

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

Responsible Entity:

Mirvac Funds Limited (ACN 002 561 640)

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

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

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

Operative provisions:

1 Name of Trust

- 1.1 The Trust is called the Mirvac Property Trust or by such other name as the Manager determines from time to time¹.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

2 Assets held on trust

- 2.1 The Trustee declares that it will hold the Assets that constitute the Trust upon Trust for the Unitholders and act in the interests of the Unit Holders on and subject to the terms and conditions of this deed².
- 2.2 Any Asset held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

3 Units and Options

Nature of Units

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

¹ See Corporations Regulation 5C.1.02

² See section 601FC(2) of the Corporations Act

³ See section 601FC(1)(i) of the Corporations Act

Options

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

3.5

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

3.6

- (a) An Option Holder may exercise an Option during the exercise period for the Option by giving notice to the Manager in accordance with the terms and conditions of issue of the Option together with payment in full of the exercise price (being the Application Price for the Unit to be issued following the exercise of the Option).

- (b) On exercise of an Option, the Option Holder is entitled to subscribe for and be issued such number of Units as provided for in the terms and conditions of issue of the Option.
- 3.7 Upon the termination of the Trust, an Option Holder is entitled to repayment of the issue price paid by the Option Holder for the issue of any Option which has not been exercised, unless the terms and conditions of issue of the Option provide otherwise.
- 3.8 Subject to clause 3.7, an Option does not confer on an Option Holder any interest in the Trust or any right to participate in any distribution of the income or capital of the Trust.

Rights attaching to Units and Options

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

Fractions of Units

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

Consolidation and division of Units and Options

- 3.12 Units and Options may be consolidated or divided in any proportion as determined by the Manager⁴.
- 3.13 While Stapling applies, Units and Options may only be consolidated or divided if the related Stapled Shares and Options over Stapled Shares are also consolidated or divided at the same time and to the same extent.

Transfer of Units and Options

- 3.14 Subject to clause 3.15, Members may transfer Units and, subject to the relevant terms and conditions of issue, Options.

⁴ Refer Listing Rules, Chapter 7 – reorganisations of capital

- 3.15 While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.16 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and be presented, if the Manager requires, for Registration duly stamped.
- 3.17 A transfer is not effective until Registered.
- 3.18 Subject to the Listing Rules while the Listing Rules apply⁵, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.15.
- 3.19 While Stapling applies and subject to the Corporations Act and the Listing Rules:
 - (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities and any provision of clauses 3.14 to 3.18 of this constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
 - (b) a reference in clauses 3.14 to 3.18 inclusive to a "Unit" will be deemed to be a reference to a Stapled Security.

Joint tenancy

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

Death, legal disability of Member

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

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

receive notices of or to attend or vote at any meetings of Members or Option Holders until that person is Registered as the holder of the Unit or Option.

Number of Units and Options

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

Register

- 3.25 The Manager must keep a Register of all Members and Option Holders as the Corporations Act requires. While Stapling applies, the Register will comprise a single register which records details of the members of the Trust and the Stapled Company.

Stapling

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

4 Application Price for Units⁶

- 4.1 Subject to clauses 4A, 19.1 and 30A.2(a), a Unit must only be issued at an Application Price:
 - (a) subject to clauses 4.1 (b), (c), (d), (e), (f), (g), (h) and (i) while Units are Officially Quoted, equal to the weighted average Market Price of Units during the 5 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated;

⁶ Required to be included by Section 601GA(1)(a)

- (b) subject to clauses 4.1 (c), (d), (e), (f), (g), (h) and (i), while Units are Officially Quoted as part of a Stapled Security, in accordance with clause 4.4;
- (c) in the case of a rights issue, in accordance with clause 4.5;
- (d) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.8;
- (e) in the case of reinvestment of income, in accordance with clauses 4.10 and 4.11;
- (f) in the case of a Unit issued upon the exercise of an Option, determined in accordance with clause 3.5(a) or clauses 4.1(a), (b) or (g);
- (g) in the case of a Unit issued pursuant to an Employee Security Plan, determined in accordance with clause 4.12 or 4.13;
- (h) in the case of a Unit issued pursuant to a Purchase Plan, determined in accordance with clause 4.14;
- (i) that is different to an Application Price otherwise determined under this clause 4.1, to the extent that the Manager is able to set the Application Price in circumstances permitted by and in accordance with Relief and the Listing Rules; and
- (j) in all other cases, calculated as:

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

4.2 Subject to clause 4.10, each of the variables in clause 4.1(j) must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

Determination of Application Price where Stapled Securities are issued

4.4

- (a) Where clause 4.1(b) applies, a Stapled Security must only be issued at an application price for the Stapled Security equal to the weighted average Market Price of Stapled Securities during the 5 Business Days immediately prior to the date on which or as at which the application price for the Stapled Security is to be calculated.
- (b) In each case where a Stapled Security is issued the Manager must determine what part of the application price of the Stapled Security is to represent the Application Price of the Unit.

For these purposes, the percentage that the Application Price of a Unit bears to the application price of a Stapled Security must equal the percentage that the net tangible assets of the Trust bears to the net tangible assets of the Mirvac Group as at:

- (i) unless the Manager determines the date in clause 4.4(b)(ii) applies on or before the issue of the Stapled Securities, 30 June in the prior Financial Year in which the issue of Stapled Securities occurs by reference to the annual accounts of the Trust and the Mirvac Group respectively; or
- (ii) 31 December that last occurs prior to the issue of the Stapled Securities by reference to the half year accounts of the Trust and the Mirvac Group respectively, where the Manager so determines.
- (c) Where an option or a right to acquire a Stapled Security is issued or granted, the allocation of the issue price (if any) of the option or right must be determined in the same manner as this clause 4.4.
- (d) The allocation of the Application Price for a Stapled Security issued under this clause 4.4 must be consistent for each other Stapled Security issued at the same time.

Rights issues

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

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right or entitlement is renounceable);
- (b) in relation to the:
 - (i) November 2008 Offer where:
 - (A) the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share is not less than 50% of the application price of the Stapled Security which would otherwise apply; and
 - (B) where the application price for the Stapled Securities is determined by a pre-launch cornerstone process; and
 - (ii) June 2009 Offer where the application price for Stapled Securities will be \$1.00. This price, being the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share, is not less than 50% of the application price of the Stapled Security which would otherwise apply under clause 4.4(a), determined as at the date of announcement of the June 2009 Offer; and
- (c) where Units are not Officially Quoted, the Application Price is not less than 80% of the Application Price calculated in accordance with clause 4.1(j); and
- (d) while Stapling applies, the same Members are contemporaneously offered identical numbers of Stapled Shares which will be Stapled to the Units offered,

but, subject to the Listing Rules, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia⁷.

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

⁷ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1. ⁸ See section 601FC(j) for Manager's obligations concerning valuation

Terms of pro rata issues

4.6

- (a) Any offer made under clause 4.5 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.5, provided that the Manager may adjust any entitlement to accord with the Listing Rules. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units (or Stapled Securities, in the case of clause 4.5(b)) offered for subscription under clause 4.5 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that:
 - (i) the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members; or
 - (ii) where Stapled Securities are Officially Quoted, the aggregate of the relevant Application Price for the Units and the application price for the Stapled Shares is not less than that at which the Stapled Securities were originally offered to the holders of Stapled Securities.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.5 (or Stapled Securities in the case of clause 4.5(b)), such underwriter may take up any Units (or Stapled Securities in the case of clause 4.5(b)) not subscribed for by Members (or holders of Stapled Securities in the case of clause 4.5(b)).
- (d) The Manager may structure the Entitlement Offer component of the November 2008 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.
- (e) The Manager may structure the June 2009 Entitlement Offer component of the June 2009 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.

