



21 November 2014

**MIRVAC INDUSTRIAL TRUST  
AUSTFUNDING PROPOSAL NOW EFFECTIVE**

Mirvac Funds Management Limited (“MFML”), the responsible entity of Mirvac Industrial Trust [ASX: MIX] (“MIX”), refers to the Scheme Implementation Agreement dated 19 September 2014 entered into with AustFunding Pty Limited<sup>1</sup> (the “Acquirer”) in relation to the proposed trust scheme of arrangement under which the Acquirer intends to acquire all of the units in MIX (the “Proposal”).

MFML is pleased to advise that it has today received the Second Judicial Advice from the Supreme Court of New South Wales confirming that MFML is justified in:

- implementing the Scheme;
- giving effect to the amendments to the MIX constitution; and
- doing all things necessary to implement the Scheme.

The Supplemental Deed Poll amending the constitution of MIX has been lodged with the Australian Securities and Investments Commission. A copy of the Supplemental Deed Poll is attached.

As a result of the above, the Proposal is now effective. MFML will apply to the ASX for MIX Units to be suspended from trading with effect from close of trading today, 21 November 2014.

The indicative timetable for the Proposal now that it has become effective is as follows:

Event	Date <sup>2</sup>
ASX requested to suspend MIX Units	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	On or around 8 December 2014

For further information, please contact:

**MIX Information Line**

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<sup>1</sup> A subsidiary of Goldman Sachs Group, Inc.

<sup>2</sup> All dates are indicative and subject to change.

Mirvac Funds Management Limited

## Supplemental Deed Poll

Amending the Constitution for Mirvac Industrial Trust

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This Deed Poll is made on

21 November

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 19 November 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

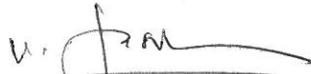
**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Mirvac Funds Management Limited:**



Director Signature

**Andrew Paul Butler**

Print Name



Director/Secretary Signature

Varunika De Silva

Print Name **COMPANY SECRETARY**

## 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.

**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 13 October 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 19 November 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 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.

**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.