



L A W Y E R S

**MERGER IMPLEMENTATION  
AGREEMENT**

**MIRVAC LIMITED ABN 92 003 280 699**

**MIRVAC FUNDS LIMITED ABN 70 002 561 640**

**as responsible entity of**

**MIRVAC PROPERTY TRUST ABN 29 769 181 534**

**JAMES FIELDING HOLDINGS LIMITED**

**ABN 39 093 200 965**

**JAMES FIELDING FUNDS MANAGEMENT LIMITED**

**ABN 78 067 417 663**

**as responsible entity of**

**JAMES FIELDING TRUST ARSN 089 988 296**

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**DATE: 12 OCTOBER 2004**

## **PARTIES**

1. **MIRVAC LIMITED ABN 92 003 280 699 (Mirvac Co)**
2. **MIRVAC FUNDS LIMITED ABN 70 002 561 640** as responsible entity of **MIRVAC PROPERTY TRUST ABN 29 769 181 534 (Mirvac RE together with Mirvac Co, Mirvac Group)**
3. **JAMES FIELDING HOLDINGS LIMITED ABN 39 093 200 965 (JFG Co)**
4. **JAMES FIELDING FUNDS MANAGEMENT LIMITED ABN 78 067 417 663** as responsible entity of the **JAMES FIELDING TRUST ARSN 089 988 296 (JFG RE together with JFG Co, JFG Group)**

## **BACKGROUND**

- A. Mirvac Group and JFG Group have agreed to merge by means of the Schemes.
- B. Mirvac Group and JFG Group have agreed to implement the Schemes, upon and subject to the terms and conditions set out in this agreement.

## **THE PARTIES AGREE**

### **1. JFG SCHEMES**

#### **1.1 JFG Schemes and Associated Documents**

- (a) (1) Subject to paragraph (b), JFG Group must prepare:
  - (i) as expeditiously as practicable, the Scheme Booklet, which must include copies of the Schemes, an explanatory statement (including as required by and in compliance with section 412 of the Corporations Act) and such other documents as may be required by applicable law (having regard to customary practice) in connection with the Schemes (including, without limitation, an Independent Expert's Report, a tax opinion and forms of Deeds Poll; and

- (ii) without limiting paragraph (i) above, all documents which are required to be filed with the Court in connection with the orders proposed to be sought pursuant to sections 411(1) and (4) of the Corporations Act.
  
- (2) JFG Group must undertake due diligence and verification processes in relation to the information in the Scheme Booklet (other than the Mirvac Group Information) to ensure that such information is not misleading or deceptive (including because of any material omission) in any material respect (including due diligence in relation to the JF Meridian Trust, but it is not obliged to make enquiries of corporations in which it has investments other than Subsidiaries and the JFG JV Companies).
  
- (3) JFG Group must provide to the Independent Expert as expeditiously as practicable all information reasonably requested by the Independent Expert to enable the Independent Expert to prepare an Independent Expert's Report.
  
- (4) JFG Group is responsible for ensuring, and shall ensure, that the information in the Scheme Booklet (other than the Mirvac Group Information) complies with applicable law (having regard to customary practice) and is not misleading or deceptive in any material respect and there are no material omissions from that information.
  
- (b) (1) Mirvac Group must provide to JFG Group, as expeditiously as practicable, for inclusion in the Scheme Booklet all information about Mirvac Group and Mirvac Stapled Securities which is required by applicable law (having regard to customary practice) to be included in the Scheme Booklet, and in any event in reasonable time to allow the JFG Group to prepare the Scheme Booklet in accordance with this agreement and the Timetable, and must provide such assistance in relation to the drafting of sections of the Scheme Booklet which relate to Mirvac Group and Mirvac Stapled Securities as JFG Group reasonably requires.
  
- (2) Without limiting the generality of paragraph (b)(1), Mirvac Group must provide to the JFG Group for inclusion in the Scheme Booklet :
  - (i) a business description of Mirvac Group and its Subsidiaries;

- (ii) all such information which is required to be included in the explanatory statement relating to the JFG Share Scheme about Mirvac Group or Mirvac Stapled Securities by virtue of section 411(3) or 412 of the Corporations Act or Part 3 of Schedule 8 to the Corporations Regulations;
  - (iii) all such other information which would be required to be included in the Scheme Booklet were the Scheme Booklet a Bidders Statement for a takeover bid under Chapter 6 of the Corporations Act where Mirvac Stapled Securities were offered as consideration for the acquisition of JFG Stapled Securities; and
  - (iv) a pro forma balance sheet of Mirvac Group as at 30 June 2004 assuming the Schemes had taken effect as at that date, which is to be based on the published audited financial statements of Mirvac Group and JFG Group.
- (3) Mirvac Group must, as expeditiously as practicable, provide to the JFG Group any further information about Mirvac Group or Mirvac Stapled Securities which JFG Group reasonably requests, including such information as may be necessary to ensure that the Mirvac Group Information is not misleading or deceptive in any material respect and that there are no material omissions from it.
  - (4) Mirvac Group must undertake due diligence and verification processes in relation to the information provided to the JFG Group to ensure that such information complies with clause 1.1(b)(2) and is not misleading or deceptive (including because of any material omission) in any material respect, but it is not obliged to make enquiries of corporations in which it has investments other than Subsidiaries.
  - (5) Mirvac Group must provide to the Independent Expert as expeditiously as practicable all information reasonably requested of Mirvac Group by the Independent Expert (or by JFG Group at the request of the Independent Expert) to enable the Independent Expert to prepare an Independent Expert's Report, provided that such information shall not include budgets, forecasts or other forward looking information not otherwise forming part of the Mirvac Group Information.

- (6) Mirvac Group is responsible for ensuring, and shall ensure, that the information it provides to JFG Group about Mirvac Group and Mirvac Stapled Securities for inclusion in the Scheme Booklet complies with applicable law (having regard to customary practice) and is not misleading or deceptive in any material respect and there are no material omissions from that information.

## **1.2 Mirvac Explanatory Memorandum**

- (a) Except if the condition under clause 5.1(i) is waived:
  - (i) Mirvac Group must prepare as expeditiously as practicable, the Mirvac Explanatory Memorandum, which must include information as may be required by applicable law (having regard to customary practice);
  - (ii) Mirvac Group must undertake such due diligence and verification processes as may be appropriate in relation to the information in the Mirvac Explanatory Memorandum to ensure that such information is not misleading or deceptive (including because of any material omission) in any material respect, but it is not obliged to make enquiries of corporations in which it has investments other than Subsidiaries;
  - (iii) Mirvac Group must provide to JFG Group a draft of the Mirvac Explanatory Memorandum by at least a reasonable time prior to its despatch to holders of Mirvac Units so as to allow JFG Group to review and consult with Mirvac Group as to its contents; and
  - (iv) Mirvac Group is responsible for ensuring, and shall ensure, that the information in the Mirvac Explanatory Memorandum complies with applicable law (having regard to customary practice) and is not misleading or deceptive in any material respect and there are no material omissions from that information.
- (b) JFG Group consents to Mirvac Group making copies of the Scheme Booklet available to Mirvac Stapled Securityholders in connection with the provision of the Mirvac Explanatory Memorandum to Mirvac Stapled Securityholders, including placing a copy of the Scheme Booklet on its website.

### **1.3 Update Information**

- (a) If prior to the Court Approval Date Mirvac Group becomes aware of a material change in relation to Mirvac Group or the Mirvac Stapled Securities which a reasonable person would expect to have a material effect on the price or value of the Mirvac Stapled Securities then, as soon as practicable after that change has occurred, Mirvac Group must provide all material details of the change to JFG Group. For the avoidance of doubt information that is generally available within the meaning of section 1042C of the Corporations Act does not need to be provided by Mirvac Group to JFG Group under this clause 1.3.
- (b) If prior to the Court Approval Date JFG Group becomes aware of a material change in relation to JFG Group or the JFG Stapled Securities which a reasonable person would expect to have a material effect on the price or value of the JFG Stapled Securities then, as soon as practicable after that change has occurred, JFG Group must provide all material details of the change to Mirvac Group. For the avoidance of doubt information of the Corporations Act that is generally available within the meaning of section 1042C does not need to be provided by JFG Group to Mirvac Group under this clause 1.3.

### **1.4 Tax Rulings**

- (a) Each party must (unless the other party agrees, acting reasonably) promptly apply for all Tax Rulings and take all steps for which it is responsible as part of the Tax Ruling application process, including responding to requests for information at the earliest practicable time.
- (b) Each party must consult as far as practicable the other in advance in relation to all communications (whether written or oral, and whether direct or through agents or advisers) with a Revenue Authority relating to any Tax Ruling. In particular as far as practicable, each party must:
  - (i) give the other party drafts of any material written communications to be sent to a Revenue Authority and make such changes to those communications as the other party reasonably requests; and
  - (ii) give the other party copies of any written communications sent to, or received from, a Revenue Authority promptly on sending or receiving them (as the case may be).

- (c) Each party is entitled to be represented and to make submissions at any meeting with any Governmental Agency, including a Revenue Authority, relating to any Tax Ruling.

#### **1.5 Assistance of officers and advisors**

Each party must procure that its officers and advisors work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to propose and, if approved, implement the Schemes and to prepare all documents required relating to the Schemes.

## **2. JFG GROUP'S OBLIGATIONS**

### **2.1 General Obligations of JFG Group**

JFG Group must use its best endeavours to give effect to the Schemes and to do all those things and execute all those deeds, agreements and other documents within its power as may be necessary or expedient on its part to give effect to the Schemes including, without limitation, using best endeavours to procure the making of all necessary amendments to the constitutions of JFG Co, JFG RE and JFG Trust (subject to necessary approvals of security holders) to enable the Schemes to be implemented in accordance with their terms.