- (f) The Manager may structure an offer made under clause 4.5 in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief) despite anything else in clause 4.5, clause 4.6 and clause 4.7.

4.7

- (a) Notwithstanding the provisions of clauses 4.5 and 4.6, if:

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

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

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

and that they are not to be offered or issued or both to Members in other countries.

- (b) Where the Manager makes an election under clause 4.7(a), then:

- (i) the Manager must procure that a number of Units (corresponding to the number that would have been offered to those Members but for the Manager's election under this clause 4.7) are offered to a nominee (which may be the Manager) provided that while Stapling applies, that nominee is contemporaneously offered an identical number of Stapled Shares which will be Stapled to those Units; and
- (ii) the Manager must use its best endeavours to procure that the nominee sells the rights in respect of those Units (and if applicable, Stapled Shares) and (after deducting the nominee's reasonable costs and expenses) remits the balance of the funds received by it for those rights to those Members (in proportion to the number of Units including if applicable the number of Stapled Shares that would have been offered to those Members but for the Manager's election under this clause 4.7).

Placements and other issues

4.8

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

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

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

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

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

- (i) the Manager proposes an institutional placement of Stapled Securities as part of the June 2009 Offer; and
- (ii) the application price of the Stapled Securities under the institutional placement will be \$1.00. This price is the same as the application price of Stapled Securities under the June 2009 Entitlement Offer.

(bc) Without limiting clause 4.8(a), where:

- (i) the Manager proposes an institutional placement of Stapled Securities as part of the April 2010 Offer; and

- (ii) the application price of the Stapled Securities under the institutional placement will be \$1.40.
- (b) Without limiting the operation of clause 4.5 or the generality of clause (a), the Manager may at any time issue Units or Stapled Securities to any person, whether by way of a placement or otherwise, at a price and on terms determined by it in accordance with any Relief.

4.9 [Deleted]

Reinvestment

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

Employee Security Plan

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

Purchase Plan

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

4A Issue of Units as Bid Consideration

Manager may issue Stapled Securities as Bid Consideration

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

Application price of Stapled Securities issued as Bid Consideration

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

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

Satisfaction of obligation to make payment or transfer property

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

- (b) the application price for Stapled Securities, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Stapled Securities and other consideration.

5 Application procedure

Application form

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

Payment

- 5.3 Without limiting clause 4A, payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
 - (a) accompany the application;
 - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or
 - (c) comprise a reinvestment of distribution in accordance with clause 8.19.

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

Manager may reject

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

Manager must reject

- 5.5 While Stapling applies, the Manager must reject an application for Units if the applicant does not apply at the same time for an identical

number of Stapled Shares or if an identical number of Stapled Shares will not be issued to the applicant at the same time as the issue of Units to the applicant.

Minimum amounts

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

Issue date

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

Uncleared funds

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

Income entitlement of Units

- 5.9 Except as otherwise expressly provided in this constitution, the Manager may in its discretion issue Units on terms that such Units:
- (a) participate fully in the allocation of the Distributable Income in respect of the Distribution Period in which they are issued;
 - (b) do not entitle the holder of such Units to receive a share of the Distributable Income in respect of the Distribution Period in which such Units are issued; or
 - (c) entitle the holder of such Units to receive a share of the Distributable Income in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

6 Redemption of Units and Buy-Back

- 6.1 The Manager is not obliged to redeem Units.

Buy-back

- 6.2 Subject to the Corporations Act, the Listing Rules and any Relief, while Units or Stapled Securities are Officially Quoted, the Manager may purchase or cause to be purchased Units, or where Stapling applies, Stapled Securities and cause the Units which form part of the Stapled Securities to be cancelled. Where the Units comprise part of Stapled Securities, the Manager may only buy-back and cancel the Units if the Stapled Shares are also the subject of a contemporaneous buy-back and cancellation by the Stapled Company. Where the Units are purchased as part of a Stapled Security under a buy-back, the Manager must determine, in a manner similar to that provided in clause 4.4 in relation to issues of Stapled Securities, what proportion of the price paid for the Stapled Security is to be paid from the Assets.

Restriction on issue and redemption of Units

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

7 Valuation of assets

Periodic valuations

- 7.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.⁸
- 7.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 7.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value⁹.
- 7.4 While Units are not Officially Quoted, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price that is independently verifiable.

⁸ See section 601FC(j) for Manager's obligations concerning valuation

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

8 Income and distributions to Members

Determination of Distributable Income

- 8.1 The Manager must determine the Distributable Income for each Distribution Period.
- 8.2 Unless the Manager determines otherwise on or before the Determination Date, the Distributable Income for the Distribution Period will be equal to Trust's Adjusted Taxable Income for the Distribution Period.
- 8.3 The Manager may classify into categories all or any part of the Distributable Income and any items constituting or relating to the Assets of the Trust, and may account separately for each category, such categories may include the following without limitation:
 - (a) amounts of income or ordinary income or statutory income (whether or not assessable or exempt income), and amounts deductible on income account, or amounts deductible as capital allowances or otherwise as capital expenditure;
 - (b) any capital gains, and capital losses or items otherwise deductible or dealt with on capital account;
 - (c) any distribution which is franked or unfranked for the purposes of the Tax Act and the amount of any franking credit;
 - (d) any tax offset, any refundable tax offset and/or refund of a tax offset; and
 - (e) any other items identified for the purposes of the Tax Act.
- 8.4 In determining the Distributable Income:
 - (a) The Manager may determine an item to be on capital account whether or not it would ordinarily be on capital account.
 - (b) The Manager may determine an item to be on income account whether or not it would ordinarily be on income account.
 - (c) The Manager does not have to take into account accounting standards or generally accepted accounting principles and practices which apply to trusts.

The preparation of the accounts of the Trust in accordance with accounting standards or generally accepted accounting principles and practices which apply to trusts is not to be regarded as a determination that an item is income or capital or as a determination of the method of calculating the Distributable Income of the Trust.
- 8.5 The Manager may, prior to the end of a Distribution Period,

allocate to a Member all or part of the Distributable Income to which the Member is entitled in respect of that Distribution Period, from a particular category or source and the Manager may advise the Member of the extent to which the amount allocated to the Member consists of an amount from a particular category or source.

Distribution Entitlement

- 8.6 Each of the Members on the Register at the close of business on the Record Date in respect of a Distribution Period has a vested and indefeasible interest in the Member's Income Entitlement calculated in accordance with clause 8.8.
- 8.7 The Manager may determine to make an Interim Distribution out of the Distributable Income during or with respect to one or more Interim Distribution Periods in a Distribution Period. Each of the Members on the Register at the close of business on the last Business Day of the Interim Distribution Period has a vested and indefeasible interest in the Interim Distribution in respect of the relevant Distribution Period in accordance with clause 8.8.

Income Entitlement

- 8.8 Subject to the rights, obligations and restrictions attaching to any particular Unit or class of Units, the entitlement of a Member for a Distribution Period is an amount calculated by the Manager as follows:

- (a) in respect of an Interim Distribution Period, an amount calculated as follows:

$$A = \left[\frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;
- B is the number of Units held by the Member at the end of the Interim Distribution Period;
- C is the number of Units held by all Members at the end of the Interim Distribution Period;
- D is the amount determined to be distributed by the Manager in respect of the Interim Distribution Period;
- and

- (b) in respect of a Distribution Period, an amount calculated as follows:

$$A = \left[\frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;

- B is the number of Units held by the Member at the end of the Record Date;
 - C is the number of Units held by all Members at the end of the Record Date;
 - D is the amount (if any) by which the Distributable Income for the Distribution Period exceeds the Distributable Income previously distributed in respect of the Distribution Period by way of Interim Distribution or otherwise.
- (c) For the avoidance of doubt, an estimate calculated for the purposes of variable D in clause 8.8(a) above is not a determination of Distributable Income for a Distribution Period; and
 - (d) subject to clause 8.15, an Interim Distribution will be taken to be a distribution of Distributable Income equal to the estimate calculated for the purposes of variable D in clause 8.8(a) for that distribution.

