowledges and agrees that it remains bound by the Confidentiality Deed and accepts that, for so long as this Agreement remains on foot, the terms of this Agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

19.2 Entire agreement

This Agreement and the Confidentiality Deed contain the entire agreement between the parties with respect to their respective subject matter and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their respective subject matter.

19.3 Amendment

This Agreement may be amended only by a document signed by or on behalf of each of the parties.

19.4 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

19.5 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

19.6 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

19.7 Change name of WOT

- (a) Subject to clause 19.7(b), with effect from the Implementation Date Mirvac will not use and will procure that the name of WOT is changed to exclude the name 'Westpac' (and that all documents issued, entered into or executed after the Implementation Date relating to WOT shall reflect this change of name).
- (b) Clause 19.7 does not apply to the extent that Mirvac is required to use the name WOT at law (for example, in the preparation of accounts) or to the extent it is reasonably necessary in implementing the Scheme (for example, communication with investors and tenants).

19.8 No merger

The rights and obligations of the parties will not merge on the implementation of the Scheme. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

19.9 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

19.10 No representation or reliance

- (a) No party (nor any person acting on its behalf) has made any representation or other inducement to the other to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Neither party enters into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Agreement.

19.11 Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. Any stamp duty (including fines, penalties and interest) payable on or in connection with the transfer to Mirvac RE of ~~WOT Instalment Receipts and~~ WOT Units pursuant to the Scheme shall be borne by Mirvac.

19.12 GST

- (a) Unless otherwise expressly stated, all amounts payable under this Agreement are expressed to be exclusive of GST. If GST is payable on a Taxable Supply made under or in connection with this Agreement, the recipient of the supply must pay

the supplier an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.

- (b) Without limiting clause 19.12(a), if an amount payable under this Agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the acquisition of the supply to which that liability relates. A party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.
- (c) Words and expressions used in this clause 19.12 have the same meaning as in *A New Tax System (Goods and Services) Tax Act 1999 (Cth)*.

19.13 Governing law

This Agreement is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

19.14 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1 – Mirvac Deed Polls

Deed Poll

Mirvac Funds Limited as responsible entity of Mirvac
Property Trust

Allens Arthur Robinson
Level 28
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Tel +61 2 9230 4000
Fax +61 2 9230 5333
www.aar.com.au

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Date	[*] 2010
By	Mirvac Funds Limited (ABN 70 002 561 640) as responsible entity of the Mirvac Property Trust (ARSN 086 780 645) (<i>MPT</i>) of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac RE</i>).
In favour of	Each Scheme Securityholder
Recitals	
A	Mirvac RE has entered into a Scheme Implementation Agreement dated [*] with Mirvac Limited (ACN 003 280 699) and Westpac Funds Management Limited (ACN 085 352 405) (<i>WFML</i>) as responsible entity of Westpac Office Trust (ARSN 103 853 523) (the <i>SIA</i>).
B	WFML has agreed in the SIA to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions, Mirvac RE will acquire all of the Scheme Securities from Scheme Securityholders for the Scheme Consideration.
C	In accordance with the SIA, Mirvac RE is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Securityholders that it will observe and perform the obligations contemplated of it under the Scheme and the SIA.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the SIA have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the SIA form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Agreement' in that clause are references to 'this Deed Poll'.

2. Nature of Deed Poll

Mirvac RE acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Securityholder in accordance with its terms even though the Scheme Securityholders are not party to it; and
- (b) under the Scheme, each Scheme Securityholder appoints WFML as its agent and attorney to enforce this Deed Poll against Mirvac RE on behalf of that Scheme Securityholder.

3. Condition Precedent and Termination

3.1 Condition precedent

Mirvac RE's obligations under this Deed Poll are subject to the Supplemental WOT Deed becoming Effective.

3.2 Termination

The obligations of Mirvac RE under this Deed Poll will automatically terminate on termination of the SIA.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Mirvac RE is released from its obligations under this Deed Poll, except those obligations under clause ~~9.6~~[10.6](#); and
- (b) each Scheme Securityholder retains any rights, powers or remedies that Scheme Securityholder has against Mirvac RE in respect of any breach by Mirvac RE of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4. Compliance with Scheme Obligations

Mirvac RE covenants in favour of each Scheme Securityholder that it will observe and perform all obligations contemplated of it under the Scheme and the SIA including, without limitation, the obligation to provide the Scheme Consideration in accordance with the terms of the Scheme.

[5. Undertaking](#)

[Mirvac RE undertakes and covenants in favour of each Scheme Securityholder to comply with its obligations in relation to the Scheme set out in section 17.25 of the Scheme Booklet.](#)

6. ~~5.~~ Representations and Warranties

Mirvac RE makes the following representations and warranties in favour of Scheme Securityholders:

- (a) **(company status)** it is validly incorporated as a company limited by shares under the Corporations Act;
- (b) **(MIS status)** MPT is validly established and registered as a "registered scheme" under Chapter 5C of the Corporations Act;
- (c) **(capacity)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enters into this Deed Poll and to carry out the transactions that this Deed Poll contemplates;
- (d) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed Poll and its carrying out the transactions that this Deed Poll contemplates;
- (e) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Deed Poll and to carry out the transactions that this Deed Poll contemplates;
 - (ii) ensure that this Deed Poll is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,
and it is complying with any conditions to which any Authorisation is subject;
- (f) **(document effective)** this Deed Poll constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (g) **(no contravention)** neither its execution of this Deed Poll nor the carrying out by it of the transactions that this Deed Poll contemplates does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution or the MPT constitution;
- (h) **(New Mirvac Securities)** except as provided under the Scheme, the New Mirvac Securities issued as Scheme Consideration will, on their issue:
 - (i) be fully paid and free from any mortgages, charges, liens, encumbrances, and other security interests; and
 - (ii) rank equally in all respects with all existing Mirvac Stapled Securities.



7. ~~6.~~ Continuing Obligations

This Deed Poll is irrevocable and remains in full force and effect until the earlier of:

- (a) Mirvac RE having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.2.

8. ~~7.~~ Further Assurances

Mirvac RE will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Securityholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

9. ~~8.~~ Mirvac RE Limitation of liability

- (a) Mirvac RE enters into this Deed Poll only in its capacity as responsibly entity of MPT.
- (b) A liability arising under or in connection with this Deed Poll is limited to and can be enforced against Mirvac RE only to the extent to which it can be and is in fact satisfied out of property of MPT out of which Mirvac RE is actually indemnified for the liability. This limitation of Mirvac RE's liability applies despite any other provision of this Deed Poll and extends to all liabilities and obligations of Mirvac RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed Poll.
- (c) Each Scheme Securityholder may not sue Mirvac RE in any capacity other than as responsible entity of MPT, including seeking the appointment of a receiver (except in relation to property of MPT) a liquidator, an administrator or any similar person to Mirvac RE or proving in any liquidation, administration or arrangement of or affecting Mirvac RE (except in relation to property of MPT).
- (d) These provisions do not apply to any obligation or liability of Mirvac RE to the extent that it is not satisfied because under the constitution establishing MPT, or by operation of law, there is a reduction in the extent of Mirvac RE's indemnification out of the assets of MPT, as a result of Mirvac RE's failure to perform its duties as responsibly entity of MPT.
- (e) Nothing in this clause ~~8.2~~ shall make Mirvac RE liable to any claim for an amount greater than the amount which Mirvac RE would have been able to claim and recover from the assets of Mirvac Trust in relation to the relevant liability if Mirvac RE's right of indemnification out of the assets of MPT had not been prejudiced by failure to properly perform its duties.
- (f) Mirvac RE is not obliged to do or refrain from doing anything under this Deed Poll (including incur any liability) unless its liability is limited in the same manner as set out in this clause ~~8.2~~.

10. ~~9.~~ General**10.1 ~~9.1~~ Notices**

Any notice, demand, consent or other communication (a *Notice*) given or made to Mirvac RE under or in connection with this Deed Poll:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to Mirvac RE by pre-paid post (if posted to an address in another country, by registered airmail) or by hand to the address below or the address last requested by Mirvac RE in writing to the sender:

Level 26

60 Margaret Street

Sydney NSW 2000

Attention: Company Secretary; and

- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country),

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

10.2 ~~9.2~~ No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Mirvac RE or by any Scheme Securityholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

10.3 ~~9.3~~ Remedies cumulative

The rights, powers and remedies of Mirvac RE and of each Scheme Securityholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

10.4 ~~9.4~~ Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) the amendment or variation is agreed to in writing by WFML, and

- (b) Mirvac RE enters into a further deed poll in favour of the Scheme Securityholders giving effect to that amendment or variation.

10.5 **9.5-Assignment**

The rights and obligations of each of Mirvac RE and of each Scheme Securityholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so.

10.6 **9.6-Costs and stamp duty**

- (a) Mirvac RE must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.
- (b) All stamp duty (including any related fines, penalties and interest) payable on or in connection with the transfer of Scheme Securities under the Scheme, this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by Mirvac RE. Mirvac RE must indemnify each Scheme Securityholder on demand against any liability for that stamp duty (including any related fines, penalties and interest).

