

ASX Release / Media Release

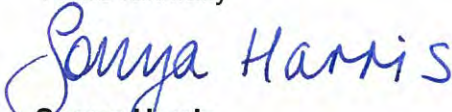
7 April 2010

Amendment to Constitution – Mirvac Property Trust

Pursuant to Listing Rule 15.4.2, Mirvac Group (ASX: MGR) advises that Mirvac Funds Limited ACN 002 561 640, as responsible entity of Mirvac Property Trust (“MPT”) ARSN 086 780 645, has amended MPT's constitution by supplemental deed dated 7 April 2010. The supplemental deed was lodged with the Australian Securities and Investments Commission today.

Attached is a consolidated copy of MPT's constitution identifying the amendments that have been made.

Yours faithfully



Sonya Harris

General Counsel / Company Secretary

Supplemental deed

Mirvac Property Trust ARSN 086 780 645

Mirvac Funds Limited ACN 002 561 640

(Responsible Entity)

MinterEllison

L A W Y E E R S

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Supplemental deed

Details	3
Agreed terms	5
1. Defined terms & interpretation	5
2. Amendment of the Constitution	5
3. Operation of this document	8
4. No redeclaration etc	8
5. Governing law and jurisdiction	9
Signing page	10

Details

Date **7 April** 2010

Parties

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

Background

- A The Responsible Entity is the responsible entity of the registered managed investment scheme known as the Mirvac Property Trust ARSN 086 780 645 (**Trust**). The Trust was established pursuant to a trust deed dated 9 April 1987, as subsequently amended from time to time (**Constitution**).
- B Clause 21.1 of the Constitution provides that subject to the *Corporations Act 2001* (Cth) (**Corporations Act**), the Responsible Entity may by deed amend the Constitution.
- C Pursuant to section 601GC(1) of the Corporations Act, the constitution of a registered scheme may be modified by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.
- D The Responsible Entity does not consider that the amendments contained in this deed will adversely affect the rights of members of the Trust.
- E The amendments to the Constitution contained in this deed are accordingly made in accordance with the Constitution and the Corporations Act, and will take effect when a copy of this deed is lodged with ASIC.

Agreed terms

1. Defined terms & interpretation

In this deed, unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.

2. Amendment of the Constitution

By this deed the Responsible Entity, pursuant to its powers under the Constitution and the Corporations Act, amends the Constitution as follows:

- (a) Clause 4.1 is amended by:
- (i) in clause 4.1(a), delete "and (g)" and insert ", (g) and (h)";
 - (ii) in clause 4.1(b), delete "and (g)" and insert ", (g) and (h)";
 - (iii) insert after clause 4.1(g) the following as a new clause 4.1(h):
"(h) in the case of a Unit issued pursuant to a Purchase Plan, determined in accordance with clause 4.14"; and
 - (iv) renumber the existing clause 4.1(h) as clause 4.1(i).
- (b) Clause 4.8 is amended by inserting a new sub-paragraph (bc) immediately after sub-paragraph (bb) as follows:
- "Without limiting clause 4.8(a), where:
- (i) the Manager proposes an institutional placement of Stapled Securities as part of the April 2010 Offer; and
 - (ii) the application price of the Stapled Securities under the institutional placement will be \$1.40.
- (c) Clause 4 is amended by inserting the following words following clause 4.13:
- "4.14 Purchase Plan**
- Without limiting the provisions of this constitution and subject to the Corporations Act, the Manager may issue Units at an Application Price determined by the Manager (being a price other than the Application Price calculated in accordance with this clause 4) under a Purchase Plan."
- (d) Clause 31.1 is amended by inserting in alphabetical order the following definitions:
- "April 2010 Offer:** means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 7 April 2010 involving:
- (a) an institutional placement of Stapled Securities; and
 - (b) a Purchase Plan."; and
- "Purchase Plan:** means an offer to existing Members of interests in the Trust, only available when:

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

3. Operation of this document

This deed takes effect on the date that it is lodged with ASIC in accordance with section 601GC(2) of the Corporations Act.

4. No redeclaration etc

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

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

5. Governing law and jurisdiction

This deed is governed by the laws of New South Wales. The Responsible Entity irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Signing page

EXECUTED as a deed poll.

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

Signature of director

Nicholas Roland Collishaw

Name of director (print)

←  ←

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

SONYA LOUISE HARRIS

Name of director/company secretary (print)

**Consolidated
Constitution of the
Mirvac Property Trust
(ARSN 086 780 645) as
at 7 April 2010**

Responsible Entity:

Mirvac Funds Limited (ACN 002 561 640)

Note: This is a consolidated version of the trust deed of the Mirvac Split Trust dated 9 April 1997 (**Original Trust Deed**), incorporating the amendments that have subsequently been made to the Original Trust Deed.

