



19 September 2014

**MIRVAC INDUSTRIAL TRUST
EXECUTES A SCHEME IMPLEMENTATION AGREEMENT
WITH A MEMBER OF THE GOLDMAN SACHS GROUP**

Mirvac Funds Management Limited ("MFML"), the responsible entity of Mirvac Industrial Trust [ASX: MIX] ("MIX" or the "Trust"), today announced that it has entered into a Scheme Implementation Agreement ("SIA") with AustFunding Pty Ltd (the "Acquirer"), a wholly owned subsidiary of The Goldman Sachs Group, Inc., in relation to a trust scheme under which the Acquirer will acquire all of the Units in MIX (the "Proposal"), subject to MIX Unitholder approval and other conditions being satisfied or waived (as applicable).

On the implementation of the Proposal, MIX Unitholders will receive a payment estimated to be A\$0.214 per MIX Unit ("Scheme Consideration"), based on:

- > an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014; and
- > the assumed transaction costs that will be incurred.

The Acquirer's offer¹ represents a portfolio valuation of US\$170.0 million, which is a premium of 3.7 per cent above the portfolio's book value of US\$164.0 million² and implies a capitalisation rate of 7.7 per cent for the portfolio. Under the proposal the Acquirer will also pay full consideration for the Trust's net other assets which totalled US\$6.7 million as at 18 September 2014.

A reconciliation of the Scheme Consideration is included at Appendix A. The Scheme Consideration is expected to be paid on or around 8 December 2014.

The premiums of the estimated Scheme Consideration of A\$0.214 per MIX Unit to the closing price of MIX on the day prior to the announcement of the Expressions of Interest ("EOI")³ campaign and on the day prior to the execution of the SIA⁴ are as follows:

	Day prior to the announcement of the EOI campaign being 27 May 2014	Day prior to the execution of the SIA being 18 September 2014
Premium to last closing price	33.5%	22.0%
Premium to one month VWAP	32.3%	22.8%
Premium to three month VWAP	30.7%	25.8%

¹ The Acquirer's offer is not conditional on any further due diligence.

² As at 30 June 2014 including the Touhy asset.

³ The last trading day before the announcement of the EOI campaign which was announced on 28 May 2014.

⁴ The last trading day before the execution of the SIA on 19 September 2014.

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The premiums of the estimated Scheme Consideration of A\$0.214 per MIX Unit to the stated NTA⁵ and proforma NTA⁶ are as follows:

Premium to stated NTA as at 30 June 2014 ⁵	8.8%
Premium to proforma NTA as at 18 September 2014 ⁶	3.5%

The amount ultimately received by MIX Unitholders will depend on the confirmation of the final amount of transaction costs that will be incurred and the A\$/US\$ exchange rate to be applied to the US dollar proceeds received from the Acquirer. Full details of the Scheme Consideration will be set out in the Explanatory Memorandum.

A sensitivity table highlighting the impact of movements in the A\$/US\$ exchange rate on the Scheme Consideration and the proforma NTA is included at Appendix B.

Directors' recommendation

The Directors' of MFML believe the Proposal is in the best interests of MIX Unitholders and unanimously recommend that MIX Unitholders vote in favour of the Proposal, subject to the Independent Expert concluding that the Proposal is fair and reasonable and in the best interests of MIX Unitholders, and in the absence of a superior proposal.

MFML Chairman, Paul Barker said today, "The Proposal represents the culmination of the strategy announced in February 2013 to sell non-core assets and realign the portfolio to position it for a potential future sale and deliver value for the benefit of MIX Unitholders."

"The EOI campaign which we embarked on in late May 2014 has comprehensively tested the market's interest in MIX and its underlying real estate portfolio. We are very pleased with the level of interest received from this process."

"After careful consideration of all proposals received during the EOI campaign and also assessing a number of strategic alternatives for the Trust, we believe the Acquirer's offer represents the most compelling and certain value proposition available for MIX Unitholders, in the absence of a superior proposal."

Mirvac Group [ASX:MGR] as MIX's largest Unitholder and owner of MFML, has indicated that it supports the transaction, and that its current intention is to vote in favour of the transaction, in the absence of a superior proposal, to the extent that it is permitted to vote⁷. The transaction reflects Mirvac Group's intention to support the best commercial outcome for all MIX Unitholders, and in the context of the current

⁵ The stated NTA as at 30 June 2014 is \$0.196 per MIX Unit which was rounded to \$0.20 per MIX Unit.

⁶ Based on NTA as at 30 June 2014 converted at an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014. The proforma NTA includes the Touhy asset. The sale of Touhy asset announced on 3 September 2014 has no material impact to either the stated or the proforma NTA.

⁷ Mirvac Group is an associate of MFML and, as such, may be restricted under section 253E of the Corporations Act from voting on the resolutions to approve the transaction to the extent that it has an interest in the resolutions other than as a member. Whether or not Mirvac is permitted to vote will be determined by MFML.

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transaction, Mirvac Group confirms it intends to sell its units in MIX only into a MFML Board recommended proposal that is in the best interest of MIX Unitholders.

Independent Expert

The Directors appointed Deloitte Corporate Finance Pty Limited as Independent Expert to advise whether, in its opinion, the offer is fair and reasonable and in the best interests of MIX Unitholders.

The full Independent Expert's opinion and report will be contained in the Explanatory Memorandum.

Explanatory Memorandum and Unitholders' meeting

The Proposal is subject to approval at a meeting of MIX Unitholders. It is expected that the Notice of Meeting and the accompanying Explanatory Memorandum including the Independent Expert's Report will be sent to MIX Unitholders no later than 27 October 2014, and that the MIX Unitholders' meeting is expected to be held on 19 November 2014. If the Proposal is approved and other conditions are satisfied or waived (as applicable), it is expected that it will be implemented on 3 December 2014.

A copy of the SIA is included in Appendix C. A full summary of the SIA will be included in the Explanatory Memorandum. Implementation of the Proposal is conditional on the satisfaction or waiver of certain conditions, including:

- > receipt of all relevant regulatory approvals;
- > the requisite MIX Unitholder approvals;
- > judicial advice being obtained;
- > the Independent Expert concluding that the Proposal is fair and reasonable and in the best interests of MIX Unitholders; and
- > the Directors continuing to recommend unanimously that MIX Unitholders vote in favour of the resolutions.

The SIA also includes provisions customary for a transaction of this nature, including exclusivity arrangements and provisions for the payment of a break fee to the Acquirer in certain circumstances.

Indicative timetable⁸

Event	Date
First court hearing	Week commencing 13 October 2014
Explanatory Memorandum dispatched to MIX Unitholders	No later than 27 October 2014
MIX Unitholders scheme meeting	19 November 2014
Second court hearing	21 November 2014
Effective date	21 November 2014
Record date for determining entitlements to Scheme Consideration	28 November 2014
Implementation date	3 December 2014
Payment of Scheme Consideration to MIX Unitholders	8 December 2014

⁸ All dates are indicative and subject to change.



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**About AustFunding Pty Ltd,
a wholly owned subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”):**

The Goldman Sachs Group, Inc. is a leading global financial services firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in all major financial centers around the world.

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APPENDIX A

RECONCILIATION OF ESTIMATED SCHEME CONSIDERATION

MIX portfolio (US\$m)	170.0
Net other assets (US\$m) ⁹	6.7
ING debt pools (US\$m)	(103.4)
Estimated transaction costs (US\$m) ¹⁰	(3.9)
Equity value (US\$m)	69.5
AUD / USD ¹¹	0.8973
Equity value (A\$m)	77.4
Equity value (A\$ cpu)	21.4

APPENDIX B

SENSITIVITY OF IMPACT FROM MOVEMENT IN A\$/US\$ EXCHANGE RATE IN RELATION TO THE SCHEME CONSIDERATION AND PROFORMA NTA

A\$/US\$ exchange rate	0.88	0.89	0.8973	0.90	0.91	0.92
Scheme Consideration (\$A cpu)	21.8	21.5	21.4	21.3	21.1	20.8
Proforma NTA (A\$ cpu)	21.0	20.8	20.6	20.6	20.3	20.1

⁹ Under the proposal the Acquirer will also pay full consideration for the Trust's net other assets which totalled US\$6.7 million as at 18 September 2014.

¹⁰ Estimated transaction costs may be subject to adjustment for final transaction costs.

¹¹ Based on an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014.

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APPENDIX C
SCHEME IMPLEMENTATION AGREEMENT

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AustFunding Pty Ltd

Mirvac Funds Management Limited as responsible entity for the Mirvac Industrial Trust

Scheme Implementation Agreement

EXECUTION VERSION

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Contents

1	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	10
1.3	Best and reasonable endeavours	11
1.4	Consents and approvals	12
1.5	Breach of Conditions Precedent	12
2	Agreement to Proceed with Scheme	12
2.1	MIX RE to propose Scheme	12
2.2	Acquirer to assist	12
3	Conditions Precedent and Pre-Implementation Steps	12
3.1	Conditions Precedent	12
3.2	Benefit and waiver of Conditions Precedent	13
3.3	Best endeavours and co-operation	14
3.4	Notifications	15
3.5	Failure of Conditions Precedent	15
3.6	Conditions of Regulatory Approvals	16
3.7	Fulfilment of Conditions Precedent	16
4	Scheme	16
4.1	Outline of Scheme	16
4.2	Scheme Consideration	16
5	Steps for Implementation	17
5.1	MIX RE's obligations in respect of the Scheme	17
5.2	Appeal process	18
5.3	The Acquirer's obligations in respect of the Scheme	19
5.4	Preparation of Explanatory Memorandum	20
5.5	Dealings in MIX Units	21
5.6	MIX Register	22
5.7	Deed of Retirement and Appointment	22
6	Conduct of Business and Requests for Access	22
6.1	Conduct of business	22
6.2	Access to information and co-operation	23
6.3	No Regulated Events	24
7	MIX RE Board Recommendations and Intentions	24
7.1	MIX RE Board recommendation	24
7.2	MIX RE Board intentions	24
8	Public Announcements, Communications and Confidentiality	25
8.1	Required announcements	25
8.2	Agreement on other Communications	25
8.3	Confidentiality Deed	26
9	Representations and Warranties	26
9.1	Acquirer representations and warranties	26
9.2	MIX representations and warranties	27
9.3	Reliance by parties	30
9.4	Notifications	30
9.5	Status of representations and warranties	30

10	Indemnities	31
10.1	Indemnities by the MIX RE	31
10.2	Indemnities by the Acquirer	31
10.3	Survival of indemnities	31
10.4	Enforcement of indemnities	31
11	Exclusivity	31
11.1	Termination of existing discussions	31
11.2	No shop restriction	32
11.3	No talk restriction	32
11.4	No due diligence	32
11.5	Exception	32
11.6	Notification by the MIX RE and matching rights	32
11.7	Normal provision of information	34
11.8	Acknowledgement	34
12	Break Fee	34
12.1	Payment of costs	34
12.2	Break Fee	35
12.3	Compliance with law	36
12.4	Time for payment	36
13	Termination	36
13.1	Termination by either party	36
13.2	Termination by the Acquirer	36
13.3	Termination by MIX RE	37
13.4	Effect of termination	37
14	GST	37
14.1	Recovery of GST	37
14.2	Liability net of GST	37
14.3	Adjustment events	37
14.4	Cost exclusive of GST	38
14.5	Survival	38
14.6	Definitions	38
15	MIX RE Limitation of Liability	38
16	Miscellaneous	39
16.1	Notices	39
16.2	No waiver	39
16.3	Remedies cumulative	40
16.4	Entire agreement	40
16.5	Amendment	40
16.6	Assignment	40
16.7	No merger	40
16.8	Further assurances	40
16.9	Costs and duty	40
16.10	Severability of provisions	40
16.11	Governing law and jurisdiction	41
16.12	Counterparts	41
Schedule 1		42
	Regulatory Approvals	42

Scheme Implementation Agreement

Schedule 2	43
Timetable	43
Schedule 3	44
Supplemental Deed Poll	44
Schedule 4	45
Deed Poll	45
Schedule 5	46
Agreed Public Announcement	46
Schedule 6	47
Deed of Retirement and Appointment	47

This Agreement is made on **19 September 2014**

Parties

- 1 **AustFunding Pty Ltd** (ACN 601 686 999) of Level 17, 101 Collins Street, Melbourne, Victoria, 3000 (the **Acquirer**).
- 2 **Mirvac Funds Management Limited** (ABN 78 067 417 663, AFSL 220718) in its capacity as responsible entity of **Mirvac Industrial Trust** (ARSN 113 489 624) (ASX: MIX) of Level 26, 60 Margaret Street, Sydney NSW 2000 (the **MIX RE**).

Recitals

- A The Acquirer proposes to acquire all of the MIX Units pursuant to the Scheme, subject to the approval of the MIX Scheme Unitholders and the granting of Judicial Advice.
- B MIX RE has agreed to propose the Scheme to MIX Unitholders and to issue the Explanatory Memorandum to MIX Unitholders, and the Acquirer and the MIX RE have agreed to implement the Scheme, upon and subject to the terms and conditions of this Agreement.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

Acquirer Board means the board of directors of the Acquirer.

Acquirer Group means the Acquirer and its Related Bodies Corporate.

Acquirer Group Member means a member of the Acquirer Group.

Acquirer Indemnified Parties means each Acquirer Group Member.

Acquirer Information means all information provided by the Acquirer to the MIX RE for inclusion in the Explanatory Memorandum regarding the Acquirer as is required by the Corporations Act (and its regulations), ASIC Regulatory Guides 60 and 74 and the Takeovers Panel's Guidance Note 15, as applicable. For the avoidance of doubt, Acquirer Information does not include the MIX Information, the Independent Expert's Report, any third party tax advice or any other information about MIX (except to the extent it relates to any statement of intention relating to MIX following the Effective Date).

Adviser means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that entity.

Agreed Public Announcement means the public announcement to be made jointly by the Acquirer and the MIX RE in the form of Schedule 5.

Announcement Date means:

- (a) the date on which this Agreement is executed; or
- (b) if this Agreement is executed on a day that is not a Trading Day, the first Trading Day immediately following the day of execution.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 10 to 17 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

ASX Listing Rules means the official listing rules of ASX.

ATO means the Australian Taxation Office.

Break Fee means an amount equal to 1% of the Scheme Payment (exclusive of any GST).

Business Day means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, New South Wales.

Cash Balance Adjustment means the amount of any unrepresented cheques in respect of MIX Group bank accounts as at midnight (U.S. time) on 18 September 2014 (excluding any such cheques of an amount less than US\$10,000), such amount being the amount agreed to by the Acquirer, acting reasonably, but prepared by the MIX RE and presented to the Acquirer as soon as reasonably practicable and in any event no later than 3 Business Days prior to the Second Court Date.

CHES means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited, a wholly-owned subsidiary of the Australian Securities Exchange Ltd.

Communications means all forms of communications, whether written, oral, in electronic format or otherwise, and whether direct or indirect via agents or Representatives.

Competing Proposal means any bona fide expression of interest, proposal, offer, transaction or arrangement (other than the Scheme or any other transaction in favour of the Acquirer that may be made and implemented in accordance with this Agreement) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a Third Party will (directly or indirectly):
 - (i) acquire an interest in, or a Relevant Interest in, or become the holder of, 20% or more of the MIX Units;
 - (ii) acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of the MIX Group;
 - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of MIX; or
 - (iv) otherwise directly or indirectly acquire, merge or amalgamate with MIX or in all or a substantial part of the assets or business of MIX, whether by way of takeover offer, scheme of arrangement, trust scheme, member approved acquisition, capital reduction, buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation or other synthetic merger or any other transaction or arrangement; or
- (b) the MIX RE would be required to abandon or otherwise fail to proceed with the Scheme or the Transactions, by whatever means.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Deed means the deed of that name between MIX RE and the Goldman Sachs Investments Holdings (Asia) Limited dated 12 June 2014.

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

Controlled Entities means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

Constitution means the trust deed that established MIX dated 21 March 2005 (as amended).

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

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction as the Acquirer and the MIX RE may agree in writing.

Deed of Retirement and Appointment means the deed substantially in the form of Schedule 6.

Deed Poll means a deed poll to be executed by the Acquirer in favour of the MIX Scheme Unitholders substantially in the form of Schedule 4 (or in such other form as the Acquirer and the MIX RE may agree in writing).

Effective means, in relation to the Scheme, the Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 31 March 2015, or such later date as the Acquirer and the MIX RE may agree in writing.

Entity includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

Estimated Transaction Costs Amount means US\$3,878,234.

Exclusivity Period means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) the termination of this Agreement in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

Explanatory Memorandum means the explanatory memorandum to be prepared in respect of the Scheme in accordance with the terms of this Agreement and to be despatched to MIX Unitholders, including the Independent Expert's Report, the Supplemental Deed, the Deed Poll and the Notice of Meeting.

Final Transaction Costs Amount has the meaning given in clause 5.1(o).

First Court Date means the first day of hearing for the First Judicial Advice, or if the hearing of that application is adjourned for any reason, means the first day of the adjourned meeting.

First Judicial Advice means conformation from the Court under section 63 of the *Trustee Act 1925* (NSW) that the:

- (a) MIX RE would be justified in convening the Scheme Meeting for the purposes of considering the Scheme Resolutions; and
- (b) subject to MIX Unitholders passing the Scheme Resolutions, the MIX RE would be justified in proceeding on the basis that amending the Constitution as set out in the Supplemental Deed Poll would be within the powers of alteration conferred by the Constitution and section 601GC of the Corporations Act.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister

(including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the ACCC, the ATO, ASX and any regulatory organisation established under statute or any stock exchange.

Guidance Note 15 means *Guidance Note 15: Listed Trusts and Managed Investment Scheme Mergers* issued by the Takeovers Panel of Australia.