10.7 **9.7-Governing law and jurisdiction**

This Deed Poll is governed by the laws of New South Wales. Mirvac RE submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

Deed Poll

Mirvac Limited

Allens Arthur Robinson
Level 28
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Tel +61 2 9230 4000
Fax +61 2 9230 5333
www.aar.com.au



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Date	[*] 2010
By	Mirvac Limited (ABN 93 003 280 699) of Level 26, 60 Margaret Street, Sydney NSW 2000 (<i>Mirvac Limited</i>).
In favour of	Each Scheme Securityholder.
Recitals	
A	Mirvac Limited has entered into a Scheme Implementation Agreement dated [*] with Mirvac Funds Limited (ACN 002 561 640) in its capacity as responsible entity of the Mirvac Property Trust (ARSN 086 780 645) (<i>MPT</i>) (<i>Mirvac RE</i>) and Westpac Funds Management Limited (ACN 085 352 405) (<i>WFML</i>) as responsible entity of Westpac Office Trust (ARSN 103 853 523) (the <i>SIA</i>).
B	WFML has agreed in the SIA to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions, Mirvac RE will acquire all of the Scheme Securities from Scheme Securityholders for the Scheme Consideration.
C	In accordance with the SIA, Mirvac Limited is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Securityholders that it will observe and perform the obligations contemplated of it under the Scheme and the SIA, and that it will procure that Mirvac RE observes and performs the obligations contemplated of Mirvac RE under the Scheme and the SIA.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the SIA have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the SIA form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Agreement' in that clause are references to 'this Deed Poll'.

2. Nature of Deed Poll

Mirvac Limited acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Securityholder in accordance with its terms even though the Scheme Securityholders are not party to it; and
- (b) under the Scheme, each Scheme Securityholder appoints WFML as its agent and attorney to enforce this Deed Poll against Mirvac Limited on behalf of that Scheme Securityholder.

3. Condition Precedent and Termination

3.1 Condition precedent

Mirvac Limited's obligations under this Deed Poll are subject to the Supplemental WOT Deed becoming Effective.

3.2 Termination

The obligations of Mirvac Limited under this Deed Poll will automatically terminate on termination of the SIA.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Mirvac Limited is released from its obligations under this Deed Poll, except those obligations under clause ~~8.69.6~~; and
- (b) each Scheme Securityholder retains any rights, powers or remedies that Scheme Securityholder has against Mirvac Limited in respect of any breach by Mirvac Limited of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4. Compliance with Scheme Obligations

Mirvac Limited covenants in favour of each Scheme Securityholder that it will observe and perform all obligations contemplated of it under the Scheme and the SIA including, without limitation, the obligation to provide the Scheme Consideration in accordance with the terms of the Scheme.

5. Undertaking

[Mirvac Limited undertakes and covenants in favour of each Scheme Securityholder to comply with its obligations in relation to the Scheme set out in section 17.25 of the Scheme Booklet.](#)

6. ~~5.~~ Representations and Warranties

Mirvac Limited makes the following representations and warranties in favour of Scheme Securityholders:

- (a) **(company status)** it is validly incorporated as a company limited by shares under the Corporations Act;
- ~~(b) **(MIS status)** MPT is validly established and registered as a "registered scheme" under Chapter 5C of the Corporations Act;~~
- (b) ~~(c)~~ **(capacity)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Deed Poll and to carry out the transactions that this Deed Poll contemplates;
- (c) ~~(d)~~ **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed and its carrying out the transactions that this Deed Poll contemplates;
- (d) ~~(e)~~ **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Deed and to carry out the transactions that this Agreement contemplates;
 - (ii) ensure that this Deed is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any Authorisation is subject;
- (e) ~~(f)~~ **(document effective)** this Deed Poll constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (f) ~~(g)~~ **(no contravention)** neither its execution of this Deed Poll nor the carrying out by it of the transactions that this Deed Poll contemplates does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution or the MPT constitution; and
- (g) ~~(h)~~ **(New Mirvac Securities)** except as provided under the Scheme, the New Mirvac Securities issued as Scheme Consideration will, on their issue:
 - (i) be fully paid and free from any mortgages, charges, liens, encumbrances, and other security interests; and
 - (ii) rank equally in all respects with all existing Mirvac Stapled Securities.

7. ~~6.~~ Continuing Obligations

This Deed Poll is irrevocable and remains in full force and effect until the earlier of:

- (a) Mirvac Limited having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.2.

8. ~~7.~~ Further Assurances

Mirvac Limited will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Securityholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

9. ~~8.~~ General

9.1 ~~8.1~~ Notices

Any notice, demand, consent or other communication (a *Notice*) given or made to Mirvac Limited under or in connection with this Deed Poll:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to Mirvac Limited by pre-paid post (if posted to an address in another country, by registered airmail) or by hand to the address below or the address last requested by Mirvac Limited in writing to the sender:

Level 26

60 Margaret Street

Sydney NSW 2000

Attention: Company Secretary; and

- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country),

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

9.2 ~~8.2~~ No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Mirvac Limited or by any Scheme Securityholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more

occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

9.3 ~~8.3~~ Remedies cumulative

The rights, powers and remedies of Mirvac Limited and of each Scheme Securityholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

9.4 ~~8.4~~ Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) the amendment or variation is agreed to in writing by WFML; and
- (b) Mirvac Limited enters into a further deed poll in favour of the Scheme Securityholders giving effect to that amendment or variation.

9.5 ~~8.5~~ Assignment

The rights and obligations of Mirvac Limited and of each Scheme Securityholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so.

9.6 ~~8.6~~ Costs and stamp duty

- (a) Mirvac Limited must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.
- (b) All stamp duty (including any related fines, penalties and interest) payable on or in connection with the transfer of Scheme Securities under the Scheme, this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by Mirvac Limited. Mirvac Limited must indemnify each Scheme Securityholder on demand against any liability for that stamp duty (including any related fines, penalties and interest).

9.7 ~~8.7~~ Governing law and jurisdiction

This Deed Poll is governed by the laws of New South Wales. Mirvac Limited submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

Executed and delivered as a Deed in Sydney

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

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed and delivered as a Deed in Sydney

Executed in accordance with section 127 of the *Corporations Act 2001* by **Mirvac Funds Limited** as responsible entity of the **Mirvac Property Trust**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule 2 – Timetable

Event	Date
Scheme is announced	Wednesday, 28 April 2010
Draft Scheme Booklet is provided to ASIC and ASX for review	Friday <u>Tuesday, 14</u> 25 May 2010
<u>Westpac Deed Poll to be signed by Westpac</u>	<u>Thursday, 10 June 2010</u>
<u>Mirvac Deed Poll to be signed by Mirvac</u>	<u>Thursday, 10 June 2010</u>
File documents (including verified draft Scheme Booklet) with Court	Wednesday <u>Thursday, 2</u> 10 June 2010
First Court Hearing (Judicial Advice)	Friday <u>Wednesday, 4</u> 16 June 2010
Westpac Deed Poll to be signed by Westpac	Friday, 11 June 2010
Mirvac Deed Polls to be signed by Mirvac	Friday, 11 June 2010
Scheme Booklet is publicly released and despatched to Scheme Securityholders	Friday <u>Tuesday, 11</u> 22 June 2010
<u>Deadline for proxy forms</u>	<u>Monday, 19 July 2010</u>
Scheme Meeting	Tuesday <u>Wednesday, 13</u> 21 July 2010
Suspension of trading of WOT Units at close of trading on ASX	Tuesday, 13 July 2010
Deadline for submission of Election Forms	Tuesday <u>Wednesday, 13</u> 21 July 2010 <u>at 5.00 pm</u>
Second Court Hearing (Judicial Advice)	Thursday <u>Friday, 15</u> 23 July 2010
New Mirvac Securities commence trading on a deferred settlement basis	Friday, 16 July 2010
Supplemental WOT Deed to be signed by WFML to amend WOT Constitution	Wednesday, 21 <u>Friday 23</u> July 2010 <u>(after Second Court Hearing)</u>
Effective Date (being the date on which the Supplemental Deed is lodged with ASIC, whereupon it becomes Effective)	Wednesday, 21 <u>Friday 23</u> July 2010
<u>Suspension of trading of WOT Units at close of trading on ASX</u>	<u>Friday 23 July 2010</u>
<u>Announcement to ASX that WOT Unitholders have approved the Consolidation</u>	<u>Friday 23 July 2010</u>

<u>New Mirvac Securities commence trading on a deferred settlement basis</u>	<u>Monday, 26 July 2010</u>
Record Date (being the date and time for determining entitlements to Scheme Consideration <u>and also for the consolidation of the WOT units</u>)	Wednesday <u>Friday, 21³⁰ July 2010 at 7.00pm</u>
Implementation Date	Wednesday, 21 July <u>4 August 2010</u>
<u>Termination of official quotation of WOT Units (and removal of WOT from official list of ASX)</u>	<u>Thursday, 5 August 2010</u>
<u>Despatch of Holding Statements for New Mirvac Securities and payment of cash consideration</u>	<u>by Monday, 9 August 2010</u>
<u>Deferred settlement trading in New Mirvac Securities ends</u>	<u>Monday, 9 August 2010</u>
<u>Trading of New Mirvac Securities on a normal settlement basis commences on ASX</u>	<u>Tuesday, 10 August 2010</u>

Schedule 3 – Supplemental WOT Deed

Supplemental Deed

Westpac Funds Management Limited

Amending the Constitution for the Westpac Office Trust

Allens Arthur Robinson
Level 28
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
Tel +61 2 9230 4000
Fax +61 2 9230 5333
www.aar.com.au