### **2.2 JFG Group's Specific Obligations in relation to the Schemes**

Without in any way limiting the generality of clause 1.1 and 2.1, JFG Group must:

- (a) [**apply for Regulatory Approvals**] as expeditiously as practicable, apply for any relevant Regulatory Approvals;
- (b) [**draft Scheme Booklet**] as soon as practicable after the date of this agreement, provide to Mirvac Group a draft of the Scheme Booklet;
- (c) [**commission Independent Expert's Report**] commission the preparation of an Independent Expert's Report;
- (d) [**board meeting**] as soon as practicable after preparation of the Regulators' Draft procure that a meeting of the JFG Group Board is convened to consider and, if



thought fit, approve the Regulators' Draft as being in a form appropriate for provision to ASIC for review;

- (e) [**consult with Mirvac Group on form of Scheme Booklet**] consult with Mirvac Group in good faith in relation to the form and content of the Scheme Booklet, including taking into account its reasonable comments. Subject to the foregoing, JFG Group will determine the final form and content of the Scheme Booklet in accordance with applicable law and having regard to applicable practice;
- (f) [**Regulator's Draft**] as soon as practicable, provide a copy of the Regulators' Draft to ASIC and liaise with ASIC throughout the Regulatory Review Period;
- (g) [**continuing consultation with Mirvac Group**] during the Regulatory Review Period:
  - (i) promptly provide to Mirvac Group and include in a revised draft of the Scheme Booklet any new information not included in the Regulators' Draft which is required by applicable law to be included in the Scheme Booklet;
  - (ii) keep Mirvac Group informed of any matters raised by ASIC in relation to the Scheme Booklet, and use all reasonable endeavours in co-operation with Mirvac Group to resolve any such matters; and
  - (iii) keep Mirvac Group informed of any matters raised in connection with any other Regulatory Approval, and use all reasonable endeavours in co-operation with Mirvac Group to resolve any such matters;
- (h) [**prepare Court documents**] prepare all documents as required by clause 1.1(a)(1)(ii) in accordance with applicable law and in consultation with Mirvac Group as to form and content of the Court documents;
- (i) [**apply to Court for orders convening Scheme meeting**] apply to the Court for orders under section 411(1) of the Corporations Act convening meetings of JFG Shareholders to consider the JFG Share Scheme;
- (j) [**register Scheme Booklet**] take all steps reasonably required to cause ASIC to register the explanatory statement relating to the JFG Share Scheme;

- (k) **[convene JFG meetings]** convene:
  - (i) the JFG Share Scheme Meeting in accordance with any orders which are made by the Court pursuant to section 411(1) of the Corporations Act; and
  - (ii) a separate general meeting of JFG Co to be held immediately after the JFG Share Scheme Meeting to consider, and, if thought fit, pass all other necessary JFG Co Resolutions;
- (l) **[convene JFG Unit Scheme Meeting]** convene the JFG Unit Scheme Meeting to be held immediately following the meetings referred to in clause 2.2(k);
- (m) **[dispatch Scheme Booklet]** dispatch a copy of the Scheme Booklet to each JFG Stapled Securityholder and to all other persons entitled to receive notice of the JFG Share Scheme Meeting or JFG Unit Scheme Meeting within the time required by applicable law;
- (n) **[JFG Group directors' assistance]** use best endeavours to procure that the directors of JFG Co and JFG RE provide reasonable assistance to and co-operate with Mirvac Group in seeking the approval of JFG Scheme Participants to the Schemes;
- (o) **[applications]** if the JFG Scheme Participants approve the Schemes:
  - (i) **[Court]** apply to the Court for its approval of the JFG Share Scheme under section 411(4) of the Corporations Act; and
  - (ii) **[ASIC]** apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act in relation to the JFG Scheme;
- (p) **[not act inconsistently]** not act in a manner which is inconsistent with obtaining Court approval for the JFG Share Scheme;
- (q) **[lodge copy of Court order]** if the Court makes orders under section 411(4) of the Corporations Act approving the JFG Share Scheme lodge, as soon as practicable thereafter, with ASIC an office copy of the orders of the Court approving the JFG Share Scheme;

- (r) **[JFG Scheme Participants]** determine who are the JFG Scheme Participants and their entitlements to the Scheme Consideration and provide all information about the JFG Scheme Participants to Mirvac Group which Mirvac Group reasonably requires in order for Mirvac Group to provide the Scheme Consideration to the JFG Scheme Participants;
- (s) **[register transfers of JFG Shares]** in accordance with the JFG Share Scheme, register or cause to be registered the Mirvac Group Entities (as notified by Mirvac Group) as the holder of JFG Shares as soon as practicable following the Close of Registers and
- (t) **[register transfers of JFG Units]** in accordance with the JFG Unit Scheme, register or cause to be registered the Mirvac RE as the holder of JFG Units as soon as practicable following the Close of Registers,

and shall use their best endeavours to do so in accordance with the Timetable.

### **2.3 Registry Details**

For the purpose of clause 2.2(r), JFG Group must give all necessary directions to the JFG Group Registry to ensure that any information that Mirvac Group reasonably requests in relation to JFG Group's share register, unit register and options register including any CHESS sub-register and any issuer sponsored sub-register is promptly provided to Mirvac Group and, where requested by Mirvac Group, JFG Group must procure for such information to be provided on a floppy disk (or in such other electronic form as is reasonably requested by Mirvac Group).

## **3. MIRVAC GROUP'S OBLIGATIONS**

### **3.1 Deeds Poll**

- (a) Mirvac Group agrees prior to the First Court Date to execute a deed poll in favour of the JFG Scheme Participants undertaking to perform the acts required of it under this agreement and the Schemes, including without limitation, providing the Scheme Consideration on the Implementation Date in accordance with the Schemes.
- (b) Mirvac Group agrees prior to the First Court Date to execute a deed poll in favour of the directors and officers of JFG Co and JFG RE undertaking to

perform the acts required of it under this agreement and provide the Mirvac Group Representations and Warranties contained in this agreement and an indemnity in respect of breach of this agreement, the deed poll or such representations and warranties.

- (c) The form of the deeds poll to be executed by Mirvac Group under clauses 3.1(a) and (b) shall be in a form which is reasonably satisfactory to the parties and which is customary for a transaction of the nature referred to in this agreement.

### **3.2 General Obligations of Mirvac Group**

Mirvac Group must use its best endeavours to give effect to the Schemes and to do all those things and execute all those deeds, agreements and other documents within its power as may be necessary or expedient on its part to implement the Schemes.

### **3.3 Mirvac Group's Obligations in Relation to the Schemes**

Without in any way limiting the generality of clause 3.2, Mirvac Group must:

- (a) [**apply for Regulatory Approvals**] as expeditiously as practicable, apply for any relevant Regulatory Approvals;
- (b) [**information**] provide information in accordance with clause 1.1;
- (c) [**review Scheme Booklet**] as soon as practicable after delivery, review the drafts of the Scheme Booklet prepared by JFG Group and provide comments on those drafts in good faith;
- (d) [**ASX**] make application to ASX for the Mirvac Stapled Securities which are to be issued in accordance with the Schemes to be quoted on ASX;
- (e) [**Deeds Poll**] as soon as practicable after the execution of this agreement and, in any event, before the First Court Date, execute the Deeds Poll;
- (f) [**approval of Scheme Booklet**] as soon as practicable after:
  - (i) the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, approve in writing those sections of the draft that have been provided by or relate to Mirvac Group as being in a form which

complies with clause 1.1(b)(2), is not misleading or deceptive (including because of any material omission) and is otherwise appropriate for provision to ASIC for review; and

- (ii) the conclusion of the review by ASIC, approve those sections of the draft that have been provided by or relate to Mirvac Group as being in a form which complies with clause 1.1(b)(2), is not misleading or deceptive (including because of any material omission) and is otherwise appropriate for dispatch to JFG Stapled Securityholders, subject to approval of the Court;
- (g) **[Mirvac Unitholder approval]** except if the condition under clause 5.1(i) is waived, do such things as are necessary to obtain such approvals of holders of Mirvac Units as is required to approve the issue of Mirvac Units, as part of Mirvac Stapled Securities, by way of consideration under the Schemes, including:
- (i) **[board meeting]** convening a meeting of holders of Mirvac Units to consider and, if thought fit, to pass such resolutions as may be required to issue the Mirvac Units;
  - (ii) **[recommendation of directors]** using its best endeavours to procure that, subject to their obligations under applicable law (including fiduciary duties), directors of Mirvac RE have resolved to recommend the approval of the resolutions referred to in clause 3.3(g)(i) to the holders of Mirvac Units and do not make any public statement or take any other action which would suggest that such resolutions are not recommended by the directors;
  - (iii) **[Explanatory Memorandum]** preparing notices of meeting and the Mirvac Explanatory Memorandum in accordance with applicable law. Mirvac Group shall consult with JFG Group in good faith in relation to the form and content of any explanatory statements provided to holders of Mirvac Units, including taking into account its reasonable comments. Subject to the foregoing, Mirvac Group will determine the final form and content of such explanatory statements in accordance with applicable law and having regard to applicable practice; and

- (iv) [**dispatch Mirvac Explanatory Memorandum**] dispatch the notices of meeting and the Mirvac Explanatory Memorandum to each holder of Mirvac Units and to all other persons entitled to receive notice of the meeting within the time required by applicable law;
- (h) [**Court undertaking**] procure that, through its counsel, it undertakes (if requested by the Court or ASIC) to do all things and takes all steps within its power as may be necessary to fulfil its obligations under this agreement, the Deeds Poll and the Schemes;
- (i) [**not act inconsistently**] not act in a manner which is inconsistent with obtaining Court approval for the JFG Share Scheme;
- (j) [**register JFG Scheme Participants**] register or cause to be registered the JFG Scheme Participants (or the Nominee, as the case may be) as the holders of the Mirvac Stapled Securities to which JFG Scheme Participants become entitled under the Schemes, as soon as practicable following the Close of Registers;
- (k) [**provide Scheme Consideration**] provide the Scheme Consideration on the Implementation Date in accordance with the Schemes, such consideration to rank pari passu with Mirvac Shares and Mirvac Units which are on issue at the Effective Date; and
- (l) [**issue holding statements**] subject to the Schemes, issue statements of holdings of Mirvac Stapled Securities to the Scheme Participants (or to the Nominee, as the case may be) who become entitled to Mirvac Stapled Securities under the Schemes in the time required by the Schemes,

and shall use their best endeavours to do so in accordance with the Timetable.