Holding Company has the meaning given in the Corporations Act, but as if references to:

- (a) "body corporate" were to "Entity"; and
- (b) "subsidiaries" include Subsidiaries as defined in this Agreement.

Implementation Date means 3 Business Days following the Record Date, or such other date as the MIX RE and the Acquirer may agree in writing or as may be required by ASX.

Independent Expert means an independent expert commissioned by the MIX RE to express an opinion on whether the Scheme is fair and reasonable and in the best interests of MIX Unitholders.

Independent Expert's Report means the report from the Independent Expert commissioned by the MIX RE for inclusion in the Explanatory Memorandum, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

Insolvent or **insolvency** means, in relation to an entity:

- (a) a receiver, receiver and adviser, administrator, trustee or similar official, is appointed over any of the assets or undertakings of the entity;
- (b) the entity suspends payment of its debts generally;
- (c) the entity is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act;
- (d) the entity enters into or resolves to enter into any arrangement, competition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (that is not frivolous or vexatious) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator, to the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction that has the prior consent of the other party;
- (f) an administrator is appointed under the Corporations Act; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with that entity under the law of any jurisdiction.

Judicial Advice means the First Judicial Advice and the Second Judicial Advice.

MIX means the Mirvac Industrial Trust (ARSN 113 489 624).

MIX Disclosed Information means all information (in whatever form) disclosed to ASX by the MIX RE prior to the date of this Agreement or provided by the MIX RE and its Representatives to the Acquirer and its Representatives prior to entry into this Agreement, through the online data room accessed at <https://dataroom.ansarada.com/cutler%7C11359/483611/DataRoom.asp> and hosted by ansarada.

MIX Group means MIX and its Controlled Entities.

MIX Group Member means a member of the MIX Group.

MIX Indemnified Parties means the MIX RE, its Representatives (other than any Adviser) and its Related Bodies Corporate, and the Representatives (other than any Adviser) of its Related Bodies Corporate.

MIX Material Adverse Change means any event, occurrence, condition or matter that, individually or when aggregated with all such events, occurrences, conditions or matters which diminishes, or is reasonably likely to diminish, (whether now or in the future) the value of the net assets of MIX by at least US\$3,500,000 from the value shown in the consolidated statement of financial position as at 30 June 2014, but does not include:

- (a) any market movements in value due to changes in foreign exchange rates;
- (b) any matter apparent or reasonably ascertainable by the Acquirer or its Representatives from the MIX Disclosed Information;
- (c) any event, occurrence or matter that was known to the Acquirer prior to the date of this Agreement (which does not include knowledge of the risk of an event, occurrence or matter happening);
- (d) any changes in taxation, interest rates or foreign exchange rates which impact on MIX and the Acquirer in a similar manner;
- (e) any change in accounting policy required by law or applicable accounting standard; or
- (f) anything required to be undertaken or procured by the MIX Group pursuant to the Transaction Documents.

MIX Provided Information means all information included in the Explanatory Memorandum, and any updates to that information prepared by or on behalf of MIX other than:

- (a) the Acquirer Information and any information solely derived from, or prepared solely in reliance on, the Acquirer Information;
- (b) the Independent Expert's Report; and
- (c) the tax letter.

MIX RE Board means those members of the board of directors of the MIX RE who are non-executive directors as at the date of the Explanatory Memorandum.

MIX Register means the register of members of MIX maintained by or on behalf of MIX in accordance with section 168(1) of the Corporations Act.

MIX Prescribed Occurrences means the occurrence of any of the following events:

- (a) **(conversion)** MIX (acting through the MIX RE) or any member of the MIX Group converts all or any of its securities into a larger or smaller number of securities;
- (b) **(reduction of capital)** MIX (acting through the MIX RE) or any member of the MIX Group reduces or resolves to reduce its capital in any way;
- (c) **(redemption)** MIX (acting through MIX RE) redeems any MIX Units or resolves to redeem any MIX Units or any other member of the MIX Group redeems or resolves to redeem any securities on issue in that MIX Group Member;
- (d) **(buy back)** MIX (acting through the MIX RE) or any member of the MIX Group:
 - (i) enters into a buy-back agreement (or something having a substantially similar effect under the law of any jurisdiction); or
 - (ii) resolves to approve the terms of a buy-back agreement or withdrawal offer under the Corporations Act (or something having a substantially similar effect under the law of any jurisdiction);
- (e) **(issuing units or options)** MIX (acting through MIX RE) or any member of the MIX Group issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option;

- (f) **(convertible securities)** MIX (acting through MIX RE) or any member of the MIX Group issues or agrees to issue convertible notes or other security or instrument convertible into its securities;
- (g) **(encumbrances)** MIX (acting through MIX RE) or any member of the MIX Group creates, or agrees to create, any mortgage charge, lien or other encumbrance over any of its business or assets;
- (h) **(acquisitions and disposals)** MIX (acting through MIX RE) or any member of the MIX Group acquires or disposes, or agrees to acquire or dispose, of any part of its business or property;
- (i) **(Insolvency)** any member of the MIX Group becomes Insolvent;
- (j) **(Constitution)** the MIX RE modifies, repeals or replaces the Constitution or a provision of it, or the constitution of MIX RE, or calls a meeting to consider any such modification, repeal or replacement or any member of the MIX Group takes similar or equivalent steps with respect to its own constituent documents or the constituent documents of any other member of the MIX Group;
- (k) **(distributions)** MIX (acting through MIX RE) or any member of the MIX Group agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a distribution of income, profits, assets or capital to any entity;
- (l) **(Trusts)** any of the following occur:
 - (i) the MIX RE ceases to be the responsible entity of MIX;
 - (ii) the MIX Unitholders resolve to remove or replace the MIX RE as responsible entity of MIX;
 - (iii) a meeting being convened to consider a resolution for the removal, retirement or replacement of the MIX RE as responsible entity of MIX; or
 - (iv) any application being made in any Court for the appointment of a temporary responsible entity of MIX in accordance with the Corporations Act;
- (m) **(indemnity)** the MIX RE (or its Representatives) or any MIX Group Member (or their Representatives) doing or failing to do anything that could restrict the MIX RE's right of indemnity from the Trust Property in respect of the obligations incurred by the MIX RE under the documents to which it is a party;
- (n) **(termination)** the MIX RE (or its Representatives) or any MIX Group Member (or their Representatives) effects or facilitates the termination or winding up of MIX or a MIX Group Member;
- (o) **(resettlement)** the MIX RE (or its Representatives) or any MIX Group Member (or their Representatives) effects or facilitates the resettlement of the Trust Property;
- (p) **(delisting and extended suspension)** MIX ceases to be admitted to the official list of ASX or MIX Units cease to be quoted or MIX is suspended from trading by ASX for a consecutive period of more than 2 weeks;
- (q) **(financial accommodation)** the MIX RE or any MIX Group Member enters into a new loan, advance or financing arrangement, or guarantees or indemnifies the obligations of any other person other than a member of the MIX Group, or amends (or waives any right under) any existing financing arrangements;
- (r) **(accounting policies)** there is a change to the existing accounting policies of MIX Group other than required by law or MIX's auditors;

- (s) **(new director, agent or employee)** a new director, employee, consultant or agent is employed or engaged by the MIX Group, or any variation to any of those existing arrangements;
- (t) **(disposal)** the MIX RE (or its Representatives) or any MIX Group Member (or their Representatives) disposes, or agrees to dispose, of any securities that it holds or controls to any person;
- (u) **(ceasing to be a member of the MIX Group)** any member of the MIX Group at the date of this Agreement, ceases to be a member of the MIX Group;
- (v) **(material undertakings)** enter into, vary or terminate any contract, joint venture, partnership or commitment other than in the ordinary course of MIX Group's business and provided that the undertaking or arrangement may be terminated by the relevant MIX Group Member on no more than 30 days' notice without any penalty or payment required as a result of such termination;
- (w) **(capital expenditure)** any member of the MIX Group incurs, agrees to incur or commits to any capital expenditure of more than US\$65,000 per property or US\$300,000 in aggregate across all properties, whichever occurs sooner, excluding capital expenditure required to reasonably and prudently respond to an emergency or disaster, including a situation giving rise to a risk of personal injury or damage to property, provided prior written notice is given to the Acquirer prior to such capital expenditure;
- (x) **(resolutions)** the MIX RE (or its Representatives) or any MIX Group Member (or their Representatives) agrees or resolves to any of the foregoing,

provided that a MIX Prescribed Occurrence will not include a matter:

- (y) that is required to be undertaken or procured by the MIX Group pursuant to, or otherwise as contemplated by, the Transaction Documents;
- (z) any matter apparent or reasonably ascertainable by the Acquirer or its Representatives from the MIX Disclosed Information;
- (aa) where the MIX Group has first consulted with the Acquirer in relation to the matter and the Acquirer has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having being so consulted;
- (bb) that is required to be undertaken directly in relation to the potential sale of the MIX Group asset located at 5990 W. Touhy Avenue, Niles on terms as disclosed to the Acquirer prior to the date of this Agreement; and
- (cc) that is required to be undertaken directly in relation to the proposed dissolution process for the MIX Group members CJF3 and CJF4 on terms as disclosed to the Acquirer prior to the date of this Agreement.

MIX Scheme Unit means the MIX Units on issue as at the Record Date.

MIX Scheme Unitholders means each person who is registered on the MIX Register as a holder of MIX Scheme Units as at the Record Date.

MIX Unit means a fully paid ordinary unit in MIX.

MIX Unitholder means a person who is registered in the MIX Register as a holder of MIX Units from time to time.

New Responsible Entity means the new responsible entity of MIX to be appointed by the Acquirer after the Implementation Date.

Notice of Meeting means the notice convening the Scheme Meeting, together with the proxy

form for the Scheme Meeting.

Officer means, in relation to an entity, any of its directors, officers and employees.

Record Date means 7pm on the date that is five Business Days after the Effective Date, or such other date as may be agreed in writing between the Acquirer and the MIX RE or as may be required by ASX.

Regulator's Draft means the draft of the Explanatory Memorandum in a form acceptable to both parties which is provided to ASIC for review for the purposes of Regulatory Guide 74.

Regulatory Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

It includes the matters referred to in Schedule 1.

Related Body Corporate has the meaning given in the Corporations Act but as if references to:

- (a) "body corporate" and "body" were to "Entity";
- (b) "subsidiary" include Subsidiaries as defined in this Agreement; and
- (c) "holding company" include Holding Companies as defined in this Agreement.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representative means, in relation to a person:

- (a) a Related Body Corporate of the person; or
- (b) an Officer of the person or any of the person's Related Bodies Corporate; or
- (c) an Adviser to the person or any of the person's Related Bodies Corporate.

Scheme means the arrangement, in accordance with Guidance Note 15, under which the Acquirer acquires all of the MIX Scheme Units from the relevant MIX Scheme Unitholders, facilitated by the amendments to the Constitution as set out in the Supplemental Deed, subject to the Scheme Resolutions being approved by the requisite majorities of MIX Unitholders and the granting of Judicial Advice.

Scheme Consideration means the consideration to be provided to MIX Scheme Unitholders under the terms of the Scheme for the transfer to the Acquirer of their MIX Scheme Units, to be calculated in accordance with clause 4.2.

Scheme Meeting means the meeting of MIX Unitholders to be convened by the MIX RE pursuant to the Constitution and section 252A of the Corporations Act to consider the Scheme Resolutions, and includes any adjournment of that meeting.

Scheme Payment means US\$69,453,766 plus the Transaction Costs Adjustment.

Scheme Resolution means the following resolutions to be put to MIX Unitholders to approve the Scheme:

- (a) a special resolution to approve amendments to the Constitution as set out in the Supplemental Deed and to authorise the MIX RE to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments; and

- (b) an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the MIX Scheme Units by the Acquirer.

Second Court Date means the first day of hearing of an application made to the Court by the MIX RE for the Second Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Second Judicial Advice means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that, MIX Scheme Unitholders having approved the Scheme Resolutions by the requisite majorities, the MIX RE would be justified in implementing the Scheme Resolutions, giving effect to the provisions of the Constitution (as amended by the Supplemental Deed) and in doing all things and taking all necessary steps to put the Scheme into effect.

Subsidiary has the meaning given in the Corporations Act, but an Entity will also be taken to be a Subsidiary of an Entity if it is controlled by that Entity (as 'control' is defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) where a trust is a Subsidiary, the trustee of that trust (acting in that capacity) will also be a Subsidiary.

Superior Proposal means a bona fide Competing Proposal received by the MIX RE (other than as a result of any breach by the MIX RE of clause 11 in respect of that Competing Proposal) that the MIX RE Board determines, acting reasonably and in good faith, having consulted with the MIX RE's financial advisors and received written advice from reputable external legal counsel:

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the MIX Unitholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal, such that the MIX RE Board (after receiving that advice) would not in their opinion satisfy their fiduciary and/or statutory duties were they not to pursue such Competing Proposal.

Supplemental Deed means a deed poll pursuant to which the MIX RE will amend the Constitution, to be executed by the MIX RE in the form of Schedule 3 (or in such other form as the Acquirer and the MIX RE agree in writing).

Third Party means any of the following:

- (a) a person other than any Acquirer Group Member; or
- (b) a consortium, partnership, limited partnership, syndicate, trust or other group in which no Acquirer Group Member has agreed in writing to be a participant.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 2, or such other indicative timetable as the MIX RE and the Acquirer may agree in writing or as may be required by ASX.

Trading Day has the meaning given in the ASX Listing Rules.

Transaction Costs means all costs incurred by the MIX RE in connection with the Scheme,

including advisory costs, accounting fees, legal fees, independent expert fees, printing and costs associated with convening the Scheme Meeting.

Transaction Costs Adjustment means the amount calculated as:

- (a) the Estimated Transaction Costs Amount minus the Final Transaction Costs Amount, such that:
 - (i) if the Final Transaction Costs Amount is greater than the Estimated Transaction Costs Amount, the Transaction Costs Adjustment will be a negative number; and
 - (ii) if the Final Transaction Costs Amount is less than the Estimated Transaction Costs Amount, the Transaction Costs Adjustment will be a positive number;
- (b) less the Cash Balance Adjustment.

Transaction Documents means:

- (a) this Agreement;
- (b) the Supplemental Deed; and
- (c) the Deed Poll.

Transfer Taxes means state, county, municipal, village, local and other real estate transfer taxes, stamp duties or equivalent or similar taxes or duties.

Trust Property means the scheme property of MIX including all of the MIX RE's rights, property and undertaking which are the subject of MIX:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

Voting Power has the meaning given in section 610 of the Corporations Act.

Wholly-Owned Subsidiary means, in relation to a party, a body corporate, all of the issued shares of which are or will be directly or indirectly owned by that party.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

- (a) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

The following rules apply unless the context requires otherwise.

- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
- (g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (h) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (k) A reference to A\$ or Australian dollars is to the lawful currency of Australia.
- (l) A reference to US\$ or United States dollars is to the lawful currency of the United States.
- (m) Words and phrases not specifically defined in this Agreement have the same meanings (if any) given to them in the Corporations Act.
- (n) A reference to time is a reference to time in Sydney, New South Wales, Australia.
- (o) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (p) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (q) A reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (r) A reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.
- (s) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

1.3 Best and reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of- an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person;
- (c) agree to commercially onerous or unreasonable conditions; or
- (d) forego, sacrifice or prejudice their commercial, economic or operational interests.

1.4 Consents and approvals

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

1.5 Breach of Conditions Precedent

For the avoidance of doubt, a reference in this Agreement to a Condition Precedent being breached includes a reference to the Condition Precedent becoming incapable of being satisfied.

2 Agreement to Proceed with Scheme

2.1 MIX RE to propose Scheme

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

2.2 Acquirer to assist

The Acquirer agrees to assist the MIX RE to implement the Scheme upon and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so as soon as is reasonably practicable and otherwise in accordance with the Timetable.

3 Conditions Precedent and Pre-Implementation Steps

3.1 Conditions Precedent

Subject to this clause 3, the obligations of the MIX RE under clause 5.1(m) and the Acquirer's obligation to pay, or procure the payment of, the Scheme Payment in accordance with the Deed Poll and clause 5.3(i) are subject to the satisfaction (or waiver in accordance with clause 3.2) of each of the following Conditions Precedent:

Conditions Precedent for the benefit of the Acquirer and the MIX RE

- (a) **(Regulatory Approvals)** before the relevant time set out in Schedule 1, all Regulatory Approvals required to implement the Scheme are granted or obtained and those Regulatory Approvals are not withdrawn, cancelled or revoked;
- (b) **(MIX Unitholder approval)** MIX Unitholders approve the Scheme Resolutions by the requisite majorities before 8.00am on the Second Court Date;
- (c) **(no restraints)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction, remains in effect as at 8am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Scheme or any Transaction Document;

Conditions Precedent for the benefit of the Acquirer only

- (d) **(Execution and lodgement of Supplemental Deed)** the MIX RE executes the Supplemental Deed and lodges a copy of the executed Supplemental Deed with ASIC;
- (e) **(no MIX Prescribed Occurrences)** no MIX Prescribed Occurrence occurs or becomes known to the Acquirer or the MIX RE between the date of this Agreement and 8am on the Second Court Date;

- (f) **(no MIX Material Adverse Change)** no MIX Material Adverse Change occurs or becomes known to the Acquirer or the MIX RE between the date of this Agreement and 8am on the Second Court Date;
- (g) **(MIX representations and warranties)** the representations and warranties of the MIX RE set out in clause 9.2:
 - (i) that are qualified as to materiality, are true and correct; and
 - (ii) that are not so qualified, are true and correct in all material respects, as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time;
- (h) **(MIX RE Board's recommendation)** all of the directors on the MIX RE Board have, in the Explanatory Memorandum, stated that they recommend that the MIX Scheme Unitholders vote in favour of the Scheme Resolutions, in the absence of a Superior Proposal, and no director on the MIX RE Board has withdrawn, qualified or varied those recommendations before the Scheme Resolutions are approved by the requisite majorities of MIX Scheme Unitholders;
- (i) **(Deed of Retirement and Appointment)** before the Second Court Date, the MIX RE signs and delivers the Deed of Retirement and Appointment to the Acquirer, together with all the documents contemplated to be delivered to the Acquirer under the Deed of Retirement and Appointment;

Conditions Precedent for the benefit of the MIX RE only

- (j) **(Judicial Advice)** the Court provides the Judicial Advice;
- (k) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to the MIX RE, stating that in its opinion the Scheme is fair and reasonable and is in the best interests of MIX Unitholders before the date on which the Explanatory Memorandum is lodged with ASIC, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to the MIX RE prior to the Scheme Meeting;
- (l) **(execution of Deed Poll)** between the date of this Agreement and the date of sending the Explanatory Memorandum to MIX Unitholders, the Acquirer signs and delivers the Deed Poll;
- (m) **(Acquirer representations and warranties)** the representations and warranties of the Acquirer set out in clause 9.1:
 - (i) that are qualified as to materiality, are true and correct; and
 - (ii) that are not so qualified, are true and correct in all material respects, as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time.