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Date	2010
Party	Westpac Funds Management Limited (ABN 28 085 352 405) as responsible entity of the Westpac Office Trust (ARSN 103 853 523) of Level 15, 90 Collins Street, Melbourne VIC 3000 (the Responsible Entity).
Recitals	
A	The Responsible Entity is the responsible entity of the Westpac Office Trust (ARSN 103 853 523) (the Fund), which was established under the Constitution.
B	The Fund has been registered by the Australian Securities and Investments Commission (ASIC) as a managed investment scheme pursuant to section 601EB of the <i>Corporations Act 2001</i> (Cth) (the Corporations Act).
C	The Units of the Fund are quoted and traded on the ASX.
D	IRs in respect of Units have also been issued to investors under the terms of the IR Security Trust Deed. IRs are quoted, but suspended from trading, on the ASX.
E	The Responsible Entity and the Bidder have agreed, by executing a Scheme Implementation Agreement dated 28 April 2010 (as amended on [*]), to propose and implement the Scheme.
F	The Constitution must be amended to facilitate the Scheme.
G	Under clause 20 of the Constitution, subject to the Corporations Act, the Responsible Entity may modify, repeal or replace the Constitution by a supplemental deed made by the Responsible Entity.
H	Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of the Members of the Fund.
I	At a meeting held on [*] convened in accordance with the Corporations Act, clause 15 of the Constitution and clause 22 of the IR Security Trust Deed, the Members of the Fund approved certain resolutions, including a special resolution to make the amendments to the Constitution contained in this Supplemental Deed.
J	Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed cannot take effect until a copy of this Supplemental Deed has been lodged with ASIC.
K	The Bidder has entered into a deed poll for the purpose of covenanting in favour of

- the Members and the IR Holders who are eligible to participate in the Scheme, that it will observe and perform the obligations contemplated of it under the Scheme.
- L Westpac has entered into a deed poll for the purpose of covenanting in favour of the Members and the IR Holders who are eligible to participate in the Scheme, that it will, and it will procure that WCN and WSL will, observe and perform obligations contemplated of them under the Scheme.
- M WSL has provided its written consent to the implementation of the Scheme in the manner contemplated by the amendments to the Constitution as set out in this Supplemental Deed.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Supplemental Deed including the Recitals, the following definitions apply unless the context otherwise requires.

ASX means Australian Securities Exchange or ASX Limited (ABN 98 00 824 691).

Bidder means Mirvac Limited and Mirvac RE.

Constitution means the trust deed dated 19 February 2003 constituting the Fund, as amended from time to time.

Effective Time means the date and time on which a copy of this Supplemental Deed is lodged with ASIC under section 601GC(2) of the Corporations Act.

IR means an instalment receipt which evidences the beneficial ownership of the IR Holder in one Unit, where that Unit is held by the Security Trustee on separate trust for the IR Holder's beneficial interest and WSL's security interest under the terms of the IR Security Trust Deed.

IR Holder means a person who is registered in the Securityholder Register as the holder of one or more IRs from time to time.

IR Security Trust Deed means the Security Trust and Subscription Deed in respect of the IRs, between WCN and WSL dated 10 June 2003, as amended from time to time.

Member means a person who is registered in the Securityholder Register as the holder of one or more Units from time to time, including the Security Trustee as trustee for each IR Holder.

Mirvac RE means Mirvac Funds Limited (ABN 70 002 561 640) in its capacity as responsible entity of MPT.

MPT means the Mirvac Property Trust (ARSN 086 780 645).



Registrar means such suitably qualified person or persons that is from time to time appointed by the Responsible Entity or the Security Trustee (as applicable) to operate the Securityholder Register.

Scheme means the arrangement facilitated by the amendments to the Constitution set out in this Supplemental Deed under which Mirvac RE acquires all of the Units from eligible Members.

Security Trustee means WCN or such other trustee under the IR Security Trust Deed.

Securityholder Register means:

- (a) the register of Members from time to time, and
- (b) the register of IR Holders from time to time,

as administered by the Responsible Entity or the Security Trustee, as applicable (or by the Registrar on behalf of the Responsible Entity or the Security Trustee, as applicable).

Unit has the meaning given in the Constitution.

WCN means Westpac Custodian Nominees Limited (ABN 18 002 861 565) as security trustee under the IR Security Trust Deed or such other party appointed as security trustee under the IR Security Trust Deed..

WSL means Westpac Securities Limited (ABN 39 087 924 221).

1.2 Interpretation

Clauses 1.2 (Interpretation), 2 (Corporations Act) and 25 (Listing) of the Constitution apply to this Supplemental Deed as if set out in this Supplemental Deed.

1.3 Benefit of this Supplemental Deed

This Supplemental Deed is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed shall enure to the benefit of the members of the Fund, including the Members and the IR Holders, jointly and severally.

2. Amendments to Constitution

On and from the Effective Time, the Constitution is amended in the manner set out in the Schedule.

3. No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed intending to:

- (a) settle or re-declare the trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

4. Governing Law and Jurisdiction

This Supplemental Deed is governed by the laws of New South Wales and the Responsible Entity submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Executed and delivered as a Deed Poll in Canberra

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by affixing the common seal of **Westpac Funds Management Limited** in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule

Amendments to the Constitution for the Westpac Office Trust

The Constitution is amended as follows:

1. Clause 1.1 - Definitions

In clause 1.1 of the Constitution, the following definitions are inserted in alphabetical order:

ASX Listing Rules means the official listing rules of ASX Limited.

Australian ADI has the meaning given in the Corporations Act.

Beneficial Interest means the beneficial interest which an IR Holder has in a specified Unit pursuant to the IR Security Trust Deed.

Benefits Record Time has the meaning given in the IR Security Trust Deed.

Bidder means Mirvac Limited and Mirvac RE (or either of them, as applicable).

Bidder Deed Poll means a deed poll executed by the Bidder in favour of Scheme Securityholders.

Bidder Registrar means such suitably qualified person or persons that is from time to time appointed by the Bidder to operate the Bidder Securityholder Register.

Bidder Security means a Mirvac Unit stapled to (and traded together with) a Mirvac Share.

Bidder Securityholder Register means the register of holders of the Bidder Stapled Securities from time to time, as administered by the Bidder (or by the Bidder Registrar on behalf of the Bidder).

Cash Alternative means the alternative consideration described in clause 26.7 whereby Scheme Unitholders can elect to receive the Fixed Cash Price rather than the New Bidder Securities to which they are entitled as Scrip Consideration.

Consolidation means:

- (a) the consolidation of the Scheme Units on the basis that the Pre-Consolidation Scheme Units held by a Scheme Unitholder (or, in the case of the Security Trustee, the Pre-Consolidation Scheme Units in each IR Holding) are consolidated such that, following the consolidation, the number of Post-Consolidation Scheme Units held by a Scheme Unitholder (or, in the case of the Security Trustee, the number of Post-Consolidation Scheme Units in each IR Holding) is determined as follows:

$$A = B \times 0.597,$$

where:



A is the number of Post-Consolidation Scheme Units held by the Scheme Unitholder (or the number of Post-Consolidation Scheme Units in an IR Holding); and

B is the number of Pre-Consolidation Scheme Units held by the Scheme Unitholder (or the number of Post-Consolidation Scheme Units in an IR Holding),

except that where this consolidation would result in any Scheme Unitholder (or the Security Trustee in respect of an IR Holding) holding a fraction of a Post-Consolidation Scheme Unit, the fractional entitlement will be rounded up to the nearest whole Post-Consolidation Scheme Unit; and

- (b) in the case of Scheme Units in an IR Holding, the simultaneous and corresponding consolidation of IRs, on the basis that the Pre-Consolidation Scheme IRs held by a Scheme IR Holder are consolidated such that:
- (i) following the consolidation, the number of Post-Consolidation Scheme IRs held by the Scheme IR Holder is equal to the whole number of Post-Consolidation Scheme Units held by the Security Trustee in the IR Holding of that Scheme IR Holder; and
 - (ii) in respect of an IR Holding, the correspondence between one Pre-Consolidation Scheme IR and one Pre-Consolidation Scheme Unit is preserved, so that one Post-Consolidation Scheme IR corresponds to one Post-Consolidation Scheme Unit.

Consolidation Resolution means a resolution of Unitholders to approve the Consolidation of the Scheme Units.

Effective Date means the date on which the Supplemental Deed making amendments to this Constitution to facilitate the Scheme, including the insertion of clause 26, takes effect pursuant to section 601GC(2) of the Corporations Act.

Election Date means 5.00 pm on the date of the Scheme Meeting.

Election Form means a form of election accompanying the Explanatory Memorandum, referred to in clause 26.6(e), relating to the form of Scheme Consideration and the Sale Facility.

Explanatory Memorandum means the notice of meeting and explanatory memorandum in relation to the proposal to implement the Scheme.

Final Instalment means \$0.25 per Pre-Consolidation Scheme Unit corresponding to a Pre-Consolidation Scheme IR (which is equivalent to \$0.41876 per Post-Consolidation Scheme Unit corresponding to a Post-Consolidation Scheme IR).

Final Instalment Payment Date means, in relation to a Unit, the date specified in the IR Security Trust Deed for the payment of the Final Instalment (and to the extent it has not been paid, the Second Instalment).

Fixed Cash Price, in relation to a Scheme Unit, means a fixed cash price equal to \$0.86 per Pre-Consolidation Scheme Unit (which is equivalent to \$1.44 per Post-Consolidation Scheme Unit), to be paid and applied in accordance with clause 26.7.

Implementation Date means the date which is 2 Scheme Business Days after the Record Date or such other date as the parties agree in writing.

Ineligible Overseas IR Holder means a Scheme IR Holder whose address as shown in the Securityholder Register as at the Record Date is a place outside Australia and its external territories, New Zealand and such other jurisdictions as the Bidder and the Responsible Entity agree to in writing.

Ineligible Overseas Securityholder means an Ineligible Overseas Unitholder or an Ineligible Overseas IR Holder (or both, as the context requires).

Ineligible Overseas Unitholder means a Scheme Unitholder whose address as shown in the Securityholder Register as at the Record Date is a place outside Australia and its external territories, New Zealand and such other jurisdictions as the Bidder and the Responsible Entity agree to in writing.

Instalment Interest means, in relation to an IR, the interest payable in respect of the Second Instalment and the Final Instalment by each IR Holder in accordance with the IR Security Trust Deed.

