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Our ref MAK:1009046



L A W Y E R S

5 May 2010

By fax | 88 pages (incl. cover page)

To Company Announcements Office
Australian Securities Exchange Limited
Exchange Centre
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Sydney NSW 2000
Fax 1300 135 638

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

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Dear Sir/Madam

Notice of Initial Substantial Holder – MacarthurCook Industrial Property Fund (MIF)

We act for HRPT Properties Trust (**HRPT**).

On behalf of HRPT, we attach an ASIC Form 603 advising that HRPT has become a substantial holder of MacarthurCook Industrial Property Fund.

Yours faithfully
Gilbert + Tobin

Gilbert + Tobin

Marko Komadina
Partner
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International associate

 金杜律师事务所
KING & WOOD
INTERNATIONAL AND PRC LAWYERS

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme MacarthurCook Industrial Property Fund (MIF)
This notice is given to MacarthurCook Fund Management Limited ACN 004 956 558 (MCFML) as responsible entity of MIF.

ACN/ARSN ARSN 104 606 573

1. Details of substantial holder (1)

Name HRPT Properties Trust (HRPT)
ACN/ARSN (if applicable) N/A

The holder became a substantial holder on 3 May 2010

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary units in MIF (MIF Units)	23,948,066	23,948,066	24.42%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
MCFML and/or its associates as set out in the Notice of Initial Substantial Holder filed with MIF by AIMS Securities Holdings Pty Limited ACN 137 063 113 on 23 September 2009 (AIMS Notice)	Direct and indirect relevant interests as set out in the AIMS Notice	23,948,066 MIF Units in aggregate

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number
As set out in the AIMS Notice	As set out in the AIMS Notice	As set out in the AIMS Notice	23,948,066 MIF Units in aggregate

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
N/A	N/A	N/A		N/A

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
MCFML	MCFML is an associate of HRPT by virtue of sections 12(2)(b) and 12(3)(a) of the <i>Corporations Act</i> as a result of HRPT entering into the Scheme Implementation Agreement with MCFML on 3 May 2010, a copy of which is attached as Annexure A.

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
HRPT	400 Centre Street, Newton MA 02458-2076, United States of America

Signature

print name	<u>Jennifer Clark</u>	capacity	<u>Secretary</u>
sign here	<u>Jennifer Clark</u>	date	<u>5/4/10</u>

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the *Corporations Act* 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the *Corporations Act* 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the *Corporations Act* 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

ANNEXURE A

This is annexure A of 86 pages referred to in form 603

Signature

print name	Jennifer B Clark	capacity	Secretary
sign here	<i>Jennifer B Clark</i>	date	5 '4 '10

Scheme Implementation Agreement

MacarthurCook Fund Management Limited

HRPT Properties Trust

3 May 2010

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

T +61 2 9263 4000
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DX 10348 SSE

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Parties

- 1 **HRPT Properties Trust** a real estate investment trust formed under the laws of the State of Maryland of 400 Centre Street, Newton MA 02458-2076, United States of America (HRPT)
 - 2 **MacarthurCook Fund Management Limited** ACN 004 956 558 (**MacarthurCook**) in its capacity as responsible entity for the **MacarthurCook Industrial Property Fund** ARSN 104 606 573 (**MIF**)
-

Background

- A MacarthurCook is a company constituted under the Corporations Act and is the responsible entity of MIF. MIF is a managed investment scheme that has been registered under the Corporations Act. The MIF Units are quoted on the ASX under the listing code "MIF".
- B HRPT proposes to acquire all of the MIF Units pursuant to the Scheme.
- C MacarthurCook has agreed to propose the Scheme to the MIF Unitholders and to issue the Scheme Booklet to the MIF Unitholders, and HRPT and MacarthurCook have agreed to implement the Scheme, upon and subject to the terms and conditions of this agreement.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this agreement.

1.3 Capacity

MacarthurCook enters into this agreement in its capacity as responsibility entity of MIF and all representations or warranties given by MacarthurCook and obligations incurred by MacarthurCook are given or incurred solely in its capacity as responsible entity of MIF.

2 Agreement to proceed with Scheme

2.1 MacarthurCook to propose Scheme

MacarthurCook 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 HRPT to assist

HRPT agrees to assist MacarthurCook 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 MacarthurCook under clause 5.1(m) and HRPT's obligation to pay, or procure the payment of, the Scheme Consideration in accordance with the Deed Poll and clause 5.2(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 HRPT and MacarthurCook

(a) (Regulatory Approvals)

- (i) **(ASIC Modifications)** before 8:00am on the Meeting Date, ASIC has granted the ASIC Modifications;
- (ii) **(FIRB approval)** before 8:00am on the Effective Date, either:
 - (A) the Treasurer (or his delegate) has provided written advice that there are no objections under Australia's foreign investment policy to the proposed Scheme; or
 - (B) following notice of the proposed Scheme having been given by HRPT (and/or its nominee) to the Treasurer under the Foreign Acquisitions and Takeovers Act 1975 (Cth), the Treasurer has ceased to be empowered to make any order under Part II of that Act because of lapse of time; and
- (iii) **(ASX Waivers and Confirmations)** before 8:00am on the Meeting Date, ASX has granted the ASX Waivers and Confirmations or, in respect of any ASX Waiver and Confirmation which has not been granted, has indicated in writing that such a waiver or confirmation is not required;

- (b) **(MIF Unitholders approval)** the Scheme Resolutions are approved at the Scheme Meeting by the requisite majorities of MIF Unitholders as required under the Corporations Act (subject to the ASIC Modifications);

- (c) **(Judicial Advice)** before 8:00am on the Meeting Date, the Court grants the Judicial Advice;

- (d) **(execution and lodgement of the Supplemental Deed)** MacarthurCook executes the Supplemental Deed and lodges a copy of the executed Supplemental Deed with ASIC;
- (e) **(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 8:00am on the Effective Date that prohibits, materially restricts, makes illegal or restrains the completion of the Transaction or any Transaction Document;
- (f) **(Taxation Rulings)** before 8:00am on the Effective Date, each of the Final MIF Tax Ruling and the Final HRPT Tax Ruling are issued by the Australian Taxation Office in a form and substance satisfactory to each party (acting reasonably);
- (g) **(no change in laws which affect Taxation Rulings)** between the date of this agreement and 8:00am on the Effective Date, no Law has been enacted, proclaimed, announced or proposed by any Governmental Agency which, in the reasonable opinion of either HRPT or MacarthurCook, adversely affects (or, in the case of a Law announced or proposed, if enacted or proclaimed would adversely affect) the position that:
 - (i) HRPT and any Nominated Rulee would (but for that Law being enacted) enjoy under the Final HRPT Tax Ruling; or
 - (ii) MacarthurCook would (but for that Law being enacted) enjoy under the Final MIF Tax Ruling;

Conditions Precedent for the benefit of HRPT only

- (h) **(no MIF Regulated Events)** no MIF Regulated Event occurs or becomes known to HRPT between the date of this agreement and 8:00am on the Effective Date;
- (i) **(no MIF Material Adverse Change)** no MIF Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to HRPT, between the date of this agreement and 8:00am on the Effective Date;
- (j) **(no Market Disruption Event)** no Market Disruption Event occurs between the date of this agreement and 8:00am on the Effective Date;
- (k) **(AUD/USD Exchange Rate)** the AUD/USD Exchange Rate is not, at 8:00am on the Effective Date, equal to or in excess of 1.00;
- (l) **(MIF Closing Certificate)** at 8:00am on the Effective Date, MacarthurCook provides HRPT with the MIF Closing Certificate;
- (m) **(Lender consent):** before 8:00am on the Effective Date, the Lender has:
 - (i) either:
 - (A) if the Effective Date occurs at least 10 Business Days before the Termination Date, provided to MacarthurCook in writing its consent to the Transaction for the purpose of, or a waiver of all of its rights under, each provision of the Loan Facility that is triggered by or in connection with the Transaction; or
 - (B) if the Effective Date occurs after, or less than 10 Business Days before, the Termination Date:

- (1) provided to MacarthurCook in writing its consent to the Transaction for the purpose of, or a waiver of all of its rights under, each provision of the Loan Facility that is triggered by or in connection with the Transaction; and
 - (2) agreed to extend the Termination Date to a date that occurs at least 10 Business Days after the Effective Date and on such other terms satisfactory to the parties (acting reasonably); and
- (ii) if, on the same day, the Loan Facility is to be repaid and all of the Hedge Transactions entered into in respect of MIF's financing arrangements (including under the Loan Facility) (**NAB Hedge Transactions**) are to be terminated or the amounts secured by the Security are otherwise to be fully repaid on any day so that no amounts will be actually or contingently secured by the Security (collectively, **Full Repayment and Termination**), and that day is to occur on, or within 5 Business Days before or after, the Implementation Date (each an **Available Repayment Date**), agreed (in a manner satisfactory to HRPT) that it will deliver to HRPT, on the Available Repayment Date on which Full Repayment and Termination is made or occurs (the **Actual Repayment Date**) a fully executed deed or deeds of release, an Australian Securities and Investments Commission form 312 and any other document which is required to discharge and deregister a Security Interest (including, without limitation, a mortgage over real property) and which, with effect on and from the Actual Repayment Date, among other things, release and discharge:
- (A) the property the subject of the Security (and any other property or asset of MIF) from the operation of the Security and each other Security Interest granted in favour of the Lender or a Related Body Corporate of the Lender; and
 - (B) MacarthurCook from all of its obligations under the Loan Facility, the NAB Hedge Transactions, the Security and each other Security Interest granted in favour of the Lender or a Related Body Corporate of the Lender,

each such deed, form and document on terms satisfactory to HRPT; and

- (iii) if Full Repayment and Termination is to be made or occur on an Available Repayment Date, provided to MacarthurCook its written consent to Full Repayment and Termination being made or occurring on the Actual Repayment Date on terms satisfactory to HRPT.

Any consent or waiver and, if applicable, extension required for the purposes of this clause 3.1(m) is to be in a form and substance satisfactory to the parties (acting reasonably);

- (n) (**Net Current Assets**) before 8.00am on the Effective Date, MacarthurCook has provided HRPT with evidence in writing to HRPT's reasonable satisfaction that, as at the Effective Date, MIF has Net Current Assets of no less than \$1; and
- (o) (**management arrangements**) before 8.00am on the Effective Date, HRPT, MacarthurCook and any other applicable parties have entered into an agreement or agreements to formally document the management arrangements to apply in respect of MIF in the period on and from the Implementation Date, such arrangements to be on terms substantially in accordance with those set out in Attachment C and on such other terms as shall be acceptable to HRPT and MacarthurCook (acting reasonably); and

Conditions Precedent for the benefit of MacarthurCook only

- (p) (HRPT Closing Certificate) at 8.00am on the Effective Date, HRPT provides MacarthurCook with the HRPT Closing Certificate.

3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(g) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 3.1(b) and 3.1(d), 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(h) to 3.1(o) are for the sole benefit of HRPT, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by HRPT giving its written consent.
- (c) The Condition Precedent in clause 3.1(p) is for the sole benefit of MacarthurCook, and any breach or non-fulfilment of any of that Condition Precedent may only be waived by MacarthurCook 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) HRPT must use its best endeavours to satisfy, or procure the satisfaction of, the Condition Precedent in clause 3.1(p);
- (b) MacarthurCook must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(d), 3.1(h), 3.1(i), 3.1(l), 3.1(m) and 3.1(n) and if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", clause 3.1(b) and ;
- (c) each of HRPT and MacarthurCook 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(e), 3.1(f) and 3.1(o), to the extent that it is within their respective control;

- (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; and
- (e) the parties agree, in respect of the Condition Precedent in clause 3.1(m), that if any or all of the Loan Facility, the NAB Hedge Transactions, the Security or any other Security Interest granted in favour of the Lender or a Related Body Corporate of the Lender has been, or will be, prior to the Implementation Date, supplemented, amended or replaced with or by any other financing arrangement(s), they will engage in good faith discussions with a view to amending that Condition Precedent (and any associated definitions) so that it applies to all of the relevant financing arrangements then existing.

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 3.6).

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 date and time specified in this agreement for the satisfaction of that Condition Precedent;
 - (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 3.6 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived in accordance with this agreement); or

(iii) the Scheme has not become Effective by the End Date,

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

- (iv) the Scheme or the Transaction may proceed by way of alternative means or methods;
- (v) to extend the relevant time or date for satisfaction of the Condition Precedent; or
- (vi) to extend the End Date.

- (b) If HRPT and MacarthurCook are unable to reach agreement under clauses 3.5(a)(iv), 3.5(a)(v) or 3.5(a)(vi) within 5 Business Days after the delivery of the notice under that clause or any shorter period ending at 5:00pm on the day before the Effective 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 12.4 will have effect.

3.6 Regulatory Approvals

- (a) 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 the party (or parties) who have the benefit of the condition.
- (b) Without prejudice to any other obligations of the parties under this agreement:
- (i) HRPT must apply for the FIRB approval referred to in clause 3.1(a)(ii) on or as soon as practicable after the date of this agreement;
 - (ii) HRPT must apply for the Interim HRPT Tax Ruling, and MacarthurCook must apply for the Interim MIF Tax Ruling, on or as soon as practicable after the date of this agreement. If the Proposed MIT Tax Law Amendments are enacted and/or proclaimed before the Interim MIF Tax Ruling and/or the Interim HRPT Tax Ruling are issued by the Commissioner, the parties must ensure that the applications for the Interim HRPT Tax Ruling and the Interim MIF Tax Ruling are:
 - (A) withdrawn and replaced with applications for the Final HRPT Tax Ruling and the Final MIF Tax Ruling in accordance with clause 3.6(b)(iii); or
 - (B) amended so that they become applications for the Final HRPT Tax Ruling and the Final MIF Tax Ruling in accordance with clause 3.6(b)(iii),

on or as soon as practicable after the date the Proposed MIT Tax Law Amendments are enacted and/or proclaimed;

- (iii) HRPT must apply for the Final HRPT Tax Ruling, and MacarthurCook must apply for the Final MIF Tax Ruling, on or as soon as practicable after the date the Proposed MIT Tax Law Amendments are enacted and/or proclaimed. The obligations imposed on the parties under this clause 3.6(b)(iii) shall apply, irrespective of whether the Commissioner has issued the Interim HRPT Tax Ruling and/or the Interim MIF Tax Ruling;
- (iv) MacarthurCook must on or as soon as practicable after the date of this agreement provide a draft of its application for the Interim MIF Tax Ruling to HRPT for comment and must not lodge that application with the ATO until it has been approved by HRPT (such approval not to be unreasonably

withheld or delayed). MacarthurCook must consult with HRPT in respect of, and must keep HRPT informed in a timely manner of the status of, any discussions or negotiations with the ATO regarding the application for the Interim MIF Tax Ruling;

- (v) HRPT must on or as soon as practicable after the date of this agreement provide a draft of its application for the Interim HRPT Tax Ruling to MacarthurCook for comment and must not lodge that application with the ATO until it has been approved by MacarthurCook (such approval not to be unreasonably withheld or delayed). HRPT must consult with MacarthurCook in respect of, and must keep MacarthurCook informed in a timely manner of the status of, any discussions or negotiations with the ATO regarding the application for the Interim HRPT Tax Ruling;
- (vi) MacarthurCook must on or as soon as practicable after the date that the Proposed MIT Tax Law Amendments are enacted and/or proclaimed, provide a draft of its application for the Final MIF Tax Ruling (including any amendments to the application for the Interim MIF Tax Ruling referred to at clause 3.6(b)(ii)(B)) to HRPT for comment and must not lodge that application (or amendment as the case may be) with the ATO until it has been approved by HRPT (such approval not to be unreasonably withheld or delayed). MacarthurCook must consult with HRPT in respect of, and must keep HRPT informed in a timely manner of the status of, any discussions or negotiations with the ATO regarding the application for the Final MIF Tax Ruling;
- (vii) HRPT must on or as soon as practicable after the date that the Proposed MIT Tax Law Amendments are enacted and/or proclaimed, provide a draft of its application for the Final HRPT Tax Ruling (including any amendments to the application for the Interim HRPT Tax Ruling referred to at clause 3.6(b)(ii)(B)) to MacarthurCook for comment and must not lodge that application (or amendment as the case may be) with the ATO until it has been approved by MacarthurCook (such approval not to be unreasonably withheld or delayed). HRPT must consult with MacarthurCook in respect of, and must keep MacarthurCook informed in a timely manner of the status of, any discussions or negotiations with the ATO regarding the application for the Final HRPT Tax Ruling; and
- (viii) HRPT and MacarthurCook undertake to co-operate in communicating with any Government Agency for the purposes of satisfying all Conditions Precedent which are subject to approval by a Government Agency, including providing the relevant party with any information or documents reasonably requested and necessary for the purpose of making a submission, filing or notification to any relevant Government Agency in relation to the Scheme or the satisfaction of the relevant Conditions Precedent as soon as practicable.