#### **3.4 Appointment of JFG Directors**

Within 2 Business Days after the Court Approval Date, Mirvac Group must invite the JFG Invitees to join the boards of Mirvac Co and Mirvac RE and, if the JFG Invitees accept, must appoint the JFG Invitees to the boards of Mirvac Co and Mirvac RE in accordance with the constitutions of Mirvac Co and Mirvac RE respectively.

### **3.5 CEO appointments**

Mirvac Group must offer to appoint:

- (a) Greg Paramor as CEO of the Mirvac Group and JFG Group; and
- (b) Nicholas Collishaw as CEO – Investments Division of the Mirvac Group and JFG Group,

with effect from the Effective Date on arms length terms to be reasonably agreed by the parties as soon as reasonably practicable, but not later than the First Court Date or such later date as agreed between the parties.

### **3.6 Key Staff**

The CEO of Mirvac Group and the CEO of JFG Group must consult in good faith following entry into this agreement to identify key executives of JFG Group which Mirvac Group would wish to retain following the implementation of the Schemes and to institute arrangements for their retention provided that the financial cost of additional incentives offered to such key JFG Group executives must be borne by Mirvac Group. The CEO of Mirvac Group and the CEO of JFG Group must also consult in good faith in relation to the future employment of the present employees of JFG Group.

### **3.7 No corporate actions until after Implementation Date**

- (a) From the date of this agreement until (and including) the Implementation Date, Mirvac Group must not without the written consent of JFG Group, which consent must not be unreasonably withheld:
  - (i) announce, pay or make any dividend or distribution (including by way of return of capital) other than the Exempt Distribution in respect of Mirvac Group; or
  - (ii) do any other act or thing which would result in a Prescribed Occurrence occurring in relation to the Mirvac Group,

except as expressly permitted under this agreement or the Schemes.

- (b) From the date of this agreement until (and including) the Implementation Date, the JFG Group must not without the written consent of Mirvac Group which consent must not be unreasonably withheld:
  - (i) announce, pay or make any dividend or distribution (including by way of return of capital) other than the Exempt Distribution in respect of JFG Group; or
  - (ii) do any other act or thing which would result in a Prescribed Occurrence occurring in relation to the JFG Group,

except as expressly permitted under this agreement or the Schemes.

### **3.8 Cash Out Facility**

Prior to the dispatch of the Scheme Booklet, Mirvac Group and JFG Group shall discuss and determine in good faith the terms of a cash-out facility which shall be provided to JFG Scheme Participants by Mirvac Group, or a third party procured by Mirvac Group, in conjunction with the implementation of the Schemes (**Cash Out Facility**). The terms of the Cash-Out Facility must:

- (a) provide that JFG Scheme Participants may elect to receive \$3.27 per JFG Stapled Security as consideration (instead of Mirvac Stapled Securities) for transferring their JFG Stapled Securities to Mirvac Group under or in conjunction with the Schemes, provided that:
  - (i) the maximum aggregate amount to be paid to JFG Scheme Participants under the Cash Out Facility shall not exceed \$50 million; and
  - (ii) if JFG Scheme Participants participating in the Cash Out Facility elect to receive greater than \$50 million in aggregate under the Cash Out Facility, the facility will be subject to scale-back on terms reasonably determined by the parties; and
- (b) include such other terms as are reasonably agreed by Mirvac Group and JFG Group.

To the extent appropriate, the terms of the Cash Out Facility shall be included in the terms of the Schemes.



### **3.9 Liquidity Facility – James Fielding Retail Trust, James Fielding Industrial Fund and James Fielding Retail Portfolio**

The parties agree that in relation to the JFG Liquidity Facilities:

- (a) subject to the implementation of the Schemes, Mirvac Group shall procure that the responsible entity under such facilities shall offer to purchase for cash Eligible Units (as defined in the JFG Liquidity Facilities) under the facilities on terms consistent with the terms of the redemption offer and shall procure that such cash consideration is paid to accepting holders of Eligible Units; and
- (b) prior to the dispatch of the Scheme Booklet, Mirvac Group and JFG Group shall discuss and determine in good faith whether there is an appropriate manner in which Mirvac Stapled Securities may be offered in substitution for JFG Stapled Securities under the Liquidity Facilities in compliance with applicable law, provided that such offer or issuance of Mirvac Stapled Securities does not require the issuance of a PDS or prospectus or require the approval of Mirvac Stapled Securityholders.

## **4. MEETINGS AND COURT APPROVALS GENERALLY**

### **4.1 Court Refuses to Make Orders**

- (a) If the Court refuses to make an order pursuant to section 411(1) of the Corporations Act convening the meetings of JFG Shareholders to consider the JFG Share Scheme, JFG Group and Mirvac Group will consult in good faith as to whether or not to appeal the Court's decision having regard to the advice of legal counsel. There shall be no obligation to appeal the decision unless the parties agree otherwise.
- (b) The costs of any appeal shall be borne by JFG Group and Mirvac Group in equal shares unless they agree otherwise.

## **5. CONDITIONS**

### **5.1 Conditional Obligation**

The obligations of the parties with respect to implementation of the Schemes (including the obligation of Mirvac Group to provide the Scheme Consideration on the

Implementation Date) are subject to each of the following conditions being satisfied or waived under this clause:

- (a) [**no restraint**] no permanent or temporary order of a court of competent jurisdiction or other legal restraint restraining or prohibiting the implementation of the Schemes or otherwise adversely impacting on the Schemes is in effect as at 8.00am on the Court Approval Date;
- (b) [**Independent Expert's Report**] the Independent Expert's Report concludes that the Schemes are in the best interest of the JFG Shareholders and JFG Unitholders;
- (c) [**recommendation of JFG Group boards**] the boards of JFG Co and JFG RE recommend the approval of the Schemes to JFG Stapled Securityholders;
- (d) [**orders convening meeting**] the Court orders convening of the JFG Share Scheme Meeting;
- (e) [**JFG Stapled Securityholders approval**] JFG Stapled Securityholders approve the Schemes at the JFG Share Scheme Meeting and JFG Unit Scheme Meeting;
- (f) [**Court approval**] the Court makes orders under section 411(4)(b) of the Corporations Act approving the JFG Share Scheme;
- (g) [**Regulatory Approvals**] all Regulatory Approvals are obtained (for the purpose of this condition, where a Regulatory Approval is conditional, it is to be regarded as:
  - (i) having been obtained if the relevant conditions cannot reasonably be considered to have a material adverse effect on the value that Mirvac Group considered it would derive from implementation of the Schemes;
  - (ii) not having been obtained if it is not granted or the relevant conditions do not satisfy the test in paragraph (i) above);
- (h) [**ASX Quotation**] prior to 8.00am on the Court Approval Date, the Mirvac Stapled Securities to be issued in accordance with the JFG Schemes are accepted for quotation and trading on a deferred settlement basis from the Business Day next following the Effective Date by ASX, subject only to the JFG Share Scheme

being approved by the Court pursuant to section 411(4) of the Corporations Act and taking effect and to such other conditions as are acceptable to Mirvac Group and to JFG Group;

- (i) **[Mirvac Unitholder approval]** the holders of Mirvac Units have approved the issue of Mirvac Units, as part of Mirvac Stapled Securities, by way of consideration under the Schemes;
- (j) **[Mircvac Group Representations and Warranties]** the Mirvac Group Representations and Warranties (other than those set out in clauses 10.2(f), (g) and (h)) that are qualified as to materiality shall be true and correct, and the Mirvac Group Representations and Warranties (other than those set out in clauses 10.2(f), (g) and (h)) that are not so qualified shall be true and correct in all material respects, in each case as of the date of this agreement and as of 8.00am on the Court Approval Date as though made on and as of that time except to the extent any such representation or warranty expressly relates to an earlier date (in which case as of such date). For the avoidance of doubt, for these purposes, the warranty contained in clause 10.2(e) must be true and correct in all material respects as if given as of 8.00 am on the Court Approval Date;
- (k) **[JFG Group Representations and Warranties]** the JFG Group Representations and Warranties (other than those set out in clauses 10.1(g), (h) and (i)) that are qualified as to materiality shall be true and correct, and the JFG Group Representations and Warranties (other than those set out in clauses 10.1(g), (h) and (i)) that are not so qualified shall be true and correct in all material respects, in each case as of the date of this agreement and as of 8.00am on the Court Approval Date as though made on and as of that time except to the extent any such representation or warranty expressly relates to an earlier date (in which case as of such date). For the avoidance of doubt, for these purposes, the warranty contained in clause 10.1 (e) must be true and correct in all material respects as if given as of 8.00 am on the Court Approval Date;
- (l) **[no JFG Group Material Adverse Change]** from the date of this agreement until 8.00am on the Court Approval Date, no JFG Group Material Adverse Change occurs or is announced or disclosed provided that a JFG Group Material Adverse Change shall be taken not to occur if it is or results from an occurrence or matter (or occurrences or matters):
  - (i) disclosed in writing to Mirvac Group before the date of this agreement; or