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

Contents Constitution of the Mirvac Property Trust

1	Name of Trust	1
2	Assets held on trust	1
3	Units and Options	1
	Rights attaching to Units and Options	2
	Fractions of Units	3
	Consolidation and division of Units and Options	3
	Transfer of Units and Options	3
	Joint tenancy	4
	Death, legal disability of Member	4
	Number of Units and Options	4
	Register 4	
	Stapling 4	
4	Application Price for Units	5
	Determination of Application Price where Stapled Securities are issued	6
	Rights issues	6
	Terms of pro rata issues	7
	Placements and other issues	9
	Reinvestment	11
	Employee Security Plan	12
	Purchase Plan	12
	Manager may issue Stapled Securities as Bid Consideration	12
	Application price of Stapled Securities issued as Bid Consideration	13
	Satisfaction of obligation to make payment or transfer property	13
5	Application procedure	13
	Application form	13
	Payment 13	
	Manager may reject	14
	Manager must reject	14
	Minimum amounts	14
	Issue date	14
	Uncleared funds	14
	Income entitlement of Units	14
6	No redemption of Units	15
	Restriction on issue and redemption of Units	15
7	Valuation of assets	15
	Periodic valuations	15
8	Income and distributions to Members	16
	Distributable income	16
	Distribution Amount	16
	Distribution Account	17
	Equalise Distributions	17
	Participation in Distribution of Income	17

	Deduction of Tax	18
	Distribution of Income	19
	Adjustments to Capital Reserve Accounts	19
	Capital Reserves and Bonus Issues	19
	Stapling 21	
	Member Reinvestment	21
	Restriction on reinvestment	22
	Notice of Reinvestment	22
	Monthly Distributions	23
	Two-Monthly Distributions	23
	Effect of Transfer or Transmission of Units	23
	Distribution on Termination	23
	Refund of Surplus Capital	23
	Stapled Security Reinvestment Plan	24
9	Payments	26
10	Powers of the Manager	26
	General powers	26
	Contracting powers	26
	Borrowing	26
	Investment powers	27
	Power of delegation	27
	Exercise of discretion	27
	Underwriting	27
	Principal investment policy	27
11	Retirement of Manager	28
	Voluntary retirement	28
	Compulsory retirement	28
	New responsible entity	28
	Release 28	
	Retirement benefit	28
12	Notices to Members	28
13	Notices to the Manager	29
14	Meetings of Members	29
	Corporations Act	29
	Manager may determine	29
	Quorum 30	
	No quorum	30
	Chairman	30
	Other attendees	30
	Adjournment	30
	Proxies and voting	30
	Resolutions binding	31
	Non-receipt	31
	Joint meetings	31
	Option Holders	31

15	Rights and liabilities of Manager	31
	Holding Units	31
	Other capacities	31
	Manager may rely	32
	Manager's duties in relation to Stapling	32
16	Limitation of liability and indemnity in favour of Manager	33
	Limitation on Manager's liability	33
	Indemnity in favour of Manager	33
17	Liability of Members	33
	Liability limited	33
	Recourse ³⁴	
	Restrictions on Members	34
18	Remuneration and expenses of Manager	34
	Application fee	34
	Management fee	34
	Waiver of fees	35
	Expenses	35
	GST 37	
19	Duration of the Trust	38
	Initial settlement	38
	Termination	38
20	Procedure on termination	38
	Realisation of Assets	38
	Audit of winding up	38
	Distribution following termination	39
21	Amendments to this constitution	39
	Manager may amend	39
	Statutory requirements	39
	Listing Rules	39
22	Procedure upon removal or suspension from official list of the ASX	40
	Manager's obligations upon delisting	40
	Voting procedure	40
23	Compliance committee	42
24	Complaints	42
25	Restricted Securities	43
26	Small holdings	43
27	Deleted	44
28	Deleted	44
29	Stapling	44

v		
	Paramourncy of Stapling provisions	44
	Consistency with constitution of Stapled Company	44
	Stapling - general intention	44
	Suspension of Stapling provisions	44
	Consequences of Stapling - forfeiture	44
	Manager's authority	45
	Effect of termination on stapling	45
30	Deed of Co-operation	45
	Implementation of Proposal	45
	Express powers of Manager	46
	Manager's limitation of liability	46
	Stapling Provisions	46
	Definitions	46
31	Interpretation	47
	Definitions	47
	Interpretation	54
	Other documents	54
	Constitution legally binding	54
	Governing law	55
	Severance	55
	Other obligations excluded	55
	Finding list	56

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

Operative provisions:

1 Name of Trust

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

2 Assets held on trust

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

3 Units and Options

Nature of Units

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

Options

- 3.4 Subject to the provisions of this constitution, the Manager may create and issue Options on such terms and conditions as the Manager determines.
- 3.5
 - (a) Subject to this constitution, the Corporations Act (and the conditions of any applicable Relief) and, if relevant, the

¹ See Corporations Regulation 5C.1.02

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

³ See section 601FC(1)(i)

Listing Rules, the Manager may determine that Options will be issued:

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

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

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

3.6

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

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

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

Rights attaching to Units and Options

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

holds an Option subject to this constitution and the terms and conditions of issue of the Option.