Payment of Distributions

- 8.9 Where the Manager determines to make an Interim Distribution, the Manager must within 90 days after the last day of an Interim Distribution Period pay or apply to or for the Members on the Register at the close of business on the last Business Day of the Interim Distribution Period the amount of their Income Entitlement in accordance with clause 8.8(a).
- 8.10 The Manager must within 90 days after the last day of a Distribution Period pay or apply to or for the Members on the Register at the close of business on the Record Date for the Distribution Period the amount of their Income Entitlement in accordance with clause 8.8(b).
- 8.11 The Manager may retain from each Member's Income Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Manager determines it is not practical to distribute. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.

Capital Distributions

- 8.12 Subject to the rights, obligations and restrictions attaching to any particular Unit or class of Units, the Manager may at any time distribute from the Assets any amount of capital to Members pro rata according to the numbers of Units held as at a time decided by the Manager. The Manager may retain from each Member's distribution of capital all amounts which are necessary to avoid distributing a fraction of a cent or which the Manager determines it is not practical to distribute.

Tax Liability of the Manager

- 8.13 The Manager may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of Members) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the net income of the Trust within the meaning of the Tax Act is borne by the Members in proportions that correspond with the share of Distributable Income to which they are entitled, and that the Manager incurs no liability to pay Tax under the Tax Act as Manager of the Trust.

Deductions

- 8.14 The Manager may deduct or withhold from any money to be paid (or other property to be distributed) to a Member or former Member or otherwise recover, any amount of Tax (or an estimate of it) imposed on any person in respect of the Member or any amount owed by the Member to the Manager or any other person, that the Manager:
- (a) is required or authorised to deduct or withhold by law or under this document; or
 - (b) in its reasonable opinion, thinks should be deducted or withheld.

Excess distribution

- 8.15 If the Manager determines that the total amount of the distributions actually made to Members (in one of the forms mentioned in clause 8.8) during or with respect to a Distribution Period exceeds the Distributable Income for the Distribution Period:
- (a) the excess constitutes a distribution of capital; and
 - (b) the Manager may, prior to the end of the Distribution Period determine the extent to which each distribution consisted of Distributable Income; and
 - (c) if no determination is made in accordance with clause 8.15(b), the Distributable Income is allocated to each distribution on a pro-rata basis.

Transfer of capital to enable distribution of Distributable Income

- 8.16 For a Distribution Period, the Manager may apply trust capital to enable distribution to Members of an amount at least equal to the Distributable Income for that Distribution Period.

Member Reinvestment

- 8.17 A Member is entitled, if the right of reinvestment of income has been offered under a prospectus or by notice in writing to all Members or both, by giving notice in writing to the Manager (in the form determined by the Manager) to request that the Manager retain and reinvest in Units the money or part of the money the Member is entitled to receive under clause 8.8.
- 8.18 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period cancel any notice given under clause 8.17. The Member is entitled to give a further notice under clause 8.17 at any time in respect of any subsequent Distribution Period provided that the Manager has not previously cancelled the right of reinvestment of income. The Manager may by notice in writing to all Members, posted or otherwise sent on or before the last day of any relevant Distribution Period cancel any right of reinvestment of income. The Manager may at any time and from time to time re-offer the right of reinvestment of income to all Members by notice in writing or prospectus or both.
- 8.19 In the event that a notice under clause 8.17 has been given to the Manager by a Member not later than the last day of the relevant Distribution Period and has not been cancelled by the Member under clause 8.18 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member in respect of the relevant Distribution Period to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in Units.
- 8.20 If the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member cancels the relevant notice under clause 8.18 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the Distribution Period current at the date of cancellation.
- 8.21 Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and when sufficient for the purpose the aggregated amount will be applied in the purchase of a new Unit for issue to the Member in accordance with the relevant provisions of this clause 8.

Restriction on reinvestment

- 8.22 While Stapling applies, no reinvestment under clause 8.17 may occur unless at the same time as Members are issued with additional Units, Members are issued with an identical number of Stapled Shares which are then stapled to the additional Units issued. The Manager may provide for and pay on behalf of Members all or part of the application money for such Stapled Shares out of the amount otherwise available for reinvestment.

Notice of Reinvestment

- 8.23 Where a Member has made a request under clause 8.17, the

Member is to be provided by the Manager with a notice to the effect that the whole or part of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Trustee under clause 8.14. The notice is to be given by the Manager upon the issue of the Units.

- 8.24 The Member is to be provided with a certificate (if required) for the Units. The Units will be deemed to be issued on a date determined by the Manager.
- 8.25 For all purposes the net income to be distributed to a Member is deemed to have been received by the Member on a reinvestment of that income in Units under the terms of clause 8.

Stapled Security Reinvestment Plan

- 8.26 While Stapling applies, notwithstanding clauses 8.17 to 8.25, but subject to clause 4.11 and clause 29, if the Manager agrees with the Stapled Company to implement a reinvestment plan in relation to dividends and income in relation to Stapled Shares and the Units (a "Plan") a Member may apply to the Manager to have reinvested in Units the money or part of the money the Member is entitled to receive under clause 8.8 in accordance with the terms of the Plan subject to the following provisions:
 - (a) the Manager may prescribe the application form for participation in the Plan;
 - (b) the Plan must permit a Member to cancel the participation of the Member in the Plan and to vary the participation of the Member in the Plan on reasonable grounds;
 - (c) the Manager may determine a Member's eligibility to participate in the Plan and may limit the number of a Member's Units that may participate in the Plan in accordance with the Listing Rules;
 - (d) if the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction may either be held by the Manager without interest until the next distribution when it will be added to the amount of the distribution to that Member or paid to the Member without interest;
 - (e) where income is reinvested pursuant to the Plan, the Manager will advise the Member at the time when each distribution is made of the number of Units issued to the Member, the amount of income applied to the purchase of such Units and the amount of income (if any) not so applied;
 - (f) application for participation in the Plan will be automatically cancelled upon transfer of the Units to which an application relates and in such other circumstances reasonably determined by the Manager (where an application relates to a number of Units that is more than the number of units transferred, the Manager may determine whether the application has been cancelled in respect of any Units that remain held by the Member);
 - (g) subject to the Corporations Act and the Listing Rules, the

Manager shall not be obliged to issue a certificate for Units issued under the Plan;

- (h) for all purposes the net income to be distributed to a Member under this clause 8.26 is deemed to have been received by the member on a reinvestment of that income in Units under the Plan (and for the purposes of clause 5.3(c) comprises a reinvestment of a distribution in accordance with clause 8.19); and
- (i) the Manager may suspend the Plan's operation in respect of any distribution or cancel the Plan without prior notice at any time.

8.27 No reinvestment under clause 8.26 may occur unless at the same time as Members are issued with additional Units, Members are issued with an identical number of Stapled Shares which are then Stapled to the additional Units.