Instalment Interest Payment Date means the date that the Instalment Interest is payable as set out in column 1 of Schedule 6 to the IR Security Trust Deed.

IR means an instalment receipt which evidences the beneficial ownership of an IR Holder in one Unit, where that Unit is held on separate trust by the Security Trustee for the IR Holder's beneficial interest and WSL's security interest under the IR Security Trust Deed.

IR Amending Deed means the deed poll dated on or about the date of the Supplemental Deed, made by the Security Trustee and WSL in relation to the amendments to the IR Security Trust Deed.

IR Holder means a person who is registered in the Securityholder Register as the holder of one or more IRs from time to time.

IR Holding has the meaning given in clause 26.6(b)(i).

IR Security Trust Deed means the Security Trust and Subscription Deed in respect of the IRs, between the Security Trustee and WSL dated 10 June 2003, as amended from time to time, as it applies at the relevant time.

Maximum Cash Amount means \$200 million.

Mirvac Limited means Mirvac Limited (ABN 92 003 280 699).

Mirvac RE means Mirvac Funds Limited (ABN 70 002 561 640) in its capacity as responsible entity of MPT.

Mirvac Share means a fully paid ordinary share issued by Mirvac Limited.

Mirvac Unit means a fully paid ordinary unit in MPT issued by Mirvac RE.

MPT means the Mirvac Property Trust (ARSN 086 780 645).

New Bidder Security means a Bidder Security to be issued to, or at the direction of, Scheme Unitholders who receive the Scrip Consideration under the Scheme.

Outstanding Amount means the total amount owing by an IR Holder to WSL under the terms of the IR Security Trust Deed.

Post-Consolidation Scheme IR means a Scheme IR as it exists immediately following the Consolidation.

Post-Consolidation Scheme Unit means a Scheme Unit as it exists immediately following the Consolidation.

Pre-Consolidation Scheme IR means a Scheme IR as it exists immediately before the Consolidation.

Pre-Consolidation Scheme Unit means a Scheme Unit as it exists immediately before the Consolidation.

Record Date means 7.00pm (Sydney time) on the day that is 4 Scheme Business Days after the Effective Date or such other date as may be agreed by the parties in writing.

Registered Address means, in relation to a Scheme Unitholder, the address of that Scheme Unitholder shown on the Securityholder Register.

Registrar means such suitably qualified person or persons that are from time to time appointed by the Responsible Entity or the Security Trustee (as applicable) to operate the Securityholder Register.

Sale Facility means the facility described in clause 26.8, whereby the New Bidder Securities:

- (a) to which the Ineligible Overseas Securityholders would otherwise have been entitled; or
- (b) which are issued to Scheme Securityholders who have elected to participate in the Sale Facility, and which are transferred to the Sale Nominee,

are placed for sale by the Sale Nominee.

Sale Facility Proceeds means, in relation to a New Bidder Security sold under the Sale Facility, that portion of the total proceeds of sale to be derived by the Sale Nominee in respect of all the New Bidder Securities sold under the Sale Facility, which is attributed to each New Bidder Security in accordance with the procedures set out in the Explanatory Memorandum.

Sale Nominee means an entity appointed by the Bidder to sell the New Bidder Securities in accordance with the Sale Facility.

Scheme means the arrangement by which all of the Scheme Units will be transferred to Mirvac RE for the Scheme Consideration, as set out in clause 26.

Scheme Business Day means:

- (a) a Business Day as defined in the ASX Listing Rules; and
- (b) a week day on which trading banks are open for business in Sydney, Australia.

Scheme Consideration means, at the election of the Scheme Unitholder in accordance with clause 26.6 of this Constitution, either the Scrip Consideration or the Cash

Alternative, being the consideration to be provided for the transfer by the Scheme Unitholders of their Scheme Units to Mirvac RE.

Scheme Custodian means:

- (a) a Scheme Unitholder who holds one or more parcels of Scheme Units as trustee or nominee for, or otherwise on account of, another person and who is not an Ineligible Overseas Unitholder, excluding the Security Trustee in respect of the IR Holdings; or
- (b) a Scheme IR Holder who holds one or more parcels of Scheme IRs as trustee or nominee for, or otherwise on account of, another person and who is not an Ineligible Overseas IR Holder.

Scheme Implementation Agreement means the agreement of that name dated 28 April 2010 between the Bidder and the Responsible Entity, as amended from time to time.

Scheme IR means an IR on issue as at the Record Date.

Scheme IR Holder means a person registered in the Securityholder Register as the holder of one or more Scheme IRs as at the Record Date.

Scheme Meeting means the meeting of Unitholders held on [*insert date*] to consider the Scheme Resolutions, and includes any adjournment of that meeting.

Scheme Outcome has the meaning given in the IR Security Trust Deed.

Scheme Resolutions means resolutions of Unitholders to approve the Scheme, being:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the acquisition by Mirvac RE of all the Scheme Units; and
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Scheme.

Scheme Security means a Scheme Unit and a Scheme IR (or both, as the context requires).

Scheme Securityholder means a Scheme Unitholder or a Scheme IR Holder (or both, as the context requires).

Scheme Transfers means, for each Scheme Unitholder, a proper instrument of transfer of their Scheme Units for the purpose of section 1071B of the Corporations Act (which may be a master transfer of all or part of all of the Scheme Units).

Scheme Unit means a Unit, including a Unit held by the Security Trustee on trust for a Scheme IR Holder, on issue as at the Record Date.

Scheme Unitholder means a person registered in the Securityholder Register as a holder of one or more Scheme Units as at the Record Date.

Scrip Consideration means 0.597 New Bidder Securities for each Pre-Consolidation Scheme Unit (which is equivalent to one New Bidder Security for each Post-Consolidation Scheme Unit).

Second Instalment means \$0.25 per Pre-Consolidation Scheme Unit corresponding to a Pre-Consolidation Scheme IR (which is equivalent to \$0.41876 per Post-Consolidation Scheme Unit corresponding to a Post-Consolidation Scheme IR).

Security Interest has the meaning given in the IR Security Trust Deed.

Security Trustee means WCN or such other party appointed as security trustee under the IR Security Trust Deed.

Securityholder means a Unitholder or an IR Holder (as both, as the context requires).

Securityholder Register means:

- (a) the register of holders of Units from time to time; and
- (b) the register of holder of IRs from time to time,

as administered by the Responsible Entity or the Security Trustee, as applicable (or by the Registrar on behalf of the Responsible Entity or the Security Trustee, as applicable).

Separate Parcel has the meaning given in clause 26.6(c)(i).

Supplemental Deed means the deed poll dated [*insert date*] made by the Responsible Entity in relation to the amendment of this Constitution.

Total Fixed Cash Price means the Fixed Cash Price multiplied by the total number of Scheme Units in respect of which a valid election has been made to receive the Cash Alternative.

Unitholder means a person, including the Security Trustee, who is registered in the Securityholder Register as the holder of one or more Units from time to time.

WCN means Westpac Custodian Nominees Limited (ABN 18 002 861 565).

Westpac means Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Deed Poll means the means a deed poll executed by Westpac in favour of Scheme Securityholders.

WSL means Westpac Securities Limited (ABN 39 087 924 221).

2. Clause 5.2

Clause 5.2 is deleted and replaced with the following clause:

5.2 Fractions

Fractions in a Unit may be issued (unless the Responsible Entity determines otherwise) to such number of decimal places as the Responsible Entity decides. If the Responsible Entity determines that fractions are not to be issued:

- (a) subject to paragraph (b), where any calculation performed under this Constitution would otherwise result in the issue of a fraction of one Unit, the number of Units to be issued is to be rounded to the nearest whole Unit; and

- (b) where the Consolidation would result in any Scheme Unitholder (including the Security Trustee in respect of an IR Holding) holding a fraction of a Unit, the fractional entitlement is to be rounded up to the nearest whole Unit.

Any excess application or other moneys become an Asset of the Fund.

3. New clause 13.14 – Implementation of the Scheme

A new clause 13.14 is inserted immediately after clause 13.13 as follows:

13.14 Implementation of the Scheme

If the Scheme is implemented on the Implementation Date and:

- (a) the Security Trustee, as registered holder of Scheme Units in an IR Holding, is entitled to a distribution (the *Distribution*) from the Westpac Office Trust in circumstances where the entitlement to the Distribution arises before the Implementation Date and payment of the Distribution is to occur on or after the Implementation Date; and
- (b) the IR Holding referred to in paragraph (a) relates to Scheme Units in respect of which a Scheme IR Holder:
 - (i) has elected to receive and, following the application of any scale back in accordance with clause 26.7(a)(iv), is entitled to receive the Cash Alternative in respect of all or some of the Scheme Units in the IR Holding; or
 - (ii) participates in the Sale Facility in accordance with clause 26.8 in respect of all or some of the Scheme Units in the IR Holding, in circumstances where WSL has, before the payment date for the Distribution, received from the proceeds of sale of that IR Holding under the Sale Facility, the Second Instalment, Final Instalment and any balance of the Outstanding Amount owing as at the Implementation Date,

then, subject to paragraph (f) and despite anything in the IR Security Trust Deed or this Constitution:

- (c) at the direction of the Security Trustee, which is deemed to be given to the Responsible Entity by operation of this paragraph (c), the Distribution will be paid to the relevant Scheme IR Holder, and will not be received by the Security Trustee, on the corresponding Instalment Interest Payment Date, despite the cancellation of the Scheme IR Holder's Scheme IRs in accordance with clauses 26.7(c)(ii)(B) or 26.8(c)(iii); but
- (d) despite clause 15.2 or any other provision of the IR Security Trust Deed, or any provision of this Constitution, no Instalment Interest is to be deducted from the Distribution and the relevant Scheme IR Holder will be under no obligation to pay

the Instalment Interest that would otherwise have been due on the Instalment Interest Payment Date corresponding to the record date for the Distribution under clause 15 of the IR Security Trust Deed and Schedule 6 of the IR Security Trust Deed; and