- (ii) which was due to one or more acts or omissions required to be done or not done, as the case may be, under this agreement or the Schemes;
  
- (m) **[no Mirvac Group Material Adverse Change]** from the date of this agreement until 8.00am on the Court Approval Date, no Mirvac Group Material Adverse Change occurs or is announced or disclosed provided that a Mirvac Group Material Adverse Change shall be taken not to occur if it is or results from an occurrence or matter (or occurrences or matters):
  - (i) disclosed in writing to JFG Group before the date of this agreement; or
  - (ii) which was due to one or more acts or omissions required to be done or not done, as the case may be, under this agreement or the Schemes;
  
- (n) **[no JFG Group Prescribed Occurrence]** in relation to JFG Group (or any material related body corporate of JFG Group), no Prescribed Occurrence occurs from the date of this agreement until 8.00 am on the Court Approval Date, except as required or contemplated by this agreement or the Schemes or as approved in writing by Mirvac Group. To avoid doubt, a Prescribed Occurrence is also taken to occur in relation to the JFG Group if an event of the kind described in the definition of "Prescribed Occurrence" occurs in relation to the JFG Trust;
  
- (o) **[no Mirvac Group Prescribed Occurrence]** in relation to Mirvac Group, no Prescribed Occurrence occurs from the date of this agreement until 8.00 am on the Court Approval Date, except as required or contemplated by this agreement or the Schemes or as approved in writing by JFG Group. To avoid doubt, a Prescribed Occurrence is also taken to occur in relation to the Mirvac Group if an event of the kind described in the definition of "Prescribed Occurrence" occurs in relation to the Mirvac Trust;
  
- (p) **[no JFG Group acquisition, disposal or distribution]** from the date of this agreement until 8.00 am on the Court Approval Date JFG Group does not except as agreed in writing by Mirvac Group:
  - (i) except in the ordinary course of business acquire or dispose of (or agree to acquire or dispose of) an asset for an amount in excess of \$25,000,000;  
or

- (ii) declare, announce or make a capital distribution or pays a dividend or distribution other than an Exempt Distribution;
  
- (q) **[no Mirvac Group acquisition, disposal or distribution]** from the date of this agreement until 8.00 am on the Court Approval Date Mirvac Group does not except as agreed in writing by JFG Group:
  - (i) except in the ordinary course of business acquire or dispose of (or agree to acquire or dispose of) an asset for an amount in excess of \$250,000,000; or
  - (ii) declare, announces or make a capital distribution or pays a dividend or distribution other than an Exempt Distribution;
  
- (r) **[no Insolvency Event]** from the date of this agreement until 8.00 am on the Court Approval Date no Insolvency Event occurs in relation to:
  - (i) JFG Co or JFG RE; or
  - (ii) Mirvac Co or Mirvac RE;
  
- (s) **[no takeover or merger of Mirvac Group]** where a Mirvac Competing Proposal is announced between from the date of this agreement and the holding of the JFG Share Scheme Meeting, both of the following occur:
  - (i) a majority of the directors of Mirvac Co and Mirvac RE have announced prior to the JFG Share Scheme Meeting that they recommend to Mirvac Stapled Securityholders to reject the Mirvac Competing Proposal and not withdraw such recommendation before the JFG Share Scheme Meeting; and
  - (ii) a person who announced the Mirvac Competing Proposal either alone or together with that person's associates has not acquired a relevant interest in more than 20% of Mirvac Stapled Securities;
  
- (t) **[termination of obligations to issue JFG securities]** Mirvac Group is reasonably satisfied that any rights granted to any person to be issued JFG Stapled Securities (including pursuant to the JFG Options) have been or will be terminated by no later than the Effective Date;

- (u) **[recommendation of Mirvac RE board]:** the board of Mirvac RE has recommended the approval of the resolutions referred to in clause 3.3(g)(i) to holders of Mirvac Units or the condition under clause 5.1(i) is waived; and
- (v) **[third party consents]** JFG Group has obtained necessary consents or waivers from third parties in relation to material agreements to which JFG Group is a party as may be reasonably required by Mirvac Group and notified in writing to JFG Group at or prior to the execution of this agreement

## 5.2 Benefit of Conditions

The following Conditions are included for the benefit of the following party or parties:

Condition	Party
<p>Clauses 5.1(c) (<b>recommendation of JFG Group directors</b>), (k) (<b>JFG Group Representations and Warranties</b>), (l) (<b>no JFG Group Material Adverse Change</b>), (n) (<b>no JFG Group Prescribed Occurrence</b>), (p) (<b>no JFG Group acquisition, disposal or distribution</b>), (r)(i) (<b>no JFG Insolvency Event</b>), and (t) (<b>termination of obligation to issue JFG securities</b>), and (v) (<b>third party consents</b>) being the <b>Mirvac Group Conditions</b></p>	<p>Mirvac Group</p>
<p>Clauses 5.1(j) (<b>Mirvac Group Representations and Warranties</b>), (m) (<b>no Mirvac Group Material Adverse Change</b>), (o) (<b>no Mirvac Group Prescribed Occurrence</b>), (q) (<b>no Mirvac Group acquisition, disposal or distribution</b>), (r)(ii) (<b>no Mirvac Insolvency Event</b>), (s) (<b>no takeover or merger of Mirvac Group</b>), and (u) (<b>recommendation of Mirvac RE board</b>) being the <b>JFG Group Conditions</b></p>	<p>JFG Group</p>

<p>Clauses 5.1(a) <b>(no restraint)</b>, (b) <b>(Independent Expert's Report)</b>, (d) <b>(orders convening meeting)</b>, (e) <b>(JFG Stapled Securityholders approval)</b>, (f) <b>(Court approval)</b>, (g) <b>(Regulatory approval)</b>, (h) <b>(ASX quotation)</b> and (i) <b>(Mirvac Unitholder approval)</b>, being the <b>Joint Conditions</b></p>	<p>Mirvac Group and JFG Group</p>
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### 5.3 Best Endeavours

- (a) Mirvac Group must use its best endeavours to satisfy the Mirvac Group Conditions prior to the Court Approval Date.
- (b) JFG Group must use its best endeavours to satisfy the JFG Group Conditions prior to the Court Approval Date.
- (c) Mirvac Group and JFG Group must use their respective best endeavours to satisfy the Joint Conditions prior to the Court Approval Date.

### 5.4 Fulfilment of conditions

Each party must:

- (a) [**consultation**] consult with each other in relation to all communications (whether written or oral) proposed to be made by or on their behalf to any Governmental Agency relating to the Schemes or the satisfaction of a Condition;
- (b) [**good faith**] procure that its officers and advisors work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other party to satisfy the Conditions;
- (c) (**not prevent satisfaction of Condition**) not take any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other party; and
- (d) (**promptly notify**) promptly notify the other party of the fulfilment of a Condition and must keep the other party informed of any material developments of which it becomes aware in relation to a Condition.

## 5.5 Waiver of a Condition

- (a) **(if only one party benefiting, that party only may rely on or waive)** If a Condition has been included for the benefit of one party only, only that party may, in its sole and absolute discretion, rely on or waive the breach or non-fulfilment of the Condition.
- (b) **(if several parties benefiting, all must waive)** If a Condition has been included for the benefit of more than one party, the breach or non-fulfilment of the Condition may be waived only by the consent of all those parties.
- (c) **(waiver precludes litigation)** If a party waives the breach or non-fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this document that resulted in the breach or non-fulfilment of the Condition.
- (d) **(Condition 5.1(i)):** Despite any other provision in this agreement, the parties will waive the condition in clause 5.1(i) if prior to 1 November 2004 or such later date as is agreed in writing by the parties and following bona fide consultation among the parties and with all necessary regulators:
  - (i) Mirvac RE reasonably considers that the issue of Mirvac Units under the Schemes does not require the prior approval of the holders of Mirvac Units; and
  - (ii) JFG Group is reasonably satisfied that the basis upon which the Mirvac Units are to be issued under the Schemes does not prejudice the interests of the holders of JFG Stapled Securities.

## 5.6 When a Condition is fulfilled

Each Condition is deemed to be fulfilled on the Relevant Date unless the party for whose benefit the Condition has been included (or, in the case of a Condition included for the benefit of more than one party, all those parties) gives notice to the other party on or before the Relevant Date (or, in the case of the Condition in clause 5.1(f), before the Sunset Date) of the non-fulfilment of the Condition.



## **5.7 If a Condition is not fulfilled or waived**

If a Condition has not been fulfilled or waived by the Relevant Date, or the Effective Date has not occurred by the Sunset Date, the parties:

- (a) will consult in good faith to determine whether the Scheme may proceed by way of alternative means or methods; and
- (b) may agree (but shall not be obliged to) to extend the Relevant Date or the Sunset Date, or both.

## **5.8 Access to Information**

- (a) If, during the period from the date of this agreement up to and including the Court Approval Date, Mirvac Group believes on reasonable grounds that a JFG Group Material Adverse Change has occurred that would result in a breach of the Condition in clause 5.1(l), JFG Group must give Mirvac Group reasonable access to its records and information (subject to any confidentiality obligations owed to third parties) for the purpose of verifying whether the Condition has been breached.
- (b) If, during the period from the date of this agreement up to and including the Court Approval Date, JFG Group believes on reasonable grounds that a Mirvac Group Material Adverse Change has occurred that would result in a breach of the Condition in clause 5.1(m), Mirvac Group must give JFG Group reasonable access to its records and information (subject to any confidentiality obligations owed to third parties) for the purpose of verifying whether the Condition has been breached.