Trust taxed as a company

8.28 Notwithstanding clauses 8.1 to 8.16, if in any Distribution Period the Manager in its capacity as Manager of the Trust becomes taxable in respect of the net income of the Trust at the rate applicable to companies:

- (a) the Manager must provide for, and pay from the assets of the Trust when appropriate, all taxation attributable to the income of the Trust.
- (b) clause 8.2 does not apply and the Manager has complete discretion as to how much, if any, of:
 - (i) the Distributable Income for that Distribution Period; or
 - (ii) in years subsequent to that Distribution Period, amounts which have not previously been distributed from prior Distribution Periods,
 is to be distributed to Members.
- (c) Subject to any rights, obligations and restrictions attaching to any particular Unit or class of Units, each Member is entitled to a proportion of the amount determined to be distributed by the Manager pursuant to this clause 8.28 equal to the proportion of the number of Units held by the Member to the total number of Units on issue at the date of the distribution.
- (d) In respect of an amount being distributed to Unit Holders pursuant to this clause 8.28:
 - (i) the Manager must comply with the provisions of the Tax Act and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
 - (ii) the Manager must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.

9 Payments

- 9.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 9.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 9.3 If the Manager decides that payment to a Member will be made by electronic transfer into an account (of a type approved by the Manager) nominated by the Member, but no such account is nominated by the Member or an electronic transfer into a nominated account is rejected or refunded, the Manager may credit the amount payable to an account of the Manager to be held until the Member nominates a valid account or paid by the Manager in accordance with the legislation relating to unclaimed moneys. An amount credited to an account in this manner is treated as having been paid to the Member and will cease to be an Asset of the Trust at the time it is credited to that account. The Manager will not be taken to be a trustee of the money and no interest will accrue on the money.
- 9.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 9.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 9.6 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

10 Powers of the Manager

General powers

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

Contracting powers¹⁰

- 10.2 Without limiting clause 10.1 but subject to clause 10.3, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities¹¹.

Borrowing

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

¹⁰ Required to be included by Section 601GA(3)

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

Investment powers

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

Power of delegation¹³

- 10.5 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 10.6 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 10.7 The agent or delegate may be an associate of the Manager.¹⁴

Exercise of discretion

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

Underwriting

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

Principal investment policy

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

¹² Subject to Section 601FC(4)

¹³ See also Section 601FB.

¹⁴ Subject to Part 5C.7

2012/2013 Capital Reallocation

10.11 Each Eligible Member irrevocably appoints and directs the Manager to:

- (a) consent in writing (which consent may be a single document or two or more documents executed by the Manager on behalf of all Eligible Members) to any variation of the rights attaching to any shares in the Stapled Company Stapled to Units held by the Eligible Member constituted by:
 - (i) any modification of the constitution of the Stapled Company that increases or provides for an increase in the liability of the Eligible Member in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company; and
 - (ii) that increase in that liability;
- (b) agree in writing (which agreement may be a single document or two or more documents executed by the Manager on behalf of all Eligible Members) to the increase in the Eligible Member's liability to contribute to the share capital of the Stapled Company in accordance with the constitution of the Stapled Company;
- (c) apply on behalf of the Eligible Member the amount of the Eligible Member's entitlement to be paid a proportion of a 2012/2013 Capital Reallocation Amount to discharge in full the increase in the Eligible Member's liability in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company; and
- (d) do all things the Manager considers necessary or expedient (including dealing with fractional entitlements and resolving any difficulty) to give effect to the payment of the 2012/2013 Capital Reallocation Amount in accordance with this constitution.

2013/2014 Capital Reallocation

10.12 Each Eligible Member irrevocably appoints and directs the Manager to:

- (a) consent in writing (which consent may be a single document or two or more documents executed by the Manager on

behalf of all Eligible Members) to any variation of the rights attaching to any shares in the Stapled Company Stapled to Units held by the Eligible Member constituted by:

- (i) any modification of the constitution of the Stapled Company that increases or provides for an increase in the liability of the Eligible Member in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company; and
- (ii) that increase in that liability;
- (b) agree in writing (which agreement may be a single document or two or more documents executed by the Manager on behalf of all Eligible Members) to the increase in the Eligible Member's liability to contribute to the share capital of the Stapled Company in accordance with the constitution of the Stapled Company;
- (c) apply on behalf of the Eligible Member the amount of the Eligible Member's entitlement to be paid a proportion of a 2013/2014 Capital Reallocation Amount to discharge in full the increase in the Eligible Member's liability in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company; and
- (d) do all things the Manager considers necessary or expedient (including dealing with fractional entitlements and resolving any difficulty) to give effect to the payment of the 2013/2014 Capital Reallocation Amount in accordance with this constitution.

11 Retirement of Manager¹⁵

Voluntary retirement

- 11.1 The Manager may retire as the responsible entity of the Trust as permitted by law¹⁶.

Compulsory retirement

- 11.2 The Manager must retire as the responsible entity of the Trust when required by law¹⁷.

¹⁵ Refer to Listing rule 3.16.2(a)

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

New responsible entity

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

Release

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

Retirement benefit

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

12 Notices to Members¹⁹

- 12.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member or Option Holder must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option Holder at the Member's or Option Holder's physical or electronic address last advised to the Manager for delivery of notices.
- 12.2 A cheque payable to a Member or Option Holder may be posted to the Member's or Option Holder's physical address or handed to the Member or Option Holder or a person authorised in writing by the Member or Option Holder²⁰.
- 12.3 In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option Holder first named in the Register.
- 12.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt

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

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

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

²⁰ See Clause 15.3(c)

is not required. Subject to the law²¹, the Manager may determine²² the time at which other forms of communication will be taken to be received.

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

13 Notices to the Manager

- 13.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 13.2 The notice is effective only at the time of receipt.
- 13.3 The notice must bear the actual, facsimile or electronic signature of the Member or Option Holder or a duly authorised officer or representative of the Member²³ or Option Holder unless the Manager dispenses with this requirement.

14 Meetings of Members

Corporations Act

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

Manager may determine

- 14.2 Subject to this clause 14, the Corporations Act²⁵ and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted²⁶.
- 14.2A The Manager may:
- (a) determine that at any meeting of Members a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a Direct Vote in respect of that resolution;

²¹ See Section 601FC(1)(d)

²² See Section 252G(4)

²³ See Clause 15.3(c)

²⁴ Refer Part 2G.4

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

²⁶ Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

- (b) prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a Direct Vote at a meeting in order for the vote to be valid; and
- (c) if the Manager determines that a Member is entitled to a Direct Vote, the Manager must specify the form, method and timing of giving a Direct Vote in the notice of meeting in order for the vote to be valid.

Quorum

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

No quorum

- 14.4 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
 - (b) otherwise - adjourned to such place and time as the Manager decides.

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

Chairman

- 14.5 Subject to the Corporations Act²⁷ the Manager may appoint a person to chair a meeting of Members.
- 14.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

Other attendees

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

²⁷ Refer Part 2G.4 and Section 601FC(1)

Adjournment

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

Proxies and voting

- 14.9 A Member may:
- (a) be present and vote in person; or
 - (b) be represented at any meeting of Members by:
 - (i) proxy;
 - (ii) attorney; or
 - (iii) in the case of a body corporate which is a Member, a representative, or
 - (c) where the Manager determines that direct voting will be available for a meeting of Members, vote by Direct Vote.
- 14.10 Subject to clause 14.12, the provisions of the Corporations Act governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust²⁸.
- 14.11 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act²⁹.
- 14.12 While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Stapled Shares which they hold.

Direct voting

- 14.13 A Member may only vote by one of the permitted methods in clause 14.9 in respect of a Unit. If a Member casts a Direct Vote on a particular resolution they are taken to have revoked the authority of a previously authorised proxy to vote on their behalf on that resolution. If a Member attempts to cast more than one vote on a particular resolution in respect of the same Unit, only the last vote received by the returning officer is to be taken to have been cast, irrespective of whether the vote is by way of Direct Vote or proxy. A person who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote, unless the Member instructs the Manager or at its instruction the Trust's unit registry otherwise.