- (e) clause 15 of the IR Security Trust Deed will not apply in respect of the Distribution and the corresponding Instalment Interest Payment Date; and
- (f) if a transfer of an IR relating to the Scheme Units referred to in paragraph (a) is registered after the Benefits Record Time in respect of the entitlement to the Distribution but (in the case of a transfer effected using the CHES System) registered before the Record Date or (in all other cases) received by the Registrar by the Record Date:
 - (i) for the removal of doubt, the transferor will, in accordance with clause 21.5 of the IR Security Trust Deed, remain the person entitled to receive the Distribution and the transferee will have no entitlement to be paid the Distribution; but
 - (ii) despite clause 15.3 of the IR Security Trust Deed, where the transferee, as a Scheme IR Holder, has elected to receive the Cash Alternative or participates in the Sale Facility in the circumstances described in paragraph (b), neither the transferor nor the transferee will be liable to pay the Instalment Interest that would otherwise have been due on the corresponding Instalment Interest Payment Date and no Instalment Interest will be deducted from the Distribution; and
 - (iii) where the circumstances described in paragraph (b) of this clause do not apply to the transferee, the Instalment Interest will be deducted from the Distribution paid to the transferee under sub-paragraph (f)(i).

4. New clause 18.3A – If Scheme is implemented

A new clause 18.3A is inserted immediately after clause 18.3, as set out below:

18.3A Performance Fee

- (a) If the Scheme is implemented in accordance with clause 26, the Responsible Entity will not be entitled to receive Performance Units or Performance Fees under clause 18.2, or a cash payment in lieu of Performance Units under clause 18.3, in respect of any period after 1 January 2010.
- (b) This clause 18.3A does not affect the right or entitlement of the Responsible Entity to receive:
 - (i) any Performance Units or Performance Fees that have accrued but remain unpaid as at 1 January 2010; or



- (ii) any other fees payable to the Responsible Entity under this Constitution.

5. New clause 26 - Scheme

A new clause 26 is inserted immediately after clause 25, as set out below:

26. Scheme

26.1 Implementation of Scheme

- (a) Each Scheme Securityholder and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as the Responsible Entity considers are necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 26, the Responsible Entity has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Scheme Implementation Agreement.
- (c) Subject to the Corporations Act, the Responsible Entity, the Security Trustee, WSL, the Bidder, or any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this clause 26 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 26:
 - (i) binds the Responsible Entity and all of the Securityholders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions); and
 - (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (including clause 6.1, but excluding clauses 2 and 25).

26.2 Consolidation of Scheme Units

- (a) If the Consolidation Resolution is passed, then on the Implementation Date, prior to the Bidder providing the Scheme Consideration in the manner contemplated by clauses 26.4, 26.7 and 26.8 (as applicable), the Scheme Units and the Scheme IRs will be consolidated in accordance with the Consolidation and the IR Security Trust Deed.
- (b) If the Consolidation occurs, the Scheme Consideration will be calculated on the basis of each Post-Consolidation Scheme Unit.

26.3 Entitlement to Scrip Consideration

Subject to clauses 26.6, 26.7 and 26.8, each Scheme Unitholder will be entitled to receive the Scrip Consideration for each Scheme Unit held by that Scheme Unitholder, which is to be issued in the manner referred to in clause 26.4.

26.4 Provision of Scrip Consideration**(a) Scheme Unitholders**

- (i) The obligation of the Responsible Entity to procure the Bidder to provide the Scrip Consideration to a Scheme Unitholder will be satisfied by procuring the Bidder, before 12.00pm on the Implementation Date:
- (A) to issue to that Scheme Unitholder such number of New Bidder Securities to which that Scheme Unitholder is entitled as Scrip Consideration pursuant to the Scheme; and
 - (B) to procure the entry in the Bidder Securityholder Register of the name and Registered Address (as at the Record Date) of that Scheme Unitholder and the number of New Bidder Securities which that Scheme Unitholder is entitled to receive under the Scheme,
- but subject always to clauses 26.6, 26.7 and 26.8.
- (ii) The Scheme Unitholders acknowledge and agree that, subject to clauses 26.6, 26.7 and 26.8, within 3 Scheme Business Days after the Implementation Date, the Responsible Entity will procure that the Bidder will despatch, or procure the despatch, to each Scheme Unitholder whose relevant New Bidder Securities are held on the issuer sponsored subregister of the Bidder, of an uncertificated holding statement in the name of that Scheme Unitholder for the New Bidder Securities issued to that Scheme Unitholder pursuant to the Scheme, with such despatch to be made by pre-paid post to that Scheme Unitholder's Registered Address (as at the Record Date).
- (iii) In the case of Scheme Units held in joint names, holding statements for New Bidder Securities must be issued in the names of joint holders and sent to the holder whose name appears first in the Securityholder Register on the Record Date.

(b) Scheme IR Holders

Where the Scheme Unitholder is the Security Trustee:

- (i) the New Bidder Securities issued to the Security Trustee as Scrip Consideration will constitute a Scheme Outcome for the purposes of the IR Security Trust Deed and will be dealt with in accordance with the remainder of this clause; and
- (ii) in accordance with the IR Security Trust Deed, the Security Trustee will hold the New Bidder Securities on the same trust as it holds:
- (A) the Beneficial Interest of the IR Holders; and
 - (B) the Security Interest of WSL,
- in the Scheme Units.



26.5 Transfer of Scheme Units to Mirvac RE

On the Implementation Date, subject to:

- (a) the Bidder having provided the Scheme Consideration in the manner contemplated by clauses 26.4, 26.7 and 26.8 (as applicable) and the Bidder having provided the Responsible Entity with written confirmation of that having occurred; and
- (b) WSL having given its written consent to the transfer of the Scheme Units that form part of an IR Holding to Mirvac RE and the release of its Security Interest in those Scheme Units,

the following will occur:

- (c) all of the Scheme Units, together with all rights and entitlements attaching to the Scheme Units as at the Implementation Date, will be transferred to Mirvac RE, without the need for any further act by any Scheme Unitholder (other than acts performed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as attorney and/or agent for Scheme Unitholders under the Scheme);
- (d) the Responsible Entity will procure the delivery to Mirvac RE for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Units to Mirvac RE, duly executed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as the attorney and/or agent of each Scheme Unitholder as transferor under clause 26.12;
- (e) Mirvac RE must immediately execute the Scheme Transfers as transferee and deliver them to the Responsible Entity for registration; and
- (f) the Responsible Entity, immediately after receipt of the Scheme Transfers under paragraph (e), must enter, or procure the entry of, the name and address of Mirvac RE in the Securityholder Register as the holder of all of the Scheme Units.

26.6 Election to receive Cash Alternative or to participate in the Sale Facility

(a) Election by Scheme Unitholders

- (i) Subject to the remainder of this clause 26.6, each Scheme Unitholder (except an Ineligible Overseas Holder) may use an Election Form to elect to:
 - (A) receive the Cash Alternative; or
 - (B) participate in the Sale Facility,in each case, in relation to all (but not some) of the Scheme Units in respect of which that Scheme Unitholder has an entitlement to be issued New Bidder Securities as Scrip Consideration.
- (ii) A Scheme Unitholder who elects to receive the Cash Alternative may elect to participate in the Sale Facility in respect of any of its Scheme Units for



which it is not entitled to receive the Cash Alternative by reason of the scaling back of the Cash Alternative in accordance with clause 26.7(a)(iv).

- (iii) If a valid election for the purposes of this clause 26.6 is not made by a Scheme Unitholder prior to the Election Date, subject to clause 26.6(d), that Scheme Unitholder will be issued with Scrip Consideration in accordance with clause 26.4 in respect of all the Scheme Units held by that Scheme Unitholder.

(b) Election by the Security Trustee and Scheme IR Holders

- (i) The Security Trustee will be able to make separate elections for the purposes of paragraph (a) in respect of each parcel of Scheme Units held by the Security Trustee as trustee for each Scheme IR Holder (each, an **IR Holding**), except in respect of an IR Holding of an Ineligible Overseas IR Holder.
- (ii) Any valid election made by a Scheme IR Holder in an Election Form in accordance with sub-paragraphs (iii) and (iv) will take effect as a separate election by the Security Trustee for the relevant IR Holding and for the purpose of clause 26.6(b)(i), without the need for any further act by the Security Trustee.
- (iii) Subject to the remainder of this clause 26.6, each Scheme IR Holder may use an Election Form to elect to:
 - (A) receive the Cash Alternative; or
 - (B) participate in the Sale Facility,in each case, in relation to all (but not some) of the Scheme Units in the IR Holding of that Scheme IR Holder.
- (iv) A Scheme IR Holder who elects to receive the Cash Alternative may elect to participate in the Sale Facility in respect of any Scheme Units in its IR Holding for which it is not entitled to receive the Cash Alternative by reason of the scaling back of the Cash Alternative in accordance with clause 26.7(a)(iv).
- (v) For the purpose of implementing the Scheme (including for the purposes of the treatment of fractional entitlements pursuant to clause 26.9, implementing the Consolidation, calculating the Scrip Consideration and scaling back the Cash Alternative in accordance with clause 26.7(a)(iv)), each IR Holding will be treated as though it were held by a separate Scheme Unitholder.
- (vi) If a Scheme IR Holder does not make a valid election under sub-paragraph (b)(iii) in respect of its IR Holding prior to the Election Date or such later date approved by the Responsible Entity, subject to clause 26.6(d), the Security Trustee, as trustee for the relevant Scheme IR Holder, will be issued with Scrip Consideration in accordance with clause 26.4 in respect of that IR Holding.