3.7 Fulfillment of Conditions Precedent

Each party must provide to the other, by 10:00am on the Effective Date, a certificate confirming, to the best of the first party's knowledge as at 8.00am on the Effective Date, whether or not all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(d)) 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 Effective Date.

4 Scheme and Scheme Consideration

4.1 Outline of Scheme

- (a) The parties agree that MacarthurCook will propose the Scheme, upon and subject to the terms of this agreement.
- (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 Scheme Securities will be transferred to HRPT (and/or its nominee) in accordance with the terms of the Scheme; and
 - (ii) in consideration for the transfer to HRPT (and/or its nominee) of all of the Scheme Securities, HRPT will pay the Scheme Consideration to the Scheme Participants in accordance with clause 4.2 and the terms of the Supplemental Deed and Deed Poll.

4.2 Scheme Consideration

Subject to the Scheme becoming Effective, HRPT agrees in favour of MacarthurCook (as trustee on behalf of the Scheme Participants) that, in consideration of the transfer to HRPT (and/or the Nominee) of each Scheme Security under the Scheme, it will accept (and/or procure that the Nominee accepts) such transfer, and will provide (and/or procure that the Nominee provides) to each Scheme Participant A\$0.40 in cash for each Scheme Security held by them on the Record Date and transferred to HRPT (and/or the Nominee), in accordance with the terms of the Scheme. For the avoidance of doubt and despite anything to the contrary in this agreement, HRPT acknowledges and agrees that the deposit of the Scheme Consideration in cleared funds into a trust account for the purposes of providing each Scheme Participant with its entitlement in cash under the Scheme must be made before the Scheme Securities are transferred to HRPT (and/or the Nominee) under the Scheme.

4.3 Special Distribution

Subject to the Scheme becoming Effective, MacarthurCook will pay to each Scheme Participant the Special Distribution for each MIF Unit held by that Scheme Participant on the Record Date. The Special Distribution will be paid on the Special Distribution Payment Date.

5 Steps for Implementation

5.1 MacarthurCook's obligations in respect of the Scheme

MacarthurCook 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 MacarthurCook must:

- (a) **(preparation of Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet in accordance with clause 5.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert 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 ASIC Modifications;
- (d) **(ASX Waivers and Confirmations)** as soon as reasonably practicable after the date of this agreement, apply to ASX for any ASX Waivers and Confirmations;
- (e) **(approval of Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, procure that a meeting of the MacarthurCook Board is convened to approve the Scheme Booklet for despatch to MIF Unitholders (and provide HRPT 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), subject to the grant of the Judicial Advice;
- (f) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide HRPT with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from HRPT and its Representatives on those drafts;
- (g) **(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 Judicial Advice;
- (h) **(lodgement of Scheme Booklet)** prior to despatch of the first Scheme Booklet to a MIF Unitholder, lodge the Scheme Booklet with ASIC;
- (i) **(Scheme Meeting)** take all reasonable steps necessary to comply with the Trust Constitution and the Corporations Act (as applicable), including, as required, despatching the Scheme Booklet to MIF Unitholders, convening and holding the Scheme Meeting and putting the Scheme Resolutions to MIF Unitholders at the Scheme Meeting, provided that if this agreement is terminated under clause 12 it will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (j) **(update Scheme Booklet)** if it becomes aware of information after the Despatch Date that is material for disclosure to MIF Unitholders in deciding whether to approve the Scheme Resolutions or that is required to be disclosed to MIF Unitholders under any applicable law, as expeditiously as practicable:
 - (i) inform MIF Unitholders of the information in an appropriate and timely manner, and in accordance with applicable law and after consultation with HRPT as to the manner of provision of that information to MIF Unitholders; and
 - (ii) to the extent it is reasonably practicable to do so, provide HRPT with drafts of any documents that it proposes to issue to MIF Unitholders under this clause 5.1(j) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments received in a timely manner from HRPT or its Representatives on those drafts;
- (k) **(execution and lodgement of Supplemental Deed)** as soon as practicable after, and in any event by no later than 4.00pm, on the later of the Meeting Date and the date on which all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(d)) 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 MIF Unit Register information)** as soon as practicable after the Record Date, and in any event at least 3 Business Days before the Implementation Date, give to HRPT (or as it directs) details of the names, registered addresses and holdings of MIF Units of every MIF Unitholder as shown in the MIF Unit Register as at the Record Date, in such form as HRPT may reasonably require;
- (m) **(implementation of the Scheme)**
- (i) use best endeavours to ensure that ASX suspends trading in MIF Units with effect from the close of trading on the Effective Date;
 - (ii) close the MIF Unit Register as at the Record Date to determine the identity of Scheme Participants and to 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 Scheme Securities to HRPT (and/or its nominee) in accordance with the Scheme; and
 - (iv) promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and to effect the transfer of the Scheme Securities to HRPT (or its nominee);
- (n) **(information)** provide all necessary information, or have the registry of MIF provide all necessary information, to HRPT about the Scheme and (subject to compliance with privacy laws) MIF Unitholders, in each case in a form reasonably requested by HRPT and at least on a weekly basis, which HRPT reasonably requires in order to:
- (i) canvass approval of the Scheme by, or discuss the Scheme with, MIF Unitholders (including the results of directions by MacarthurCook to MIF Unitholders under Part 6C.2 of the Corporations Act); and
 - (ii) facilitate the provision by HRPT (or its nominee) of the Scheme Consideration;
- (o) **(representation)** allow, and not oppose, any application by HRPT for leave of the Court to be represented, or the separate representation of HRPT by counsel, at the Court hearings heard for the purposes of the Judicial Advice in relation to the Scheme, provided that in making any application for representation or in appearing before the Court, HRPT acts in accordance with the Transaction Documents and does not oppose any application by MacarthurCook in exercise of its rights under the Transaction Documents;
- (p) **(ASX listing)** not do anything to cause the MIF Units to cease to be listed on ASX prior to the close of business on the Effective Date;
- (q) **(keep HRPT informed)** from the Despatch Date until the Implementation Date, promptly inform HRPT if it becomes aware that the Scheme Booklet contains a statement that is or has become misleading or deceptive in a material respect or that contains a material omission;
- (r) **(HRPT Provided Information)** during the period until the HRPT Provided Information (or any information solely derived from, or prepared solely in reliance on, the HRPT Provided Information) becomes publicly available, only use that information with the prior written consent of HRPT (not to be unreasonably withheld or delayed);

- (s) **(derivatives)** prior to 8:00am on the Implementation Date, ensure that all Hedge Transactions entered into by MacarthurCook (in its capacity as responsible entity for MIF) in respect of MIF's financing arrangements (including under the Loan Facility) or otherwise are terminated;
- (t) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court granting the Judicial Advice; and
- (u) **(US Internal Revenue Code)** if HRPT makes an election under United States Internal Revenue Code Section 338 in respect of the completion of the Transaction, cooperate with and do all things reasonably requested by HRPT, whether on or after the Implementation Date, to provide to US persons that were MIF Unitholder within the period specified by HRPT the notices contemplated by Treasury Regulation Section 1.338-2(e)(4) of said Code Section 338.