## **6. RECOMMENDED SCHEME**

### **6.1 JFG Group Recommendation**

If the Independent Expert has opined that the Schemes are in the best interests of the JFG Stapled Securityholders, JFG Group shall use its best endeavours to ensure that the directors of JFG Group have resolved, in the absence either of a bona fide alternative offer which in the view of the JFG Group directors must be recommended in preference to the Schemes or another reason which by applicable law (including fiduciary duties) requires the directors to not to so resolve, that they will:

- (a) recommend to JFG Stapled Securityholders that they vote in favour of and approve the Schemes; and
- (b) not make any public statement or take any other action which would suggest that the Schemes are not recommended by the directors.

**6.2 Non-Solicitation**

- (a) Subject to clause 17.9, JFG Group shall not, nor shall it permit any of its subsidiaries to, nor shall it authorise or permit any officer, director or employee of, or require any investment banker, attorney or other advisor, agent or representative of JFG Group or any of its subsidiaries to:
  - (i) directly or indirectly solicit or initiate proposals regarding any JFG Competing Proposal; or
  - (ii) accept or enter into any agreement, arrangement or understanding with respect to any JFG Competing Proposal which has been solicited or initiated by JFG Group or directly or indirectly participate in any discussions or negotiations regarding or furnish to any person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a JFG Competing Proposal which has been solicited or initiated by JFG Group.
- (b) Paragraph (a) (ii) does not restrict JFG Group or the JFG Group Board from taking or refusing to take any action with respect to JFG Competing Proposal provided that the JFG Group Board has determined in good faith and acting reasonably after consultation with its financial advisors and outside legal counsel, that such JFG Competing Proposal is superior to the Schemes having regard to the interests of JFG Stapled Securityholders.

**7. [RESERVED]**

**8. MIRVAC GROUP'S RIGHT TO SEPARATE REPRESENTATION**

Mirvac Group is entitled and obliged to procure that it is represented at Court hearings convened for the purpose of section 411(4)(b), and, through counsel, undertake (if requested by the Court) to do all things and take all steps within its power as may be

necessary to fulfil its obligations under this document and the Schemes. Nothing in this agreement shall be taken to give JFG Group any right or power to make or give undertakings to the Court for or on behalf of Mirvac Group.

## **9. CONDUCT OF BUSINESS**

From the date of this agreement to the Effective Date (inclusive), each party and its subsidiaries must in all material respects conduct their businesses only in, and not take any action except in, the ordinary course except with the written consent of the other parties.

## **10. REPRESENTATIONS AND WARRANTIES**

### **10.1 JFG Warranties**

Each of JFG Co and JFG RE represents and warrants to Mirvac Group that as at the date of this agreement and (except for clause 10.1(e)) at all times up to the Implementation Date:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary corporate action to authorise the entry into of this agreement and has taken or will take all necessary corporate action to authorise the performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) this agreement is valid and binding upon it;
- (e) to the knowledge of JFG Group, no resolutions have been passed nor has legal proceedings been commenced against it or the JFG Trust for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or those of the JFG Trust) which is likely to be successful having regard to the financial position of the JFG Group and no regulatory action of any nature has been taken or threatened in writing by a regulatory authority which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;

- (f) as at the Court Approval Date the only securities that JFG Group has issued or agreed to issue are the JFG Stapled Securities and the JFG Options and JFG Group is under no obligation to issue any other securities at any time in the future;
- (g) it and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (h) neither it nor any of its Subsidiaries is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute a material event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (i) neither the execution or performance by it of the Transaction Documents nor the consummation of any transaction contemplated under the Transaction Documents will in any material respect:
  - (i) violate any law, regulation, order, injunction or judgment binding on it; or
  - (ii) violate or accelerate the obligations of it or of any of its Subsidiaries, nor require any consent or approval of or notice to any person, under any provision of:
    - A. any of its or its Subsidiaries' constituent documents; or
    - B. any of its or its Subsidiaries' material agreements or instruments,except as disclosed to the Mirvac Group in writing before the date of this agreement; and
- (j) the Scheme Booklet and other information provided by JFG Group to JFG Stapled Securityholders (other than the Mirvac Group Information) in connection with the Schemes:

- (i) will (as at the date it is provided) not be misleading or deceptive in any material respect (including because of any material omission); and
  - (ii) will (as at the date it is provided) comply in all material respects with applicable law; and
- (k) it has not relied on any representations, warranties, statements or information whether oral or in writing other than the Mirvac Group Representations and Warranties in entering into this agreement.

## **10.2 Mirvac Group Warranties**

Each of Mirvac Co and Mirvac RE represents and warrants to JFG Group that as at the date of this agreement and (except for clause 10.2(e)) at all times up to the Implementation Date:

- (a) it is a company duly registered and validly existing under the laws of the country of its registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) this agreement constitutes valid and binding obligations on it;
- (e) to the knowledge of Mirvac Group, no resolutions have been passed nor has any legal proceeding been commenced against it or the Mirvac Trust for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or those of the Mirvac Trust) which is likely to be successful having regard to the financial position of the Mirvac Group and no regulatory action of any nature has been taken or threatened in writing by a regulatory authority which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;

- (f) it and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (g) neither it nor any of its Subsidiaries is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute a material event of default, prepayment event or similar event under any such document or agreement with such an effect;
- (h) neither the execution or performance by it of the Transaction Documents nor the consummation of any transaction contemplated under the Transaction Documents will in any material respect:
  - (i) violate any law, regulation, order, injunction or judgment binding on it;  
or
  - (ii) violate or accelerate the obligations of it or of any of its Subsidiaries under any provision of:
    - A. any of its or its Subsidiaries' constituent documents; or
    - B. any of its or its Subsidiaries' material agreements or instruments,except as disclosed to the JFG Group in writing before the date of this agreement;
- (i) the Mirvac Explanatory Memorandum and other information provided by Mirvac Group to Mirvac Stapled Securityholders in connection with the Schemes and the Mirvac Group Information:
  - (i) will (as at the date it is provided) not be misleading or deceptive in any material respect (including because of any material omission); and
  - (ii) will (as at the date it is provided) comply in all material respects with applicable law;

- (j) the Mirvac Group Information will be provided to the JFG Group in good faith and on the understanding that JFG Group and each director of JFG Co and each director of JFG RE will rely on that information for the purpose of complying with its obligations under clause 1.1(a) and under applicable law; and
- (k) it has not relied on any representations, warranties, statements or information whether oral or in writing other than the JFG Group Representations and Warranties in entering into this agreement.

## **11. TERMINATION RIGHTS**

### **11.1 Termination Events**

A party (the **terminating party**), by notice in writing to the other party, may terminate this agreement subject to clause 11.2 if any of the following events occur:

- (a) before the Relevant Date applicable to a Condition solely or jointly for its benefit, that Condition cannot be satisfied by the time required in this document for it to be satisfied and has not been waived under clause 5.5;
- (b) subject to clause 5.7, the Implementation Date has not occurred by the Sunset Date;
- (c) a Condition solely or jointly for its benefit has not been satisfied after the Relevant Date applicable to that Condition and has not been waived under clause 5.5;
- (d) the other party is in material breach of a material term of this agreement (other than the JFG Group Representations and Warranties and the Mirvac Group Representations and Warranties), taken in the context of the Schemes as a whole, at any time from the date of this agreement to the Court Approval Date;
- (e) in the case where the terminating party is JFG Group, the Condition in clause 5.1(m) is not satisfied at any time; or
- (f) in the case where the terminating party is Mirvac Group, the condition in clause 5.1(l) is not satisfied at any time.

## **11.2 Termination Right**

- (a) Subject to paragraph (b), at any time prior to the Court Approval Date in the circumstances referred to in clause 11.1(d), (e) or (f) the terminating party may give notice to the other party setting out the relevant circumstances and stating an intention to terminate and, if the relevant circumstances continue to exist after 7 Business Days from the time such notice is given (or such shorter period ending at 8.00am on the Court Approval Date where the Court Approval Date is within 7 Business Days of the date of the notice), the terminating party may, in its absolute discretion but only within the next following 7 Business Days (or shorter period as determined applicable by the terminating party), terminate this agreement by a further notice in writing to the other party.
- (b) Any right to terminate this agreement pursuant to this clause 11 shall cease at the time the Court makes orders, pursuant to section 411(4) of the Corporations Act, approving the JFG Share Scheme on the Court Approval Date.
- (c) In the event that a party terminates this agreement all further obligations of the parties under this agreement shall immediately be terminated and cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause shall release any party from liability for any breach of this agreement occurring before its termination.

## **11.3 Survival of Agreements**

Unless this agreement is lawfully terminated in accordance with its terms it shall survive the performance by the parties of their respective obligations hereunder, but always subject to its terms.

## **12. PUBLIC ANNOUNCEMENTS**

- (a) All press releases and other public announcements and presentations by JFG Group or Mirvac Group relating to the transactions contemplated by this agreement must be in terms agreed between the parties, provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this agreement or to comply with any applicable law.



- (b) Subject to paragraph (a), as soon as practicable after this agreement is executed both Mirvac Group and JFG Group will each lodge with ASX a copy of this Agreement.