(c) Election by Scheme Custodians

(i) In the manner and on the terms considered appropriate by the Responsible Entity (acting reasonably), a Scheme Custodian will be able to make separate elections for the purposes of clauses 26.6(a)(i), 26.6(a)(ii), 26.6(b)(iii) and 26.6(b)(iv) in respect of:

- (A) each parcel of Scheme Units held by the Scheme Custodian as trustee or nominee for, or otherwise on account of, another person; and
- (B) each parcel of Scheme Units held by the Scheme Custodian in its own right,

or, where the Scheme Custodian is a Scheme IR Holder:

- (C) each parcel of Scheme IRs held by the Scheme Custodian as trustee or nominee for, or otherwise on account of, another person; and
- (D) each parcel of Scheme IRs held by the Scheme Custodian in its own right,

(each, a *Separate Parcel*).

(ii) For the purpose of implementing the Scheme (including for the purposes of the treatment of fractional entitlements pursuant to clause 26.9, implementing the Consolidation, calculating the Scrip Consideration and scaling back the Cash Alternative in accordance with clause 26.7(a)(iv)), each Separate Parcel will be treated as though it were held by a separate Scheme Unitholder.

(iii) If a Scheme Custodian does not make a valid election under sub-paragraph (c)(i) in respect of one or more Separate Parcels prior to the Election Date or such later date approved by the Responsible Entity:

- (A) where the Scheme Custodian is a Scheme Unitholder, the Scheme Custodian will receive Scrip Consideration in accordance with clause 26.4 in respect of each Separate Parcel for which it has not made a valid election; and
- (B) where the Scheme Custodian is a Scheme IR Holder, the Security Trustee, as trustee for that Scheme Custodian, will receive Scrip Consideration in accordance with clause 26.4 in respect of each Separate Parcel for which it has not made a valid election.

(d) Ineligible Overseas Securityholders

(i) Each Ineligible Overseas Unitholder:

- (A) is unable to make an election under clause 26.6(a);
- (B) must participate in the Sale Facility in accordance with clause 26.8; and
- (C) acknowledges and agrees that the Responsible Entity will be under no obligation under the Scheme to procure that the Bidder

provides, and the Bidder will not provide, any New Bidder Securities or the Cash Alternative to an Ineligible Overseas Unitholder.

- (ii) In respect of the Scheme Units in the IR Holding of each Ineligible Overseas IR Holder:
 - (A) the Security Trustee is unable to make an election under clause 26.6(b)(i); and
 - (B) the Ineligible Overseas IR Holder:
 - (1) is unable to make an election under clause 26.6(b)(iii);
 - (2) must participate in the Sale Facility in accordance with clause 26.8; and
 - (3) acknowledges and agrees that the Responsible Entity will be under no obligation under the Scheme to procure that the Bidder provides, and the Bidder will not provide, any New Bidder Securities or the Cash Alternative to the an Ineligible Overseas IR Holder or to the Security Trustee as trustee for an Ineligible Overseas IR Holder.

(e) Election generally

- (i) A valid election for the purposes of this clause 26.6 may be made by a Scheme Securityholder (other than an Ineligible Overseas Securityholder) by completing the Election Form in accordance with the instructions on the Election Form, and returning the Election Form before the Election Date in writing to an address specified in the Election Form or by delivery of the Election Form in such other manner approved by the Responsible Entity.
- (ii) Once made, a valid election by a Scheme Securityholder for the purposes of this clause 26.6 may not be varied before the Election Date.
- (iii) In the event of a dispute as to the validity of any election made for the purposes of this clause 26.6, the determination of the Responsible Entity will be final.
- (iv) The Responsible Entity must ensure that, to the extent reasonably practicable, Scheme Securityholders that have acquired Scheme Units or Scheme IRs after the date of the despatch of the Explanatory Memorandum and up until the Election Date can receive an Election Form on request to the Responsible Entity.
- (v) On or before the Scheme Business Day prior to the Implementation Date, the Responsible Entity must provide, or procure the provision of, to the Bidder, or a nominee of the Bidder, details of the final elections made by each Scheme Securityholder.



26.7 Cash Alternative

(a) Terms of the Cash Alternative

- (i) This clause 26.7 applies to any Scheme Securityholder (except an Ineligible Overseas Securityholder) that has validly elected to receive the Cash Alternative (a *Cash Participant*).
- (ii) The maximum number of Scheme Units that may participate in the Cash Alternative will be equal to the Maximum Cash Amount divided by the Fixed Cash Price, rounded down to the nearest whole number.
- (iii) Subject to sub-paragraph (iv), each Cash Participant will be entitled to receive the Fixed Cash Price in respect of each Scheme Unit held by or on behalf of the Cash Participant, with such amount to be paid in accordance with paragraph (b) and (c).
- (iv) If the Total Fixed Cash Price exceeds the Maximum Cash Amount, each Cash Participant's entitlement to receive the Cash Alternative will be scaled back on a basis determined by the Responsible Entity and disclosed in the Explanatory Memorandum such that each Cash Participant will be entitled to receive:
 - (A) in respect of some but not all of the Cash Participant's Scheme Units, as determined by the Responsible Entity, the Fixed Cash Price for each such Scheme Unit, with such amount to be paid in accordance with paragraph (b) and (c); and
 - (B) in respect of the balance of the Cash Participant's Scheme Units:
 - (1) unless an election has been made by the Cash Participant in accordance with clause 26.6(a)(ii) or 26.6(b)(iv) to participate in the Sale Facility, New Bidder Securities as Scrip Consideration, to be provided in accordance with clause 26.4(a); or
 - (2) if an election has been made by the Cash Participant in accordance with clause 26.6(a)(ii) or 26.6(b)(iv) to participate in the Sale Facility, the amount payable to the Cash Participant in respect of those Scheme Units in accordance with the procedures relating to the Sale Facility.

(b) Payment of Fixed Cash Price to Scheme Unitholders

- (i) The obligation of the Responsible Entity to procure the Bidder to provide the Cash Alternative to Cash Participants holding Scheme Units in respect of which, following the application of any scale back, the Cash Participants are entitled to receive the Fixed Cash Price, will be satisfied by procuring the Bidder, before 12.00pm on the Implementation Date, to deposit in cleared funds the aggregate Fixed Cash Price that relates to all of the

Scheme Units of those Cash Participants into an account nominated by the Responsible Entity.

- (ii) The Responsible Entity is to procure that the aggregate Fixed Cash Price referred to in sub-paragraph (i) be held on trust for the relevant Cash Participants (except that any interest on the amount will be for the account of the Bidder) for the purpose, subject to paragraph (c), of paying that amount to the relevant Cash Participants within 3 Scheme Business Days after the Implementation Date (or otherwise as directed by the Responsible Entity) as follows:
 - (A) where the Cash Participant has nominated (by notice to the Responsible Entity or the Registrar before the Record Date) a bank account with an Australian ADI for the purpose of payment of any distributions or in the Election Form, then by depositing, or procuring the deposit of, directly to that bank account, the amount equal to the Fixed Cash Price to which the Cash Participant is entitled under sub-paragraphs (a)(iii) or (a)(iv)(A); or
 - (B) by despatching or procuring the despatch to each relevant Cash Participant by pre-paid post to their Registered Address a cheque in Australian currency drawn on an Australian ADI in the name of that Cash Participant for an amount equal to the Fixed Cash Price to which the Cash Participant is entitled under sub-paragraphs (a)(iii) or (a)(iv)(A),

and in the case of joint holders of Scheme Units, a cheque will be payable to those joint holders and will be forwarded to the holder whose name appears first in the Securityholder Register on the Record Date.

(c) Payment of Fixed Cash Price to Scheme IR Holders

Where the Cash Participant is the Security Trustee:

- (i) the Fixed Cash Price to which the Security Trustee is entitled in respect of a Scheme Unit in an IR Holding will constitute a Scheme Outcome for the purposes of the IR Security Trust Deed and will be dealt with in accordance with the remainder of this clause; and
- (ii) the Responsible Entity will:
 - (A) consult with the Security Trustee and determine (subject to the prior approval of the Security Trustee) the aggregate Fixed Cash Price to which each relevant Scheme IR Holder who has validly elected the Cash Alternative (the **Relevant Cash IR Holder**) is entitled under sub-paragraphs (a)(iii) or (a)(iv)(A) (having regard to clause 26.6(b)(v));
 - (B) at the direction of the Security Trustee, which is deemed to be given to the Responsible Entity by operation of this sub-paragraph (B), within 3 Scheme Business Days after the Implementation Date, pay to WSL from the amount referred to in sub-paragraph (A)

the Second Instalment, Final Instalment and any balance of the Outstanding Amount owing as at the Implementation Date in relation to each Scheme Unit in the IR Holding of the Relevant Cash IR Holder in respect of which the Fixed Cash Price was paid, and upon such payment each Scheme IR corresponding to those Scheme Units will be cancelled; and

- (C) at the direction of the Security Trustee, which is deemed to be given to the Responsible Entity by operation of this sub-paragraph (C), within 3 Scheme Business Days after the Implementation Date, pay the balance remaining after payment of the amounts referred to in sub-paragraph (B) to the Relevant Cash IR Holder in accordance with either of the methods of payment specified in clause 26.7(b)(ii).