5.2 HRPT's obligations in respect of the Scheme

HRPT must take all steps reasonably necessary to assist MacarthurCook 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 HRPT must:

- (a) **(provide information)** provide to MacarthurCook the information referred to in clause 5.3(d) which information must not be misleading or deceptive in any material respect (whether by omissions or otherwise);
- (b) **(preparation of Scheme Booklet)** provide assistance with the preparation of the Scheme Booklet in accordance with clause 5.3;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by MacarthurCook or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(ASIC relief)** provide reasonable assistance to MacarthurCook in applying to ASIC for the ASIC Modifications;
- (e) **(ASX waivers)** provide reasonable assistance to MacarthurCook in applying to ASX for the ASX Waivers and Confirmations;
- (f) **(approval of Scheme Booklet)** approve those sections of the Scheme Booklet that comprise the HRPT Provided Information as being in a form appropriate for despatch to MIF Unitholders and consent in writing to the despatch of that information in that form to MIF Unitholders (and provide MacarthurCook 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) **(keep MacarthurCook informed)** from the Despatch Date until the Implementation Date, promptly inform MacarthurCook if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the HRPT Provided Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, 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;
- (h) **(Deed Poll)** prior to the Despatch Date, execute the Deed Poll;

- (i) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration in accordance with this agreement, the Scheme and the Deed Poll on the Implementation Date;
- (j) **(Judicial Advice)** assist with the preparation of all documents as reasonably requested by MacarthurCook and take all other reasonable steps to assist MacarthurCook to obtain the Judicial Advice;
- (k) **(MIF Provided Information)** during the period until the MIF Provided Information becomes publicly available, only use the MIF Provided Information with the prior written consent of MacarthurCook (not to be unreasonably withheld or delayed);
- (l) **(Loan Facility)** if Full Repayment and Termination is to be made or is to occur on an Available Repayment Date, and subject to the satisfaction or waiver of the Conditions Precedent in clause 3.1(m), ensure that Full Repayment and Termination (insofar as it relates to the Loan Facility only) is made or occurs on the Actual Repayment Date; and
- (m) **(all things necessary)** to the extent within the control of HRPT, do all other things contemplated by or necessary to implement the Scheme and the orders of the Court granting the Judicial Advice.

5.3 Preparation of Scheme Booklet

- (a) **(MacarthurCook to prepare)** Subject to HRPT complying with its obligations under clause 5.3(d), MacarthurCook must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this agreement and otherwise substantially in accordance with the Timetable.
- (b) **(Compliance requirements)** MacarthurCook must ensure that the Scheme Booklet complies with all applicable laws, in particular the requirements of the Corporations Act and the ASX Listing Rules, except that the obligation to do so in respect of the HRPT Provided Information is subject to HRPT complying with its obligations under clause 5.3(d).
- (c) **(Content of Scheme Booklet)** Without limiting clause 5.3(b), the Scheme Booklet will include or be accompanied by:
 - (i) the Notice of Meeting;
 - (ii) a copy of this agreement (without the schedules and annexures) or a summary of it;
 - (iii) a copy of the executed Deed Poll;
 - (iv) the Independent Expert's Report;
 - (v) if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable":
 - (A) a statement that the Special Board Committee unanimously recommends that MIF Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal; and
 - (B) a statement that each member of the Special Board Committee who has a Relevant Interest in and is able to control voting rights in relation to MIF Units intends to vote those MIF Units, or procure that those MIF Units are voted, in favour of the Scheme Resolutions, in the absence of a Superior Proposal; and

- (vi) the Responsibility Statement.
- (d) **(HRPT Provided Information)** HRPT must provide the HRPT Provided Information to MacarthurCook 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 HRPT that is required by, all applicable Laws including the Corporations Act and the ASX Listing Rules and must provide to MacarthurCook such assistance as MacarthurCook may reasonably require in order to adapt such information for inclusion in the Scheme Booklet.
- (e) **(Review by HRPT)** MacarthurCook must make available to HRPT drafts of the Scheme Booklet (including any draft of the Independent Expert's Report), consult with HRPT in relation to the content of those drafts (including the inclusion of any HRPT Provided Information and any information solely derived from, or prepared solely in reliance on, the HRPT Provided Information), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from HRPT and its Representatives on those drafts.
- (f) **(Consent of HRPT)** HRPT must provide written consent to MacarthurCook in relation to the form and context in which any HRPT Provided Information (and any information solely derived from, or prepared solely in reliance on, the HRPT Provided Information) is included in the Scheme Booklet.
- (g) **(Verification)** MacarthurCook must undertake appropriate verification processes in relation to the MacarthurCook Provided Information included in the Scheme Booklet, and HRPT must undertake appropriate verification processes in relation to the HRPT Provided Information included in the Scheme Booklet.
- (h) **(Responsibility Statement)** MacarthurCook and HRPT each represents to the other that the Responsibility Statement is to be included in the Scheme Booklet.

5.4 Appeal process

If the Court refuses to make any orders to grant the Judicial Advice, MacarthurCook 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 10 years' experience advises that, in his/her view, an appeal would have no reasonable prospect of success before the End Date).

6 Conduct of Business and Requests for Access

6.1 Conduct of MIF business

During the period from the date of this agreement up to and including the earlier of the Implementation Date, the date that this agreement is terminated and the End Date, MacarthurCook must:

- (a) ensure that the business and operations of MIF are conducted only in the ordinary course and consistently with the manner in which each such business and operation has been conducted in the period prior to the date of this agreement;
- (b) to the extent consistent with the obligation imposed under clause 6.1(a), use its best endeavours to preserve intact MIF's current business organisation and to preserve its relationship with Governmental Agencies, customers (including current, potential and future tenants), suppliers, licensors, licensees and others having business dealings with it;

- (c) use its best endeavours to ensure that the condition of all assets of MIF (including, without limitation, the Properties) are, to the extent that it is within the control of MacarthurCook, maintained in accordance with past practice of MIF;
- (d) use best endeavours to not do, or not omit to do, anything that will, or is reasonably likely to, result in:
 - (i) the occurrence of a MIF Regulated Event; or
 - (ii) any representation or warranty in clause 9.2 being untrue, inaccurate or otherwise breached at any time when those representations and warranties are given or made; and
- (e) use its best endeavours to ensure that:
 - (i) a MIF Regulated Event does not occur; and
 - (ii) no representation or warranty in clause 9.2 is or becomes inaccurate, untrue or otherwise breached at any time when those representations and warranties are given or made, in each case to the extent that such event or occurrence is within the control of MacarthurCook,

except to the extent required to be done or to not be done or procured or ensured by MacarthurCook pursuant to, or that is otherwise expressly permitted or prohibited by, the Transaction Documents, or the undertaking of which HRPT has approved in writing, such approval not to be unreasonably withheld or delayed, provided that nothing in this clause 6.1 shall prevent MacarthurCook from taking any proposed course of action the details of which have been fairly disclosed to HRPT in this agreement or the Management Responses.

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 and including the earlier of the Implementation Date, the date of termination of this agreement and the End Date, MacarthurCook must respond to reasonable requests from HRPT and its Representatives for information concerning the MIF businesses and operations, and give HRPT and its Representatives reasonable access to its Representatives and records, and otherwise provide reasonable co-operation to HRPT and its Representatives, in each case for the purposes of:
 - (i) the implementation of the Scheme and the Transaction;
 - (ii) the integration of MIF and HRPT following the implementation of the Transaction; or
 - (iii) any other purpose that is agreed in writing between the parties,
 subject to the proper performance by the directors and officers of MacarthurCook of their fiduciary duties with respect to MIF Unitholders.
- (b) **(Monthly management accounts)** Without limiting clause 6.2(a), during the period from the date of this agreement up to and including the earlier of the Implementation Date, the date of termination of this agreement and the End Date, MacarthurCook must provide to HRPT a copy of the monthly management accounts of MIF in each case no later than 5 Business Days after the end of the month in respect of which accounts have been prepared.

- (c) **(Limits on MacarthurCook obligations)** Without limiting clause 9.2(d), the obligations in clauses 6.2(a) and 6.2(b) do not require MacarthurCook to:
- (i) provide information to HRPT concerning the MacarthurCook Board's consideration of the Transaction;
 - (ii) provide any commercially sensitive or competitive information; or
 - (iii) breach an obligation of confidentiality that is owed by MacarthurCook (in its capacity as responsible entity of MIF) to any person.
- (d) 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.
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7 Board Recommendations and Intentions

7.1 Special Board Committee recommendation

- (a) The Agreed Public Announcement to be issued by MacarthurCook following the execution of this agreement must state (on the basis of written statements or resolutions made by the Special Board Committee) that the Special Board Committee considers the Scheme is worthy of consideration by MIF Unitholders and will, in the Scheme Booklet, if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", unanimously recommend that MIF Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal.
- (b) MacarthurCook must use its best endeavours to procure that the Special Board Committee and each member of the Special Board Committee:
- (i) does not withdraw the statements set out in the Agreed Public Announcement issued by MacarthurCook;
 - (ii) in the Scheme Booklet, if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", states that the Special Board Committee unanimously recommends the Scheme and that MIF Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal, and does not 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 recommended,

unless the Special Board Committee determines in accordance with clause 10.4 that a Competing Proposal constitutes a Superior Proposal.