Fractions of Units

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

Consolidation and division of Units and Options

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

Transfer of Units and Options

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

⁴ Refer Listing Rules, Chapter 7 – reorganisations of capital

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

inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and

- (b) a reference in clauses 3.14 to 3.18 inclusive to a "Unit" will be deemed to be a reference to a Stapled Security.

Joint tenancy

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

Death, legal disability of Member

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

Number of Units and Options

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

Register

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

Stapling

- 3.26 While Stapling applies:
 - (a) the Manager may not issue Units unless the applicants for the Units are contemporaneously offered identical numbers of Stapled Shares which will be Stapled to the Units offered;
 - (b) the Manager may not issue Options unless Option Holders are contemporaneously offered options over identical

numbers of Stapled Shares which will be Stapled to the Units issued pursuant to the Options when they are exercised; and

- (c) any offer of Units or Options may only be accepted if the offeree accepts that offer of Units or Options, as well as the contemporaneous offer of Stapled Shares or options over Stapled Shares referred to in clause 3.26(a) and (b) as the case may be.

4 Application Price for Units⁶

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

- (a) subject to clauses 4.1 (b), (c), (d), (e), (f), ~~and (g) and (h)~~, while Units are Officially Quoted, equal to the weighted average Market Price of Units during the 5 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated;
- (b) subject to clauses 4.1 (c), (d), (e), (f), ~~and (g) and (h)~~, while Units are Officially Quoted as part of a Stapled Security, in accordance with clause 4.4;
- (c) in the case of a rights issue, in accordance with clause 4.5;
- (d) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.8;
- (e) in the case of reinvestment of income, in accordance with clauses 4.10 and 4.11;
- (f) in the case of a Unit issued upon the exercise of an Option, determined in accordance with clause 3.5(a) or clauses 4.1(a), (b) or (g);
- (g) in the case of a Unit issued pursuant to an Employee Security Plan, determined in accordance with clause 4.12 or 4.13; and
- (h) in the case of a Unit issued pursuant to a Purchase Plan, determined in accordance with clause 4.14; and
- (i) in all other cases, calculated as:

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

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

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

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

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

Determination of Application Price where Stapled Securities are issued

4.4

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

For these purposes, the percentage that the Application Price of a Unit bears to the application price of a Stapled Security must equal the percentage that the net tangible assets of the Trust bears to the net tangible assets of the Mirvac Group by reference to the last annual accounts of the Trust and the Mirvac Group respectively.

Rights issues

- 4.5 The Manager may at any time offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:
- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right or entitlement is renounceable);
- (b) where Units are Officially Quoted as part of a Stapled Security and it is proposed to issue Stapled Securities at an application price less than the weighted average Market Price of a Stapled Security during the five Business Days immediately prior to the date on which or as at which the application price is to be calculated, the aggregate of the relevant Application Price for the Unit and the application price of a Stapled Share is not less than 80% of the application price of the Stapled Security which would otherwise apply except in relation to the:
- (i) November 2008 Offer where:

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

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

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

Terms of pro rata issues

4.6

- (a) Any offer made under clause 4.5 must specify the period during which it may be accepted and must be made to

⁷ Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.5, provided that the Manager may adjust any entitlement to accord with the Listing Rules. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

- (b) Any Units (or Stapled Securities, in the case of clause 4.5(b)) offered for subscription under clause 4.5 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that:
 - (i) the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members; or
 - (ii) where Stapled Securities are Officially Quoted, the aggregate of the relevant Application Price for the Units and the application price for the Stapled Shares is not less than that at which the Stapled Securities were originally offered to the holders of Stapled Securities.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.5 (or Stapled Securities in the case of clause 4.5(b)), such underwriter may take up any Units (or Stapled Securities in the case of clause 4.5(b)) not subscribed for by Members (or holders of Stapled Securities in the case of clause 4.5(b)).
- (d) The Manager may structure the Entitlement Offer component of the November 2008 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.
- (e) The Manager may structure the June 2009 Entitlement Offer component of the June 2009 Offer in any manner consistent with the Corporations Act (as notionally modified by any applicable Relief), despite anything else in clause 4.5, clause 4.6 and clause 4.7.

4.7

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

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

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

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

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

Placements and other issues

4.8

- (a) While Units or Stapled Securities are Officially Quoted, the Manager may at any time issue Units or Stapled Securities to any person, whether by way of a placement or otherwise, at a price and on terms determined by it, provided that the Manager complies with the Listing Rules applicable to the issue and the terms of any applicable ASIC relief and provided that while Stapling applies, an offer of Units under this clause 4.8 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Stapled Shares as required to be made under clause 3.26.
- (ba) Without limiting clause 4.8(a), where:

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

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

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

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

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

- ~~(i) the Manager proposes an institutional placement of Stapled Securities as part of the April 2010 Offer; and~~
- ~~(ii) the application price of the Stapled Securities under the institutional placement will be \$1.40.~~

(b) Without limiting the operation of clause 4.5 or the generality of clause 4.8(a), the Manager may at any time issue Units or Stapled Securities to any person, whether by way of a placement or otherwise, at a price and on terms determined by it:

- (i) in accordance with any Relief; and
- (ii) where the issue, together with any Related Issue in the previous year does not, immediately before the issue, comprise more than 15% of all issued Units or Stapled Securities.