3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(c) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 3.1(b), 3.1(d) and 3.1(j) which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of both parties.
- (b) The Conditions Precedent in clauses 3.1(d) to 3.1(h) are for the sole benefit of the Acquirer, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by the Acquirer giving its written consent.

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

3.3 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Agreement:

- (a) the Acquirer must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(l) and 3.1(m);
- (b) the MIX RE must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b), 3.1(d), 3.1(g) and 3.1(h);
- (c) each of the Acquirer and the MIX RE must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(c), 3.1(d) and 3.1(j);
- (d) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law.

Subject to clause 1.3, for the purposes of paragraphs (a), (b) and (c), the 'best endeavours' of a party will require that party to (among other things):

- (e) observe and comply with clause 8.2; and
- (f) co-operate with the other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Acquirer Group or MIX Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.7).

3.5 Failure of Conditions Precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 before the End Date; or
 - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.7 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

either party may serve notice on the other party, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
 - (v) to change the date of the application to be made to the Court for the granting of Judicial Advice or to adjourn such application (as applicable) to another date agreed by the parties; or
 - (vi) to extend the End Date provided that, notwithstanding anything in this Agreement, each party may make a determination with respect to the matters in clauses 3.5(a)(iii) to 3.5(a)(vi) in its sole, absolute and unfettered discretion.
- (b) If the Acquirer and the MIX RE are unable to reach agreement under clauses 3.5(a)(iii), 3.5(a)(iv), 3.5(a)(v) or 3.5(a)(vi) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5pm on the day before the Second Court Date, either party may terminate this Agreement by notice in writing to the other party, provided that:
 - (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 13.4 will have effect.

3.6 Conditions of Regulatory Approvals

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval, if such conditions are reasonably satisfactory to both parties.

3.7 Fulfilment of Conditions Precedent

Each party must provide to the other, by 10.00am on the Second Court Date, a certificate confirming, to the best of the first party's knowledge as at 8.00am on the Second Court Date, whether or not all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(j)) have been fulfilled or waived in accordance with this Agreement. A draft of the certificate referred to in this clause must be provided by each party to the other party by 5.00pm on the day that is 2 Business Days prior to the Second Court Date.

4 Scheme

4.1 Outline of Scheme

- (a) The parties agree that:
- (i) the MIX RE will propose the Scheme to MIX Unitholders on and subject to the terms of this Agreement, and to use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable; and
 - (ii) the Acquirer will assist the MIX RE in implementing the Scheme on and subject to the terms of this Agreement, and to use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.
- (b) Subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be as follows:
- (i) all of the MIX Scheme Units will be transferred to the Acquirer in accordance with the terms of the Scheme; and
 - (ii) in consideration for the transfer to the Acquirer of all MIX Scheme Units held by the MIX Scheme Unitholders, the MIX Scheme Unitholders will receive the Scheme Consideration in accordance with clause 4.2 and the terms of the Scheme.

4.2 Scheme Consideration

Subject to the Scheme becoming Effective and clauses 5.5 and 5.6:

- (a) before 9:00am on the Implementation Date, the Acquirer must pay, or procure the payment, into an account nominated by the MIX RE maintained by a third party on terms agreed with the Acquirer acting reasonably (the **Trust Account**) an amount in cleared funds equal to the Scheme Payment denominated in US dollars, to be held on trust for MIX Unitholders; and
- (b) subject to the Acquirer having complied with its obligation under clause 4.2(a) on the Implementation Date, the MIX RE will procure that the following steps occur in the following order:
- (i) the amount in the Trust Account will be converted into Australian dollars at the prevailing exchange rate on the Implementation Date; and

- (ii) each MIX Scheme Unitholder will be paid an amount per MIX Scheme Unit equal to the amount following the conversion in accordance with clause 4.2(b)(i) divided by the number of MIX Scheme Units, with the aggregate amount payable to a MIX Scheme Unitholder under this clause 4.2(b)(ii) to be rounded down to the nearest one cent.

5 Steps for Implementation

5.1 MIX RE's obligations in respect of the Scheme

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

- (a) **(preparation of Explanatory Memorandum)** prepare the Explanatory Memorandum in accordance with clause 5.4;
- (b) **(Independent Expert)** commission the preparation of the Independent Expert's Report and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(ASIC modifications)** as soon as reasonably practicable after the date of this Agreement apply to ASIC for the modifications set out in Schedule 1;
- (d) **(liaison with ASIC)** provide an advanced draft of the Explanatory Memorandum to ASIC for its review and approval and (to the extent reasonably practicable) keep the Acquirer reasonably informed of any matters raised by ASIC in relation to the Explanatory Memorandum (and of any resolution of those matters);
- (e) **(ASX confirmation)** seek confirmation from ASX under ASX Listing Rule 15.1 that ASX does not object to the proposed amendments to the Constitution as set out in the Supplemental Deed or the Explanatory Memorandum;
- (f) **(approval of Explanatory Memorandum)** after an advanced draft of the Explanatory Memorandum is provided to ASIC for its review:
 - (i) if ASIC does not raise any objection to the Scheme or the Explanatory Memorandum within a reasonable period of time as agreed between the parties;
or
 - (ii) if ASIC raises any objection to the Scheme or Explanatory Memorandum, as soon as reasonably practicable after such objection is resolved,procure that a meeting of the MIX RE Board (including the executive director(s)) is convened to approve the Explanatory Memorandum for despatch to MIX Unitholders (and provide the Acquirer with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (g) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme in accordance with all applicable laws, and provide the Acquirer with copies of those documents;
- (h) **(First Judicial Advice)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for the first Judicial Advice;
- (i) **(Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Explanatory Memorandum to MIX Unitholders, convening and holding the Scheme Meeting in accordance with the Court

orders, and putting the Scheme Resolution to MIX Unitholders at the Scheme Meeting, provided that if this Agreement is terminated under clause 13 it will take all steps reasonably required to ensure the Scheme Meeting is not held;

- (j) **(Second Judicial Advice)** if MIX Scheme Unitholders approve the Scheme Resolutions by the requisite majorities, lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for the Second Judicial Advice;
- (k) **(execution and lodgement of Supplemental Deed)** if the Court grants the Second Judicial Advice, as soon as practicable after, and in any event by no later than 4.00pm on the first Business Day after, the later of the Second Court Date and the date on which all of the Conditions Precedent are satisfied or waived in accordance with this Agreement, execute the Supplemental Deed and lodge with ASIC a copy of the executed Supplemental Deed;
- (l) **(provide MIX Register information)** as soon as reasonably practicable after the Record Date, and in any event at least 2 Business Days before the Implementation Date, give to the Acquirer (or as it directs) details of the names, registered addresses and holdings of MIX Units of every MIX Scheme Unitholder as shown in the MIX Register as at the Record Date;
- (m) **(implementation of the Scheme)** if the Court grants the Second Judicial Advice:
 - (i) use best endeavours to ensure that ASX suspends trading in MIX Units with effect from the close of trading on the Effective Date;
 - (ii) close the MIX Register as at the Record Date (in accordance with clauses 5.5 and 5.6) to determine the identity of Scheme Unitholders and determine their entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) promptly execute proper instruments of transfer of, and register all transfers of, the MIX Scheme Units to the Acquirer in accordance with the Scheme; and
 - (iv) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court granting the Judicial Advice and to effect the transfer of the MIX Scheme Units to the Acquirer;
- (n) **(Acquirer Information)** during the period until the Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Acquirer Information) becomes publicly available, only use that information with the prior written consent of the Acquirer (not to be unreasonably withheld); and
- (o) **(Transaction Costs)** provide to the Acquirer a running total of all Transaction Costs on a fortnightly basis and, at least 3 Business Days before the Second Court Date:
 - (i) full details of the final Transaction Costs; and
 - (ii) the total aggregate amount of all Transaction Costs, denominated in US dollars (the **Final Transaction Costs Amount**),and pay all Transaction Costs (other than Transfer Taxes) on or prior to the Implementation Date.

5.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme, the MIX RE must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent barrister with at least 15 years'

experience advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

5.3 The Acquirer's obligations in respect of the Scheme

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

- (a) **(preparation of Explanatory Memorandum)** provide assistance with the preparation of the Explanatory Memorandum in accordance with clause 5.4;
- (b) **(Independent Expert information)** provide all assistance and information reasonably requested by the MIX RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(reasonable assistance)** provide reasonable assistance to the MIX RE to assist the MIX RE in applying for the modifications set out in Schedule 1 and provide any necessary consents in relation to such applications;
- (d) **(liaison with ASIC)** provide reasonable assistance to the MIX RE to assist the MIX RE to resolve any matter raised by ASIC regarding the Explanatory Memorandum or the Scheme during its review of the Explanatory Memorandum;
- (e) **(approval of Explanatory Memorandum)** after an advanced draft of the Explanatory Memorandum is provided to ASIC for its review:
 - (i) if ASIC does not raise any objection to the Scheme or the Explanatory Memorandum within a reasonable period of time as agreed between the parties;
or
 - (ii) if ASIC raises any objection to the Scheme or the Explanatory Memorandum, as soon as reasonably practicable after such objection is resolved,

procure that a meeting of the Acquirer Board (or of a committee of the Acquirer Board appointed for the purpose) is convened to approve those sections of the Explanatory Memorandum that comprise the Acquirer Information as being in a form appropriate for despatch to MIX Unitholders;
- (f) **(keep the MIX RE informed)** from the First Court Date until the Implementation Date, promptly inform the MIX RE if it becomes aware that the Acquirer Information contains a statement that, in the form and context in which it appears in the Explanatory Memorandum, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (g) **(Court representation)** if requested by the MIX RE, ensure that it is represented by counsel at the Court hearings convened for the purposes of the Judicial Advice in relation to the Scheme, at which, through its counsel and if requested by the Court, the Acquirer will undertake to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this Agreement and the Scheme;
- (h) **(Deed Poll)** before the despatch of the Explanatory Memorandum, execute the Deed Poll;

- (i) **(Scheme Payment)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Payment in accordance with the Scheme and the Deed Poll on the Implementation Date;
- (j) **(MIX Provided Information)** during the period until the MIX Provided Information becomes publicly available, only use the MIX Provided Information with the prior written consent of the MIX RE (not to be unreasonably withheld).

5.4 Preparation of Explanatory Memorandum

- (a) **(MIX to prepare)** Subject to the Acquirer complying with its obligations under clause 5.4(d), the MIX RE must prepare the Explanatory Memorandum as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable.
- (b) **(Compliance requirements)** The MIX RE must ensure that the Explanatory Memorandum complies with all applicable laws and regulatory guides, and in particular the requirements of the Corporations Act, the ASX Listing Rules, Guidance Note 15, and all applicable ASIC Regulatory Guides, except that the obligation to do so in respect of the Acquirer Information is subject to the Acquirer complying with its obligations under clauses 5.4(d) and 9.1(b).
- (c) **(Content of Explanatory Memorandum)** Without limiting clause 5.4(b), the Explanatory Memorandum will include or be accompanied by:
 - (i) the Supplemental Deed;
 - (ii) the Notice of Meeting;
 - (iii) a copy of this Agreement (without the Schedules) or a summary of it;
 - (iv) a copy of the executed Deed Poll;
 - (v) the Independent Expert's Report;
 - (vi) a statement that the MIX RE Board unanimously recommends that MIX Unitholders approve the Scheme Resolution, in the absence of a Superior Proposal, unless prior to the issue of the Explanatory Memorandum the MIX RE Board has changed or withdrawn that recommendation in accordance with clause 7.1; and
 - (vii) a statement that each of the directors of the MIX RE Board who is able to control voting rights in relation to MIX Units intends to vote those MIX Units, or procure that those MIX Units are voted, in favour of the Scheme Resolution, in the absence of a Superior Proposal, unless prior to the issue of the Explanatory Memorandum the relevant director of the MIX RE Board have changed his or her voting intention in accordance with clause 7.2.
- (d) **(Acquirer Information)** The Acquirer must provide the Acquirer Information to the MIX RE or its Representatives as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, in a form that includes all information regarding the Acquirer Group, that is required by all applicable laws and regulatory guides, and in particular the Corporations Act, ASX Listing Rules and Guidance Note 15, and must provide to the MIX RE such assistance as the MIX RE may reasonably require in order to adapt such information for inclusion in the Explanatory Memorandum.
- (e) **(Review by the Acquirer)** The MIX RE must make available to the Acquirer drafts of the Explanatory Memorandum, consult with the Acquirer in relation to the content of those

drafts (including the inclusion of any Acquirer Information and any information solely derived from, or prepared solely in reliance on, the Acquirer Information, and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from the Acquirer and its Representatives on those drafts.

- (f) **(Dispute as to Explanatory Memorandum)** If, after a reasonable period of consultation and compliance by the MIX RE with its obligations under clauses 5.4(e), the Acquirer and MIX RE, acting reasonably and in good faith, are unable to agree on the form or content of the Explanatory Memorandum, then:
- (i) if the disagreement relates to the form or content of the Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Acquirer Information), the MIX RE will, acting in good faith, make such amendments to that information in the Explanatory Memorandum as Acquirer may reasonably require; and
 - (ii) if the disagreement relates to the form or content of the MIX Provided Information, the MIX RE will, acting in good faith, decide the final form of that information in the Explanatory Memorandum.
- (g) **(Consent of the Acquirer)** Without limiting clause 5.4(f), the MIX RE must obtain written consent from the Acquirer in relation to the form and context in which any Acquirer Information (and any information solely derived from, or prepared solely in reliance on, the Acquirer Information) is used, such consent not to be unreasonably withheld by Acquirer.
- (h) **(Verification)** The MIX RE must undertake appropriate verification processes in relation to the MIX Provided Information included in the Explanatory Memorandum, and the Acquirer must undertake appropriate verification processes in relation to the Acquirer Information included in the Explanatory Memorandum.
- (i) **(update of Explanatory Memorandum)** Each party must ensure that those parts of the Explanatory Memorandum for which the party is responsible are updated with any information of which the party becomes aware between the date of despatch of the Explanatory Memorandum and the date of the Scheme Meeting that is necessary to ensure that the Explanatory Memorandum is not misleading or deceptive or likely to mislead or deceive in any material request and complies with all applicable laws, ASIC policy, Takeovers Panel guidance notes and the ASX Listing Rules.
- (j) **(Responsibility statement)** The parties agree that the Explanatory Memorandum will contain a responsibility statement to the effect that:
- (i) the MIX RE is responsible for the MIX Provided Information contained in the Explanatory Memorandum;
 - (ii) the Acquirer is responsible for the Acquirer Information contained in the Explanatory Memorandum; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report.

5.5 Dealings in MIX Units

For the purpose of establishing the persons who are MIX Scheme Unitholders, dealings in MIX Units will be recognised by the MIX RE provided that:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered as the holder of the relevant MIX Units by the Record Date; and

- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the registrar of MIX by 5.00pm on the day which is the Record Date (in which case the MIX RE must register such transfers or transmission applications before 7.00pm on that day),

and the MIX RE will not accept for registration, nor recognise for the purpose of establishing the persons who are MIX Scheme Unitholders, any transfer or transmission application in respect of MIX Units received after such times (other than as contemplated by the Scheme in relation to the transfer of the MIX Scheme Units to the Acquirer), or received prior to such times but not in registrable form.

5.6 MIX Register

On and from the Effective Date, the Acquirer will, until the Scheme Consideration has been provided and the name and address of the Acquirer has been entered into the MIX Register as the holder of all of the MIX Scheme Units, maintain, or procure the maintenance of, the MIX Register in accordance with the amendments to the Constitution set out in the Supplemental Deed, and the MIX Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration. As from the Record Date (and other than for the Acquirer following the Implementation Date), each entry in the MIX Register as at the Record Date relating to Scheme Units will cease to have any effect other than as evidence of the entitlements of MIX Scheme Unitholders to the Scheme Consideration in respect of those MIX Scheme Units.

5.7 Deed of Retirement and Appointment

Prior to the Second Court Date, MIX RE must execute and the Acquirer must execute and must procure that New Responsible Entity executes, the Deed of Retirement and Appointment.