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

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

- 14.14 If the Manager determines that a Member who is entitled to attend a meeting of Members is entitled to a Direct Vote, then a Member is entitled to cast a Direct Vote prior to the relevant meeting of Members. If a vote is taken at a meeting of Members on a resolution on which a Direct Vote was cast, the chairman of the meeting must:
- (a) on a show of hands, exclude each Member who has submitted a Direct Vote for or against the resolution; and
 - (b) on a poll, count the votes cast by each Member who has submitted a Direct Vote directly for or against the resolution, by the value of the total interests in the Trust held by each Member.
- 14.15 If sent by post or fax, the Direct Vote must be signed by the Member or, if the Member is a corporation, either under seal or by a duly authorised officer, attorney or representative. If sent by electronic transmission or other electronic means, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Member in the manner approved by the Manager or specified in the notice of meeting. A Direct Vote includes any form of vote that the Manager may prescribe or accept including by any electronic means. At least 48 hours (or any shorter period as the Manager may permit) before the time for holding the relevant meeting of Members, an adjourned meeting or a poll at which a person proposes to cast a notice of their voting intention, the following must be Validly Received:
- (a) a Direct Vote; and
 - (b) any authority or power under which the Direct Vote was signed or a certified copy of that power or authority if not already lodged with the Manager.

A notice of a voting intention is valid if it contains the following information:

- (a) the Member's name and address or any applicable identifying notations such as the holder identification number or similar approved by the Manager or specified in the notice of meeting, and
- (b) the Member's voting intention or any or all of the resolutions to be put before the meeting.

If the chairman determines it is appropriate, a Direct Vote by a Member on a resolution is taken to be a Direct Vote on the resolution as amended. The chairman's decision as to whether a Direct Vote is valid is conclusive.

- 14.16 A vote cast in accordance with a Direct Vote is valid even if before the vote was cast the Member:
- (a) died;
 - (b) became mentally incapacitated;
 - (c) revoked the appointment or authority;
 - (d) revoked the authority under which the appointment was made by a third party;
 - (e) transferred the Unit in respect of which the appointment or authority was given or
 - (f) wished to change their vote,

unless written notification of the relevant event is received by the Manager before the meeting, adjourned meeting or the taking of the poll in respect of which the Direct Vote was to have been cast.

Resolutions binding

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

Non-receipt

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

Joint meetings

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

Option Holders

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

Meetings by technology

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

15 Rights and liabilities of Manager

Holding Units

- 15.1 The Manager and its associates may hold Units in the Trust and Stapled Shares in any capacity³⁰.

Other capacities

- 15.2 Subject to the Corporations Act³¹, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member;
 - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
 - (d) lending money to or borrowing money from or providing or receiving guarantees or security from the Stapled Company or any of their associates.

Manager may rely

- 15.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
 - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
 - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a

³⁰ See Section 601FG, Section 253E and Part 5C.7

³¹ Refer Part 5C.7, and see also Listing Rule 10.1

person to act as their agent for any purpose connected with the Trust; and

- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

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

Manager's duties in relation to Stapling

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

- (a) the Manager's duties and obligations to Members will be owed to Members only in their capacity as holders of Units and not as holders of Stapled Shares;
- (b) the Manager must act in the best interests of Members, having regard to their interests as stapled security holders in the Mirvac Group as a whole, comprising interests in the Trust and the Stapled Company, and, if there is a conflict between the Members' interests and its own interests, give priority to the Members' interests;
- (c) in the performance of its duties and the exercise of its powers under this constitution, the Manager will have no obligation to consider the effect of its acts or omissions on the Stapled Company or the Stapled Shares; and
- (d) the Manager will have no obligation to consider or monitor the performance by the Stapled Company, the officers of the Stapled Company of any obligations they may have to Members.

16 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

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

the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

Indemnity in favour of Manager

- 16.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³².
- 16.4 To the extent permitted by the Corporations Act³³, the indemnity under clause 16.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 16.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

17 Liability of Members

Liability limited

- 17.1 Subject to clauses 17.3 and 17.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 17.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 17.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or omission, or as a result of an act or omission requested by the Member or former Member.
- 17.4 Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 17.3 applies.

Recourse

- 17.5 In the absence of a separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

³² See Section 601GA(2)

³³ See Sections 601FB(2) and 601GA(2)

Restrictions on Members

17.6 A Member:

- (a) must not interfere with any rights or powers of the Manager under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

18 Remuneration and expenses of Manager

Application fee

- 18.1 The Manager is entitled in respect of each application for Units in the Trust which it accepts to a fee of 6% of the application money or value of the assets contributed to the Trust by an applicant for Units. This amount is payable to the Manager at the time the Units are issued and the number of Units to be issued must be calculated after this fee is deducted.
- 18.2 The Manager is not entitled to an application fee unless the relevant Unit is issued pursuant to:
 - (a) clause 4.6 to a person other than the Member to which the relevant Units were originally offered under clause 4.5;
 - (b) clause 4.8; or
 - (c) a prospectus which indicates that the Manager is entitled to receive an application fee.

Management fee

- 18.3 The Manager is entitled to a management fee of the lesser of:
 - (a) 0.75% per annum of the value of the Assets calculated in accordance with clause 7; and
 - (b) 1.0% per annum of the Net Asset Value,
 calculated on the last Business Day of each Quarter and payable in arrears on the last Business Day of each Quarter or at such other times as the Manager determines, from the date the Trust commences to the date of final distribution in accordance with clause 20.3.

- 18.4 The determination of which method in clause 18.3(a) or 18.3(b) results in the lesser fee shall be made in respect of the whole of the relevant Quarter.

Waiver of fees

- 18.5 The Manager may:
- (a) accept lower fees than it is entitled to receive under this constitution;
 - (b) waive in whole or in part the payment of any application fee; or
 - (c) defer payment for any period.

Where payment is deferred, the fee accrues daily until paid.

Expenses

- 18.6 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust³⁴ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes the following and expenses connected with the following:
- (a) this constitution and the formation of the Trust;
 - (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or Stapled Shares;
 - (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (d) any proposed acquisition, disposal or other dealing with an investment;
 - (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
 - (f) the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
 - (g) underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and

³⁴ Refer Section 601GA(2)(b)

- any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
 - (i) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
 - (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
 - (k) preparation and audit of the taxation returns and accounts of the Trust;
 - (l) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
 - (m) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 18.6(m) must be repaid;
 - (n) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums³⁵ in respect of Compliance Committee Members;
 - (o) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (p) the preparation, implementation, amendment and audit of the compliance plan; and

³⁵ See Section 601JG

- (q) complying with any law, and any request or requirement of the ASIC.

In this clause 18, the term "expense" includes:

- (i) internal expenses of the Manager (including costs of appointing and maintaining staff in connection with the Trust); and
- (ii) amounts paid by the Manager to related bodies corporate for services provided to the Manager in connection with the Trust where the expenses referable to such service would have been reimburseable under this clause 18.6 had they been incurred by the Manager.

GST

- 18.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this agreement (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 18.8 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
 - (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including, without limitation, any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
 - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with the proper performance of the Manager's duties under this constitution (including, without limitation, the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

- 18.9 An amount may only be paid or reimbursed out of the Assets under clauses 18.6 and 18.7 if it relates to the proper performance of the Manager's duties.

19 Duration of the Trust

Initial settlement

- 19.1 The Manager, after the execution of the original trust deed, lodged with the Trustee \$1,000 for investment by the Trustee (so far as it extended) in Authorised Investments of the Trust. The beneficial interest in the Trust Fund constituted by the payment to the Trustee of the sum of \$1,000 was divided into 500 Growth Units and 500 Income Units which were issued to the Manager.