7.2 Special Board Committee intentions

- (a) The Agreed Public Announcement to be issued by MacarthurCook must state that each Special Board Committee member who holds MIF Units, or who has a Relevant Interest in and control over voting rights attaching to MIF Units (**Applicable Units**), intends, if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", to vote the Applicable Units in favour of the Scheme Resolutions, or procure that the Applicable Units are voted in favour of the Scheme Resolutions, in the absence of a Superior Proposal.
- (b) If the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", the Scheme Booklet despatched to MIF

Unitholders, must state that each Special Board Committee member who holds MIF Units, or who has a Relevant Interest in and control over voting rights attaching to MIF Units (**Applicable Units**), intends to vote the Applicable Units in favour of the Scheme Resolutions, or procure that the Applicable Units are voted in favour of the Scheme Resolutions, in the absence of a Superior Proposal.

- (c) If the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable", MacarthurCook must use its best endeavours to ensure that each Special Board Committee member who holds MIF Units, or who has a Relevant Interest in and control over voting rights attaching to MIF Units (**Applicable Units**):
- (i) intends to vote the Applicable Units in favour of the Scheme Resolutions, or procure that the Applicable Units are voted in favour of the Scheme Resolutions; and
 - (ii) does not change that voting intention,

unless the Special Board Committee determines in accordance with clause 10.4 that a Competing Proposal constitutes a Superior Proposal.

8 Public Announcements, Communications and Confidentiality

8.1 Required announcements

- (a) On the Announcement Date, HRPT and MacarthurCook must each release the Agreed Public Announcements, which in the case of the Agreed Public Announcement to be issued by MacarthurCook has attached to it either this agreement or a summary of the key terms of this agreement.
- (b) Subject to clause 8.3, where MacarthurCook is required by applicable law, 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, the Transaction or any other transaction or event contemplated by this agreement or the Scheme or the Transaction, it may do so only after it has given HRPT as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event, if reasonably practicable, prior notice, and to the extent reasonably practicable has consulted with HRPT as to (and has given the other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure. 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, the ASX Listing Rules or any other stock exchange regulation.
- (c) Subject only to clauses 8.1(a) and 8.1(b), MacarthurCook must not, without the prior written consent of HRPT, make any public statement which identifies or refers to HRPT.

8.2 Agreement on other Communications

Except in relation to Communications regulated by clause 8.1 and to the extent permitted by applicable law:

- (a) HRPT and MacarthurCook must in good faith and on a timely and pragmatic basis consult with each other and agree in advance any material aspect (including the timing, form, content and manner) of 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;

- (b) each of HRPT and MacarthurCook is entitled to be represented and to make submissions in any meeting with any Governmental Agency relating to any Regulatory Approval;
- (c) 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) promptly upon despatch or receipt (as the case may be); and
- (d) 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.

8.3 Disclosure on termination of this agreement

The parties agree that, if this agreement is terminated under clause 12, either party may disclose by way of announcement to ASX (or any other applicable stock exchange) the fact that this agreement has been terminated provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

9 Representations and Warranties

9.1 HRPT representations and warranties

HRPT represents and warrants to MacarthurCook that (except as consented to in writing by MacarthurCook) on the date of this agreement, on the Despatch Date, at the time of giving its certificate under clause 3.7 and on the Implementation Date:

- (a) HRPT is a real estate investment trust validly existing under the laws of its place of organisation;
- (b) HRPT has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement in accordance with and subject to its terms;
- (c) HRPT has taken all necessary corporate and trust action to authorise its entry into this agreement and has taken or will take all necessary corporate and trust action to authorise the performance of this agreement in accordance with and subject to its terms;
- (d) this agreement is HRPT's valid and binding obligation enforceable in accordance with its terms;
- (e) HRPT is not affected by an Insolvency Event; and
- (f) the execution and performance by HRPT of this agreement and each transaction contemplated by this agreement, subject to the satisfaction or, as appropriate, waiver of each Condition Precedent, does not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Related Bodies Corporate;
 - (ii) any declaration of trust or its constituent documents; or
 - (iii) any other document or agreement that is binding on HRPT or HRPT's assets.

9.2 MacarthurCook representations and warranties

MacarthurCook in its capacity as responsible entity of MIF and only in that capacity represents and warrants to HRPT that, except as consented to in writing by HRPT:

- (a) on the date of this agreement, on the Despatch Date, at the time of giving its certificate under clause 3.7 and on the Implementation Date:
 - (i) **(incorporation)**
 - (A) MacarthurCook is a corporation validly existing under the laws of its place of incorporation; and
 - (B) MIF is validly established and registered under Part 5C of the Corporations Act;
 - (ii) MacarthurCook has the power to enter into and perform its obligations under this agreement and, subject to the satisfaction or, as appropriate, waiver of each Condition Precedent, to carry out the transactions contemplated by this agreement;
 - (iii) MacarthurCook has taken all necessary corporate action to authorise its entry into this agreement and has taken or will take all necessary corporate action to authorise the performance of this agreement in accordance with and subject to its terms;
 - (iv) this agreement is MacarthurCook's valid and binding obligation enforceable in accordance with its terms;
 - (v) neither it nor MIF is affected by an Insolvency Event;
 - (vi) the execution and performance by MacarthurCook of this agreement and each transaction contemplated by this agreement, subject to the satisfaction or, as appropriate, waiver of each Condition Precedent, in each case in accordance with and subject to the terms of 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 Related Bodies Corporate;
 - (B) its constitution or the Trust Constitution; or
 - (C) any other document or agreement that is binding on it or on any of its or MIF's assets;
 - (vii) it is the current responsible entity of MIF;
 - (viii) MIF has been validly constituted under the Trust Constitution;
 - (ix) there are 98,468,806 MIF Units on issue and no other MIF Units have been or are required to be issued (either contingently or otherwise) and no other securities or instruments are still outstanding (or may become outstanding) and that may convert into MIF Units except for securities to be issued under MIF's distribution reinvestment plan;
- (b) on the date of this agreement other than as fairly disclosed in writing in the MIF Disclosed Information, the Management Responses are, so far as MacarthurCook is aware, true, complete and accurate in all material respects;

- (c) the MIF Disclosed Information was prepared in good faith and, so far as MacarthurCook is aware, on the date of this agreement:
 - (i) the MIF Disclosed Information is not false, misleading or deceptive (whether by omission or otherwise) in any material respect; and
 - (ii) no information that was requested in writing of MacarthurCook or its Representatives by or on behalf of HRPT as part of HRPT's due diligence investigations or that is material for the purpose of any representations and warranties in this clause 9.2 has been knowingly or recklessly omitted from the MIF Disclosed Information or the Management Responses;
- (d) on the date of this agreement, at the time of giving its certificate under clause 3.7, on the Meeting Date and on the Implementation Date, following the making by MacarthurCook of its Agreed Public Announcement, MIF (acting through its responsible entity MacarthurCook):
 - (i) so far as MacarthurCook is aware, is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1; and
 - (ii) is not withholding any information from HRPT that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and
- (e) so far as MacarthurCook is aware, on the Despatch Date, at the time of giving its certificate under clause 3.7 and on the Meeting Date, the Scheme Booklet (other than the HRPT Information and the Independent Expert's Report) is not misleading or deceptive (including by the omission of information) in any material respect and will comply with applicable laws and the terms of this agreement as they apply to such information.

9.3 Qualification

MacarthurCook is not liable in respect of any claim for breach of a representation or warranty set out in clause 9.2, if the fact, matter or circumstance giving rise to the claim was fairly disclosed in writing in the MIF Disclosed Information or the Management Responses prior to the execution of this agreement.

9.4 Reliance by parties

Each party (**Representor**) acknowledges that in entering into this agreement the other party has relied on the representations and warranties provided by the Representor under this clause 9.

9.5 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.

9.6 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.