(c) In clause 4.8(b), **Related Issue** does not include an issue in accordance with clause 4 (other than this clause 4.8) or an issue approved or ratified by Members:

- (a) by a special resolution, where both of the following apply:
 - (i) votes are only cast in respect of Units or Stapled Securities (**Eligible Interests**)
 - (A) that are held by a Member who:

- (I) will not acquire any of the Units or Stapled Securities that are to be issued; or
- (II) did not acquire any of the units or Stapled Securities previously issued; or
- (B) that are held by a Member for the benefit of another person who:
 - (I) will not obtain beneficial ownership of any of the Units or Stapled Securities that are to be issued; or
 - (II) did not obtain beneficial ownership of any of the Units or Stapled Securities previously issued; and
- (ii) the value of the Eligible Interests held by Members who vote represents at least 25% of the total value of Eligible Interests;
- (b) unless the Manager reasonably considers that the issue will not adversely affect the interests of Members in another class (if any) – Members in that other class approve or ratify the issue by a resolution satisfying in respect of that other class, paragraph (a); and
- (c) any notice convening a meeting to vote on the issue contains particulars of the use to be made, or the use that has been made, of the money raised by the issue.

4.9 [Deleted]

Reinvestment

- 4.10 The Application Price payable for each Unit upon reinvestment of distributions is the Application Price as determined by the Manager, provided that:
- (a) while Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment of distributions (if any) is calculated in accordance with clause 4.1(i) ~~4.1(h)~~ as at the first Business Day after the end of the Distribution Period to which the distribution relates less such discount, if any, not exceeding 20% as the Manager may determine;
 - (b) while Units are Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is not less than 80% of the weighted average Market Price of Units for the 5 Business Days

following the end of the Distribution Period to which the distribution relates.

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

Employee Security Plan

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

Purchase Plan

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

4A Issue of Units as Bid Consideration

Manager may issue Stapled Securities as Bid Consideration

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

Application price of Stapled Securities issued as Bid Consideration

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

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

Satisfaction of obligation to make payment or transfer property

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

5 Application procedure

Application form

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

Payment

- 5.3 Without limiting clause 4A, payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application;

- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or
- (c) comprise a reinvestment of distribution in accordance with clause 8.22.

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

Manager may reject

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

Manager must reject

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

Minimum amounts

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

Issue date

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

Uncleared funds

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

Income entitlement of Units

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

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

6 No redemption of Units

6.1 The Manager is not obliged to redeem Units.

Restriction on issue and redemption of Units

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

7 Valuation of assets

Periodic valuations

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

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

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

8 Income and distributions to Members

Distributable income

8.1

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

8.2

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

Distribution Amount

8.3

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

8.4

- (a) The Manager shall keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income.
- (b) The Manager shall advise each Member of its share of Taxable Period Income and any tax credits attributable to each Member and such advice shall include reference to the categories or sources of that Taxable Period Income and the

share of those categories or sources to which each Member is entitled.

Distribution Account

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

Equalise Distributions

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

Participation in Distribution of Income

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

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

Where:

A = the amount standing to the credit of the Distribution Account;

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

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

Deduction of Tax

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

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

Distribution of Income

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

Adjustments to Capital Reserve Accounts

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

Capital Reserves and Bonus Issues

- 8.14 Any realised capital gains of the Trust must be separated from the other income of the Trust and credited to the Reserve Account.
- 8.15 The Manager may distribute to the Members from time to time by way of cash or other Assets of the Trust as at a date determined by the Manager an amount equal to so much of the net realised gains credited to the Reserve Account as determined by the Manager. The Manager must debit the Reserve Account with the amount so distributed. Where Assets of the Trust other than cash are distributed under this clause the identity of the recipients and the nature of the Assets of the Trust other than cash distributed shall be at the discretion of the Manager.
- 8.16 The distribution of cash or other Assets to each Member under clause 8.15 is to be calculated in accordance with the following formula:

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

where:

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

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

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

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

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

Where:

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

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

Where:

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

A = as defined above in this clause 8.18; and

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

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

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

number of Units in issue at the date of capitalisation. Following capitalisation:

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

Stapling

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

Member Reinvestment

- 8.20 A Member is entitled, if the right of reinvestment of income has been offered under a prospectus or by notice in writing to all Members or both, by giving notice in writing to the Manager (in the form determined by the Manager) to request that the Manager retain and reinvest in Units the money or part of the money the Member is entitled to receive under clause 8.8.
- 8.21 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period cancel any notice given under clause 8.20. The Member is entitled to give a further notice under clause 8.20 at any time in respect of any subsequent Distribution Period provided that the Manager has not previously cancelled the right of reinvestment of income. The Manager may by notice in writing to all Members, posted or otherwise sent on or before the last day of any relevant Distribution Period cancel any right of reinvestment of income. The Manager may at any time and from time to time re-offer the right of

reinvestment of income to all Members by notice in writing or prospectus or both.