Termination

- 19.2 The Trust terminates on the earliest of:
- (a) [deleted];
 - (b) a date which the Members determine by special resolution;
 - (c) the Date of Delisting, unless clause 22 applies; and
 - (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁶.
- 19.3 Notwithstanding clause 19.2 of this constitution, if at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Manager may summon a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Trust shall be wound up.

³⁶ See Part 5C.9 on winding up

20 Procedure on termination

Realisation of Assets

- 20.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

Audit of winding up

- 20.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

- 20.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), meeting the expenses (including anticipated expenses) of the termination and satisfying distributions of income, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.
- 20.4 Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 20.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

21 Amendments to this constitution

Manager may amend

- 21.1 Subject to the Corporations Act³⁷, the Manager may by deed amend this constitution.

Statutory requirements

- 21.2 If the Corporations Act or a condition of any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which

³⁷ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 21.1 does not apply to provisions deemed by this clause 21.2 to be incorporated in the constitution.

- 21.3 If the Manager is of the opinion that as a result of clause 21.2 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

Listing Rules

- 21.4 While Units are Officially Quoted:
- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
 - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
 - (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
 - (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.
- 21.5 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 21.4 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

22 Procedure upon removal or suspension from official list of the ASX

Manager's obligations upon delisting

- 22.1 If the Trust is Delisted the Date of Delisting will be the Termination Date unless within 90 days after removal of the Trust from the official List of the ASX or 150 days after the commencement of the suspension of the Units from trading by the ASX (whichever is the earlier) or such longer period as the ASIC or any delegate of the ASIC permits, the Manager has convened a meeting of Members to consider all of the following:
- (a) a proposal to restructure the Trust (unless the ASIC or any delegate of the ASIC directs that no such proposal need be considered);
 - (b) replacing the Manager;
 - (c) terminating the Trust;
 - (d) any proposal which the ASIC or a delegate of the ASIC directs should be considered; and
 - (e) any proposals which the Manager determines.

Voting procedure

- 22.2 Notwithstanding anything contained in clause 14, where a meeting is convened by the Manager under clause 22.1:
- (a) any proposal considered by the meeting of Members will only be accepted if agreed to by 75% (by value) of the Members voting (in person or by proxy) at the meeting;
 - (b) a quorum for the meeting shall be 25% (by value) of the Members eligible to vote (in person or by proxy) at the meeting;
 - (c) if it is determined by the Manager to use such a system, where a vote is taken in relation to any proposal before the meeting a preferential voting system may be employed whereby Members will be required to rank the alternatives available in relation to a proposal before the meeting in order of preference and votes will be redistributed on a preferential basis provided that:
 - (i) the preferential voting system is fully explained in the notice convening the meeting;

- (ii) the Manager confirms that in the given circumstances such a voting system is in its opinion in the interests of the Members;
 - (iii) the Auditor acts as independent scrutineer at the meeting;
 - (iv) the Register is up to date at the time of the vote in order to assist in the counting of votes and the allocation of the preferences; and
 - (d) any notice of meeting sent to Members shall contain a provision urging Members to attend and vote at the meeting and must contain adequate notice of:
 - (i) any matters to be considered at the meeting;
 - (ii) any resolutions to be put at the meeting; and
 - (iii) a summary of information relating to those matters and resolutions that is determined by the Manager to be relevant to the decision of a Member on how to vote at the meeting; and
 - (e) 25% (by value) of Members eligible to vote at the meeting must do so, in person or by proxy.
- 22.3 Neither the Manager nor its associates will exercise any power to vote attached to a Unit held by or on behalf of the Manager or its associates at a meeting convened under clause 22.1.
- 22.4 Subject to the other provisions of this clause 22, meetings convened pursuant to this clause shall be convened and conducted in accordance with the terms of clause 14 and the Corporations Act.
- 22.5 If before a meeting convened under clause 22.1 is held an alternative manager asks the Manager for information that will assist the alternative manager to make an informed decision whether to offer to manage the Trust in place of the Manager, the Manager will as soon as practicable, and not later than 14 days prior to the meeting (or if the request is made less than 14 days prior to the meeting, as soon as practicable) give the information to the alternative manager:
- (a) if in the reasonable opinion of the Manager the alternative manager is a suitable replacement for the Manager and has made the request in good faith; and
 - (b) if the alternative manager agrees in writing to use the information solely for the purpose of making an informed decision whether to offer to manage the Trust.

23 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act³⁸.

24 Complaints

If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

³⁸ See section 601JF

25 Restricted Securities

- 25.1 Clause 25.2 only operates:
- (a) while Units are Officially Quoted; and
 - (b) to the extent that it is not inconsistent with the Corporations Act.
- 25.2 During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

26 Small holdings

- 26.1 Subject to the provisions of this clause 26, while Units are Officially Quoted the Manager may in its discretion from time to time sell or redeem any Units held by a Member (or while Stapling applies, any Units forming part of a Stapled Security holding of a Member) which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- 26.2 The Manager may only sell or redeem Units under this clause 26 on one occasion in any 12 month period.
- 26.3 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26.
- 26.4 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.3; or
 - (b) if, within the 6 weeks allowed by clause 26.4(a), the Member advises the Manager that the Member wishes to retain the Units.
- 26.5 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.6 The Manager or the purchaser of the Units must pay the costs of the sale as the Manager decides.
- 26.7 The proceeds of the sale or redemption will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.8 The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 26.

- 26.9 While Stapling applies, no redemption or sale under this clause 26 may occur unless, at the same time as Units are redeemed or sold, an identical number of Stapled Shares are also redeemed or sold (as the case may be). Where the Units are redeemed or sold, the Manager must determine, in a manner similar to that provided in clause 4.4, what proportion of the price paid for the Stapled Security is to be paid from the Assets.

27 Deleted

28 Deleted

29 Stapling

Paramountcy of Stapling provisions

- 29.1 Subject to clauses 21.2, 21.4 and clause 30A, the provisions of this constitution relating to Stapling prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

Consistency with constitution of Stapled Company

- 29.2 The Manager undertakes to use every reasonable endeavour to procure that Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to Stapled Securities in the constitution of the Stapled Company.

Stapling - general intention

- 29.3 The Units are intended to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share. The intention is that the Members shall be identical to the holders of Stapled Shares and that, so far as the law permits, a Unit and a Stapled Share which are Stapled together shall be treated as one security.

Suspension of Stapling provisions

- 29.4 Subject to the Corporations Act, the Listing Rules and approval by special resolution of the Members and the members of the Stapled Company respectively, the Manager may determine that the Stapling

provisions will cease to apply. If it does so, it may at a later time give notice that the application of the provisions is to recommence.

Consequences of Stapling - forfeiture

- 29.5 Each Member acknowledges that they will have no voting rights and no entitlement to a distribution declared but not paid where a Unit is forfeited under Article 7 of the constitution of the Stapled Company.
- 29.6 Each Member acknowledges that it will cease to be a Member in the Trust in respect of a Unit where that Unit is forfeited under Article 7 of the constitution of the Stapled Company.
- 29.7 Each Member acknowledges the terms of Articles 3 and 7 of the constitution of the Stapled Company and agrees to be bound by those articles. The terms of those articles reflect the intention that a Unit should remain Stapled to a Stapled Share. In particular, each Member acknowledges that:
 - (a) Article 3 imposes a lien on a Unit in the circumstances described in that article and that under that article the Stapled Company in certain circumstances will have the right to sell or otherwise dispose of a Unit; and
 - (b) under Article 7 a Unit, in the circumstances described in that article, may be forfeited and sold or otherwise disposed of by the Company.