9.7 MacarthurCook's awareness

For the purposes of this agreement, the Management Responses, the MIF Disclosed Information and the MIF Closing Certificate, references to "so far as MacarthurCook is aware" or to MacarthurCook's knowledge or similar expressions are references to the actual knowledge and awareness of each member of the Special Board Committee and Russell Bullen and, in the case of Russell Bullen, the knowledge and awareness that he has after making, or would have had if he made, reasonable enquiry of his direct reports.

9.8 Events occurring prior to implementation

- (a) MacarthurCook must immediately disclose in writing to HRPT any fact, matter or circumstance which arises, or becomes known to MacarthurCook in the period between the date of this agreement up to and including the Implementation Date (**Relevant Period**) which:

- (i) makes any of the Management Responses not true, incomplete or inaccurate in a material respect; or
- (ii) results in any of the representations and warranties given by MacarthurCook in clause 9.2 being breached, or makes any of them untrue or inaccurate, in a material respect,

or which would:

- (iii) make any of the Management Responses not true, incomplete or inaccurate in a material respect; or
- (iv) result in any of the representations and warranties given by MacarthurCook in clause 9.2 being breached, or make any of them not true or inaccurate, in a material respect,

at any time during the Relevant Period, if each of those Management Responses, representations and warranties was provided, made or repeated, with any necessary modification to a date reference in the Management Questions, representations and warranties, at all times during the Relevant Period having regard to the facts, matters and circumstances then existing.

- (b) HRPT must immediately disclose in writing to MacarthurCook any fact, matter or circumstance which arises, or becomes known to HRPT in the period between the date of this agreement up to and including the Implementation Date (**Relevant Period**) which would result in any of the representations and warranties given by HRPT in clause 9.1 being breached, or make any of them not true or inaccurate, in a material respect if those representations and warranties were repeated, with any necessary modification to a date reference in the representations and warranties, at all times during the Relevant Period having regard to the facts, matters and circumstances then existing.
- (c) For the purposes of clause 9.8(a), MacarthurCook must, on an ongoing basis, in the Relevant Period, make due enquiries into:
- (i) the continuing truth, completeness and accuracy of the Management Responses; and
 - (ii) any breach of, and the continuing truth and accuracy of, the representations and warranties given by MacarthurCook in clause 9.2,

in each case including as if those Management Responses, representations and warranties were provided, made or repeated, with any necessary modification to a date reference in the Management Questions, representations and warranties, at all times during the Relevant Period having regard to the facts, matters and circumstances then existing.

- (d) For the purposes of clause 9.8(b), HRPT must, on an ongoing basis, in the Relevant Period, make due enquiries into the continuing truth and accuracy of the representations and warranties given by HRPT in clause 9.1, including as if each of those representations and warranties was provided or repeated, with any necessary modification to a date reference in the representations and warranties, at all times during the Relevant Period having regard to the facts, matters and circumstances then existing.

10 Exclusivity

10.1 No shop restriction

During the Exclusivity Period, MacarthurCook must not, and must ensure that each of its Representatives does not, except with the prior written consent of HRPT, directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries, negotiations 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.

10.2 No talk restriction

During the Exclusivity Period, MacarthurCook must not, and must ensure that each of its Representatives does not, except with the prior written consent of HRPT, 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, facilitated, encouraged or initiated by MacarthurCook or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced,

unless the Special Board Committee, acting in good faith and in order to satisfy what the Special Board Committee reasonably considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is a Superior Proposal.

10.3 No due diligence

Without limiting the general nature of clause 10.2, during the Exclusivity Period, MacarthurCook must not, and must ensure that each of its Representatives do not, except with the prior written consent of HRPT, make available to any Third Party (other than to HRPT or any of its Representatives) or permit any such Third Party to receive any non-public information relating to MIF in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:

- (a) the Special Board Committee, acting in good faith and in order to satisfy what the Special Board Committee reasonably considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is a Superior Proposal; and

- (b) if MacarthurCook proposes to provide any confidential information to a Third Party, before MacarthurCook provides such information to the Third Party the Third Party has entered into a written agreement (the terms of which being no less onerous on the Third Party than the terms of the Confidentiality Deed are on HRPT) in favour of MacarthurCook regarding the use and disclosure of the confidential information by the person.

10.4 Notification by MacarthurCook

- (a) During the Exclusivity Period, MacarthurCook must promptly notify HRPT if:
 - (i) it is approached by any Third Party to take any action of a kind that would breach its obligations under clause 10.2 or 10.3 (or that would breach its obligations under clause 10.2 or 10.3 if it were not for the provisos to the relevant clause); or
 - (ii) it proposes to take any action of a kind that would breach its obligations under clause 10.2 or 10.3 (or that would breach its obligations under clause 10.2 or 10.3 if it were not for the provisos to the relevant clause),

unless (and only to the extent that) the Special Board Committee, acting reasonably and in good faith, determines that it would be a breach of its fiduciary or statutory duties to so notify HRPT.

- (b) If MacarthurCook receives a Superior Proposal, and as a result the Special Board Committee proposes to either publicly recommend that MIF Unitholders approve or accept that Superior Proposal and/or change or withdraw its recommendation that MIF Unitholders approve the Scheme Resolutions, MacarthurCook must (unless the Special Board Committee, acting reasonably and in good faith, determines that it would be a breach of its fiduciary or statutory duties to do so) give HRPT 4 clear Business Days notice (such notice to be in writing) of such proposed recommendation, change or withdrawal, and provide to HRPT 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). MacarthurCook will use its reasonable endeavours to ask the person who has made the applicable Competing Proposal (the **Competing Party**) for their consent to their name being provided by MacarthurCook to HRPT on a confidential basis. For the avoidance of doubt, MacarthurCook will have no obligation to disclose the identity of the Competing Party to HRPT if the Competing Party does not consent to such disclosure. If information is withheld pursuant to this clause 10.4(b), MacarthurCook must immediately notify HRPT. Any information provided pursuant to this clause 10.4(b) will be provided subject to the terms of the Confidentiality Deed.
- (c) During the period of 4 clear Business Days referred to in clause 10.4(b), HRPT will have the right to offer to amend the terms of the Scheme or the Transaction (a **HRPT Counterproposal**) so that the terms of the Scheme or the Transaction (as amended) would provide a superior outcome for the MIF Unitholders than the applicable Competing Proposal.
- (d) MacarthurCook must procure that the Special Board Committee considers any such HRPT Counterproposal and if the Special Board Committee, acting in good faith, determines that:
 - (i) the HRPT Counterproposal would provide on equivalent or superior outcome for the MIF Unitholders than the applicable Competing Proposal (it being acknowledged that the price or value implied by the HRPT Counterproposal does have to be above, but does not have to be materially above, the price or value implied by the applicable Competing Proposal for the Special Board

Committee to consider the HRPT Counterproposal in relation to price to be superior); and

- (ii) the other terms and conditions of the HRPT Counterproposal taken as a whole are not less favourable than those in the applicable Competing Proposal,

then MacarthurCook and HRPT must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the HRPT Counterproposal (including amendments to the Scheme Consideration that are reasonably necessary to reflect the HRPT Counterproposal), and to enter into one or more appropriate amended agreements to give effect to those amendments and to implement the HRPT Counterproposal, in each case as soon as reasonably practicable.

- (e) Any material modification to any Competing Proposal (which will include any modification relating to the price or value of the Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which the Target must comply with its obligations under clause 10.4.

10.5 Normal provision of information

Nothing in this clause 10 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 brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

10.6 Acknowledgement

HRPT has required MacarthurCook to agree to the obligations set out in this clause 10 in consideration of it proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations from MacarthurCook, HRPT would not have entered into this agreement.

11 Reimbursement of costs

11.1 Background

This clause 11 has been agreed in circumstances where:

- (a) the Special Board Committee believes that the Transaction is worthy of consideration by MIF Unitholders, and MacarthurCook and HRPT acknowledge that, if they enter into this agreement and the Transaction is subsequently not implemented, HRPT and MIF will both incur significant costs;
- (b) HRPT requested that provision be made for the payment outlined in clause 11.2, without which HRPT would not have entered into this agreement;

- (c) MacarthurCook requested that provision be made for the payment outlined in clause 11.4, without which MacarthurCook would not have entered into this agreement;
- (d) both the MacarthurCook Board and HRPT Board believe that it is appropriate for both parties to agree to the payments referred to in this clause 11 to secure each party's participation in the Transaction; and
- (e) both parties have received legal advice on this agreement and the operation of this clause 11.