- 8.22 In the event that a notice under clause 8.20 has been given to the Manager by a Member not later than the last day of the relevant Distribution Period and has not been cancelled by the Member under clause 8.21 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member in respect of the relevant Distribution Period to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in Units.
- 8.23 If the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member cancels the relevant notice under clause 8.21 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the Distribution Period current at the date of cancellation.
- 8.24 Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and when sufficient for the purpose the aggregated amount will be applied in the purchase of a new Unit for issue to the Member in accordance with the relevant provisions of this clause 8.

Restriction on reinvestment

- 8.25 While Stapling applies, no reinvestment under clause 8.20 may occur unless at the same time as Members are issued with additional Units, Members are issued with an identical number of Stapled Shares which are then stapled to the additional Units issued. The Manager may provide for and pay on behalf of Members all or part of the application money for such Stapled Shares out of the amount otherwise available for reinvestment.

Notice of Reinvestment

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

Monthly Distributions

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

Two-Monthly Distributions

- 8.30 The Manager, upon giving the Members in the Trust notice of its intention not less than 10 Business Days before the end of the month, may distribute to each Member every second month, the Member's entitlement to the net income of the Trust calculated on the last day of every second month and otherwise in accordance with clause 8. The Manager must distribute the Member's entitlement within 10 Business Days of the last day of every second month. If the Manager distributes each Member's entitlement under this clause 8.30 then subject to this clause 8.30, the provisions of clause 8 will apply except that , the word "Distribution Period" wherever appearing in this clause 8 shall mean a period of 2 months.

Effect of Transfer or Transmission of Units

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

Distribution on Termination

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

Refund of Surplus Capital

- 8.33 Subject to this constitution, the Manager may, at a time determined by the Manager, pay amounts representing part of the capital of the Trust to Members.

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

$$A \times \frac{B}{C}$$
 where:
 - A = the amount determined under clause 8.35(a);
 - B = the number of Units held by the Member at the close of business on the date determined under clause 8.33;
 - C = the total number of Units in issue at the close of business on the date determined under clause 8.33.
- 8.36 On the date determined under clause 8.33, the amount determined under clause 8.34 to be paid to Members is to be transferred to a special account designated a Surplus Capital Account. Any amount in the Surplus Capital Account does not form part of the Trust but must be held by the Manager on trust pending payment to the Members in accordance with clause 8.37. The Manager may invest any moneys standing to the credit of the Surplus Capital Account pending disbursement and any income therefrom will form part of the Trust.
- 8.37 The Manager must pay the amount calculated in accordance with clause 8.35(b) to each Member from the Surplus Capital Account. The payment must be sent on or before the date being 10 Business Days after the date determined under clause 8.33.

Stapled Security Reinvestment Plan

- 8.38 While Stapling applies, notwithstanding clauses 8.20 to 8.28, but subject to clause 4.11 and clause 29, if the Manager agrees with the Stapled Company to implement a reinvestment plan in relation to dividends and income in relation to Stapled Shares and the Units (a "Plan") a Member may apply to the Manager to have reinvested in Units the money or part of the money the Member is entitled to receive under clause 8.8 in accordance with the terms of the Plan subject to the following provisions:
- (a) the Manager may prescribe the application form for participation in the Plan;

- (b) the Plan must permit a Member to cancel the participation of the Member in the Plan and to vary the participation of the Member in the Plan on reasonable grounds;
- (c) the Manager may determine a Member's eligibility to participate in the Plan and may limit the number of a Member's Units that may participate in the Plan in accordance with the Listing Rules;
- (d) if the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction may either be held by the Manager without interest until the next distribution when it will be added to the amount of the distribution to that Member or paid to the Member without interest;
- (e) where income is reinvested pursuant to the Plan, the Manager will advise the Member at the time when each distribution is made of the number of Units issued to the Member, the amount of income applied to the purchase of such Units and the amount of income (if any) not so applied;
- (f) application for participation in the Plan will be automatically cancelled upon transfer of the Units to which an application relates and in such other circumstances reasonably determined by the Manager (where an application relates to a number of Units that is more than the number of units transferred, the Manager may determine whether the application has been cancelled in respect of any Units that remain held by the Member);
- (g) subject to the Corporations Act and the Listing Rules, the Manager shall not be obliged to issue a certificate for Units issued under the Plan;
- (h) for all purposes the net income to be distributed to a Member under this clause 8.38 is deemed to have been received by the member on a reinvestment of that income in Units under the Plan (and for the purposes of clause 5.3(c) comprises a reinvestment of a distribution in accordance with clause 8.22); and
- (i) the Manager may suspend the Plan's operation in respect of any distribution or cancel the Plan without prior notice at any time.