The Member authorises the Company and the Manager to take whatever action they consider necessary to give effect to the provisions of those articles including selling, signing an instrument of transfer or otherwise disposing of a Unit so as to ensure that a Unit held by a Member remains Stapled to a Stapled Share.

Manager's authority

- 29.8 While Stapling applies, each Member authorises the Manager to take whatever action it considers necessary to give effect to any disposal of a Unit and a Stapled Share.

Effect of termination on stapling

- 29.9 Upon winding up of the Stapled Company, Stapling will cease to apply.

30 Deed of Co-operation

- 30.1 To the maximum extent that the Corporations Act (as modified by any exemption or declaration issued by the Commission) permits

and notwithstanding any other provisions of this constitution except clauses 21.2 and 21.4, the Manager may do everything necessary or convenient to give effect to the terms of the Deed of Co-operation and any transactions pursuant to the Deed of Co-operation.

30A Restructure

Implementation of Proposal

30A.1 The Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

Express powers of Manager

30A.2 Without limiting clause 30A.1 and despite any other provision of this constitution, the Manager has power to:

- (a) issue Units to MCT Unit Holders in accordance with the Simplification Implementation Deed with the Application Price for the issue of each Unit being one MCT Unit to be satisfied by the transfer by the relevant MCT Unit Holder of one MCT Unit to the Manager in accordance with the Simplification Implementation Deed;
- (b) after the issue of Units under clause 30A.2(a), consolidate every two Units held by a Unit Holder into one Unit and Staple each Unit to a Stapled Share in the ratio of one Unit to one Stapled Share; and
- (c) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

Manager's limitation of liability

30A.3 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly and indirectly, from the Manager doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of the Proposal.

Stapling Provisions

30A.4 Except as provided for in Clause 30A.5, the Stapling Provisions do not apply to the transactions contemplated by the Simplification Implementation Deed and the transactions provided for in clause 30A.

30A.5 Immediately after the issue of Units to MCT Unit Holders provided for under clause 30A.2(a) and the consolidation of Units provided for under clause 30A.2(b) the Units are to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share and the Stapling Provisions will apply to the Stapled Security.

Definitions

30A.6 In this clause 30A the following words have these meanings unless the contrary intention appears:

MCT means the Mirvac Commercial Trust ARSN 086 763 760 constituted under the MCT Constitution.

MCT Unit means a unit in MCT.

MCT Unit Holder means the holder of a MCT Unit on the Record Date and includes joint holders.

MCT Constitution means the trust deed dated 30 June 1975 which governs the MCT (as amended).

Proposal the transactions contemplated and described in the Notice of Annual and General Meetings and Explanatory Memorandum in relation to the Trust dated 20 September 2001.

Record Date means the Record Date as that term is defined in the Simplification Implementation Deed.

Simplification Implementation Deed means the deed made between Mirvac Limited ACN 003 280 699, Mirvac Funds Limited ACN 002 561 640 in its capacity as responsible entity of the Mirvac Property Trust ARSN 086 780 645 and Mirvac Funds Limited ACN 002 561 640 in its capacity as responsible entity of the Mirvac Commercial Trust ARSN 086 763 760 dated 20 September 2001 in relation to the Proposal (as amended).

Stapling Provisions means any provision of this constitution relating to, referring to, or connected with, Stapling.

30B Instalment Receipts

Status of Instalment Receipts

30B.1 An Instalment Receipt Holder is bound by this constitution as a person claiming through a Member as a party to this constitution but who is not a Member.

Rights attaching to Instalment Receipts

- 30B.2 Subject to the Corporations Act and any Relief, the Manager may do all things to facilitate the existence of the Instalment Receipts.
- 30B.3 An Instalment Receipt may be issued on such terms and conditions as set out in the Security Trust Deed.
- 30B.4 An Instalment Receipt does not confer an interest in a particular Asset or any right to participate in any distribution of income or capital of the Trust, including any determination of the Trust.
- 30B.5 Instalment Receipt Holders only have those rights conferred on them by this constitution and the Security Trust Deed.
- 30B.6 Units which are held by the Security Trustee subject to the Security Trust Deed rank equally with all other Units on issue.
- 30B.7 Each Instalment Receipt Holder undertakes not to exercise any voting rights attaching to their Instalment Receipts under Part 2G.4 of the Corporations Act (and expressly authorises the Manager to disregard any vote cast in breach of such undertaking) but to exercise any voting rights in respect of their Instalment Receipts (if they do exercise such voting rights) solely as expressly provided in the Security Trust Deed.
- 30B.8 The Manager will act in the best interests of the Instalment Receipt Holders as members of the registered scheme constituted by the Trust by acting in the best interests of the Members.
- 30B.9 If an Instalment Receipt Holder submits to the Manager or the Security Trustee a complaint alleging that the Instalment Receipt Holder has been adversely affected in relation to the management or administration of the Trust, the Manager will apply the process set out under clause 24 as if the Instalment Receipt Holder were a Unit Holder.

Definitions

- 31.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

2012/2013 Capital Reallocation Amount: any amount that the Manager distributed as capital under the arrangement described by the Commissioner of Taxation in class ruling CR 2013/49.

2013/2014 Capital Reallocation Amount: any amount that the Manager distributed as capital under the arrangement described by the Commissioner of Taxation in class ruling CR 2014/9.

2013/2014 Record Date: has the meaning given in Article 23.1 of the constitution of the Stapled Company for each 2013/2014 Capital Reallocation.

Adjusted Taxable Income: means:

- (a) if the Trust is a type of entity that is not entitled to apply the CGT discount under Division 115 of the Tax Act in the calculation of its own taxable income but some or all Unitholders in the Trust are entitled to apply the CGT discount under Division 115 of the Tax Act in respect of capital gains made by the Trust, the taxable income of the Trust for the purposes of the Tax Act calculated as if it were an Australian resident individual; and
- (b) in any other case, the taxable income of the Trust for the purposes of the Tax Act.

AMIT means an attribution managed investment trust within the meaning of the Tax Act.

Application Price: the Unit price calculated or determined in accordance with clauses 4, 4A, 19.1 or 30A.2.

April 2010 Offer: means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 7 April 2010 involving:

- (a) an institutional placement of Stapled Securities; and
- (b) a Purchase Plan.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or the amount of any unpaid distribution.

ASX: ASX Limited.

Auditor: the auditor of the Trust.

Authorised Investment: has the meaning as it was set out in this deed at the time the Trust commenced.

Business Day:

- (a) a day other than a Saturday or a Sunday on which banks

- are open for general banking business in Sydney; or
- (b) for the purposes of clause 4, a day on which the ASX is open for trading.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Date of Delisting: whichever is the first to occur of the following:

- (a) the date upon which the Manager receives notification from the ASX of the removal of the Trust from the official list of the ASX; or
- (b) where the Units are suspended from trading by the ASX for a continuous period of 60 days, the date following the expiration of that 60 day period.

Deed of Co-Operation: the deed with that name dated 15 June 1999 between, amongst others, the Stapled Company, the Manager and various subsidiaries of the Stapled Company, as amended or replaced from time to time.

Delisted: the removal of the Trust from the official list of the ASX or the suspension of the Units from trading by the ASX for a continuous period of more than 60 days.

Determination Date: means:

- (a) if the Trust is not an AMIT in respect of a Financial Year, the last day of a Distribution Period; and
- (b) if the Trust is an AMIT in respect of a Financial Year, 90 days after the last day of a Distribution Period.