### **13. REIMBURSEMENT OF JFG COSTS**

#### **13.1 Acknowledgment**

- (a) Mirvac Group acknowledges that the JFG Group has incurred and will continue to incur significant costs in relation to the Schemes, including out of pocket expenses and internal costs and, if the circumstances set out in clause 13.2 occur, opportunity and reputational costs and other losses. The parties acknowledge that the amount of the costs referred to in this clause is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained and that the Break Fee Amount is a genuine and reasonable pre-estimate of the costs that JFG Group will suffer in the event of the transactions contemplated under this agreement not proceeding in the circumstances set out in this clause (but without prejudice to such other rights the parties may have in respect of breach of the terms of this agreement).
- (b) Each party acknowledges that:
  - (i) it has received legal advice on this agreement and the operation of this clause;
  - (ii) it would not have entered into this agreement without the benefit of this clause and that it would not have entered into and continued the negotiations leading up to this agreement unless the other party had agreed to enter into a clause of this kind; and
  - (iii) that it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its securityholders) resulting from the transactions contemplated under this agreement.

#### **13.2 Reimbursement**

- (a) Subject to clause 13.3, Mirvac Group agrees to pay JFG Group the Break Fee Amount if:

- (i) at any time after the execution of this agreement and before the holding of the JFG Share Scheme Meeting a Mirvac Competing Proposal is announced and a majority of directors of Mirvac Co and Mirvac RE do not reject the Mirvac Competing Proposal by the JFG Scheme Meeting;  
or
  - (ii) at any time after the execution of this agreement and before the Sunset Date any recommendation by directors of Mirvac Co and Mirvac RE to Mirvac Stapled Securityholders in favour of approvals required for the implementation of the Schemes is withdrawn.
- (b) The payment of the Break Fee Amount by Mirvac Group to JFG Group provided for in this clause 13.2 must be made within 3 Business Days of receipt by Mirvac Group of a written demand for payment from JFG Group.

### **13.3 Compliance with law**

The payment of the Break Fee Amount by Mirvac Group under clause 13 is not required, or is refundable, to the extent that:

- (a) such payment involves, involved or would involve a breach of their fiduciary or other legal duties or would be unlawful or unenforceable on any other basis; or
- (b) the Takeovers Panel makes an order against such payment.

## **14. REIMBURSEMENT OF MIRVAC COSTS**

### **14.1 Acknowledgment**

- (a) JFG Group acknowledges that the Mirvac Group has incurred and will continue to incur significant costs in relation to the Schemes including out of pocket expenses and internal costs and, if the circumstances set out in clause 14.2 occur, opportunity and reputational costs and other losses. The parties acknowledge that the amount of the costs referred to in this clause is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained and that the Break Fee Amount is a genuine and reasonable pre-estimate of the costs that Mirvac Group will suffer in the event of the transactions contemplated under this agreement not proceeding in the

circumstances set out in this clause (but without prejudice to such other rights the parties may have in respect of breach of the terms of this agreement).

- (b) Each party acknowledges that:
- (i) it has received legal advice on this agreement and the operation of this clause;
  - (ii) it would not have entered into this agreement without the benefit of this clause and that it would not have entered into and continued the negotiations leading up to this agreement unless the other party had agreed to enter into a clause of this kind; and
  - (iii) that it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its securityholders) resulting from the transactions contemplated under this agreement.

#### **14.2 Reimbursement**

- (a) Subject to clause 14.3, JFG Group agrees to pay Mirvac Group the Break Fee Amount if at any time after the execution of this agreement and before the JFG Share Scheme Meeting or, where the Schemes are approved by JFG Stapled Securityholders, before the first to occur of the Effective Date and the Sunset Date a JFG Competing Proposal is announced or becomes open for acceptance and a majority of directors of JFG Group withdraw their recommendation of the approval of the Schemes or a majority of directors of JFG Group recommend the JFG Competing Proposal.
- (b) The payment of the Break Fee Amount by JFG Group to Mirvac Group provided for in this clause 14.2 must be made within 3 Business Days of receipt by JFG Group of a written demand for payment from Mirvac Group. The obligation to pay the Break Fee Amount under this clause 14.2 cannot be triggered more than once.

#### **14.3 Compliance with law**

The payment of the Break Fee Amount by JFG Group under clause 14 is not required, or is refundable, to the extent that:

- (a) such payment involves, involved or would involve a breach of their fiduciary or other legal duties, or would be unlawful or unenforceable on any other basis; or
- (b) the Takeovers Panel makes an order against such payment.

**15. STAMP DUTY**

Mirvac Group will bear all stamp duty payable in respect of the implementation of the Schemes.

**16. NOTICES**

- 16.1** A notice, consent, request or any other communication under this agreement must be in writing and must be left at the address of the addressee, or sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee specified below or any other address or facsimile number the addressee requests.

**JFG Group:**

Address: James Fielding Group  
Level 22 56 Pitt Street  
Sydney NSW 2000

Attention: Company Secretary

Facsimile:

**Mirvac Group:**

Address: Mirvac Group  
Level 5, 40 Miller Street  
North Sydney NSW 2060

Attention: Company Secretary

Facsimile: (02) 9004 8460

- 16.2** A notice, consent, request or any other communication is taken to be received:

- (a) if by delivery, when it is delivered unless it is delivered on a day other than a Business Day in which case it is taken to be received at 9.00am on the next Business Day;
- (b) if by post, 3 days after posting; and
- (c) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

## **17. GENERAL**

### **17.1 Cumulative Rights**

The rights, powers and remedies of a party under this agreement are cumulative with the rights, powers or remedies provided by law independently of this agreement.

### **17.2 Waiver and Variation**

A provision or a right under this agreement may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

### **17.3 Approvals and Consents**

A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this agreement states otherwise. Any approval or consent or agreement required pursuant to this agreement must be in writing.

### **17.4 Specific Performance**

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this agreement and that specific performance of that obligation is an appropriate remedy.

### **17.5 Effect of Agreement**

This agreement supersedes any previous understandings or agreements between the parties concerning the subject matter of this agreement, and is the entire agreement of the parties with respect to its subject matter. Notwithstanding the foregoing, nothing in this

agreement affects the rights and obligations of the parties under the confidentiality agreement between JFG Co, Mirvac Co and JF Meridian Management Limited dated September 2004.

#### **17.6 Severability**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

#### **17.7 Obligation to Enforce**

Subject to clause 17.9, in the event that a third party seeks in relation to this agreement either from a Court, the Takeovers Panel or a regulatory authority any orders, judgment or other action the effect of which if granted would be to diminish, restrict, modify, waive or vary any obligation imposed on JFG Group or Mirvac Group under this agreement, including the obligation under this clause 17.7, then the relevant party will:

- (a) use its best endeavours to defend such action or proceeding before a Court, the Takeovers Panel or regulatory authority; and
- (b) at the other party's cost take such reasonable steps as may be required in order to permit the other party to participate in such action or proceeding.

#### **17.8 Mutual Further Assurances**

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this agreement.

#### **17.9 Duties of Directors**

Nothing in this agreement requires a party or the director of a party to take any action or refrain from taking any action if to do so would in the reasonable view of the directors of that party result in a breach of their duties as directors of the relevant party.

## **18. COUNTERPARTS**

This agreement may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.

## **19. GOVERNING LAW AND JURISDICTION**

This agreement is governed by the laws of New South Wales.

## **20. ASSIGNMENT**

The rights and obligations of each party under this agreement are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other party.

## **21. DEFINED TERMS AND INTERPRETATION**

### **21.1 Defined Terms**

Unless the context requires otherwise:

**Announcement** means the joint announcement of Mirvac Group and JFG Group which is to be made to ASX on 12 October 2004 relating to their proposed merger.

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

**ASX** means the Australian Stock Exchange Limited.

**ATO** means the Commissioner of Taxation of the Commonwealth of Australia, the Second Commissioner of Taxation of the Commonwealth of Australia, the Deputy Commissioners of Taxation of the Commonwealth of Australia, their delegates and agents, and officers of the Australian Taxation Office.

**Break Fee Amount** means \$4 million.

**Business Day** means Monday to Friday inclusive except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day that ASX declares is not a business day.

**Close of Registers** means 7.00pm Sydney time on the Record Date.

**Conditions** means the conditions set out in clause 5.1 of this agreement.

**Court** means the Supreme Court of New South Wales or the Federal Court of Australia.

**Court Approval Date** means the last date on which the Court hears the application for an order under section 411(4)(b) approving the JFG Share Scheme or, if the application is adjourned or subject to appeal for any reason, the last date on which the adjourned or appealed application is heard.

**Deeds Poll** means the deeds poll to be executed by Mirvac Group referred to in clause 3.1;

**Effective Date** means the date when the Schemes take effect.

**Exempt Distribution** means:

- (i) in relation to JFG Group, a distribution of up to an aggregate of \$0.1225 per JFG Unit and JFG Share to be declared and paid to JFG Stapled Securityholders by reference to a record date occurring on or before the Implementation Date or such other return of capital or other agreed distribution as may be agreed by the parties; and
- (ii) in relation to Mirvac Group, a distribution of up to an aggregate of \$0.083 per Mirvac Unit and Mirvac Share to be declared and paid to Mirvac Stapled Securityholders by reference to a record date occurring on or before the Implementation Date or such other return of capital or other agreed distribution as may be agreed by the parties.

**First Court Date** means the first date of the hearing of the Court of an application for an order under section 411(1) to order the convening of the meeting referred to in clause 2.2(k)(i).

**Governmental Agency** means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**Implementation Date** means the date that is 1 Business Day after the Record Date.