11.2 Payment by MacarthurCook to HRPT

MacarthurCook as responsible entity for MIF agrees to pay to HRPT the HRPT Break Fee, being a genuine pre-estimate of HRPT's actual costs and expenses, and those of its Related Bodies Corporate incurred in respect of the proposed Transaction, (including but not limited to advisory costs (including costs of advisers other than success fees), costs of management and directors' time, out-of-pocket expenses and reasonable opportunity costs incurred by HRPT in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which HRPT could have developed to further its business and objectives) if:

- (a) during the Exclusivity Period, a Competing Proposal is announced or made and is publicly recommended, promoted or otherwise endorsed by the MacarthurCook Board or by any of the members of the Special Board Committee;
- (b) during the Exclusivity Period, a Competing Proposal is announced or is open for acceptance and within 12 months of the date of this agreement:
 - (i) pursuant to that Competing Proposal, a Third Party acquires a Relevant Interest and/or economic interest in at least 50% of all MIF Units and the Competing Proposal completes, is unconditional or has become unconditional; or
 - (ii) the Competing Proposal is approved by a requisite majority of MIF Unitholders or votes attaching to MIF Units;
- (c) any member of the Special Board Committee:
 - (i) fails to recommend the Transaction (including in the Scheme Booklet) where the Independent Expert has concluded that the Scheme is either "fair and reasonable" or "not fair but reasonable"; or
 - (ii) changes (including by attaching qualifications to) or withdraws (including by abstaining) his or her recommendation of the Transaction where the Independent Expert has concluded that the Scheme is either "fair and reasonable" or "not fair but reasonable";
- (d) HRPT terminates this agreement in accordance with:
 - (i) clause 12.1(b);
 - (ii) clause 12.2(a)(i); or
 - (iii) clause 12.2(b).

Notwithstanding anything to the contrary in this agreement, if MacarthurCook is liable to and makes full payment to HRPT pursuant to clause 11.2, MacarthurCook has no further

liability to HRPT under this agreement or at law or in equity including, without limitation, for or in respect of any breach of this agreement or any breach of a representation or warranty in this agreement.

11.3 Repayment

Despite any event in clause 11.2 occurring, if HRPT ultimately acquires beneficial ownership of 50.1% or more of MIF Units, HRPT must repay to MacarthurCook any amount received under this clause 11.2 which has not already been refunded under clause 11.7.

11.4 Payment by HRPT to MacarthurCook

- (a) If MacarthurCook terminates this agreement in accordance with clause 12.1(b), HRPT agrees to pay to MacarthurCook the MacarthurCook Break Fee, being a genuine pre-estimate of MacarthurCook's actual costs and expenses, and those of its Related Bodies Corporate incurred in respect of the proposed Transaction, (including but not limited to advisory costs (including costs of advisers other than success fees), costs of management and directors' time, out-of-pocket expenses and reasonable opportunity costs incurred by MacarthurCook in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which MacarthurCook could have developed.
- (b) Notwithstanding anything to the contrary in this agreement, if HRPT is liable to and makes full payment to MacarthurCook pursuant to clause 11.4(a), HRPT has no further liability to MacarthurCook under this agreement or at law or in equity including, without limitation, for or in respect of any breach of this agreement or any breach of a representation or warranty in this agreement.

11.5 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event under clause 11.2 or 11.4(a), no amount is payable under clause 11.2 or 11.4(a) if the Scheme becomes Effective.

11.6 Timing of payment

- (a) MacarthurCook must pay HRPT the amount referred to in clause 11.2 within 5 Business Days of receipt by MacarthurCook of a demand for payment from HRPT. The demand may only be made after the occurrence of an event referred to in clause 11.2(a), 11.2(b), 11.2(c) or 11.2(d).
- (b) HRPT must pay to MacarthurCook the amount referred to in clause 11.4(a) within 5 Business Days of receipt by HRPT of a demand for payment from MacarthurCook. The demand may only be made after the occurrence of an event referred to in clause 11.4(a).

11.7 Compliance with law

If it is determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 11.2 or 11.4:

- (a) is unlawful;
- (b) involves a breach of the duties of the MacarthurCook Board or the board of trustees of HRPT (as applicable); or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then MacarthurCook's or HRPT's obligation to pay the amount payable under clause 11.2 or 11.4 (as the case may be) does not apply to the extent the amount is found to be unlawful, involve a breach of duties of the MacarthurCook Board or the board of trustees of HRPT or constitute unacceptable circumstances and if MacarthurCook or HRPT has received any part of the payment due under clause 11.2 or 11.4 (as applicable) it must, to the extent the amount is found to be unlawful, involve a breach of duties of the MacarthurCook Board or the board of trustees of HRPT or constitute unacceptable circumstances, refund it within ten Business Days of such final determination.

11.8 Survival

Any accrued obligations under this clause 11 survive termination of this agreement.

12 Termination

12.1 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 Scheme becomes Effective if the other party is in breach of this agreement in a material respect (including a breach of a representation or warranty given by HRPT under clause 9.1(e) or MacarthurCook under clause 9.2(a)(v) or 9.2(d)), provided that (except, where HRPT is the terminating party, in the case of a material breach by MacarthurCook of clause 7 or 10) 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 the scheduled time for implementation of the Scheme on the Implementation Date) from the time such notice is given.

12.2 Termination by HRPT

HRPT may terminate this agreement at any time before the Scheme becomes Effective by notice in writing to MacarthurCook:

- (a) if
 - (i) a MIF Regulated Event;
 - (ii) a MIF Material Adverse Change; or
 - (iii) a Market Disruption Event,

occurs, provided that HRPT has given notice to MacarthurCook 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 immediately prior to the scheduled time for implementation of the Scheme on the Implementation Date) from the time such notice is given;

- (b) if the Independent Expert concludes that the Scheme is either "fair and reasonable" or "not fair but reasonable" and any Special Board Committee member fails, in the Scheme Booklet, to recommend the Scheme and that MIF Unitholders approve the Scheme in the absence of a Superior Proposal;

- (c) if at any time after the Independent Expert has concluded that the Scheme is either "fair and reasonable" or "not fair but reasonable", any member of the Special Board Committee publicly states that they do not, or qualifies a statement to the effect that they, recommend that MIF Unitholders approve the Scheme in the absence of a Superior Proposal;
- (d) if any Special Board Committee member publicly recommends a Competing Proposal, whether or not in accordance with clause 7.1(b);
- (e) if the Independent Expert concludes that the Scheme:
 - (i) is neither "fair and reasonable" or "not fair but reasonable"; or
 - (ii) is not in the best interest of MIF Unitholders; or
- (f) if MacarthurCook notifies HRPT, or HRPT otherwise becomes aware, of any fact, matter or circumstance which :
 - (i) makes any of the Management Responses not true, incomplete or inaccurate in a material respect; or
 - (ii) results in any of the representations or warranties given by MacarthurCook in clause 9.2 being breached, or makes any of them not true or inaccurate, in a material respect,

or which would:

 - (iii) make any of the Management Responses not true, incomplete or inaccurate in a material respect; or
 - (iv) result in any of the representations or warranties given by MacarthurCook in clause 9.2 being breached, or make any of them not true or inaccurate, in a material respect,

at any time during the Relevant Period, if each of those Management Responses, representations and warranties was provided, made or repeated, with any necessary modification to a date reference in the Management Question, representation or warranty, at all times during the Relevant Period having regard to the facts, matters and circumstances then existing.

12.3 Termination by MacarthurCook

MacarthurCook may terminate this agreement at any time before the Scheme becomes Effective by notice in writing to HRPT if:

- (a) the Special Board Committee publicly changes a unanimous recommendation of the Scheme, or publicly recommends, promotes or otherwise endorses a Superior Proposal and the Scheme Meeting has been validly cancelled;
- (b) if the Independent Expert concludes that the Scheme is neither "fair and reasonable" or "not fair but reasonable"; or
- (c) if HRPT notifies MacarthurCook, or MacarthurCook otherwise becomes aware, of any fact, matter or circumstance which is materially inconsistent with any of the representations or warranties given by HRPT in clause 9.1 or which would be materially inconsistent with any of those representations or warranties if each of those representations or warranties was provided or repeated, with any necessary modification to a date reference in the representation or warranty, at all times

during the Relevant Period having regard to the facts, matters and circumstances then existing.