6 Conduct of Business and Requests for Access

6.1 Conduct of business

During the period from the date of this Agreement up to and including the Implementation Date, the MIX RE must:

- (a) procure that the MIX Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this Agreement, and in any event not undertake a MIX Prescribed Occurrence, do (or omit to do) anything that may reasonably give rise to a MIX Prescribed Occurrence, or commence any litigation, and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals; and
- (b) to the extent consistent with that obligation, use its best endeavours to preserve intact the MIX Group's current business organisation, to keep available the services of the current Officers of it and the other MIX Group Members, and to preserve the MIX Group's relationship with Governmental Agencies, ratings agencies and stakeholders having business dealings with it,

except to the extent required to be done or procured by the MIX RE pursuant to, or that is otherwise expressly permitted by, the Transaction Documents, or which is apparent or reasonably ascertainable by the Acquirer from the MIX Disclosed Information, or which the Acquirer has approved in writing, such approval not to be unreasonably withheld or delayed.

6.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this Agreement up to the Implementation Date, the MIX RE must:
- (i) promptly provide the Acquirer and its Representatives with reasonable access to the documents, records and other information relating to the MIX Group (subject to existing confidentiality obligations owed to third parties, or applicable privacy laws), including by way of site visits and/or access to the Representatives of the MIX Group as reasonably requested by the Acquirer or its Representatives, which the Acquirer reasonably requires for the purposes of:
 - (A) the implementation and facilitation of the Scheme, including obtaining any Regulatory Approvals and satisfying Conditions Precedent;
 - (B) planning the transition of the MIX Group and other matters relating to the conduct of the MIX Group following the Implementation Date; or
 - (C) any other purpose that is agreed in writing between the parties;
 - (ii) procure that at least 2 members of the MIX RE's executive management team meet (in person or by telephone) with the Acquirer's Representatives on a fortnightly basis to assist with, among other things:
 - (A) keeping the Acquirer informed of the matters contemplated in clause 6.1;
 - (B) providing the Acquirer with access to information, sites and MIX Group Representatives under this clause 6.2(a); and
 - (C) the MIX RE's strategy and approach to engaging with MIX Unitholders in relation to the Scheme;
 - (iii) keep the Acquirer reasonably informed of all material developments relating to the MIX Group (including any events or circumstances reasonably likely to give rise to a MIX Prescribed Occurrence or MIX Material Adverse Change) and the Scheme and provide the Acquirer with:
 - (A) monthly financial reports for the MIX Group (and/or any MIX Group Entity as requested by the Acquirer); and
 - (B) once the Notice of Meeting has been despatched to MIX Unitholders, regular updates on of the number of voting proxies received in relation to the Scheme including three weeks, two weeks and then every day of the last week, before the date of the Scheme Meeting,
- subject to the proper performance by the Officers of the MIX RE of their fiduciary duties.
- (b) **(Limits on MIX RE's obligations)** Without limiting clauses 9.2(a)(xix), 9.2(c) and 9.2(e), the obligations in clauses 6.2(a) do not require the MIX RE to:
- (i) provide information to the Acquirer concerning the directors of the MIX RE Board (including the executive director(s) for the purposes of this clause 6.2(b)(i)) and management's consideration of the Scheme; or
 - (ii) breach an obligation of confidentiality to any person,
- and, for the avoidance of doubt, nothing in those clauses entitles either party to terminate this Agreement or to claim damages for breach of contract in the event that they are not satisfied.

- (c) The parties acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

6.3 No Regulated Events

Without limiting clauses 6.1, during the period from the date of this Agreement up to and including the Implementation Date, the MIX RE must ensure, to the extent within the control of the MIX RE, that no MIX Prescribed Occurrence occurs, without the prior written consent of the Acquirer.

7 MIX RE Board Recommendations and Intentions

7.1 MIX RE Board recommendation

- (a) The Agreed Public Announcement to be issued by the MIX RE and the Acquirer immediately after execution of this Agreement must state (on the basis of written statements or resolutions made by each of the directors of MIX) that the MIX RE Board unanimously recommends that MIX Unitholders approve the Scheme Resolution, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is fair and reasonable and in the best interests of MIX Unitholders.
- (b) The MIX RE must procure that the MIX RE Board:
 - (i) does not change or withdraw its recommendations set out in the Agreed Public Announcement;
 - (ii) in the Explanatory Memorandum, state that the MIX RE Board unanimously recommends that MIX Unitholders approve the Scheme Resolution, in the absence of a Superior Proposal, and does not change or withdraw those statements or recommendations once made; and
 - (iii) does not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended or supported,
unless:
 - (iv) either:
 - (A) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not fair, not reasonable or not in the best interests of MIX Unitholders; or
 - (B) there is a Superior Proposal; and
 - (v) a majority of the MIX RE Board, after considering the matter reasonably and in good faith, no longer considers the Scheme to be in the best interests of MIX Unitholders.

7.2 MIX RE Board intentions

- (a) The Explanatory Memorandum despatched to MIX Unitholders must state (on the basis of written statements or resolutions made by each of the relevant directors on the MIX RE Board) that each director of the MIX RE Board who holds MIX Units, or who has control over voting rights attaching to MIX Units, intends to vote in favour of the Scheme, or procure that the MIX Units the voting rights of which the director has control over are voted in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is fair and reasonable and in the best interests of MIX Unitholders.

- (b) The MIX RE must use its best endeavours to ensure that each director of the MIX RE Board who holds MIX Units, or who has control over voting rights attaching to MIX Units:
 - (i) intends to vote in favour of the Scheme Resolution, or procure that the MIX Units the voting rights of which the director of the MIX RE Board has control over are voted in favour of the Scheme Resolution; and
 - (ii) does not change that voting intention, unless:
 - (iii) either:
 - (A) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not fair, not reasonable or not in the best interests of MIX Unitholders; or
 - (B) there is a Superior Proposal; and
 - (iv) the applicable director of the MIX RE Board, after considering the matter in good faith, no longer considers the Scheme to be in the best interests of MIX Unitholders.

8 Public Announcements, Communications and Confidentiality

8.1 Required announcements

- (a) On the Announcement Date, the Acquirer and MIX RE must jointly release the Agreed Public Announcement, which has attached to it a summary of the key terms of this Agreement.
- (b) Where a party is required by applicable law or the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with this Agreement (including its termination), the Scheme or any other transaction contemplated by this Agreement or the Scheme, it may do so only after:
 - (i) it has given the other party at least 1 clear Business Day's prior notice or, failing that as much notice as is reasonably practicable in the context of any deadlines imposed by law but in any event prior notice; and
 - (ii) has consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure and taken all reasonable steps to restrict that disclosure to the greatest extent possible.

Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law or the ASX Listing Rules or any other applicable stock exchange regulation.

8.2 Agreement on other Communications

- (a) Between the date of this Agreement and the Implementation Date, except in relation to Communications regulated by clause 8.1 and to the extent permitted by applicable law:
 - (i) the Acquirer and MIX RE must in good faith and on a timely and pragmatic basis consult with each other and agree in advance on all aspects (including the timing, form, content and manner) of:

- (A) any Communications with any Governmental Agency in relation to the implementation of the Scheme, whether or not such Communications are for the purposes of satisfying a Condition Precedent; and
 - (B) any public announcement or disclosure in connection with this Agreement (including its termination), the Scheme, or any other transaction contemplated by this Agreement or the Scheme;
- (ii) each of the Acquirer and MIX RE is entitled to be represented and to make submissions in any meeting with any Governmental Agency relating to any Regulatory Approval;
 - (iii) each of the Acquirer and MIX RE must ensure that any other Communications with third parties in relation to the Scheme (such as with employees or shareholders or with the media other than by way of public announcement or disclosure) must be in accordance with the communication protocols and messages agreed between the parties (and if branded with the name or logo of the other party, must be consented to by that party);
 - (iv) each party must provide copies to the other party of any written Communications sent to or received from a person referred to in clause 8.2(a)(i) promptly upon despatch or receipt (as the case may be); and
 - (v) each party will have the right to be present and make submissions at or in relation to any proposed meeting with any Governmental Agency in relation to the Scheme.
- (b) Where a party is required by applicable law or the ASX Listing Rules or any other applicable stock exchange regulation to make any Communication contemplated by clause 8.2(a)(i)(A) it may do so only after it has given the other party at least 1 clear Business Day's prior notice or, failing that as much notice as is reasonably practicable in the context of any deadlines imposed by law. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law, legal requirement or the ASX Listing Rules or any other applicable stock exchange regulation.

8.3 Confidentiality Deed

Except as set out in clause 8.1(b), the parties acknowledge and agree that:

- (a) they continue to be bound by the Confidentiality Deed after the date of this Agreement; and
- (b) the rights and obligations of the parties under the Confidentiality Deed survive termination of this Agreement.

9 Representations and Warranties

9.1 Acquirer representations and warranties

The Acquirer represents and warrants to the MIX RE (on its own behalf and separately as trustee for each of the MIX Indemnified Parties) that, except as consented to in writing by MIX:

- (a) on each date from the date of this Agreement until (and including) the Second Court Date:
 - (i) the Acquirer is a corporation validly existing under the laws of its place of incorporation;

- (ii) the Acquirer has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
 - (iii) the Acquirer has taken all necessary corporate action to authorise the entry into this Agreement and the Acquirer has taken or will take all necessary corporate action to authorise the performance of this Agreement;
 - (iv) this Agreement is the Acquirer's valid and binding obligation enforceable in accordance with its terms; and
 - (v) the execution and performance by the Acquirer of this Agreement, and each transaction contemplated by this Agreement, did not and will not violate in any respect a provision of:
 - (A) a law, judgment, ruling, order or decree binding on it;
 - (B) its constitution; or
 - (C) any other document or agreement that is binding on it or any of its Subsidiaries;
- (b) on the First Court Date and the Second Court Date:
- (i) the Acquirer Information has been prepared and provided in good faith and on the understanding that the MIX RE and each of its Officers have relied on that information for the purposes of preparing the Explanatory Memorandum and proposing the Scheme, and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
 - (ii) the Acquirer Information complies in all material respects with the requirements referred to in clause 5.4(d);
 - (iii) the Acquirer Information in the form and context in which it appears in the Explanatory Memorandum (as consented to by the Acquirer in accordance with clause 5.4(g)) is not, as at that date, misleading or deceptive in any material respect and does not contain any material omission;
- (c) on the date of this Agreement, the date of the Scheme Meeting and the Second Court Date the Acquirer Information has been disclosed in good faith, and the Acquirer is not aware of any material omission having regard to the applicable disclosure requirements; and
- (d) as at the date of this Agreement, other than as disclosed to the MIX RE, the Acquirer does not have a Relevant Interest in any MIX Units.

9.2 MIX representations and warranties

The MIX RE represents and warrants to the Acquirer (on its own behalf and separately as trustee for each of the Acquirer Indemnified Parties) that, except as consented to in writing by the Acquirer or disclosed in the MIX Disclosed Information in a manner that is apparent or reasonably ascertainable by the Acquirer:

- (a) on each date from the date of this Agreement until (and including) the Second Court Date:
 - (i) the MIX RE is a corporation validly existing under the laws of its place of incorporation;
 - (ii) the MIX RE has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;

- (iii) the MIX RE has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;
- (iv) this Agreement is the MIX RE's valid and binding obligation enforceable in accordance with its terms;
- (v) the execution and performance by the MIX RE of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
 - (A) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Controlled Entities;
 - (B) its constitution; or
 - (C) any other document or agreement that is binding on it or any of its Controlled Entities;
- (vi) each MIX Group Member is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against any MIX Group Member for the winding up, dissolution or termination of that MIX Group Member or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of any MIX Group Member's assets (other than the proposed dissolution process for the MIX Group members CJF3 and CJF4 on terms as disclosed to the Acquirer prior to the date of this Agreement);
- (vii) the MIX RE is not aware of any material breach of law by any MIX Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Governmental Agencies having jurisdiction over it and the MIX Group has all material licences, permits and franchises necessary for it to conduct its activities as presently being conducted;
- (viii) as at the date of this Agreement, neither ASIC nor ASX (as applicable) has made a determination against any MIX Group Member for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules; and
- (ix) so far as the MIX RE is aware, there has not been any event, change, effect or development that would require a restatement of MIX 's financial statements as disclosed to ASX;
- (x) as at the date of this Agreement, neither MIX nor any of the MIX Group Members are in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute (nor will the entering into by MIX and any of its Controlled Entities of this Agreement, or the execution of its terms by any of them, constitute (whether immediately or following the giving of notice or lapse of time)) an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect, in all cases which results, or is reasonably likely to result, in a MIX Material Adverse Change;
- (xi) MIX has been duly established and has not been terminated and is a registered managed investment scheme;

- (xii) the MIX RE is the only trustee and responsible entity of MIX and no action has been taken or proposed to remove it as trustee or responsible entity of MIX;
 - (xiii) no action has been taken or proposed to, either:
 - (A) terminate MIX; or
 - (B) wind-up MIX whether under Chapter 5C of the Corporations Act or otherwise;
 - (xiv) subject to the amendments to the Constitution contemplated by this Agreement, true copies of the Constitution (including any amending documents) have been provided to the Acquirer;
 - (xv) the MIX RE has the authorisations necessary for it to enter into the documents to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under the Constitution (if any));
 - (xvi) the MIX RE has not exercised its powers under the Constitution to release, abandon or restrict any power conferred on it by the Constitution;
 - (xvii) entry into the documents to which the MIX RE is a party is a valid exercise of the MIX RE's powers under the Constitution for the benefit of the beneficiaries;
 - (xviii) the MIX RE has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under the documents to which it is a party, and there is nothing that would prevent the MIX RE from being fully indemnified out of the Trust Property for any obligations under or in connection with this deed, or any of the transactions contemplated by this Agreement;
 - (xix) the MIX Disclosed Information has been disclosed in good faith and the MIX RE has taken all reasonable steps to ensure that the MIX Disclosed Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) as at the date of this Agreement, the total number of MIX Units on issue are 362,457,269 MIX Units and no MIX Group Member has issued (or is actually or contingently required to issue) any other securities or instruments that are still outstanding (or may become outstanding) and that may convert into MIX securities;
- (c) on the First Court Date and the Second Court Date:
- (i) the MIX Provided Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that the Acquirer and each of its Officers have relied on that information for the purposes of considering and approving the Acquirer Information in the Explanatory Memorandum, and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
 - (ii) the MIX Provided Information complies in all material respects with the requirements referred to in clause 5.4(b);
 - (iii) the MIX Provided Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; and
 - (iv) all information provided by or on behalf of the MIX RE to the Independent Expert to enable the Independent Expert's Report to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert

has relied on the information for the purposes of preparing the Independent Expert's Report;

- (d) on the Second Court Date there are no Transaction Costs not included in the Final Transaction Costs Amount disclosed to the Acquirer in accordance with clause 5.1(o);
- (e) following the making by the MIX RE of the Agreed Public Announcement, MIX is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1 and is not withholding any information from the Acquirer that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and
- (f) at all material times, to the best of the knowledge of the MIX RE and the MIX Group, none of the MIX RE, any member of the MIX Group, any Entity that Controls the MIX RE or any MIX Group Member, and no Representatives of any of the foregoing have directly or indirectly taken any action in relation to the MIX Group or any MIX Group Member that would violate, or cause the Acquirer to violate, the United States Foreign Corrupt Practices Act of 1997 (**FCPA**), if applicable, or any other anti-corruption or anti-bribery law or regulations applicable to them (collectively with the FCPA, the **Anti-corruption Laws**). To the best of the MIX RE's knowledge and each MIX Group Member's knowledge there has been no investigation or request for information from the MIX RE or any MIX Group Member, or any Entity that Controls the MIX RE or any MIX Group Member where the investigation or request for information involves or relates to the MIX Group or any MIX Group Member, by any Governmental Agency in relation the Anti-corruption Laws, and there have been no false entries made in the books and records of the MIX Group relating to illicit payments or unrecorded funds which would be in breach of the Anti-corruption Laws.

9.3 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Agreement the other party has relied on the representations and warranties provided by the Representor under this clause 9;
- (b) any breach of the representations and warranties provided by the Representor under this clause 9 after the Scheme becomes Effective may only give rise to a claim in damages and cannot result in a termination of this Agreement; and
- (c) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this Agreement. This acknowledgment does not prejudice the rights any party may have in relation to the MIX Provided Information, the MIX Disclosed Information, the Acquirer Information or any information filed by the other party with ASX or ASIC.

9.4 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

9.5 Status of representations and warranties

Each representation and warranty in this clause 9:

- (a) is severable;
- (b) will survive the termination of this Agreement; and

- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this Agreement.

However, despite any other provision of this Agreement (including clause 10), no party can make a claim for any breach of a representation or warranty after the day that is two years after the Implementation Date (the **Expiry Day**), except where a party has given the other party notice of the claim before the Expiry Day and the notice included details of the facts, circumstances or matter giving rise to the claim, the nature of the claim and the notifying party's calculation of the loss suffered.

10 Indemnities

10.1 Indemnities by the MIX RE

Subject to section 199A of the Corporations Act, the MIX RE agrees with the Acquirer to indemnify and keep indemnified the Acquirer Indemnified Parties from and against all loss that any of the Acquirer Indemnified Parties may suffer or incur by reason of any breach of this Agreement or any of the representations and warranties of the MIX RE in clause 9.2.

10.2 Indemnities by the Acquirer

Subject to section 199A of the Corporations Act, the Acquirer agrees with the MIX RE to indemnify and keep indemnified the MIX Indemnified Parties from and against all loss that any of the MIX Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties of the Acquirer in clause 9.1.

10.3 Survival of indemnities

Each indemnity in clauses 10.1 and 10.2 will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Agreement; and
- (d) survive the termination of this Agreement.

10.4 Enforcement of indemnities

- (a) The indemnities in clause 10.1 are given to the Acquirer, for itself and as trustee for each of the other Acquirer Indemnified Parties.
- (b) The indemnities in clause 10.2 are given to MIX RE, for itself and as trustee for each of the other MIX Indemnified Parties.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by clause 10.1 or 10.2.