**Independent Expert** means the expert commissioned by JFG Group to prepare the Independent Expert's Report.

**Independent Expert's Report** means a report prepared for inclusion in the Scheme Booklet by an expert who is not an associate of JFG Group stating whether or not, in the expert's opinion, the Schemes are in the best interests of the holders of JFG Stapled Securities, and setting out his or her reasons for that opinion.

**Insolvency Event** means in relation to a party:

- (a) the party becomes unable to pay its debts as and when they fall due;
- (b) the making of any order, or the passing of any resolution, for the winding up, liquidation or bankruptcy of the party;
- (c) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager to the party;
- (d) the appointment of an administrator to the party; or
- (e) the entry by a party into any compromise or arrangement with creditors.

**JFG Co Resolutions** means such resolutions as are necessary to be passed by the members of JFG Co to enable the JFG Share Scheme to be implemented.

**JFG Competing Proposal** means any proposal or offer with respect to any transaction (by purchase, merger, amalgamation, arrangement, business combination, liquidation, dissolution, recapitalisation, take-over bid or otherwise) that would, if completed substantially in accordance with its terms, result:

- (a) any person (or group of persons) acquiring assets of JFG Group and/or its related bodies corporate that have, individually or in the aggregate, a market value exceeding 50% of the market value of all the assets of JFG Group and its related bodies corporate (taken as a whole); or
- (b) any person either alone or together with than person's associates having a relevant interest in greater than 50% of the JFG Stapled Securities or JFG Shares or JFG Units; or

- (c) other securities being stapled to securities in JFG Co or JFG Trust or JFG Group becoming a dual listed entity with another person or persons.

**JFG Group Board** means the board of directors of JFG Co and JFG RE.

**JFG Group Conditions** means the conditions identified as such in clause 5.2.

**JFG Group Material Adverse Change** means any matter, event or circumstance which individually, or when aggregated with any other matters, events or circumstances of a like kind or category, (including, without limitation, the loss of existing development rights) which has or could be reasonably expected to have, an adverse effect on the fair market value of the JFG Group by an amount of greater than \$75 million.

**JFG Group Registry** means Computershare Investor Services Pty Ltd.

**JFG Group Representations and Warranties** means the representations and warranties of JFG Group set out in clause 10.1.

**JFG Invitees** means JFG's CEO and two other non-executive directors to be nominated by the JFG Group prior to the Court Approval Date.

**JFG JV Companies** means those companies listed in Schedule 3.

**JFG Liquidity Facilities** means the "Redemption Offer" arrangements offered or to be offered to unitholders of the James Fielding Industrial Fund, the James Fielding Retail Fund and the James Fielding Retail Portfolio, under which under certain circumstances unitholders may exchange their units in such funds for JFG Stapled Securities.

**JFG Options** means options to subscribe for JFG Stapled Securities issued pursuant to the JFG Employee Option Plan and such other JFG Options (if any) agreed to by the parties as approved (if required) by the Court.

**JFG RE** means James Fielding Funds Management Limited ABN 78 067 417 663 as responsible entity of the JFG Trust.

**JFG Scheme Participants** means a person registered in the JFG Stapled Securities Register at the Close of Registers as the holder of JFG Stapled Securities, after the registration by JFG Group of transfers and transmissions in accordance with the Schemes.

**JFG Scheme Shares** means JFG Shares held by JFG Scheme Participants.

**JFG Scheme Units** means JFG Units held by JFG Scheme Participants.

**JFG Shares** means:

- (a) ordinary shares issued in the capital of JFG Co, which have been fully paid;
- (b) any ordinary shares in the capital of JFG Co issued on exercise of a JFG Option;  
and
- (c) such other JFG Shares (if any) agreed to by the parties as approved (if required) by the Court.

**JFG Share Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act to be proposed between JFG Co and the JFG Shareholders substantially in the terms set out in schedule 1 or in such other form as is agreed between JFG Group and Mirvac Group.

**JFG Share Scheme Meeting** means the meeting of holders of JFG Group Shares convened pursuant to clause 2.2(k)(i).

**JFG Shareholder** means a holder of JFG Shares.

**JFG Stapled Securities** means the JFG Shares stapled to the JFG Units.

**JFG Stapled Securityholders** means the holders of JFG Stapled Securities.

**JFG Tax Rulings** means the following rulings issued by the ATO pursuant to Part IVAA or Part IVAAA of the Taxation Administration Act 1953 (Cth):

- (a) in relation to the Schemes – a class ruling for the benefit of JFG Stapled Securityholders who hold JFG Stapled Securities on capital account;
- (b) in relation to the Cash Out Facility – a class ruling for the benefit of JFG Stapled Securityholders who hold JFG Stapled Securities on capital account; and
- (c) if required by Mirvac RE – a private ruling in relation to the Schemes for the benefit of JFG RE addressing tax consequences of the Schemes, including, if

reasonably required by Mirvac RE, issues raised by Divisions 6B and 6C of Part III of the Income Tax Assessment Act 1936 (Cth), and issues relating to the resettlement of trusts.

**JFG Trust** means James Fielding Trust ARSN 089 988 296.

**JFG Trust Resolutions** means the resolutions of JFG Unitholders to approve:

- (a) the JFG Unit Scheme; and
- (b) such amendments to the constitution of the JFG Trust as are necessary to enable the JFG Unit Scheme to be implemented.

**JFG Unitholder** means a holder of JFG Units.

**JFG Units** means:

- (a) ordinary units issued by JFG Trust, which have been fully paid;
- (b) any ordinary units in JFG Trust issued on exercise of a JFG Option; and
- (c) such other JFG Units (if any) agreed to by the parties.

**JFG Unit Scheme** means the arrangement under which the Mirvac RE acquires all the JFG Scheme Units from the JFG Scheme Participants, to be implemented pursuant to the JFG Trust Resolutions substantially in the terms set out in schedule 2 or in such other form as is agreed between JFG Group and Mirvac Group.

**JFG Unit Scheme Meeting** means the meeting of JFG Unitholders convened pursuant to clause 2.2(1).

**Joint Conditions** means the conditions identified as such in clauses 5.2.

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

**Mirvac Competing Proposal** means any proposal or offer with respect to any transaction (by purchase, merger, amalgamation, arrangement, business combination, liquidation, dissolution, recapitalisation, take-over bid or otherwise) that would, if completed substantially in accordance with its terms, result in:

- (a) any person (or group of persons) acquiring assets of Mirvac Group and/or its related bodies corporate that have, individually or in the aggregate, a market value exceeding 50% of the market value of all the assets of Mirvac Group and its related bodies corporate (taken as a whole); or
- (b) any person either alone or together with that person's associates having a relevant interest in greater than 50% of the Mirvac Stapled Securities or Mirvac Shares or Mirvac Units; or
- (c) other securities being stapled to securities in Mirvac Co or Mirvac Trust or Mirvac Group becoming a dual listed entity with another person or persons.

**Mirvac Explanatory Memorandum** means explanatory memorandum to accompany the notice of meeting to holders of Mirvac Units prepared for the purposes of the meeting of holders of Mirvac Units referred to in condition 5.1(i).

**Mirvac Group Conditions** means the conditions identified as such in clause 5.2.

**Mirvac Group Entity** means Mirvac Co, Mirvac Trust or any Subsidiary of either.

**Mirvac Group Information** means such information regarding the Mirvac Group and its Subsidiaries which is provided pursuant to clause 1.1(b) and is included in the Scheme Booklet.

**Mirvac Group Material Adverse Change** means any matter, event or circumstance which individually, or when aggregated with any other matters, events or circumstances of a like kind or category (including, without limitation, the loss of existing development rights) which has or could be reasonably expected to have an adverse effect on the fair market value of the Mirvac Group by an amount greater than \$250 million.

**Mirvac Group Representations and Warranties** means the representations and warranties of Mirvac Group set out in clause 10.2.

**Mirvac RE** means Mirvac Funds Limited ABN 70 002 561 640 as responsible entity of the Mirvac Trust.

**Mirvac Shares** means fully paid ordinary shares issued by Mirvac Co.

**Mirvac Stapled Securities** means the Mirvac Shares stapled to the Mirvac Units.

**Mirvac Stapled Securityholders** means the holders of Mirvac Stapled Securities.

**Mirvac Tax Rulings** means the following rulings issued by the ATO pursuant to Part IVAA or Part IVAAA of the Taxation Administration Act 1953 (Cth) in relation to the Schemes:

- (a) a private ruling for the benefit of Mirvac RE addressing tax consequences of the Schemes, including, if required by Mirvac RE, issues raised by Divisions 6B and 6C of Part III of the Income Tax Assessment Act 1936 (Cth); and
- (b) a class ruling for the benefit of Mirvac Stapled Securityholders who hold Mirvac Stapled Securities on capital account.

**Mirvac Trust** means Mirvac Property Trust ABN 78 067 417 663.

**Mirvac Units** means fully paid ordinary units issued by Mirvac Trust.

**Nominee** means the person so described in the Schemes.

**Person** includes bodies corporate or unincorporate.

**Prescribed Occurrence** means, in relation to a party:

- (a) (**convert shares**) the party converts all or any of its securities into a larger or smaller number of securities;
- (b) (**reduce share capital**) the party or a related body corporate of the party resolves to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;
- (c) (**buy-back**) the party or a subsidiary of the party:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

- (d) **(issue shares or options)** the party or a subsidiary of the party issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option, excluding:
  - (i) any issue or grant contemplated by the Schemes; and
  - (ii) any securities issued by the party as a result of the exercise of options existing at the date of this agreement;
- (e) **(issue convertible securities)** the party or a subsidiary of the party issues, or agrees to issue, securities or other instruments convertible into shares or units;
- (f) **(change to constitution or trust deed)** the party makes any material change or amendment to its constitution or trust deed;
- (g) **(create mortgage)** the party or a subsidiary of a party creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business or property of the party and any of its subsidiaries,

but excluding any:

- (h) matter required to be done or procured by a party under this agreement or the Schemes; or
- (i) matter disclosed in writing to the other parties prior to the date of this agreement; or
- (j) Exempt Distribution.