Direct Vote: a valid notice of a Member's voting intention in accordance with the form or instrument specified by the Manager and given to the Manager by post, fax or other electronic means approved from time to time by the Manager.

Distributable Income: the amount, if any, determined by the Manager in accordance with clause 8.

Distribution Calculation Date: means the last day of each Financial Year and such other dates as determined by the Manager in its discretion.

Distribution Period:

- (a) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and

- (b) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Eligible Member means:

- (a) in relation to the 2012/2013 Capital Reallocation Amount, a Member registered as such on the 2012/2013 Record Date; and
- (b) in relation to a 2013/2014 Capital Reallocation Amount, a Member registered as such on the 2013/2014 Record Date applicable to that 2013/2014 Capital Reallocation Amount.

Employee:

- (a) a "Permanent Employee" within the meaning of Division 83A of the *Income Tax Assessment Act 1997* (Cth); or
- (b) such other permanent or full-time or part-time employee of the Mirvac Group or a person entitled to participate in accordance with the rules of any relevant Employee Security Plan (including a director of the Mirvac Group) as the Manager may from time to time determine.

Employee Security Plan: any employee security plan, employee option plan or employee rights plan pursuant to which Stapled Securities will be issued or transferred, or rights to receive Stapled Securities will be granted, to Employees.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

Growth Unit: has the same meaning as it was set out in this deed at the time the Trust commenced.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Income Entitlement: the amount determined under clause 8.8.

Income Unit: has the same meaning as it was set out in this deed at the time the Trust commenced.

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

Instalment Receipt Holder means a person who is registered on the register created under the Security Trust Deed as the holder of one or more Instalment Receipts from time to time.

Interim Distribution: means a distribution pursuant to clause 8.7 out of or with respect to Distributable Income as determined by the Manager accruing during or with respect to an Interim Distribution Period.

Interim Distribution Period: means any period determined by the Manager that commences and ends during the same Distribution Period, that does not overlap with any other Interim Distribution Period and that does not end on the last day of that Distribution Period.

June 2009 Offer: means the fund raising to be undertaken by the Manager described in an announcement to the ASX on or about 4 June 2009 involving:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional Members and the second being the offer of Stapled Securities to eligible retail Members (together, the **June 2009 Entitlement Offer**). Eligible Members will be invited to participate in the June 2009 Entitlement Offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager. Part or all of the June 2009 Entitlement Offer may be underwritten and Stapled Securities may be issued to underwriters and sub-underwriters. To the extent that Members do not take up their entitlement:
 - (i) to the extent applicable, the underwriters and sub-underwriters will seek to place the shortfall; and
 - (ii) the Manager and the Stapled Company may issue the Stapled Securities, to which those Members who did not take up their entitlement were entitled, to other eligible Members; and
- (b) an institutional placement of Stapled Securities.

Liabilities: all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Listing Rules: the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official

list of the ASX, each as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

Manager: the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

Market Price: of a Stapled Security in respect of any Business Day means:

- (a) the last sale price per Stapled Security recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Stapled Security on that Business Day, the mid-point of the bid and offer prices per Stapled Security recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Stapled Security on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

Market Price: of a Unit in respect of any Business Day means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Mirvac Group: the Trust and the Stapled Company.

Net Asset Value: the value of the Assets calculated in accordance with clause 7 less the Liabilities.

November 2008 Offer: means the fund raising to be undertaken by the Manager described in an announcement to the ASX on or about 5 November 2008 involving:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional Members and the second being the offer of Stapled Securities to eligible retail Members (together, the **Entitlement Offer**). Members will be invited to participate in the Entitlement Offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager. Part or all of the Entitlement Offer will be underwritten and Stapled Securities will be issued to underwriters and sub-underwriters. To the extent that Members do not take up their entitlement, the underwriters and sub-underwriters will seek to place the shortfall; and
- (b) an institutional placement of Stapled Securities.

Officially Quoted: quoted on the official list of the ASX, including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Option: an option granted under this constitution to subscribe for unissued Units.

Option Holder: the person Registered in the register of option holders and includes persons jointly Registered or, if no such register is kept, the holder of an Option.

Purchase Plan: means an offer to existing Members of interests in the Trust, only available when:

- (a) the Trust is listed on the ASX; and
- (b) the offer is made pursuant to Relief, which may include ASIC Class Order 09/425 as amended, substituted or replaced from time to time.

Quarter: a calendar quarter and any period between the end of the last Quarter prior to the date of termination of the Trust and the date of termination of the Trust.

Record Date: means the date determined by the Manager for the purposes of clause 8.6 as the date on which persons who hold Units at the end of that date will be entitled to receive a distribution, provided that:

- (a) if MPT is an AMIT in respect of a Financial Year that includes the Distribution Period to which the payment relates, the Record Date must not be later than 90 days after the end of the Distribution Period to which the distribution relates; and
- (b) if MPT is not an AMIT in respect of a Financial Year that includes the Distribution Period to which the payment relates, the Record Date must not be later than the last day of the Distribution Period to which the distribution relates.

Register: the register of Members kept by the Manager under the Corporations Act.

Registered: recorded in the Register.

Registration: recording in the Register.

Relief: a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Manager or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority³⁹.

Restricted Securities: has the same meaning as in the Listing Rules.

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

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

Stapled: the state that results from Stapling.

Stapled Company: Mirvac Limited (ACN 003 280 699).

Stapled Security: a Stapled Share and a Unit which are stapled together and registered in the name of the Member.

Stapled Share: a share in the Stapled Company.

Stapling: the linking together of all the rights and obligations which attach to a Stapled Security.

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

Tax Act: the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Taxation Administration Act 1953, or all of those Acts, as appropriate.

³⁹ Circumstances where a special or extraordinary resolution is required include a vote on amendments to this constitution if necessary (see section 601GA(1)(a)), winding up by Members, and choosing a new responsible entity (if the Trust is not listed).

Termination Date: the date on which the Trust terminates in accordance with clause 19.2.

Transaction Costs:

- (a) when calculating the Application Price of a Unit, the Manager's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager's estimate of the total cost of selling the Assets;

provided that subject to the Corporations Act⁴⁰ the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust: the trust constituted under or governed by this constitution.

Trust Fund: all of the Assets, but subject to the Liabilities.

Trustee: the person appointed as trustee of the Trust for the time being and the Manager when acting as Trustee in accordance with the provisions of this deed.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

Unit Holder: has the same meaning as Member.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.

Validly Received: in the context of a meeting of Members means:

- (a) received at the registered office or such other place as is specified for that purpose in the notice of meeting; or
- (b) transmitted to a facsimile number at the registered office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

⁴⁰ See section 601FC(1)(d)

Valuation Time: a time at which the Manager calculates Net Asset Value.

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

Interpretation

31.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively; and
- (i) if a day on or by which an obligation (including an obligation to pay money) must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the following Business Day.

Other documents

31.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

Constitution legally binding⁴¹

- 31.4 This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Governing law

- 31.5 This constitution is governed by the law of New South Wales.

Severance

- 31.6 If all or part of any provision of this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

Other obligations excluded

- 31.7 Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

⁴¹ Refer Section 601GB

Finding list

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA	
(1)(a)	4.1 – 4.10
(1)(b)	10.1 – 10.3
(1)(c)	24
(1)(d)	20
(2)	16.3 – 16.5, 18.1 – 18.9
(3)	10.2
(4)(a)	N/A
(4)(b)	N/A
(4)(c)	N/A
601GB	31.4

This list is included to assist the ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
1.1, condition 2	21.4
1.1, condition 5	N/A
15.12.1	3.11
15.12.2	3.15
15.12.3	25
15.13	26
15.14	27 and 28