11 Exclusivity

11.1 Termination of existing discussions

MIX RE represents and warrants that, as at the time of execution of this Agreement, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions, in respect of any Competing Proposal (whether new or subsisting at the date of this Agreement) with any person (other than, for the avoidance of doubt, the discussions with the Acquirer and its Representatives in respect of the Scheme).

11.2 No shop restriction

During the Exclusivity Period, MIX RE must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Acquirer, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations, communications or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things with a view to obtaining any expression of interest, offer or proposal from any person in relation to a Competing Proposal.

11.3 No talk restriction

Subject always to clause 11.5, during the Exclusivity Period, the MIX RE must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Acquirer, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

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

11.4 No due diligence

Without limiting the general nature of clause 11.3 but subject always to clause 11.5, during the Exclusivity Period, the MIX RE must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Acquirer, make available to, or continue to make available to, any Third Party (other than to the Acquirer or any of its Representatives) or permit any such Third Party to receive any non-public information relating to MIX or any MIX Group Member in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of or otherwise in connection with a Competing Proposal.

11.5 Exception

Nothing in clauses 11.3 and 11.4 will prevent the MIX RE or its Representatives from taking or refusing to take any action with respect to a Competing Proposal (which was not encouraged, solicited, invited or initiated by the MIX RE or its Representatives in breach of clause 11.2) if the MIX RE Board, acting reasonably and in good faith forms the view that:

- (a) the Competing Transaction is a Superior Proposal or is reasonably capable of becoming a Superior Proposal; and
- (b) failing to respond to such bona fide Competing Transaction would be likely to constitute a breach of its fiduciary or statutory duties, after receiving written advice from reputable legal counsel in relation to such matter.

11.6 Notification by the MIX RE and matching rights

- (a) During the Exclusivity Period, the MIX RE must promptly notify the Acquirer (**Competing Proposal Notice**) if:
 - (i) it is approached by any Third Party in relation to a bona fide proposal that may reasonably be expected to lead to a Competing Proposal (the **Competing Party**), and the MIX RE will undertake any action of a kind that would breach its obligations under clauses 11.2, 11.3 or 11.4 (or that would breach those obligations if not for the proviso in 11.5); or

- (ii) it proposes to take any action of a kind that would breach its obligations under clauses 11.2, 11.3 or 11.4 (if that would breach those obligations if not for the proviso in clause 11.5),

unless (and only to the extent that) the directors on the MIX RE Board, acting reasonably and in good faith, determine that it would, or would be likely to, involve a breach of its fiduciary or statutory duties to so notify the Acquirer, after receiving written advice from reputable legal counsel in relation to such matter.

- (b) In giving the Competing Proposal Notice, the MIX RE must provide in writing to the Acquirer (to the extent known):
 - (i) the identity of the Competing Party (or in the case of a consortium, the details to the extent disclosed to the MIX RE of the investors behind the consortium); and
 - (ii) all material details of the applicable Competing Proposal made by the person (including details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing and break fee (if any)).
- (c) If the MIX RE receives a Competing Proposal that is a Superior Proposal or is reasonably capable of becoming a Superior Proposal, and as a result the MIX RE Board proposes to publicly change or withdraw its recommendation that MIX Unitholders vote in favour of the Scheme Resolution in accordance with clause 7, the MIX RE must:
 - (i) give the Acquirer 5 clear Business Days' notice in writing of such proposed change or withdrawal; and
 - (ii) provide the Acquirer with that notice all material terms of the applicable Competing Proposal, including details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing and break fee (if any).

The MIX RE will use its reasonable endeavours to negotiate with the Competing Party for their consent to their name and other identifying details which may identify the Competing Party (**Identifying Details**) being provided by the MIX RE to the Acquirer on a confidential basis. If consent is refused, the MIX RE may only withhold the Identifying Details from the Acquirer if the MIX RE Board, acting reasonably and in good faith, determines that failing to do so would, or would be likely to, involve a breach of its fiduciary or statutory obligations, after receiving written advice from reputable legal counsel in relation to such matter. Any information provided pursuant to this clause 11.6(c) will be provided subject to the terms of the Confidentiality Deed.

- (d) During the period of 5 clear Business Days referred to in clause 11.6(c), the Acquirer will have the right to offer to amend the terms of the Scheme (an **Acquirer Counterproposal**) so that the terms of the Scheme (as amended) would provide an equal or superior outcome for the MIX Unitholders than the applicable Competing Proposal.
- (e) The MIX RE must procure that the MIX RE Board considers any such Acquirer Counterproposal and if the MIX RE Board, acting reasonably and in good faith, determines that the terms and conditions of the Acquirer Counterproposal taken as a whole would provide an equal or superior outcome for the MIX Unitholders than the applicable Competing Proposal, then:
 - (i) the MIX RE and the Acquirer must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Acquirer Counterproposal (including amendments to the Scheme

Consideration that are reasonably necessary to reflect the Acquirer Counterproposal), and to enter into one or more appropriate amended agreements to give effect to those amendments and to implement the Acquirer Counterproposal, in each case as soon as reasonably practicable; and

- (ii) the MIX RE must procure that the MIX RE Board recommends the Acquirer Counterproposal to MIX Unitholders and not the applicable Competing Proposal.
- (f) Any material modification to any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which the MIX RE must comply with its obligations under this clause 11.6.
- (g) Notwithstanding anything else in this clause 11.6, each obligation of the MIX RE under this clause 11.6 does not apply to the extent that the MIX RE Board, acting reasonably and in good faith, determines that it would, or would be likely to, involve a breach of the fiduciary or statutory duties owed by any director of the MIX RE Board, after receiving written advice from reputable legal counsel in relation to such matter.

11.7 Normal provision of information

Nothing in this clause 11 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Governmental Agency;
- (c) providing information to its auditors, Advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law or any Governmental Agency; or
- (e) making presentations to, and responding to, enquiries from, brokers, individual asset acquirers, portfolio investors, analysts, MIX Unitholders and other third parties in the ordinary course of business.

11.8 Acknowledgement

The Acquirer has required the MIX RE to agree to the obligations set out in this clause 11 in consideration of it proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations from the MIX RE, the Acquirer would not have entered into this Agreement.

12 Break Fee

12.1 Payment of costs

- (a) The MIX RE and the Acquirer believe that the proposed transaction will provide benefits to MIX and its unitholders, and acknowledge that if they enter into this Agreement and the Scheme is subsequently not implemented, the Acquirer will incur significant costs.
- (b) In the circumstances referred to in clause 12.1(a):
 - (i) the Acquirer requested that provision be made for the payments referred to in clause 12.2, without which it would not have entered into this Agreement; and
 - (ii) the MIX RE Board (including the executive director(s)) believes that it is appropriate for both parties to agree to the payments referred to in clause 12.2 in order to secure the Acquirer's participation.

- (c) The MIX RE and the Acquirer acknowledge that the Break Fee represents a reasonable amount to compensate the other for the following:
 - (i) all advisory costs (including costs of Advisers other than success fees);
 - (ii) costs of management and directors' time;
 - (iii) all out of pocket expenses;
 - (iv) all commitment fees and other financing costs (whether associated with debt or equity finance); and
 - (v) reasonable opportunity costs in pursuing the transaction or not pursuing other alternative acquisitions or strategic initiatives.
- (d) The parties agree that clause 12.2 does not limit the rights of the MIX RE or the Acquirer in respect of any other claims that they may have against each other, whether under this Agreement or otherwise.

12.2 Break Fee

- (a) Subject to clauses 12.2(b), 12.2(c) and 12.3(a), the MIX RE must pay the Acquirer the Break Fee in accordance with clause 12.4(a), without withholding or set off, if:
 - (i) a Competing Proposal is announced or made prior to the End Date and is completed at any time prior to 30 June 2015 and, as a result, a Third Party acquires control of MIX or the MIX Group within the meaning of section 50AA of the Corporations Act; or
 - (ii) the Acquirer terminates this Agreement in accordance with:
 - (A) clause 13.1(b);
 - (B) clause 13.2, except in circumstances where the Independent Expert concludes in the final Independent Expert's Report that the Scheme is not fair, not reasonable or not in the best interests of MIX Unitholders; or
 - (C) clause 3.5 as a result of the following occurring:
 - (1) a MIX Prescribed Occurrence or a MIX Material Adverse Change occurs prior to 8am on the Second Court Date;
 - (2) the MIX RE caused or contributed to the MIX Prescribed Occurrence or MIX Material Adverse Change; and
 - (3) the MIX RE fails to rectify the MIX Prescribed Occurrence or MIX Material Adverse Change within 5 Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) after the Acquirer gives the MIX RE notice requiring it to do so.
- (b) Despite any other term of this Agreement:
 - (i) the Break Fee is only payable once; and
 - (ii) upon payment of the Break Fee, the Break Fee amount is the sole remedy available to the Acquirer to the exclusion of any other right, power or remedy provided by law or equity or by any agreement in relation to the event giving rise to the payment of the Break Fee (other than for payment of the Break Fee).
- (c) Despite any other term of this Agreement, the Break Fee will not be payable to the Acquirer if:

- (i) the Scheme becomes Effective notwithstanding the occurrence of any event in clause 12.2(a); or
 - (ii) as at the earlier of the date of termination of this Agreement and the End Date, the MIX RE was entitled to terminate this Agreement under clause 13.1(b).
- (d) For the avoidance of doubt, the Break Fee will not be payable merely by reason that the Scheme is not approved by MIX Unitholders at the Scheme Meeting.

12.3 Compliance with law

If a court or the Takeovers Panel determines that any part of the Break Fee:

- (a) constitutes or would, if performed, constitute:
 - (i) a breach of the fiduciary or statutory duties of the MIX RE Board (including the executive director(s)); or
 - (ii) unacceptable circumstances within the meaning of the Corporations Act; or
- (b) is unenforceable or would, if paid, be unlawful for any reason,

then MIX RE will not be obliged to pay such part of the Break Fee and, if such payment has already been made, then the Acquirer must within five Business Days after receiving written demand from the MIX RE refund that part of the Break Fee to the MIX RE.

12.4 Time for payment

- (a) The MIX RE must pay the Acquirer the Break Fee, if it is payable pursuant to clause 12.2(a), within five Business Days after receiving a written notice from the Acquirer setting out the relevant circumstances and requiring payment of the Break Fee.
- (b) A written notice requiring payment of the Break Fee may only be made after the Scheme fails to become Effective by the End Date or this Agreement is terminated in accordance with its terms.

13 Termination

13.1 Termination by either party

Either party (**terminating party**) may terminate this Agreement by notice to the other:

- (a) in accordance with clause 3.5; or
- (b) at any time before 8am on the Second Court Date if the other party is in material breach of any clause of this Agreement (including a material breach of a representation or warranty given by the other party under clause 9), provided that (except, where the Acquirer is the terminating party, in the case of a material breach by the MIX RE of clause 7 or 11) the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given.

13.2 Termination by the Acquirer

The Acquirer may terminate this Agreement at any time before 8am of the Second Court Date by notice in writing to the MIX RE:

- (a) if a majority of the directors of the MIX RE Board publicly change (including by attaching qualifications to) or withdraw their recommendation that MIX Unitholders approve the Scheme, or publicly recommend, promote or otherwise endorse a Competing Proposal,

whether or not in accordance with clause 7.1(b). For the avoidance of doubt, the resignation of a director of the MIX RE Board will not constitute a change of recommendation;

- (b) if a majority of the directors of the MIX RE Board fails to make a public recommendation in accordance with clause 11.6(e)(ii); or
- (c) if a Competing Proposal is announced, made, or becomes open for acceptance and the Third Party announcing or making the Competing Proposal (either alone or together with its Associates) acquires a Relevant Interest in more than 20% of all MIX Units and that Competing Proposal is (or has become) free from any defeating conditions.

13.3 Termination by MIX RE

The MIX RE may terminate this Agreement at any time before 8am on the Second Court Date by notice in writing to the Acquirer if the majority of the MIX RE Board publicly changes (including by attaching qualifications to) or withdraws its recommendation that MIX Unitholders approve the Scheme, in either case in accordance with clause 7.1(b), or publicly recommends, promotes or otherwise endorses a Superior Proposal.

13.4 Effect of termination

In the event of termination of this Agreement by either the Acquirer or the MIX RE pursuant to clauses 13.1, 13.2 or 13.3, this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 13 and clauses 1, 8.3 10, 12, 14 and 15 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Agreement.

14 GST

14.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

14.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

14.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

14.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

14.5 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

14.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

15 MIX RE Limitation of Liability

- (a) The MIX RE executes this Agreement only in its capacity as responsible entity of MIX constituted under the Constitution and in no other capacity. A liability arising under or in connection with this Agreement is limited and can be enforced against the MIX RE to the extent to which the MIX RE, having sought indemnification, is actually indemnified in respect of that liability out of the assets of MIX. Subject to clause 15(c), this limitation of the MIX RE's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the MIX RE in any way connected with any representation, warranty, indemnity, conduct, omission, agreement or transaction related to this Agreement.
- (b) No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the MIX RE in respect of any liability in any capacity other than as the responsible entity of MIX;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the MIX RE or prove in any liquidation, administration or arrangement of or affecting the MIX RE except in relation to the assets of MIX; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the MIX RE in any capacity other than as responsible entity of MIX.
- (c) This clause 15 does not apply to any obligation or liability of the MIX RE to the extent that it is not satisfied because:
 - (i) whether under the Constitution or by operation of law, there is a reduction in the extent of the MIX RE's indemnification, or loss of the MIX RE's right of indemnification, out of the assets of MIX as a result of MIX RE's failure to properly perform its duties as responsible entity of MIX; or
 - (ii) the MIX RE has failed to exercise any right of indemnity it has under the Constitution, but only in circumstances where the MIX RE is entitled to exercise its right of indemnification out of the assets of MIX in respect of the liability and only to the extent that there are sufficient assets of MIX which are available to meet that indemnity.
- (d) Nothing in clause 15(c) will make the MIX RE liable to any claim for an amount greater than the amount which a party would have been able to claim and recover from the

failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under this Agreement.

16.3 Remedies cumulative

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

16.4 Entire agreement

This Agreement and the Confidentiality Deed contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it. If there is any inconsistency between the provisions of this Agreement and the provisions of the Confidentiality Deed, the provisions of this Agreement will prevail to the extent of any inconsistency and the provisions of the Confidentiality Deed will be construed accordingly.

16.5 Amendment

This Agreement may be amended only by another agreement executed by both parties.

16.6 Assignment

Neither party can assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party.

16.7 No merger

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

16.8 Further assurances

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

16.9 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) and Transfer Taxes (including the amount of such Transfer Taxes included in the Final Transaction Costs Amount) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Acquirer.

16.10 Severability of provisions

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

16.11 Governing law and jurisdiction

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

16.12 Counterparts

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

Schedule 1

Regulatory Approvals

- (i) **(ASIC and ASX)** before 8am on the date of dispatch of the Explanatory Memorandum to MIX Unitholders:
 - (A) ASIC has either granted a modification of item 7 of section 611 of the Corporations Act, allowing each MIX Unitholder (other than those excluded from voting) to vote in favour of the Scheme for the purpose of item 7 of section 611, or has indicated in writing that it has agreed in principle to grant such a modification or that such a modification will not be required;
 - (B) ASIC has granted a modification or exemption from any requirement for the MIX RE or the Acquirer to comply with Division 5A of Part 7.9 of the Corporations Act in relation to the proposed offer to purchase MIX Scheme Units under the Scheme, or has indicated in writing that it has agreed in principle to grant such a modification or exemption, or that such a modification or exemption will not be required;
 - (C) ASIC has granted an exemption from the requirements of Part 7.6 of the Corporations Act in relation to any general financial product advice contained in the Explanatory Memorandum, or has indicated in writing that it has agreed in principle to grant such an exemption or that such an exemption will not be required;
 - (D) ASIC has granted an exemption from the requirement to provide a financial services guide in relation to any general financial product advice by the MIX RE contained in the Explanatory Memorandum, or has indicated in writing that it has agreed in principle to grant such an exemption or that such an exemption will not be required;
 - (E) ASIC has granted a modification or relief from provisions of the Corporations Act to enable the responsible entity of MIX to be replaced with a responsible entity approved by the Acquirer, without a meeting of members being held, following the Implementation Date; and
 - (F) ASX provides confirmation to the MIX RE that the proposed amendments to the Constitution as set out in the Supplemental Deed are appropriate and that it does not object to those amendments, or the Explanatory Memorandum under ASX Listing Rule 15.1.

Schedule 2**Timetable**

Event	Date
Submit draft Explanatory Memorandum and IER with ASIC for review	week commencing 22 September 2014
First Court Date	Week commencing 13 October 2014
Explanatory Memorandum dispatched to MIX Unitholders	No later than 27 October 2014
Scheme Meeting Date	19 November 2014
Second Court Date	21 November 2014
Effective Date	21 November 2014
Record Date	28 November 2014
Implementation Date	3 December 2014

Schedule 3

Supplemental Deed Poll

Mirvac Funds Management Limited

Supplemental Deed Poll

Amending the Constitution for Mirvac Industrial Trust

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This Deed Poll is made on

2014

Parties

Mirvac Funds Management Limited (ACN 067 417 663) of Level 26, 60 Margaret Street, Sydney NSW 2000 (the **Responsible Entity**).