26.8 Sale Facility

(a) Sale Facility Participants

This clause 26.8 applies to:

- (i) any Scheme Unitholder that has validly elected to participate in the Sale Facility in accordance with clause 26.6(a)(i) (in respect of all its Scheme Units) or clause 26.6(a)(ii) (in respect of the balance of its Scheme Units not dealt with under the Cash Alternative);
- (ii) each Ineligible Overseas Unitholder;
- (iii) the Security Trustee in respect of the IR Holding of any Scheme IR Holder that has validly elected to participate in the Sale Facility in accordance with clause 26.6(b)(iii) (in respect of all the Scheme Units in its IR Holding) or clause 26.6(b)(iv) (in respect of the balance of the Scheme Units in its IR Holding not dealt with under the Cash Alternative); and
- (iv) the Security Trustee in respect of the IR Holding of each Ineligible Overseas IR Holder,

each referred to in this clause 26.8 as a *Sale Facility Participant*.

(b) Scheme Unitholders

- (i) In relation to:
 - (A) a Scheme Unitholder referred to in clauses 26.8(a)(ii) and 26.8(a)(iv) - any entitlement that the Scheme Unitholder would otherwise have to be issued New Bidder Securities as Scrip Consideration under the Scheme will be satisfied by the Responsible Entity procuring that the Bidder, on the Implementation Date, issues such New Bidder Securities to the Sale Nominee; and
 - (B) a Scheme Unitholder referred to in clauses 26.8(a)(i) and 26.8(a)(iii) – on the Implementation Date:

- (1) the Responsible Entity will procure that the Bidder will issue the New Bidder Securities to which the Scheme Unitholder is entitled as Scrip Consideration to the Scheme Unitholder in accordance with clause 26.4; and
- (2) at the direction of the Scheme Unitholder, which is deemed to be given to the Responsible Entity by operation of this sub-paragraph (2), those New Bidder Securities will be transferred from the Scheme Unitholder to the Sale Nominee for a purchase price equal to the Sale Facility Proceeds attributable to those New Bidder Securities, without the need for any further act by the Scheme Unitholder (other than acts performed by the Responsible Entity as agent and attorney for the Scheme Unitholder in accordance with clause 26.12),

and, where the Scheme Unitholder is the Security Trustee, subject to a share and unit mortgage and a lien over the proceeds of sale being granted over those New Bidder Securities in favour of the Security Trustee as security trustee for WSL.

- (ii) On the Implementation Date, the Responsible Entity will procure that the Bidder procures the entry in the Bidder Securityholder Register of the name and address of the Sale Nominee in respect of the New Bidder Securities issued or transferred to it.
- (iii) The Responsible Entity will procure that the Bidder procures that, as soon as reasonably practicable and in any event not more than 6 Scheme Business Days after the Implementation Date, the Sale Nominee will:
 - (A) sell the New Bidder Securities issued or transferred to it, in such manner, at such price and on such other terms as the Sale Nominee determines in good faith, and at the risk of the Scheme Unitholders referred to in sub-paragraphs (a)(i) and (a)(ii) and the Scheme IR Holders referred to in sub-paragraphs (a)(iii) and (a)(iv), having regard to the desire to achieve the best price reasonably available at the time of sale; and
 - (B) remit to the Bidder an amount equal to the proceeds of sale.
- (iv) As soon as reasonably practicable after the last remittance in accordance with sub-paragraph (b)(iii)(B), and in any event no more than 10 Scheme Business Days after the Implementation Date, subject to paragraph (c), the Responsible Entity will procure that the Bidder will pay to each Sale Facility Participant an amount equal to the Sale Facility Proceeds to which that Sale Facility Participant is entitled, in full satisfaction of the Bidder's obligations under the Scheme, as follows:
 - (A) where the Sale Facility Participant has nominated (by notice to the Responsible Entity or the Registrar before the Record Date) a bank

account with an Australian ADI for the purpose of payment of any distributions or in the Election Form, then by depositing, or procuring the deposit of, directly to that bank account, the amount to which the Sale Facility Participant is entitled; or

- (B) by despatching or procuring the despatch to each relevant Sale Facility Participant by pre-paid post to their Registered Address a cheque in Australian currency drawn on an Australian ADI in the name of that Sale Facility Participant for the amount to which the Sale Facility Participant is entitled,

and in the case of joint holders of Scheme Units, a cheque will be payable to those joint holders and will be forwarded to the holder whose name appears first in the Securityholder Register on the Record Date.

(c) **Scheme IR Holders**

Where the Sale Facility Participant is the Security Trustee, with the consent of the Security Trustee, which is deemed to be given by operation of this paragraph (c):

- (i) the issue of the New Bidder Securities and the receipt of the proceeds of sale to which the Security Trustee is entitled in respect of a Scheme Unit in an IR Holding will constitute a Scheme Outcome for the purposes of the IR Security Trust Deed and will be dealt with in accordance with the remainder of this clause 26.8(c);
- (ii) in relation to each Ineligible Overseas IR Holder and each Scheme IR Holder who elected to participate in the Sale Facility (each, the **Relevant Sale Facility IR Holder**), the Responsible Entity will consult with the Security Trustee and will determine (subject to the prior approval of the Security Trustee) the proceeds of sale referable to Scheme Units in the IR Holding of the Relevant Sale Facility IR Holder;
- (iii) at the direction of each Relevant Sale Facility IR Holder, which is deemed to be given to the Bidder by operation of this sub-paragraph (iii), no more than 10 Scheme Business Days after the Implementation Date, the Bidder will pay to WSL from the amount referred to in sub-paragraph (ii) the Second Instalment, Final Instalment and any balance of the Outstanding Amount owing as at the Implementation Date in relation to each Scheme Unit in the IR Holding of the Relevant Sale Facility IR Holder that was sold under the Sale Facility, and upon such payment each Scheme IR corresponding to those Scheme Units will be cancelled; and
- (iv) at the direction of each Relevant Sale Facility IR Holder, which is deemed to be given to the Bidder by operation of this sub-paragraph (iv), no more than 10 Scheme Business Days after the Implementation Date, the Bidder will pay the balance remaining after payment of the amounts referred to in sub-paragraph (iii) to the Relevant Sale Facility IR Holder in accordance with the methods of payment specified in clause 26.8(b)(iv).

26.9 Fractional entitlements

If the number of Scheme Units held by a Scheme Unitholder as at the Record Date is such that the aggregate entitlement of that Scheme Unitholder to Scheme Consideration includes a fractional entitlement to a cent in cash, then the entitlement of that Scheme Unitholder must be rounded:

- (a) where the fraction is 0.5 or greater – up; and
- (b) where the fraction is less than 0.5 – down,

to the nearest whole number of cents, with any fractional entitlement being disregarded.

26.10 Dealings in Units and IRs

- (a) For the purpose of establishing the persons who are Scheme Securityholders and determining entitlements to the Scheme Consideration, dealings in Units and IRs will only be recognised if:
 - (i) in the case of dealings of the type to be effected using the CHES System, the transferee is registered in the Securityholder Register as the holder of the relevant Units or IRs by the Record Date; and
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Registrar by the Record Date.
- (b) The Responsible Entity or the Security Trustee (as applicable) will register registrable transfers or transmission applications of the kind referred to in sub-paragraph (a)(ii) by, or as soon as practicable after, the Record Date. The persons shown in the Securityholder Register, and the number of Units or IRs shown as being held by them, after registration of those transfers and transmission applications will be taken to be the Scheme Unitholders and the Scheme IR Holders, and the number of Scheme Units and Scheme IRs held by them, as at the Record Date.
- (c) The Responsible Entity and the Security Trustee will not accept for registration, nor recognise for any purpose (including the purpose of establishing the persons who are Scheme Unitholders and Scheme IR Holders), any transfer or transmission application in respect of Units or IRs received after the Record Date, or received prior the Record Date but not in registrable form.
- (d) The Responsible Entity will, until the Scheme Consideration has been provided and the name and address of Mirvac RE have been entered in the Securityholder Register as the holder of all of the Scheme Units, maintain, or procure the maintenance of, the Securityholder Register in accordance with this clause 26.10. The Securityholder Register immediately after registration of registrable transfers or transmission applications of the kind referred to in sub-paragraph (a)(ii) will solely determine the persons who are Scheme Unitholders and Scheme IR Holders and their entitlements to the Scheme Consideration.
- (e) Other than Mirvac RE (after registration of Mirvac RE in respect of all Scheme Units under clause 26.5(f)), no Scheme Unitholder or Scheme IR Holder (or any person purporting to claim through them) may deal with Scheme Units or Scheme IRs in

any way after the Record Date except as set out in this clause 26.10, and any attempt to do so will have no effect.

- (f) Other than in respect of Mirvac RE (after registration of Mirvac RE in respect of all Scheme Units under clause 26.5(f)), from the Record Date, all certificates and holding statements (as applicable) for Scheme Units as at the Record Date will cease to have any effect as evidence of title, and each entry on the Securityholder Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Unitholders to the Scheme Consideration.
- (g) On or before 9.00am on the Implementation Date, the Responsible Entity must give to the Bidder, or procure that the Bidder be given, details of the names, Registered Addresses and holdings of Scheme Units and Scheme IRs of every Scheme Securityholder as shown in the Securityholder Register as at the Record Date in such form as the Bidder may reasonably require.
- (h) Each Scheme Securityholder, and any person claiming through that Scheme Securityholder, must not dispose of or purport or agree to dispose of any Scheme Units, Scheme IRs, or any interest in them, after the Record Date.