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

9 Payments

- 9.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 9.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 9.3 Where the Manager attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 9.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 9.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 9.6 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

10 Powers of the Manager

General powers

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

Contracting powers¹⁰

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

Borrowing

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

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

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

Investment powers

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

Power of delegation¹³

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

Exercise of discretion

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

Underwriting

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

Principal investment policy

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

¹² Subject to Section 601FC(4)

¹³ See also Section 601FB.

¹⁴ Subject to Part 5C.7

11 Retirement of Manager¹⁵

Voluntary retirement

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

Compulsory retirement

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

New responsible entity

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

Release

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

Retirement benefit

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

12 Notices to Members¹⁹

- 12.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member or Option Holder must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option Holder at the Member's or Option Holder's physical or electronic address last advised to the Manager for delivery of notices.
- 12.2 A cheque payable to a Member or Option Holder may be posted to the Member's or Option Holder's physical address or handed to the Member or Option Holder or a person authorised in writing by the Member or Option Holder²⁰.

¹⁵ Refer to Listing rule 3.16.2(a)

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

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

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

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

²⁰ See Clause 15.3(c)

- 12.3 In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option Holder first named in the Register.
- 12.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law²¹, the Manager may determine²² the time at which other forms of communication will be taken to be received.
- 12.5 While Stapling applies, the Register will comprise a single register which records details of the Members of the Trust and members of the Stapled Company.

13 Notices to the Manager

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

14 Meetings of Members

Corporations Act

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

Manager may determine

- 14.2 Subject to this clause 14, the Corporations Act²⁵ and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted²⁶.

²¹ See Section 601FC(1)(d)

²² See Section 252G(4)

²³ See Clause 15.3(c)

²⁴ Refer Part 2G.4

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

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

Quorum

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

No quorum

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

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

Chairman

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

Other attendees

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

Adjournment

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

Proxies and voting

- 14.9 Subject to clause 14.11, the provisions of the Corporations Act governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust²⁸.
- 14.10 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act²⁹.

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

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

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

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

Resolutions binding

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

Non-receipt

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

Joint meetings

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

Option Holders

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

15 Rights and liabilities of Manager

Holding Units

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

Other capacities

- 15.2 Subject to the Corporations Act³¹, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member;

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

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

- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company or its directors or members or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
- (d) lending money to or borrowing money from or providing or receiving guarantees or security from the Stapled Company or any of their associates.

Manager may rely

15.3 The Manager may take and may act upon:

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

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

Manager's duties in relation to Stapling

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

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

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

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

16 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

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

Indemnity in favour of Manager

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

17 Liability of Members

Liability limited

- 17.1 Subject to clauses 17.3 and 17.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 17.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

³² See Section 601GA(2)

³³ See Sections 601FB(2) and 601GA(2)

- 17.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or omission, or as a result of an act or omission requested by the Member or former Member.
- 17.4 Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 17.3 applies.

Recourse

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

Restrictions on Members

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

18 Remuneration and expenses of Manager

Application fee

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

Management fee

- 18.3 The Manager is entitled to a management fee of the lesser of:
- (a) 0.75% per annum of the value of the Assets calculated in accordance with clause 7; and

(b) 1.0% per annum of the Net Asset Value,

calculated on the last Business Day of each Quarter and payable in arrears on the last Business Day of each Quarter or at such other times as the Manager determines, from the date the Trust commences to the date of final distribution in accordance with clause 20.3.

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

Waiver of fees

18.5 The Manager may:

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

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

Expenses

18.6 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust³⁴ are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes the following and expenses connected with the following:

- (a) this constitution and the formation of the Trust;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or Stapled Shares;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
- (f) the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
- (g) underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and

³⁴ Refer Section 601GA(2)(b)

expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;

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

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

³⁵ See Section 601JG

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

GST

- 18.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this agreement (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 18.8 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including, without limitation, any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
 - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with the proper performance of the Manager's duties under this constitution (including, without limitation, the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);
- and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.
- 18.9 An amount may only be paid or reimbursed out of the Assets under clauses 18.6 and 18.7 if it relates to the proper performance of the Manager's duties.