Recitals

- A The Responsible Entity is the responsible entity of the trust known as the Mirvac Industrial Trust (ARSN 113 489 624) (formerly known as the JF US Industrial Trust and the Lago Property Trust) (the **Trust**).
- B The Trust has been registered as a managed investment scheme pursuant to section 601EB of the Corporations Act.
- C The Units of the Trust are quoted and traded on ASX.
- D The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Agreement, to propose and implement the Scheme.
- E The Constitution must be amended to facilitate the Scheme.
- F Under clause 25 of the Constitution, subject to the Corporations Act, the Responsible Entity may amend the Constitution by executing a supplemental deed.
- G Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be amended by special resolution of the Unit Holders of the Trust.
- H At a meeting held on [] 2014 convened in accordance with the Corporations Act, the Unit Holders approved certain resolutions, including a special resolution to make the amendments to the Constitution contained in this Supplemental Deed Poll.
- I Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll cannot take effect until a copy of this Supplemental Deed Poll has been lodged with ASIC.
- J The Acquirer has entered into a deed poll for the purpose of covenanting in favour of the Unit Holders that they will observe and perform the obligations contemplated of them under the Scheme and the Scheme Implementation Agreement.

It is declared as follows.

1 Definitions and Interpretation

1.1 Definitions

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

Acquirer means AustFunding Pty Ltd (ACN 601 686 999).

Constitution means the trust deed constituting the Trust, dated 21 March 2005 (as amended by deeds dated 6 April 2005, 9 December 2005, 25 September 2006 and 25 October 2007).

Effective Time means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

Scheme means the arrangement set out in the Scheme Implementation Agreement and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

Scheme Implementation Agreement means the agreement of that name between the Responsible Entity and the Acquirer dated on 19 September 2014, as amended from time to time.

1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.
- (b) Clauses 1.1 ('Definitions'), 1.2 ('Interpretation') and 36 ('Listing Rules and the Corporations Act') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Unit Holders jointly and severally.

2 Amendment of Constitution

The Responsible Entity amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the Schedule.

3 No Resettlement

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

- (a) resettle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

4 Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

Executed and delivered as a Deed Poll in Sydney

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Mirvac Funds Management Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule

Amendments to the Constitution of Mirvac Industrial Trust

The Constitution is amended as follows:

1 Clause 1.1 - Definitions

- (a) In clause 1.1 of the Constitution, the following definitions are inserted in alphabetical order:

Acquirer means AustFunding Pty Ltd (ACN 601 686 999).

Aggregate Scheme Consideration means the amount determined in accordance with clause 41.3(b)(ii).

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX Settlement Operating Rules means the operating rules of the settlement facility of ASX Settlement for the purposes of the Corporations Act.

Cash Balance Adjustment means the amount of any unrepresented cheques in respect of MIX Group bank accounts as at midnight (U.S. time) on 18 September 2014 (excluding any such cheques of an amount less than US\$10,000), such amount being the amount agreed to by the Acquirer, acting reasonably, but prepared by the MIX RE and presented to the Acquirer as soon as reasonably practicable and in any event no later than 3 Business Days prior to the Second Court Date.

CHES means the Clearing House Electronic Subregister System for the electronic transfer of securities and other financial products, operated by ASX Settlement.

Deed Poll means the deed poll dated 11 2014 executed by the Acquirer in favour of each Scheme Unitholder in relation to the Trust Scheme.

Effective means, in relation to the Trust Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Trust Scheme, including the insertion of clause 41, taking effect pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which the Trust Scheme becomes Effective.

Estimated Transaction Costs Amount means US\$3,878,234.

Final Transaction Costs Amount means the total aggregate amount of all Scheme Transaction Costs, denominated in US dollars.

Implementation Date means three Scheme Business Days following the Record Date, or such other date as may be agreed in writing between the Acquirer and the RE or as may be required by ASX.

Record Date means 7.00pm (Sydney time) on the date that is five Scheme Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the RE or as may be required by ASX.

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

Registrar means such suitably qualified person that is from time to time appointed by the RE to operate the Register.

Scheme Business Day means any day that is each of the following:

- (i) a Business Day within the meaning given in the Listing Rules; and

(ii) a day that banks are open for business in Sydney, New South Wales.

Scheme Consideration means the Aggregate Scheme Consideration divided by the number of Scheme Units on issue, being the consideration to which Scheme Unitholders are entitled under the terms of clause 41 for each Scheme Unit they hold.

Scheme Implementation Agreement means the agreement of that name between the RE and the Acquirer dated on 19 September 2014, as amended from time to time.

Scheme Meeting means the meeting of Unit Holders held on [] 2014 to consider the Scheme Resolutions, and includes any adjournment of that meeting.

Scheme Payment means US\$69,453,766 plus the Transaction Costs Adjustment.

Scheme Resolutions means the resolutions of Unit Holders to approve the Trust Scheme, being:

- (i) an ordinary resolution approving for the purpose of item 7 of section 611 of the Corporations Act the acquisition by the Acquirer of all of the Scheme Units; and
- (ii) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Trust Scheme.

Scheme Transaction Costs means all costs incurred by the RE in connection with the Trust Scheme, including advisory costs, accounting fees, legal fees, independent expert fees, printing and costs associated with convening the Scheme Meeting.

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

Scheme Unit means a Unit on issue as at the Record Date.

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

Transaction Costs Adjustment means the amount calculated as:

- (a) the Estimated Transaction Costs Amount minus the Final Transaction Costs Amount, such that:
 - (i) if the Final Transaction Costs Amount is greater than the Estimated Transaction Costs Amount, the Transaction Costs Adjustment will be a negative number; and
 - (ii) if the Final Transaction Costs Amount is less than the Estimated Transaction Costs Amount, the Transaction Costs Adjustment will be a positive number;
- (b) less the Cash Balance Adjustment.

Transfer Taxes means state, county, municipal, village, local and other real estate transfer taxes, stamp duties or equivalent or similar taxes or duties.

Trust Scheme means the arrangement by which all of the Scheme Units will be transferred to the Acquirer for the Scheme Consideration, as set out in clause 41.

- (b) In clause 1.1 of the Constitution, the definition of 'ASX' is replaced by the following:

'**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.'

2 Clause 1.3 – Rounding and Currency

Clause 1.3(b) of the Constitution is amended by replacing the words 'Subject to clauses 3.3, 5.6 and 16.8' at the beginning of paragraph (b) with the words 'Subject to clauses 3.3, 5.6, 16.8 and 41.3(d)'.

3 Clause 31.13 – Costs exclusive of GST

A new subclause 31.13 is inserted immediately after subclause 31.12 of the Constitution, as set out below:

31.13 Costs exclusive of GST

Except where clause 31.12 applies, a reference in this Constitution to a cost, expense or other similar amount (Cost) is a reference to that Cost exclusive of GST.

4 Clause 41 – Trust Scheme

A new clause 41 is inserted immediately after clause 40 of the Constitution, as set out below:

41 Trust Scheme

41.1 Implementation of Trust Scheme

- (a) Each Scheme Unitholder and the RE must do all things and execute all deeds, instruments, transfers or other documents as the RE considers are necessary or desirable to give full effect to the terms of the Trust Scheme and the transactions contemplated by it.
- (b) Without limiting the RE's other powers under this clause 41, the RE has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Trust Scheme, the Scheme Implementation Agreement and the transactions contemplated by them.
- (c) Subject to the Corporations Act, the RE, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 41 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (d) This clause 41:
 - (i) binds the RE and all of the Unit Holders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions); and
 - (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (excluding clause 36).

41.2 Entitlement to Scheme Consideration

Each Scheme Unitholder will be entitled to receive the Scheme Consideration for each Scheme Unit held by that Scheme Unitholder, which must be paid in the manner referred to in this clause 41.3.

41.3 Provision of Scheme Payment and Scheme Consideration

- (a) The RE acknowledges that the Acquirer has covenanted to pay, before 9:00 am on the Implementation Date, the Scheme Payment in immediately available funds into a US dollar denominated trust account nominated by the RE maintained by a third party on terms agreed with the Acquirer.

- (b) Subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 41.3(a), the RE must procure that:
- (i) the amount received from the Acquirer under clause 41.3(a) is held on trust for the Scheme Unitholders, except that any interest on the amount will be for the account of the Acquirer;
 - (ii) the amount received from the Acquirer under clause 41.3(a) is converted to Australian dollars at the prevailing exchange rate on the Implementation Date (and otherwise in such manner as the RE considers appropriate (acting reasonably), and such amount following conversion:
 - (A) is held in an Australian dollar denominated trust account nominated by the RE on trust for the Scheme Unitholders, except that any interest on the amount will be for the account of the Acquirer; and
 - (B) will be the Aggregate Scheme Consideration; and
 - (iii) within three Scheme Business Days after the Implementation Date, the Aggregate Scheme Consideration is drawn to pay to each applicable Scheme Unitholder such amount in Australian currency as that Scheme Unitholder is entitled to receive as Scheme Consideration, either by:
 - (A) electronic funds transfer to an account nominated by the Scheme Unitholder for the purpose of payment of distributions or the Scheme Consideration; or
 - (B) cheque sent by pre-paid post:
 - (1) in the case of Scheme Unitholders who are registered as holding the Units jointly - to the Registered Address recorded in the Register at the Record Date of the person whose name appears first in the Register in respect of the joint holding; or
 - (2) otherwise – to the Registered Address recorded in the Register at the Record Date.
- (c) If a fractional entitlement to part of a cent in cash arises from the calculation of the total amount of cash to be paid to a Scheme Unitholder, then that fractional entitlement will be rounded down to the nearest whole cent, with any fractional entitlement being disregarded.
- (d) If the RE believes that a Scheme Unitholder is not known at the Registered Address recorded in the Register, and no account has been notified in accordance with clause 41.3(b)(iii)(A), or a deposit into such an account is rejected or refunded, the RE may credit the amount payable to the relevant Scheme Unitholder to a separate bank account of the RE to be held until the Scheme Unitholder claims the amount or the amount is dealt with in accordance with any applicable unclaimed money legislation. If the RE elects to proceed in this manner:
- (i) the RE must hold the amount on trust, but any interest accruing on the amount will be for the account of the Acquirer;
 - (ii) an amount credited to the account is to be treated as having been paid to the Scheme Unitholder when credited to the account; and
 - (iii) the RE must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (e) If any amount is required under any Australian Law or by any Australian government or any Australian governmental, semi-governmental or judicial entity or authority to be:
 - (i) withheld from an amount payable under clause 41.3(b)(iii) and paid to that entity or authority; or
 - (ii) retained by the RE out of an amount payable under clause 41.3(b)(iii),its payment or retention by the RE will constitute the full discharge of the RE's obligations under clauses 41.3(b)(iii) or 41.3(d) with respect to the amount so paid or retained until, in the case of clause 41.3(e)(ii), it is no longer required to be retained.

41.4 Transfer of Scheme Units to the Acquirer

On the Implementation Date, subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 41.3(a) and providing the RE with written confirmation of that having occurred, the following will occur:

- (a) all of the Scheme Units, together with all rights and entitlements attaching to the Scheme Units as at the Implementation Date, will be transferred to the Acquirer, without the need for any further act by any Scheme Unitholder (other than acts performed by the RE (or any of its directors and officers appointed as sub-attorneys and/or agents of the RE) as attorney and/or agent for Scheme Unitholders under the Trust Scheme);
- (b) the RE will procure:
 - (i) in the case of Scheme Units in a CHESS holding, a message to be transmitted to ASX Settlement in accordance with ASX Settlement Operating Rules so as to transfer the Scheme Units held by the Scheme Unitholder from the CHESS sub-register of the RE to the issuer sponsored sub-register operated by the RE; and
 - (ii) the delivery to the Acquirer for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Units to the Acquirer, duly executed by the RE (or any of its directors and officers appointed as sub-attorneys and/or agents of the RE) as the attorney and/or agent of each Scheme Unitholder as transferor under clause 41.7; and
- (c) the RE will, immediately after receipt of the executed Scheme Transfers in respect of the Scheme Units from the Acquirer, enter or procure the entry of, the name and address of the Acquirer in the Register in respect of all of the Scheme Units.

41.5 Dealings in Units

- (a) For the purpose of establishing the persons who are Scheme Unitholders and the number of Units held by them, the RE will only recognise dealings in Units if:
 - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; or
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Registrar by the Scheme Business Day before the Record Date in which case the RE must register such transfers or transmission applications before the Record Date.
- (b) The RE will, until the name and address of the Acquirer has been entered in the Register as the holder of all of the Scheme Units, maintain, or procure the maintenance of, the Register in accordance with this clause 41.5. Immediately after registration of registrable

transfers or transmission applications of the kind referred to in clause 41.5(a), the Registrar will solely determine the persons who are Scheme Unitholders and the number of Scheme Units held by them.

- (c) No Scheme Unitholder (or any person purporting to claim through them) may dispose of, purport or agree to dispose of, or otherwise deal with, Scheme Units or any interest in them in any way after the Record Date, and any attempt to do so will have no effect.
- (d) Other than in respect of the Acquirer (after registration of the Acquirer in respect of all Scheme Units under clause 41.4(c)), from the Record Date, all certificates and holding statements (as applicable) for Scheme Units as at the Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Unitholders to the Scheme Consideration.
- (e) As soon as reasonably practicable after the Record Date, and in any event at least 2 Business Days before the Implementation Date, the RE must ensure details of the names, Registered Addresses and holdings of Scheme Units of every Scheme Unitholder as shown in the Register as at the Record Date are given to the Acquirer (or as it directs) in such form as the Acquirer may reasonably require.

41.6 Covenants by Scheme Unitholders

Each Scheme Unitholder:

- (a) irrevocably acknowledges that this clause 41 binds all of the Unit Holders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme Resolutions) without the need for any further act by that Scheme Unitholder;
- (b) irrevocably agrees to the transfer of their Scheme Units, together with all rights, entitlements and obligations attaching to those Scheme Units, to the Acquirer in accordance with the terms of the Trust Scheme;
- (c) irrevocably agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 41;
- (d) irrevocably consents to the RE and the Acquirer doing all things and executing all deeds, instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the terms of the Trust Scheme and the transactions contemplated by it; and
- (e) irrevocably agrees to provide to the RE such information as the RE may reasonably require to comply with any law in respect of the Trust Scheme and the transactions contemplated in this clause 41, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

41.7 Appointment of the RE as attorney and as agent for implementation of the Trust Scheme

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

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Trust Scheme and the transactions contemplated by it, including effecting a valid transfer or transfers of the

Scheme Units to the Acquirer under clause 41.4(c), and including executing and delivering any Scheme Transfers; and

- (b) enforcing the Deed Poll against the Acquirer,

and the RE accepts such appointment. The RE, as attorney and as agent of each Scheme Unitholder, may sub-delegate its functions, authorities or powers under this clause 41.7 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Scheme Unitholder indemnifies the RE and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause.

41.8 Status of Scheme Units

- (a) To the maximum extent permitted by law, the Scheme Units transferred to the Acquirer under this clause 41 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Scheme Unitholder is deemed to have warranted to the RE in its own right and on behalf of the Acquirer, that all their Scheme Units (including any rights, entitlements and obligations attaching to those Scheme Units) which are transferred to the Acquirer under this clause 41 will, at the time of the transfer of them to the Acquirer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this Constitution, and that they have full power and capacity to sell and to transfer their Scheme Units to the Acquirer pursuant to the Trust Scheme.
- (c) The Acquirer will be beneficially entitled to the Scheme Units transferred to it under this clause 41 pending registration by the RE of the name and Registered Address of the Acquirer in the Register as the holder of the relevant Scheme Units.

41.9 Suspension and termination of quotation of Units

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

41.10 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Trust Scheme is sent by post to the RE, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the RE's registered office or by the Registrar, as the case may be.

41.11 Costs and stamp duty

- (a) Without limiting clause 31, all expenses incurred by the RE in relation to the Trust Scheme and the Scheme Implementation Agreement are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act.

- (b) The Acquirer will pay all stamp duty (including fines, penalties and interest) and Transfer Taxes (including the amount of such Transfer Taxes included in the Final Transaction Costs Amount) payable on or in connection with the transfer to it of Scheme Units pursuant to the Trust Scheme.

41.12 Limitation of liability

Without limiting clauses 21, 22 and 23, subject to the Corporations Act, the RE will not have any liability of any nature whatsoever to the Unit Holders, beyond the extent to which the RE is actually indemnified out of the Assets, arising, directly or indirectly, from the RE doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Trust Scheme.

Schedule 4

Deed Poll

AustFunding Pty Ltd (ACN 601 686 999)

Each MIX Scheme Unitholder

Deed Poll

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

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Contents

1	Definitions and Interpretation	2
1.1	Definitions	2
1.2	Interpretation	2
2	Nature of Deed Poll	2
3	Conditions Precedent and Termination	3
3.1	Conditions precedent	3
3.2	Termination	3
3.3	Consequences of termination	3
4	Compliance with Scheme Obligations	3
4.1	Obligations of the Acquirer	3
5	Representations and Warranties	3
6	Continuing Obligations	4
7	Further Assurances	4
8	General	4
8.1	Notices	4
8.2	No waiver	4
8.3	Remedies cumulative	5
8.4	Amendment	5
8.5	Assignment	5
8.6	Costs and duty	5
8.7	Governing law and jurisdiction	5

This Deed Poll is made on

Parties

- 1 **AustFunding Pty Ltd (ACN 601 686 999)** of Level 17, 101 Collins Street, Melbourne, Victoria, 3000 (**Acquirer**).

In favour of

Each MIX Scheme Unitholder

Recitals

- A The Acquirer and Mirvac Funds Management Limited (ABN 78 067 417 663, AFSL 220718) in its capacity as responsible entity of Mirvac Industrial Trust (ARSN 113 489 624) (the **MIX RE**) have entered into a scheme implementation agreement dated 19 September 2014 (the **Implementation Agreement**).
- B The MIX RE has agreed in the Implementation Agreement to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, the Acquirer will acquire all of the MIX Scheme Units from MIX Scheme Unitholders for the Scheme Consideration.
- C In accordance with the Implementation Agreement, the Acquirer is entering into this Deed Poll for the purpose of covenanting in favour of the MIX Scheme Unitholders that it will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

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

1.2 Interpretation

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

2 Nature of Deed Poll

The Acquirer acknowledges that:

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

3 Conditions Precedent and Termination

3.1 Conditions precedent

The Acquirer's obligations (as relevant) under this Deed Poll are conditional on and subject to the Scheme becoming Effective.