26.11 Covenants by Scheme Securityholders

Each Scheme Securityholder:

- (a) acknowledges that this clause 26 binds the Responsible Entity and all of the Securityholders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme Resolutions);
- (b) irrevocably agrees to the transfer of their Scheme Units, together with all rights and entitlements attaching to those Scheme Units, to Mirvac RE in accordance with the terms of the Scheme;
- (c) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units and Scheme IRs arising from this clause 26;
- (d) irrevocably consents to the Responsible Entity, the Security Trustee, WSL, and the Bidder doing all things and executing all deeds (including the IR Amending Deed), instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it;
- (e) agrees to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 26, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth);
- (f) to whom New Bidder Securities are to be issued pursuant to the Scheme:
 - (i) irrevocably agrees to become a member of Mirvac Limited and a member of MPT, and to have their name and address entered in the Bidder Securityholder Register; and

- (ii) irrevocably accepts the New Bidder Securities issued pursuant to the Scheme on the terms and conditions of the constitution of Mirvac Limited and the constitution of MPT, and agrees to be bound by the constitution of Mirvac Limited and the constitution of MPT as in force from time to time in respect of the New Bidder Securities,

without the need for any further act by that Scheme Securityholder; and

- (g) on whose behalf the Security Trustee will hold New Bidder Securities on trust in accordance with the IR Security Trust Deed:

- (i) irrevocably agrees to become a member of MPT; and
- (ii) agrees to be bound by the constitution of MPT as in force from time to time in respect of the interests in MPT comprising the New Bidder Securities,

without the need for any further act by that Scheme Securityholder.

26.12 Appointment of the Responsible Entity as attorney and as agent for implementation of Scheme

Each Scheme Securityholder, without the need for any further act by that Scheme Securityholder, irrevocably appoints the Responsible Entity as that Scheme Securityholder's attorney and as that Scheme Securityholder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including:
 - (i) executing any form of application (including any necessary consent) required for the New Bidder Securities to be issued to that Scheme Securityholder in accordance with the Scheme;
 - (ii) effecting a valid transfer or transfers of the Scheme Units to Mirvac RE under clause 26.5(d), including executing and delivering any Scheme Transfers;
 - (iii) effecting a valid transfer of New Bidder Securities to the Sale Nominee under clause 26.8(b)(i)(B)(2); and
 - (iv) communicating the Scheme Securityholders' instructions and notifications under clause 26.15; and
- (b) enforcing the Bidder Deed Poll against the Bidder and the Westpac Deed Poll against Westpac,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 26.12 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Scheme Securityholder indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 26.12.

26.13 Appointment of Mirvac RE as attorney and as agent for Scheme Units

- (a) From the Effective Date until Mirvac RE is registered in the Securityholder Register as the holder of all Scheme Units, each Scheme Securityholder:
 - (i) without the need for any further act by that Securityholder, irrevocably appoints the Responsible Entity as its attorney and as its agent (and directs the Responsible Entity in such capacity) to irrevocably appoint the Chairman of Mirvac RE (or other nominee of Mirvac RE) as its sole proxy and, where applicable, corporate representative, for the purpose of:
 - (A) attending Unitholder meetings;
 - (B) exercising the votes attaching to the Units registered in the name of the Scheme Securityholder in the Securityholder Register; and
 - (C) signing any Securityholders' resolution; and
 - (ii) must take all other action in the capacity of a Scheme Securityholder for the purposes of facilitating the Scheme as the Bidder reasonably directs.
- (b) From the Effective Date until Mirvac RE is registered in the Securityholder Register as the holder of all Scheme Units, no Securityholder may attend or vote at any meetings of Unitholders or sign any Unitholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 26.13.
- (c) The Responsible Entity undertakes in favour of each Scheme Securityholder that it will appoint the Chairman of Mirvac RE (or other nominee of Mirvac RE) as the Scheme Securityholders' proxy or, where applicable, corporate representative in accordance with this clause 26.13.

26.14 Status of Scheme Securities

- (a) To the extent permitted by law, and (in respect of Scheme IR Holders) subject to WSL's prior consent to release its Security Interest in the Scheme Units held by the Security Trustee in an IR Holding, the Scheme Units transferred to Mirvac RE under this clause 26 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Scheme Securityholder (including each Scheme IR Holder in relation to its Beneficial Interest in the Scheme Units and the Security Trustee in relation to its legal interest in the Scheme Units in an IR Holding) is deemed to have warranted to the Responsible Entity in its own right and on behalf of the Bidder, that all their Scheme Units (or, in the case of a Scheme IR Holder, the Scheme Units held by the Security Trustee on behalf of the Scheme IR Holder) including any rights and entitlements attaching to those Scheme Units, which are transferred to Mirvac RE under this clause 26 will:
 - (i) at the time of the transfer of them to Mirvac RE; and

- (ii) with respect to Scheme IR Holders, subject to WSL's prior consent to the transfer of the Scheme Units held by the Security Trustee in an IR Holding and to the release of its Security Interest in those Scheme Units,

be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this Constitution, and that the Scheme Unitholders have full power and capacity to sell and to transfer their Scheme Units (together with any rights and entitlements attaching to those Scheme Units) to Mirvac RE pursuant to the Scheme.

- (c) Mirvac RE will be beneficially entitled to the Scheme Units transferred to it under this clause 26 pending registration by the Responsible Entity of the name and Registered Address of Mirvac RE in the Securityholder Register as the holder of the Scheme Units.

26.15 Binding instructions or notifications

Except for a Scheme Unitholder's tax file number, any binding instruction or notification between a Scheme Unitholder and the Responsible Entity relating to Scheme Units as at the Record Date (including, without limitation, any instructions relating to payment of distributions or to communications from the Responsible Entity) will, from the Record Date, be deemed (except to the extent determined otherwise by the Bidder in its sole discretion) to be a similarly binding instruction or notification to, and accepted by, the Bidder in respect of any New Bidder Securities issued to the Scheme Unitholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to the Bidder through the Bidder Registrar, provided that any such instructions or notifications accepted by the Bidder will apply to and in respect of the issue of New Bidder Securities as part of the Scrip Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

26.16 Suspension and termination of quotation of Units

- (a) The Responsible Entity must apply to ASX for suspension of trading of the Units on the financial market known as the Australian Securities Exchange conducted by ASX with effect from the close of business on the Effective Date.
- (b) The Responsible Entity must apply to ASX for termination of official quotation of the Units on the financial market known as the Australian Securities Exchange conducted by ASX and the removal of the Fund from the official list of the ASX with effect from the Scheme Business Day immediately following the Implementation Date, or from such later date as may be agreed by the Bidder and the Responsible Entity.

26.17 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Responsible Entity, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on

which it is actually received at the Fund's registered office or by the Registrar, as the case may be.

26.18 Costs and stamp duty

- (a) Subject to clause 26.18(b), each of the Bidder and the Responsible Entity will pay their share of the costs of the Scheme in accordance with the Scheme Implementation Agreement. The Responsible Entity may pay or be reimbursed for such costs out of the Assets.
- (b) The Bidder will pay all stamp duty (including fines, penalties and interest) payable on or in connection with the transfer by Scheme Unitholders of the Scheme Units to the Bidder pursuant to the Scheme.

26.19 Limitation of liability

- (a) Without limiting clauses 16.4 and 16.6, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to Securityholders, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.
- (b) To the extent permitted by law, the Security Trustee will not have any liability of any nature whatsoever to Securityholders or any other person, arising, directly or indirectly, from the Security Trustee doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to this Constitution in connection with the implementation of the Scheme, except to the extent that the Security Trustee has acted with gross negligence, fraud or dishonesty, or in wilful breach of this Constitution.

Annexure A – Certificate

[Issuer Letterhead]

Certificate (Clause 3.1(o))

Westpac Funds Management Limited
as responsible entity of Westpac Office Trust
Level 15, 90 Collins Street
Melbourne
VIC 2000

Date: 2010

Scheme Implementation Agreement

We refer to the scheme implementation agreement dated _____ 2010 between Mirvac Limited (**Company**), Mirvac Funds Limited (**Responsible Entity**) as responsible entity of the Mirvac Property Trust (the Responsible Entity and the Company together **Mirvac**) and Westpac Funds Management Limited as responsible entity for Westpac Office Trust (**Agreement**). Terms defined in the Agreement have the same meaning when used in this Certificate.

Mirvac certifies that as at 9am on the date of the Certificate:

- (a) the sections of the Scheme Booklet that comprise Mirvac Information are in a form appropriate for despatch to Scheme Securityholders;
- (b) the Company and the Responsible Entity have undertaken and completed appropriate verification processes in relation to the Mirvac Information in the Scheme Booklet;
- (c) the boards of the Company and the Responsible Entity have given their written consent to the despatch of that information in that form to Scheme Securityholders; and
- (d) the boards of the Company and the Responsible Entity has approved the issue of the Scheme Consideration in accordance with the Scheme.

Execution Page

Executed as an agreement.

Each attorney executing this Agreement states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Westpac Funds Management Limited** (ABN 28 085 352 405) as responsible entity of Westpac Office Trust:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Execution Page

Executed as an agreement.

Each attorney executing this Agreement states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Executed by Mirvac Limited (ABN 92 003 280 699):

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed by Mirvac Funds Limited (ABN 70 002 561 640) as responsible entity of Mirvac Property Trust:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Execution Page

Executed and delivered as a Deed in Sydney, Australia.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed for Westpac Funds Management Limited (ABN 28 085 352 405) as responsible entity of Westpac Office Trust by its attorney under power of attorney dated 28 November 2006 in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Amending Deed to Scheme Implementation Agreement - Execution page for Westpac Funds Management Limited (as responsible entity of Westpac Office Trust)

Deed of Amendment to Scheme Implementation Agreement

Execution Page

Executed and delivered as a Deed in Sydney, Australia.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Executed by Mirvac Limited (ABN 92 003 280 699):

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed by Mirvac Funds Limited
(ABN 70 002 561 640) as responsible entity
of Mirvac Property Trust:

Director Signature

Director/Secretary Signature

Print Name

Print Name