19 Duration of the Trust

Initial settlement

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

Termination

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

20 Procedure on termination

Realisation of Assets

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

Audit of winding up

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

³⁶ See Part 5C.9 on winding up

Distribution following termination

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

21 Amendments to this constitution

Manager may amend

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

Statutory requirements

- 21.2 If the Corporations Act or a condition of any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 21.1 does not apply to provisions deemed by this clause 21.2 to be incorporated in the constitution.
- 21.3 If the Manager is of the opinion that as a result of clause 21.2 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

Listing Rules

- 21.4 While Units are Officially Quoted:
- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;

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

- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

21.5 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 21.4 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

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

Manager's obligations upon delisting

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

Voting procedure

- 22.2 Notwithstanding anything contained in clause 14, where a meeting is convened by the Manager under clause 22.1:

- (a) any proposal considered by the meeting of Members will only be accepted if agreed to by 75% (by value) of the Members voting (in person or by proxy) at the meeting;
- (b) a quorum for the meeting shall be 25% (by value) of the Members eligible to vote (in person or by proxy) at the meeting;
- (c) if it is determined by the Manager to use such a system, where a vote is taken in relation to any proposal before the meeting a preferential voting system may be employed whereby Members will be required to rank the alternatives available in relation to a proposal before the meeting in order of preference and votes will be redistributed on a preferential basis provided that:
 - (i) the preferential voting system is fully explained in the notice convening the meeting;
 - (ii) the Manager confirms that in the given circumstances such a voting system is in its opinion in the interests of the Members;
 - (iii) the Auditor acts as independent scrutineer at the meeting;
 - (iv) the Register is up to date at the time of the vote in order to assist in the counting of votes and the allocation of the preferences; and
- (d) any notice of meeting sent to Members shall contain a provision urging Members to attend and vote at the meeting and must contain adequate notice of:
 - (i) any matters to be considered at the meeting;
 - (ii) any resolutions to be put at the meeting; and
 - (iii) a summary of information relating to those matters and resolutions that is determined by the Manager to be relevant to the decision of a Member on how to vote at the meeting; and
- (e) 25% (by value) of Members eligible to vote at the meeting must do so, in person or by proxy.

22.3 Neither the Manager nor its associates will exercise any power to vote attached to a Unit held by or on behalf of the Manager or its associates at a meeting convened under clause 22.1.

22.4 Subject to the other provisions of this clause 22, meetings convened pursuant to this clause shall be convened and conducted in accordance with the terms of clause 14 and the Corporations Act.

22.5 If before a meeting convened under clause 22.1 is held an alternative manager asks the Manager for information that will assist the alternative manager to make an informed decision whether to offer to manage the Trust in place of the Manager, the Manager will as

soon as practicable, and not later than 14 days prior to the meeting (or if the request is made less than 14 days prior to the meeting, as soon as practicable) give the information to the alternative manager:

- (a) if in the reasonable opinion of the Manager the alternative manager is a suitable replacement for the Manager and has made the request in good faith; and
- (b) if the alternative manager agrees in writing to use the information solely for the purpose of making an informed decision whether to offer to manage the Trust.

23 Compliance committee

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

24 Complaints

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

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

³⁸ See section 601JF

- (ii) the remedies (if any) available to the Member; and
- (iii) information regarding any further avenue for complaint.

25 Restricted Securities

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

26 Small holdings

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

- 26.9 While Stapling applies, no redemption or sale under this clause 26 may occur unless, at the same time as Units are redeemed or sold, an identical number of Stapled Shares are also redeemed or sold (as the case may be).

27 Deleted

28 Deleted

29 Stapling

Paramouncy of Stapling provisions

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

Consistency with constitution of Stapled Company

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

Stapling - general intention

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

Suspension of Stapling provisions

- 29.4 Subject to the Corporations Act, the Listing Rules and approval by special resolution of the Members and the members of the Stapled Company respectively, the Manager may determine that the Stapling provisions will cease to apply. If it does so, it may at a later time give notice that the application of the provisions is to recommence.

Consequences of Stapling - forfeiture

- 29.5 Each Member acknowledges that they will have no voting rights and no entitlement to a distribution declared but not paid where a Unit is forfeited under Article 7 of the constitution of the Stapled Company.

- 29.6 Each Member acknowledges that it will cease to be a Member in the Trust in respect of a Unit where that Unit is forfeited under Article 7 of the constitution of the Stapled Company.
- 29.7 Each Member acknowledges the terms of Articles 3 and 7 of the constitution of the Stapled Company and agrees to be bound by those articles. The terms of those articles reflect the intention that a Unit should remain Stapled to a Stapled Share. In particular, each Member acknowledges that:
- (a) Article 3 imposes a lien on a Unit in the circumstances described in that article and that under that article the Stapled Company in certain circumstances will have the right to sell or otherwise dispose of a Unit; and
 - (b) under Article 7 a Unit, in the circumstances described in that article, may be forfeited and sold or otherwise disposed of by the Company.

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

Manager's authority

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

Effect of termination on stapling

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

30 Deed of Co-operation

- 30.1 To the maximum extent that the Corporations Act (as modified by any exemption or declaration issued by the Commission) permits and notwithstanding any other provisions of this constitution except clauses 21.2 and 21.4, the Manager may do everything necessary or convenient to give effect to the terms of the Deed of Co-operation and any transactions pursuant to the Deed of Co-operation.