3.2 Termination

If the Implementation Agreement is terminated before the Effective Date or the Scheme does not become Effective on or before the End Date, the obligations of the Acquirer under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless the MIX RE and the Acquirer otherwise agree in accordance with the Implementation Agreement.

3.3 Consequences of termination

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

- (a) the Acquirer is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each MIX Scheme Unitholder retains any rights, powers or remedies that MIX Scheme Unitholder has against the Acquirer in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4 Compliance with Scheme Obligations

4.1 Obligations of the Acquirer

Subject to clause 3, in consideration for the transfer to the Acquirer of the MIX Scheme Units in accordance with the Scheme, the Acquirer covenants in favour of each MIX Scheme Unitholder that:

- (a) it will pay (or procure the payment) of the Scheme Payment in accordance with clause 4.2 of the Implementation Agreement; and
- (b) it will observe and perform all other obligations contemplated of it under the Scheme.

5 Representations and Warranties

The Acquirer makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has the power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** This Deed Poll is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
 - (i) a law, judgment, ruling, order or decree binding on it; or

- (ii) its constitution or other constituent documents.

6 Continuing Obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) the Acquirer has fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7 Further Assurances

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

8 General

8.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender in writing:

AustFunding Pty Ltd

Attention: Jim Vais, Legal Counsel

Fax No: +61 3 9924 0130

Address: Level 17, 101 Collins Street, Melbourne
VIC 3000

- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

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

8.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by the Acquirer or by any MIX Scheme Unitholder operates as a waiver. A single or partial exercise of any right, power

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

8.3 Remedies cumulative

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

8.4 Amendment

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

- (a) the amendment or variation is agreed to in writing by MIX RE and the Acquirer, which such agreement may be given or withheld without reference to or approval by any MIX Unitholder;
- (b) the Court indicates that the amendment or variation would not of itself preclude provision of the First Judicial Advice or the Second Judicial Advice; and
- (c) the Acquirer enters into a further deed poll in favour of the MIX Scheme Unitholders giving effect to that amendment or variation.

8.5 Assignment

The rights and obligations of the Acquirer and of each MIX Scheme Unitholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of the Acquirer and the MIX RE.

8.6 Costs and duty

The Acquirer must bear their own costs arising out of the negotiation, preparation and execution of this Deed Poll. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by the Acquirer. The Acquirer must indemnify each MIX Scheme Unitholder on demand against any liability for that duty (including any related fines, penalties and interest).

8.7 Governing law and jurisdiction

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

Executed and delivered as a Deed in Sydney.

Executed in accordance with section 127 of the *Corporations Act 2001* by **AustFunding Pty Ltd** (ACN 601 686 999):

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule 5

Agreed Public Announcement



19 September 2014

**MIRVAC INDUSTRIAL TRUST
EXECUTES A SCHEME IMPLEMENTATION AGREEMENT
WITH A MEMBER OF THE GOLDMAN SACHS GROUP**

Mirvac Funds Management Limited (“MFML”), the responsible entity of Mirvac Industrial Trust [ASX: MIX] (“MIX” or the “Trust”), today announced that it has entered into a Scheme Implementation Agreement (“SIA”) with AustFunding Pty Ltd (the “Acquirer”), a wholly owned subsidiary of The Goldman Sachs Group, Inc., in relation to a trust scheme under which the Acquirer will acquire all of the Units in MIX (the “Proposal”), subject to MIX Unitholder approval and other conditions being satisfied or waived (as applicable).

On the implementation of the Proposal, MIX Unitholders will receive a payment estimated to be A\$0.214 per MIX Unit (“Scheme Consideration”), based on:

- > an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014; and
- > the assumed transaction costs that will be incurred.

The Acquirer’s offer¹ represents a portfolio valuation of US\$170.0 million, which is a premium of 3.7 per cent above the portfolio’s book value of US\$164.0 million² and implies a capitalisation rate of 7.7 per cent for the portfolio. Under the proposal the Acquirer will also pay full consideration for the Trust’s net other assets which totalled US\$6.7 million as at 18 September 2014.

A reconciliation of the Scheme Consideration is included at Appendix A. The Scheme Consideration is expected to be paid on or around 8 December 2014.

The premiums of the estimated Scheme Consideration of A\$0.214 per MIX Unit to the closing price of MIX on the day prior to the announcement of the Expressions of Interest (“EOI”)³ campaign and on the day prior to the execution of the SIA⁴ are as follows:

	Day prior to the announcement of the EOI campaign being 27 May 2014	Day prior to the execution of the SIA being 18 September 2014
Premium to last closing price	33.5%	22.0%
Premium to one month VWAP	32.3%	22.8%
Premium to three month VWAP	30.7%	25.8%

The premiums of the estimated Scheme Consideration of A\$0.214 per MIX Unit to the stated NTA⁵ and proforma NTA⁶ are as follows:

¹ The Acquirer’s offer is not conditional on any further due diligence.

² As at 30 June 2014 including the Touhy asset.

³ The last trading day before the announcement of the EOI campaign which was announced on 28 May 2014.

⁴ The last trading day before the execution of the SIA on 19 September 2014.

⁵ The stated NTA as at 30 June 2014 is \$0.196 per MIX Unit which was rounded to \$0.20 per MIX Unit.

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Mirvac Capital
Investments Pty Limited
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Premium to stated NTA as at 30 June 2014 ⁵	8.8%
Premium to proforma NTA as at 18 September 2014 ⁶	3.5%

The amount ultimately received by MIX Unitholders will depend on the confirmation of the final amount of transaction costs that will be incurred and the A\$/US\$ exchange rate to be applied to the US dollar proceeds received from the Acquirer. Full details of the Scheme Consideration will be set out in the Explanatory Memorandum.

A sensitivity table highlighting the impact of movements in the A\$/US\$ exchange rate on the Scheme Consideration and the proforma NTA is included at Appendix B.

Directors' recommendation

The Directors' of MFML believe the Proposal is in the best interests of MIX Unitholders and unanimously recommend that MIX Unitholders vote in favour of the Proposal, subject to the Independent Expert concluding that the Proposal is fair and reasonable and in the best interests of MIX Unitholders, and in the absence of a superior proposal.

MFML Chairman, Paul Barker said today, "The Proposal represents the culmination of the strategy announced in February 2013 to sell non-core assets and realign the portfolio to position it for a potential future sale and deliver value for the benefit of MIX Unitholders."

"The EOI campaign which we embarked on in late May 2014 has comprehensively tested the market's interest in MIX and its underlying real estate portfolio. We are very pleased with the level of interest received from this process."

"After careful consideration of all proposals received during the EOI campaign and also assessing a number of strategic alternatives for the Trust, we believe the Acquirer's offer represents the most compelling and certain value proposition available for MIX Unitholders, in the absence of a superior proposal."

Mirvac Group [ASX:MGR] as MIX's largest Unitholder and owner of MFML, has indicated that it supports the transaction, and that its current intention is to vote in favour of the transaction, in the absence of a superior proposal, to the extent that it is permitted to vote⁷. The transaction reflects Mirvac Group's intention to support the best commercial outcome for all MIX Unitholders, and in the context of the current transaction, Mirvac Group confirms it intends to sell its units in MIX only into a MFML Board recommended proposal that is in the best interest of MIX Unitholders.

Independent Expert

The Directors appointed Deloitte Corporate Finance Pty Limited as Independent Expert to advise whether, in its opinion, the offer is fair and reasonable and in the best interests of MIX Unitholders.

⁶ Based on NTA as at 30 June 2014 converted at an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014. The proforma NTA includes the Touhy asset. The sale of Touhy asset announced on 3 September 2014 has no material impact to either the stated or the proforma NTA.

⁷ Mirvac Group is an associate of MFML and, as such, may be restricted under section 253E of the Corporations Act from voting on the resolutions to approve the transaction to the extent that it has an interest in the resolutions other than as a member. Whether or not Mirvac is permitted to vote will be determined by MFML.

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The full Independent Expert's opinion and report will be contained in the Explanatory Memorandum.

Explanatory Memorandum and Unitholders' meeting

The Proposal is subject to approval at a meeting of MIX Unitholders. It is expected that the Notice of Meeting and the accompanying Explanatory Memorandum including the Independent Expert's Report will be sent to MIX Unitholders no later than 27 October 2014, and that the MIX Unitholders' meeting is expected to be held on 19 November 2014. If the Proposal is approved and other conditions are satisfied or waived (as applicable), it is expected that it will be implemented on 3 December 2014.

A copy of the SIA is included in Appendix C. A full summary of the SIA will be included in the Explanatory Memorandum. Implementation of the Proposal is conditional on the satisfaction or waiver of certain conditions, including:

- > receipt of all relevant regulatory approvals;
- > the requisite MIX Unitholder approvals;
- > judicial advice being obtained;
- > the Independent Expert concluding that the Proposal is fair and reasonable and in the best interests of MIX Unitholders; and
- > the Directors continuing to recommend unanimously that MIX Unitholders vote in favour of the resolutions.

The SIA also includes provisions customary for a transaction of this nature, including exclusivity arrangements and provisions for the payment of a break fee to the Acquirer in certain circumstances.

Indicative timetable⁸

Event	Date
First court hearing	Week commencing 13 October 2014
Explanatory Memorandum dispatched to MIX Unitholders	No later than 27 October 2014
MIX Unitholders scheme meeting	19 November 2014
Second court hearing	21 November 2014
Effective date	21 November 2014
Record date for determining entitlements to Scheme Consideration	28 November 2014
Implementation date	3 December 2014
Payment of Scheme Consideration to MIX Unitholders	8 December 2014

About AustFunding Pty Ltd, a wholly owned subsidiary of The Goldman Sachs Group, Inc. ("Goldman Sachs"):

The Goldman Sachs Group, Inc. is a leading global financial services firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in all major financial centers around the world.

⁸ All dates are indicative and subject to change.



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For further information, please contact:

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APPENDIX A

RECONCILIATION OF ESTIMATED SCHEME CONSIDERATION

MIX portfolio (US\$m)	170.0
Net other assets (US\$m) ⁹	6.7
ING debt pools (US\$m)	(103.4)
Estimated transaction costs (US\$m) ¹⁰	(3.9)
Equity value (US\$m)	69.5
AUD / USD ¹¹	0.8973
Equity value (A\$m)	77.4
Equity value (A\$ cpu)	21.4

APPENDIX B

SENSITIVITY OF IMPACT FROM MOVEMENT IN A\$/US\$ EXCHANGE RATE IN RELATION TO THE SCHEME CONSIDERATION AND PROFORMA NTA

A\$/US\$ exchange rate	0.88	0.89	0.8973	0.90	0.91	0.92
Scheme Consideration (\$A cpu)	21.8	21.5	21.4	21.3	21.1	20.8
Proforma NTA (A\$ cpu)	21.0	20.8	20.6	20.6	20.3	20.1

⁹ Under the proposal the Acquirer will also pay full consideration for the Trust's net other assets which totalled US\$6.7 million as at 18 September 2014.

¹⁰ Estimated transaction costs may be subject to adjustment for final transaction costs.

¹¹ Based on an A\$/US\$ exchange rate of 0.8973 as at 18 September 2014.



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APPENDIX C

SCHEME IMPLEMENTATION AGREEMENT

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Mirvac Real Estate Pty Ltd
ABN 65 003 342 452
Mirvac Capital
Investments Pty Limited
ABN 86 093 644 252

Schedule 6

Deed of Retirement and Appointment

Mirvac Funds Management Limited

[insert name of new RE]

AustFunding Pty Ltd

Deed of Retirement and Appointment

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Contents

1	Definitions and Interpretation	2
1.1	Definitions	2
1.2	Interpretation	3
2	Retirement and Appointment	3
3	Consents and Acknowledgements	3
4	Actions to be taken following change of responsible entity	4
4.1	Vesting of Assets	4
4.2	Transfer and delivery of records	4
4.3	Proceedings and Transactions	4
4.4	Parties to give effect to retirement and appointment	5
4.5	Name of Trust and other MIX Group entities	5
5	Additional obligations of Retiring Responsible Entity	5
5.1	Termination of arrangements	5
5.2	Retirement of directors, officers and/or trustees of the MIX Group	6
6	Release of Retiring Responsible Entity	6
6.1	Fees	6
7	Indemnities	7
7.1	Indemnity by New Responsible Entity	7
7.2	Indemnity by Retiring Responsible Entity	7
7.3	Continuing rights of indemnity	7
8	GST	7
8.1	Recovery of GST	7
8.2	Impact of GST on calculation of amounts payable	7
8.3	Adjustment events	7
8.4	Defined terms	8
9	Stamp duty	8
10	Notices	8
11	Severability	8
12	Governing Law and Jurisdiction	8
13	Counterparts	8
Schedule 1		9
	Form of Release by Mirvac Group Entities	9
Schedule 2		10
	Form of retirement and resignation by directors, officer and / or trustees	10

This Deed is made on

2014

Parties

- 1 **Mirvac Funds Management Limited** (ACN 067 417 663) of Level 26, 60 Margaret Street, Sydney NSW 2000 (the **Retiring Responsible Entity**).
- 2 **[insert name of new RE]** (ACN [*]) of **[insert address]** (the **New Responsible Entity**).
- 3 **AustFunding Pty Ltd** (ACN 601 686 999) of Level 17, 101 Collins Street, Melbourne, Victoria 3000 (the **Sole Member**).

Recitals

- A The Retiring Responsible Entity is currently the responsible entity of the Mirvac Industrial Trust (ARSN 113 489 624) (the **Trust**), a managed investment scheme registered under the Corporations Act and established under a trust deed dated 21 March 2005 (as amended) (the **Constitution**).
- B The Retiring Responsible Entity wishes to retire as responsible entity of the Trust.
- C Under clause 24.1 of the Constitution, the responsible entity of the Trust may retire as permitted by law.
- D Section 601FL(1) of the Corporations Act (as modified by the ASIC Instrument) requires that, if the responsible entity of a registered scheme wants to retire, it must either:
 - (a) call a members' meeting to explain its reasons for wanting to retire and to enable the members to vote on a resolution to choose a company to be the new responsible entity; or
 - (b) where the scheme only has one member, propose a company to be the new responsible entity in accordance with section 601FL(1A) of the Corporations Act (as notionally inserted by the ASIC Instrument), which (amongst other things) requires the sole member of the scheme to consent in writing to the retirement of the responsible entity and the appointment of the proposed responsible entity as the new responsible entity.
- E At a meeting of members of the Trust held on [*] 2014, the members approved a trust scheme which resulted in the acquisition of all issued units in the Trust by the Sole Member.
- F On and from the Implementation Time, the Sole Member will be the only member of the Trust.
- G The Retiring Responsible Entity wishes to retire as responsible entity of the Trust and proposes that the New Responsible Entity be appointed as responsible entity of the Trust, in accordance with the conditions in the ASIC Instrument.
- H This Deed:
 - (a) sets out the terms upon which the Retiring Responsible Entity retires as, and the New Responsible Entity is appointed as, the responsible entity of the Trust;
 - (b) contains the consent of the Sole Member and the New Responsible Entity as required under the ASIC Instrument to the proposed appointment of the New Responsible Entity as the responsible entity of the Trust; and
 - (c) contains provisions relating to the termination and release of certain rights and obligations existing between Mirvac Group entities and MIX Group entities.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

Terms defined in clause 1.1 of the Constitution have the same meaning in this Deed.

In addition, the following definitions apply in this Deed:

ASIC Instrument means instrument of relief numbered [] that modifies section 601FL of the Corporations Act as it applies to the Trust, which was issued by ASIC on [] 2014.

Claim means any claim, cost (including legal costs on a full indemnity basis) and Liability howsoever arising.

Control has the meaning given to that expression in the Corporations Act and **Controlled** has a similar meaning.

Delivery Date means the date that is 2 Business Days prior to the Second Court Date.

Effective Time means the date and time at which ASIC alters the record of the Trust's registration to name the New Responsible Entity as the responsible entity of the Trust, which must not occur before the Implementation Time.

Implementation Time means the date and time that the Sole Member becomes the holder of all the Units on issue.

Liabilities mean any costs, losses, damages, judgments, orders or liabilities of any nature whatsoever including, without limitation, any taxes or duties of any kind.

Mirvac Group means Mirvac Limited (ACN 003 280 699), Mirvac Property Trust (ARSN 086 780 645) and their respective wholly-owned Subsidiaries.

MIX Group means the Trust and its wholly-owned Subsidiaries.

Proceedings has the meaning given in clause 4.3.

REIT Services Agreements means collectively:

- (a) the REIT Services Agreement dated 6 April 2005 between Mirvac US Industrial Property Fund, Inc. (formerly known as JF US Industrial Property Fund, Inc.) and MFM US Real Estate Inc. (formerly known as JFFM US Real Estate, Inc.); and
- (b) the REIT Services Agreement dated 6 April 2005 between Mirvac US Industrial Property Trust (formerly known as JF US Industrial Property Trust) and MFM US Real Estate Inc. (formerly known as JFFM US Real Estate, Inc.).

Scheme Implementation Agreement means the scheme implementation agreement between the Mirvac Funds Management Limited (ABN 78 067 417 663) in its capacity as responsible entity of the Trust and the Sole Member dated 19 September 2014.

Second Court Date has the meaning given in the Scheme Implementation Agreement.

Subsidiary has the meaning given to that expression in the Corporations Act but so that:

- (a) a trust will be treated as if it were a body corporate and a unit or other beneficial interest in the trust will be treated as if it were a share in that body corporate; and
- (b) a body corporate or other entity which is not a body corporate will also be treated as a Subsidiary of a body corporate or another entity which is not a body corporate if it is Controlled by that body corporate or other entity (expressions used in this paragraph

have the meanings given for the purposes of Division 6 of Part 1.2 of the Corporations Act).