**Record Date** means 5 Business Days after the Effective Date (or such other period as may from time to time be provided for under the Listing Rules).

**Regulator's Draft** means the draft of the Scheme Booklet provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approvals** means in relation to a party, such authorisations, consents, exemptions, modifications and approvals as may be required from any Government

Agency (including ASIC) to enable the party to perform its obligations under this agreement and implement the Schemes in accordance with applicable law.

**Regulatory Review Period** means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC provides a letter of intent under section 411(17)(b) that it does not object to the JFG Share Scheme.

**Relevant Date**, in relation to a Condition, means the date or time specified in the this agreement for its fulfilment or, if no date or time is specified, 8.00am on the Court Approval Date subject, in either case, to extension under clause 5.7.

**Revenue Authority** means ATO and State Revenue Authorities.

**Scheme Booklet** means a booklet containing information about the JFG Share Scheme and the JFG Unit Scheme proposed to be sent to the JFG Scheme Stapled Securityholders.

**Scheme Consideration** means the consideration to be provided under the Schemes, being, in aggregate 0.73 Mirvac Stapled Securities in exchange for 1 JFG Share and 1 JFG Unit.

**Scheme Meetings** means the JFG Share Scheme Meeting and the JFG Unit Scheme Meeting.

**Schemes** means:

- (a) the JFG Share Scheme; and
- (b) the JFG Unit Scheme.

or as required by the context, any of them, as proposed in accordance with and subject to the matters set out in the Announcement or as otherwise agreed between the parties.

**Sunset Date** means, subject to clause 5.7, 31 March 2005.

**takes effect or taking effect** means on and from the time when an office copy of the Court Order approving the JFG Share Scheme, pursuant to sub-sections 411(6) of the Corporations Act is lodged with ASIC.



**Tax Rulings** means the JFG Tax Rulings and the Mirvac Tax Rulings.

**Timetable** means the indicative timetable for the implementation of the Schemes a copy of which is Exhibit "A" to this agreement.

**Transaction Document** means this agreement and each document to be executed or issued by either or both of the parties pursuant to this agreement.

## **21.2 Interpretation**

- (a) In this agreement unless the context otherwise requires:
- (i) words importing the singular include the plural and vice versa;
  - (ii) words which are gender neutral or gender specific include each gender;
  - (iii) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
  - (iv) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Governmental Agency;
  - (v) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
  - (vi) a reference to a clause, party, schedule or attachment is a reference to a clause of this agreement, and a party, schedule or attachment to, this agreement;
  - (vii) a reference to this agreement includes this dictionary;
  - (viii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
  - (ix) a reference to a party to a document includes that party's successors and permitted assigns;

- (x) an agreement on the part of two or more persons binds them severally;  
and
  
- (b) A reference to **applicable law** includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity, a requirement of a Governmental Agency or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced. Without limiting the generality of the foregoing, it includes the Corporations Act (and all regulations made thereunder), any declaration or exemption made under the Corporations Act, and all relevant policy statements, practice notes, guidance notes, and other guidelines and requirements of ASIC.
  
- (c) Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.
  
- (d) Headings are for convenience only and do not affect the interpretation of this agreement.
  
- (e) This agreement may not be construed adversely to a party just because that party prepared it.
  
- (f) A term or expression:
  - (i) which is defined in this clause, has the meaning given to it in this dictionary;
  
  - (ii) which is defined in the *Corporations Act* but is not defined in this clause, has the same meaning as in the *Corporations Act*; and
  
  - (iii) which is defined in the Listing Rules of ASX or the SCH Business Rules but is not defined in this clause or the *Corporations Act*, has the same meaning as the same meaning as in the Listing Rules of ASX or the SCH Business Rules.

## Schedule 1

### Terms of JFG Share Scheme

Under the JFG Share Scheme, the following steps will take place on the Implementation Date in the order set out below:

- (a) JFG Stapled Securities will be destapled through amendments to each of the constitution of JFG Co and the trust deed of JFG Trust;
- (b) the JFG Shares will be transferred to such Mirvac Group Entity or Mirvac Group Entities as are nominated by Mirvac Group (**Nominated Share Transferee**) by JFG Co delivering to the Nominated Share Transferee duly completed and executed share transfer forms on behalf of the JFG Scheme Participants to transfer all of the JFG Shares to the Nominated Share Transferee;
- (c) Mirvac Group will provide the Scheme Consideration in respect of the JFG Share Scheme to each JFG Scheme Participant. The Scheme must make adequate provision for:
  - (i) fractional entitlements to Scheme Consideration to be rounded up to the nearest whole number of Mirvac Stapled Securities, after aggregating all holdings of a security holder in relation to a Scheme and in a manner which avoids manipulation of holdings to take advantage of the rounding up entitlement;
  - (ii) the sale of entitlements to Scheme Consideration of JFG Stapled Securityholders whose registered addresses are outside Australia by the Nominee, provided the Nominee is required to account to such JFG Stapled Securityholders for their share of the proceeds of sale after deducting the expenses of sale;

The Scheme shall also provide for the receipt by JFG Scheme Participants of any Exempt Distribution by the JFG Group.

## Schedule 2

### Terms of JFG Unit Scheme

Under the JFG Trust Scheme, the following steps will take place on the Effective Date in the order set out below:

- (a) JFG Stapled Securities will be destapled through amendments to each of the constitution of JFG Co and the trust deed of JFG Trust;
- (b) the JFG Units (and any other portion of the Scheme Consideration that is to be allocated to the Mirvac RE in accordance with the agreement) will be transferred to Mirvac RE by JFG RE delivering to Mirvac RE duly completed and executed transfer forms on behalf of the JFG Scheme Participants to transfer all of the JFG Units (and such other Scheme Consideration) to Mirvac RE;
- (c) Mirvac Group will provide the Scheme Consideration in respect of the JFG Unit Scheme to each JFG Scheme Participant. The Scheme must make adequate provision for:
  - (i) fractional entitlements to Scheme Consideration to be rounded up to the nearest whole number of Mirvac Stapled Securities, after aggregating all holdings of a security holder in relation to a Scheme and in a manner which avoids manipulation of holdings to take advantage of the rounding up entitlement;
  - (ii) the sale of entitlements to Scheme Consideration of JFG Stapled Securityholders whose registered addresses are outside Australia by the Nominee, provided the Nominee is required to account to such JFG Stapled Securityholders for their share of the proceeds of sale after deducting the expenses of sale;

The Scheme shall also provide for the receipt by JFG Scheme Participants of any Exempt Distribution by the JFG Group.

### Schedule 3

#### JFG JV Companies

1. Domaine Holdings Pty Limited including Domaine Property Funds Limited, Domaine Services Pty Limited, Domaine Investment Management Pty Limited and Domaine Investment Trust;
2. Property Funds Australia Limited;
3. Phoenix Estates Pty Limited;
4. Infocus Infrastructure Management Pty Limited;
5. 197 Salmon Street Pty Limited and 197 Salmon Street Trust;
6. Perpetual James Fielding Limited;
7. High Sky Pty Limited;
8. Hotel Capital Partners Limited;
9. JF Infrastructure Pty Limited;
10. JF Aqua Pty Limited;
11. Universal Portfolio Services Pty Limited;
12. Bankstown Airport development companies including BAC Holdco Pty Limited, BAC Airports Pty Limited, Bankstown Airport Limited, Camden Airport Limited, BAC Devco Pty Limited and Bankstown Airport Development Pty Limited;
13. Hoxton Park Airport development companies including HPAL Freehold Pty Limited, HPAL Holdings Pty Limited, Hoxton Park Airport Limited and Hoxton Park Airport Development Pty Limited;
14. Springfield development companies including Springfield Development Company Pty Limited and Springfield Regional Shopping Centre Trust;

15. Old Wallgrove Road Development including Old Wallgrove Road Trust.

**SIGNED** as an agreement.

**SIGNED** by **MIRVAC LIMITED ABN 92 003 280 699** in accordance with its Constitution by

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Director

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Director

**SIGNED** by **MIRVAC FUNDS LIMITED ABN 70 002 561 640** as responsible entity for the **MIRVAC PROPERTY TRUST ABN 29 769 181 534** in accordance with its Constitution by

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Director

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Director

**SIGNED** by **JAMES FIELDING HOLDINGS LIMITED ABN 39 093 200 965** in accordance with its Constitution by

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Director

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Director

**SIGNED** by **JAMES FIELDING FUNDS MANAGEMENT LIMITED ABN 78 067 417 663** as responsible entity for the **JAMES FIELDING TRUST ARSN 089 988 296** in accordance with its Constitution by

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Director

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Director

**EXHIBIT "A"**

**INDICATIVE SCHEME TIMETABLE**

<b>Timing</b>	<b>Event</b>
	<b>SHAREHOLDER AND UNITHOLDER DOCUMENTATION</b>
22 October 2004	Lodge Scheme Booklet documentation with ASX and ASIC
	<b>COURT HEARINGS AND MEETINGS</b>
12 November 2004	First Court hearing
17 November 2004	Printing and dispatch of documentation
21 December 2004	JFG Group Scheme meetings
24 December 2004	Second Court hearing
30 December 2004	Effective Date
7 January 2005	Record Date
10 January 2005	Scheme Consideration provided (Implementation Date)