30A Restructure

Implementation of Proposal

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

Express powers of Manager

- 30A.2 Without limiting clause 30A.1 and despite any other provision of this constitution, the Manager has power to:
- (a) issue Units to MCT Unit Holders in accordance with the Simplification Implementation Deed with the Application Price for the issue of each Unit being one MCT Unit to be satisfied by the transfer by the relevant MCT Unit Holder of one MCT Unit to the Manager in accordance with the Simplification Implementation Deed;
 - (b) after the issue of Units under clause 30A.2(a), consolidate every two Units held by a Unit Holder into one Unit and Staple each Unit to a Stapled Share in the ratio of one Unit to one Stapled Share; and
 - (c) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

Manager's limitation of liability

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

Stapling Provisions

- 30A.4 Except as provided for in Clause 30A.5, the Stapling Provisions do not apply to the transactions contemplated by the Simplification Implementation Deed and the transactions provided for in clause 30A.
- 30A.5 Immediately after the issue of Units to MCT Unit Holders provided for under clause 30A.2(a) and the consolidation of Units provided for under clause 30A.2(b) the Units are to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share and the Stapling Provisions will apply to the Stapled Security.

Definitions

- 30A.6 In this clause 30A the following words have these meanings unless the contrary intention appears:
- MCT** means the Mirvac Commercial Trust ARSN 086 763 760 constituted under the MCT Constitution.
- MCT Unit** means a unit in MCT.
- MCT Unit Holder** means the holder of a MCT Unit on the Record Date and includes joint holders.

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

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

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

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

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

31 Interpretation

Definitions

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

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

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

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

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

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

ASX: Australian Stock Exchange Limited.

Auditor: the auditor of the Trust.

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

Business Day:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; or

- (b) for the purposes of clause 4, a day on which the ASX is open for trading.

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

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

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

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

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

Distribution Account: The account established under clause 8.5.

Distribution Amount: the amount, if any, determined by the Manager in accordance with clause 8.2(c) and (d).

Distribution Calculation Date: the last day of each Quarter and such other days as the Manager designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Employee:

- (a) a "Permanent Employee" as defined in Division 13A of the *Income Tax Assessment Act 1936* (Cth); or
- (b) such other permanent or full-time or part-time employee of the Mirvac Group or a person entitled to participate in accordance with the rules of any relevant Employee Security Plan (including a director of the Mirvac Group) as the Manager may from time to time determine.

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

Financial Year:

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

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

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

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

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

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

Liabilities: all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any amount representing Members' capital, undistributed profits, interest

attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Listing Rules: the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

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

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

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

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

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

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

Mirvac Group: the Trust and the Stapled Company.

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

Net Capital Gain: has the meaning contained in Part III A of the Income Tax Assessment Act, 1936 and Part 3-1 of the Income Tax Assessment Act 1997 and in respect of a Distribution Period is to be calculated as if the Distribution Period is a year of income for the purposes of that Act.

Net Operating Income: net operating income of the trust calculated in accordance with clause 8.2(a).

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

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

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

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

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

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

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

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

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

Registered: recorded in the Register.

Registration: recording in the Register.

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

Reserve Account: the account established under clause 8.14 which has the following items credited to it:

- (a) upon valuation of an Asset, any increase in the value of the Asset since its previous valuation (on the assumption that previous changes of value have been recorded in the Reserve Account); and
- (b) any realised capital gains (to the extent that adjustments under paragraph (a) have not already recorded such gain);

and which has the following amounts debited to it:

- (c) upon valuation of an Asset, the amount of any decrease in the value of the Asset since its previous valuation (on the assumption that previous changes of value have been recorded in the Reserve Account);
- (d) any realised capital losses (to the extent that adjustments under paragraph (c) have not already recorded such losses); and
- (e) amounts transferred to the Distribution Account for distribution to Members or capitalised for distribution as bonus Units.

Resolution:

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

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

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

³⁹ Circumstances where an extraordinary resolution is required include a vote on amendments to this constitution if necessary (see section 601GA(1)(a)), winding up by Members, and choosing a new responsible entity.

Stapled: the state that results from Stapling.

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

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

Stapled Share: a share in the Stapled Company.

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

Surplus Capital Account: the account established under clause 8.36.

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

Tax Act: the Income Tax Assessment Act 1936 ("1936 Act"), the Income Tax Assessment Act 1997 ("1997 Act") or both the 1936 Act and the 1997 Act, as appropriate.

Taxable Annual Income: means the net income in relation to the Trust calculated under the provisions of the Tax Act for a year of income.

Taxable Period Income: means the net income in relation to the Trust calculated under the provisions of the Tax Act but on the assumption that a Distribution Period is a year of income for the purposes of that Act.

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

Transaction Costs:

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

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

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

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

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

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

⁴⁰ See section 601FC(1)(d)

Unit Holder: has the same meaning as Member.

User Pays Fees: any cost incurred in relation to:

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

which the Manager considers should be borne by that Member.

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

Interpretation

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

Other documents

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

Constitution legally binding⁴¹

- 31.4 This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance

⁴¹ Refer Section 601GB

with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Governing law

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

Severance

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

Other obligations excluded

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

Finding list

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

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

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

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