Transactions has the meaning given in clause 4.3.

Trust Information has the meaning given in clause 4.2.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to a clause is to a clause (or subclause) of this Deed.
 - (iv) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - (v) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals and schedules to that agreement or document.
 - (vi) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (vii) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.

2 Retirement and Appointment

With effect from the Effective Time:

- (a) the Retiring Responsible Entity retires as responsible entity of the Trust; and
- (b) the New Responsible Entity is appointed as responsible entity of the Trust.

3 Consents and Acknowledgements

- (c) With effect from the Effective Time, the New Responsible Entity:
 - (i) consents to act as responsible entity of the Trust, and agrees to be bound by the provisions of the Constitution, from the Effective Time.
 - (ii) may exercise the same powers and has the same rights as the Retiring Responsible Entity under the Constitution; and
 - (iii) must perform all the obligations of the responsible entity under the Constitution and agrees to be bound by the Constitution as if it had originally been a party to it.
- (d) The Sole Member consents to the retirement of the Retiring Responsible Entity and the appointment of the New Responsible Entity from the Effective Time.

4 Actions to be taken following change of responsible entity

4.1 Vesting of Assets

- (a) The Retiring Responsible Entity agrees to transfer the Assets of the Trust, or cause them to be transferred, to the New Responsible Entity or as the New Responsible Entity directs, on or as soon as practicable after the Effective Time.
- (b) Where, after the Effective Time, the Retiring Responsible Entity continues to hold Assets of the Trust, then the Retiring Responsible Entity will, subject to clause 4.1(c), act on the direction of the New Responsible Entity in relation to those Assets until they are transferred to the New Responsible Entity or as the New Responsible Entity directs in writing. The New Responsible Entity warrants that any direction given to the Retiring Responsible Entity in accordance with this clause 4.1(b) will be given in compliance with the New Responsible Entity's obligations in respect of the Trust.
- (c) The New Responsible Entity will:
 - (i) reimburse the reasonable costs of the Retiring Responsible Entity for providing assistance to, or complying with directions of, the New Responsible Entity under this clause; and
 - (ii) indemnify the Retiring Responsible Entity against each Liability incurred or suffered by or brought or made or recovered against the Retiring Responsible Entity in connection with its compliance with this clause.

4.2 Transfer and delivery of records

- (a) The Retiring Responsible Entity agrees to deliver to the New Responsible Entity, or as the New Responsible Entity directs, all books, documents and records required under the Corporations Act to be kept in relation to the Trust (**Trust Information**) in its possession, in any manner reasonably requested by the New Responsible Entity on or as soon as practicable after the Effective Time.
- (b) The New Responsible Entity will reimburse the reasonable costs of the Retiring Responsible Entity for providing assistance to, or complying with directions of, the New Responsible Entity under this clause 4.2.

4.3 Proceedings and Transactions

The New Responsible Entity will, as soon as practicable after the Effective Time, use all reasonable endeavours to:

- (a) arrange for itself to become a party to any legal proceedings to which the Retiring Responsible Entity is a party as responsible entity of the Trust (collectively, **Proceedings**) and, accordingly, to be substituted in those Proceedings for the Retiring Responsible Entity so that the Retiring Responsible Entity is released from those Proceedings;
- (b) arrange for the release of the Retiring Responsible Entity from contracts, agreements (including financing) or obligations which it, as responsible entity of the Trust, has with or to third parties (collectively, **Transactions**) and for the New Responsible Entity to assume all obligations and liabilities under those Transactions in place of the Retiring Responsible Entity;
- (c) pending any release from a Proceeding, give to the Retiring Responsible Entity appropriate directions as to conduct of that Proceeding; and

- (d) while the Retiring Responsible Entity (as responsible entity of the Trust) is a party to any Transaction, give appropriate directions as to performance of that Transaction and to perform that Transaction on behalf of the Retiring Responsible Entity until it is either novated or terminated.

4.4 Parties to give effect to retirement and appointment

The parties agree, acknowledge and confirm that each party must do all such things and must execute all such documents as may be reasonably required on their respective parts as will give full force and effect to the retirement of the Retiring Responsible Entity and the appointment of the New Responsible Entity, including the novation of agreements executed in the capacity as responsible entity or trustee of the Trust (if required).

4.5 Name of Trust and other MIX Group entities

The New Responsible Entity will, as soon as practicable after the Effective Time, use all reasonable endeavours to promptly take whatever action is necessary to change the name of the Trust, the names of other entities within the MIX Group and remove any words, letters or expressions from the Constitution and any other documents which might express or imply an association with the Retiring Responsible Entity or any of its associates and agrees not to use any such words, letters or expressions in connection with the Trust, any other entities within the MIX Group or the Constitution.

5 Additional obligations of Retiring Responsible Entity

5.1 Termination of arrangements

- (a) The Retiring Responsible Entity must procure that:
 - (i) on or prior to the Effective Time, the REIT Services Agreements and any other contract, arrangement or understanding between any entity within the MIX Group and the Mirvac Group (it being understood that the Retiring Responsible Entity has previously advised that no such agreements or arrangements exist) are terminated without payment of any fee or other payment to any Mirvac Group entity or any affiliate thereof; and
 - (ii) on or prior to the Delivery Date, the Mirvac Group entities that are parties to the REIT Services Agreements and any other contract, arrangement or understanding with the MIX Group provide releases to the relevant MIX Group entities that are parties to those arrangements, with effect on and from the Effective Time, from any Claim the Mirvac Group entities may have against any MIX Group entity.
- (b) The releases to be provided under clause 5.1(a)(ii) must be in the form as set out in Schedule 1 and must be signed by the relevant Mirvac Group entity and delivered to the Sole Member no later than the Delivery Date.
- (c) The Retiring Responsible Entity shall indemnify the New Responsible Entity against any Liabilities which the New Responsible Entity may suffer or incur from the Effective Time, directly or indirectly, in respect of or arising out of any arrangements between a Mirvac Group Entity and a MIX Group entity, including the retirement and / or resignation of the parties under clause 5.2.

5.2 Retirement of directors, officers and/or trustees of the MIX Group

The Retiring Responsible Entity must procure that all directors, officers, employees, managers and/or trustees (or any persons with any other similar titles) of the MIX Group, specifically including:

- (a) Nicholas Blake;
- (b) Andrew Butler; and
- (c) Blake Eagle,

sign and deliver to the Sole Member, on or prior to the Delivery Date but effective no later than the Effective Time, retirement and / or resignation letters from such positions, in the form set out in Schedule 2.

6 Release of Retiring Responsible Entity

From the Effective Time, the Retiring Responsible Entity is released from all further duties as responsible entity of the Trust arising after the Effective Time, other than duties under this Deed.

6.1 Fees

- (a) The Retiring Responsible Entity is entitled to the fees payable under the Constitution up to the Effective Time as set out in paragraph (b) below and the New Responsible Entity will ensure that such fees are paid to the Retiring Responsible Entity in accordance with paragraph (b) below.
- (b) For the purposes of clause 6.1(a), the New Responsible Entity agrees:
 - (i) to pay to Retiring Responsible Entity the amount of Base Management Fees to which the Retiring Responsible Entity is entitled in accordance with the Constitution up to and including [31 October 2014], the Base Management Fee being an estimated sum of AUD\$85,000 per month varied only to the extent there are movements in the net asset position of the Trust or exchange rates between the date of the Scheme Implementation Agreement and the Effective Time (or, if the Effective Time occurs on or after the last day of a month that is later than [31 October 2014], up to and including the last day of such month); and
 - (ii) to pay such amount to the Retiring Responsible Entity as soon as possible after [31 December 2014] (or, if the Effective Time occurs on or after [31 December 2014], the last day of the next Quarter following the Effective Time), being the date on which the Base Management Fee is payable in accordance with the Constitution.
- (c) The Retiring Responsible Entity acknowledges and warrants that other than the fees that are payable to it under paragraph (b) above, the Retiring Responsible Entity does not have a Claim for any fees owing to it from any MIX Group entity from the Effective Time and waives any rights to receive fees other than those described above.
- (d) For the avoidance of doubt, this clause 6.1 does not limit the Retiring Responsible Entity's right under the Constitution to be paid or reimbursed for Expenses (excluding any fees payable to the Retiring Responsible Entity or its associates) that are reasonably and properly incurred by the Responsible Entity, until the Effective Time, in connection with the operation of the Trust or in performing its obligations under the Constitution.

7 Indemnities

7.1 Indemnity by New Responsible Entity

- (a) The New Responsible Entity indemnifies the Retiring Responsible Entity against any Liabilities which the Retiring Responsible Entity may suffer or incur in respect of or arising out of any Proceeding, Transaction or any matter in respect of which the Retiring Responsible Entity would have had a right of indemnity out of the Assets of the Trust. This indemnity extends to all legal costs on a full indemnity basis as and when incurred.
- (b) The New Responsible Entity indemnifies the Retiring Responsible Entity against any Liability of the Retiring Responsible Entity for capital gains tax or any other tax or duty (including stamp duty, GST and any fines, penalties or interest) in relation to or arising from the vesting of Assets in the New Responsible Entity, to the extent to which the Retiring Responsible Entity is not fully indemnified out of the Assets of the Trust.

7.2 Indemnity by Retiring Responsible Entity

The Retiring Responsible Entity indemnifies the New Responsible Entity against any Liabilities which the New Responsible Entity may suffer or incur arising out of the performance of the Retiring Responsible Entity's duties in relation to the Trust prior to the Effective Time to the extent that the Retiring Responsible Entity would not have had a right of indemnity out of the Assets of the Trust in respect of those Liabilities. This indemnity extends to all legal costs on a full indemnity basis as and when incurred.

7.3 Continuing rights of indemnity

Subject to clause 6.1(c) of this Deed, the retirement of the Retiring Responsible Entity does not affect or limit the Retiring Responsible Entity's rights of indemnification out of the Assets of the Trust under the Constitution or at law prior to or at the Effective Date.

8 GST

8.1 Recovery of GST

If GST is payable on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

8.2 Impact of GST on calculation of amounts payable

Without limiting clause 8.1, if an amount payable under this Deed is calculated by reference to a Liability incurred by a party, then the Liability must be reduced by the amount of any input tax credit entitlement in respect of that Liability.

8.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

8.4 Defined terms

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause 8.

9 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Deed, or any transaction contemplated by this Deed, must be paid by the New Responsible Entity.

10 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:

- (i) to the Retiring Responsible Entity: Mirvac Funds Management Limited
Level 26
60 Margaret Street
Sydney NSW 2000

Attention: Natalie Allen, General Counsel &
Company Secretary

Fax No: +61 2 9080 8111;
 - (ii) to the New Responsible Entity: [*]
Attention: [*]
Fax No: [*]; and

- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

11 Severability

Any provision of this Deed which is unenforceable for any reason in any jurisdiction will be ineffective in that jurisdiction to the extent of such unenforceability without invalidating any of the remaining provisions of this Deed or affecting the enforceability or validity of this Deed in any other jurisdiction.

12 Governing Law and Jurisdiction

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

13 Counterparts

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

Schedule 1

Form of Release by Mirvac Group Entities

MFM US Real Estate Inc.
Mirvac US Industrial Property Fund, Inc
Mirvac US Industrial Property Trust

Deed of Release

REIT Services Agreements

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

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Contents

1	Definitions and Interpretation	1
	1.1 Definitions	1
	1.2 Interpretation	2
2	Condition	2
	2.1 Condition	2
	2.2 Satisfaction of condition	2
3	Termination and Release	3
4	Covenant not to Sue	3
5	Further Assurances	3
6	Entire Agreement	3
7	Amendment	3
8	Costs and Stamp duty	3
9	Assignment	3
10	No Waiver	3
11	No Merger	3
12	Governing Law	4
13	Counterparts	4

This Deed is made on

Parties

- 1 **MFM US Real Estate Inc.** (formerly known as JFFM US Real Estate, Inc.) of [insert address] (*MFM US Real Estate*).
- 2 **Mirvac US Industrial Property Fund, Inc** (formerly known as JF US Industrial Property Fund, Inc.) of [insert address] (*Mirvac US Fund*).
- 3 **Mirvac US Industrial Property Trust** (formerly known as JF US Industrial Property Trust) of [insert address] (*Mirvac US Property Trust*).

Recitals

- A Mirvac US Real Estate has entered into the REIT Services Agreements with each of Mirvac US Fund and Mirvac US Property Trust, under which Mirvac US Real Estate has agreed to provide certain services to Mirvac US Fund and Mirvac US Property Trust on the terms of the REIT Services Agreements].
- B The parties have agreed to terminate the REIT Services Agreements, and to provide certain releases in respect of each REIT Services Agreement, on the terms set out in this Deed.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

Claim includes any claim, actions, demands, proceedings or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).

Corporations Act means the Corporations Act 2001 (Cth).

Effective Date means the time and date at which ASIC alters the record of the Trust's registration to name [insert name of New RE] as the responsible entity of the Trust.

End Date means 31 March 2015, or such later date as the parties may agree in writing.

MIX Units means a fully paid ordinary unit in the Trust.

REIT Services Agreements means collectively:

- (a) the REIT Services Agreement dated 6 April 2005 between Mirvac US Fund and MFM US Real Estate; and
- (b) the REIT Services Agreement dated 6 April 2005 between Mirvac US Property Trust and MFM US Real Estate.

Sole Member means AustFunding Pty Ltd (ACN 601 686 999).

Trust means Mirvac Industrial Trust (ARSN 113 489 624).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a clause or annexure is a reference to a clause of, or annexure to, this Deed.
- (d) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (j) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

2 Condition

2.1 Condition

This Deed and the releases under this Deed are subject to, and conditional upon, the Sole Member becoming the holder of all of the MIX Units on issue, and does not come into effect until the Effective Date.

2.2 Satisfaction of condition

If the condition set out in clause 2.1 is not satisfied by the End Date, then this Deed will be of no force or effect.

3 Termination and Release

With effect on and from the Effective Date:

- (a) each REIT Services Agreement is terminated and none of the parties to the REIT Services Agreements will have any further rights or obligations under it; and
- (b) each party to each REIT Services Agreement releases the other party from any Claim it has against that other party arising under or in connection with the relevant REIT Services Agreement.

4 Covenant not to Sue

With effect on and from the Effective Date, each party to the REIT Services Agreements covenants in favour of the other party, that it will not bring or pursue, or procure that a third party bring or pursue, a Claim against the other party in respect of any matter which is the subject of a release under clause 3(b).

5 Further Assurances

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to the transactions contemplated by this Deed.

6 Entire Agreement

This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

7 Amendment

This Deed may be amended only by another deed executed by each of the parties.

8 Costs and Stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Deed and any instrument executed under this Deed must be borne equally by the parties.

9 Assignment

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the other parties.

10 No Waiver

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

11 No Merger

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

12 Governing Law

This Deed is governed by the laws of Maryland, United States of America. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

13 Counterparts

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

Executed and delivered as a Deed in []

[To be inserted]

Schedule 2

Form of retirement and resignation by directors, officer and / or trustees

[To be Printed on Director's Letterhead]

2014

The Secretary

[insert name of MIX Group Entity]
[insert address]

Dear Sir

[re: name of MIX Group Entity]

I tender my resignation as a [insert title of position] of [insert name of MIX Group Entity] (the **Entity**) with effect on and from the Effective Time (as defined below).

I confirm that:

- 1 I have no claims of any kind against the Entity and I confirm that I have been paid all remuneration and expenses owing to me as a [insert title of position] of the Entity;
- 2 Subject to paragraph 3, I release the Entity from any and all claims of any kind I may have against the Entity; and
- 3 there is no other agreement, arrangement or understanding under which the Entity has or could have any obligation to me other than an indemnity granted to me under the Entity's [insert organisational documents] (which shall survive this resignation and continue to benefit me following this resignation in accordance with the Entity's [insert organisational documents]).

'Effective Time' means the date and time at which the Australian Securities and Investments Commission alters the record of the registration of the Mirvac Industrial Trust (ARSN 113 489 624) (the **Trust**) to name [insert name of new RE] as the responsible entity of the Trust.

Yours sincerely

[insert name of officer]

Executed and delivered as a Deed in Sydney

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

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Mirvac Funds Management Limited**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **[insert name of new RE]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed in accordance with section 127 of the *Corporations Act 2001* by **AustFunding Pty Ltd**:

Director Signature

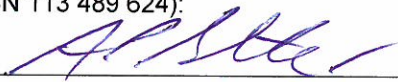
Director/Secretary Signature

Print Name

Print Name

Executed in Sydney.

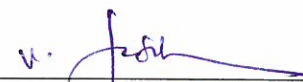
Executed in accordance with section 127 of the *Corporations Act 2001* by **Mirvac Funds Management Limited** (ABN 78 067 417 663, AFSL 220718) in its capacity as responsible entity of Mirvac Industrial Trust (ARSN 113 489 624):



Director Signature

Andrew Paul Butler

Print Name



Director/Secretary Signature

Varunika De Silva
COMPANY SECRETARY

Print Name

Executed in accordance with section 127 of the *Corporations Act 2001* by **AustFunding Pty Ltd** (ACN 601 686 999):

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed in Sydney.

Executed in accordance with section 127 of the Corporations Act 2001 by Mirvac Funds Management Limited (ABN 78 067 417 663, AFSL 220718) in its capacity as responsible entity of Mirvac Industrial Trust (ARSN 113 489 624):

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed in accordance with section 127 of the Corporations Act 2001 by AustFunding Pty Ltd (ACN 601 686 999):



Director Signature

SIMON ROTHERY

Print Name



Director/Secretary Signature

DAVID GRIBBLE

Print Name