12.4 Effect of termination

In the event of termination of this agreement by either HRPT or MacarthurCook pursuant to clause 12.1, 12.2 or 12.3, 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 12 and clauses 1, 8.3, 11, 13 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.

13 MacarthurCook limitation of liability

13.1 Application of this clause

This clause 13 applies notwithstanding any other provision of this agreement.

13.2 Liability

- (a) Any liability arising under or in connection with this agreement can be enforced against MacarthurCook only to the extent to which it can be satisfied out of the assets and property of MIF out of which MacarthurCook is actually indemnified for the liability.
- (b) The limitations on MacarthurCook's liability contained in this clause 13 extend to all liabilities of MacarthurCook in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this agreement.
- (c) No party to this agreement may claim against the personal assets of MacarthurCook or against MacarthurCook in its personal capacity or seek the appointment of a liquidator, administrator, receiver (except in relation to the assets and property of MIF) or similar person to MacarthurCook or prove in any liquidation, administration or arrangement of or affecting MacarthurCook (except in relation to the assets and property of MIF).
- (d) The provisions of this clause 13 shall not apply to any obligation or liability of MacarthurCook to the extent that it is not satisfied because under the Trust Constitution or by operation of law there is a reduction in the extent of, or a disentitlement of, MacarthurCook's indemnification out of the assets and property of MIF as a result of MacarthurCook's failure to properly perform or exercise any of its powers or duties in relation to MIF, fraud, negligence, breach of trust or breach of duty that it has as responsible entity of MIF.

13.3 Survival

The provisions of this clause 12 shall survive termination of this document.

14 GST

14.1 Definitions

In this clause 14:

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Recipient has the meaning given by the GST Law.

Tax Invoice has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84 5 of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

14.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive. Payment of the GST Amount is conditional upon the prior delivery to the Recipient of the supply of a valid Tax Invoice.

14.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

14.4 Cost exclusive of GST

Any reference in this agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

14.5 GST obligations to survive termination

This clause 14 will continue to apply after expiration or termination of this agreement.

15 Miscellaneous

15.1 Notices

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

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

- (i) to HRPT:

Attention: Jennifer Clark, Secretary
Address: 400 Centre Street, Newton, MA 02458, USA
Facsimile: +1 617 928 1305
Email: jclark@reitmr.com

with a copy to Gilbert + Tobin:

Address: Level 37, 2 Park Street, Sydney NSW 2000
Attention: Marko Komadina
Facsimile: +61 2 9263 4111

- (ii) to MacarthurCook:

Attention: Ryan Rayfield
Address: Level 16, 323 Castlereagh St, Sydney NSW 2000
Facsimile: +61 2 9215 2833;

with a copy to Blake Dawson

Address: Level 36, 225 George Street, Sydney NSW 2000
Attention: David Ryan
Facsimile: +61 2 9258 6999; and

- (c) will be 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); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine 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 4pm

(local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

15.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party 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 party granting that waiver unless made in writing.

15.3 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.

15.4 Entire agreement

This agreement and the Confidentiality Deed contain the entire agreement between the parties as at the date of this agreement with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

15.5 Amendment

No amendment or variation of this agreement is valid or binding on a party unless made in writing executed by HRPT and MacarthurCook, which may so make an amendment or variation notwithstanding that one or more other parties or persons may be entitled to the benefit of all or any of the provisions of this agreement.

15.6 Assignment

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

15.7 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.

15.8 Further assurances

Each party agrees to 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 agreement and the transactions contemplated by it.

15.9 Costs and stamp duty

Except as provided below, each party must bear its own costs, charges and expenses arising out of or incidental to the negotiations leading to or the preparation of this agreement and the proposed, attempted or actual implementation of this agreement. HRPT must pay any stamp duty that is payable on the transfer to HRPT of the Scheme Securities pursuant to the Scheme.

15.10 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.

15.11 Governing law and jurisdiction

This agreement is governed by the laws of New South Wales. Each party submits to the non exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this agreement.

15.12 Counterparts

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

15.13 HRPT Nominee

Despite anything else in this agreement, HRPT may by notice to MacarthurCook not later than 5 Business Days before the Scheme Booklet is lodged with ASIC, nominate a wholly owned entity of HRPT (**Nominee**) to pay the Scheme Consideration and/or to which some or all of the Scheme Securities will be transferred if the Scheme is implemented.

Despite the above, HRPT will continue to be bound by all of the obligations of HRPT under this agreement and will not be released from any obligations or liabilities under this agreement following the date of nomination of a Nominee. However, MacarthurCook agrees that HRPT will not be in breach of this agreement for failing to discharge the obligation of HRPT under this agreement if the Nominee fully discharges that obligation.

Schedule 1 — Dictionary

1 Dictionary

In this agreement:

Actual Repayment Date has the meaning given in clause 3.1(m)(ii).

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 Announcements means the public announcements to be made by each of HRPT and MacarthurCook in the form agreed by those parties.

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.

ASIC Modifications means a modification by ASIC of item 7 of section 611 of the Corporations Act, allowing MIF Unitholders to vote in favour of the Scheme for the purpose of item 7 of section 611 of the Corporations Act or ASIC indicating in writing that such a modification is not required, and any other modifications, exemptions or approvals from ASIC as MacarthurCook reasonably considers necessary to enable the transactions contemplated by this agreement to be implemented.

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.

ASX Listing Rules means the official listing rules of ASX.

ASX Waivers and Confirmations means such waivers and confirmations from ASX as MacarthurCook considers necessary to implement the Scheme.

ATO means the Australian Taxation Office.

AUD/USD Exchange Rate means the spot rate of exchange of one Australian dollar into US dollars as published on the WM/Reuters screen from time to time.

Available Repayment Date has the meaning given in clause 3.1(m)(ii).

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

- (a) a Business Day within the meaning of the ASX Listing Rules; and
- (b) a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, New South Wales.

Commissioner means the Commissioner of Taxation.

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 expression of interest, proposal, offer, transaction or arrangement (other than the Transaction) 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 (other than as custodian, nominee or bare trustee):
 - (i) acquire an interest in, or a Relevant Interest in, or become the holder of, 50% or more of the MIF Units;
 - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all, or a substantial part of, the assets or business of MIF;
 - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of MIF; or
 - (iv) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a significant economic interest in, MIF or in all or a substantial part of its assets or business, whether by way of takeover offer, trust scheme, unitholder approved acquisition, capital reduction, unit buy-back or repurchase, sale or purchase of assets, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for MIF or other synthetic merger or any other transaction or arrangement; or
- (b) MacarthurCook or MIF would be required to abandon or otherwise fail to proceed with the Scheme or the Transaction, by whatever means.

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

Confidentiality Deed means the deed of that name between HRPT and MacarthurCook (in its capacity as responsible entity of MIF).

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

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

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

Data Room means the electronic data room that has been established by or on behalf of MacarthurCook in connection with the Transaction.

Deed Poll means a document substantially in the form of Attachment A under which HRPT covenants in favour of Scheme Participants to perform its obligations under this agreement.

Despatch Date means the first date on which the Scheme Booklet is sent to MIF Unitholders.

Effective means the coming into effect, pursuant to section 601GC(2) of the Corporations Act of the Supplemental Deed.

Effective Date means the date on which MacarthurCook lodges the Supplemental Deed with ASIC.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, encumbrance, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect or any agreement to create any of them.

End Date means 30 September 2010, or such later date as HRPT and MacarthurCook may agree in writing.

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

- (c) the termination of this agreement in accordance with its terms;
- (d) the Implementation Date; and
- (e) the End Date.

Final MIF Tax Ruling means a private ruling or rulings of the Commissioner under Division 359 of Schedule 1 to the TAA confirming to the effect, taking into account the Final MIT Tax Law, that:

- (a) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), MIF will continue to be a MIT;
- (b) where the amounts paid by MacarthurCook (in its capacity as responsible entity of MIF) to HRPT and its related entities consist of Fund Payments, that such Fund Payments will be subject to withholding pursuant to Subdivision 12-H to Schedule 1 of the TAA at rates not greater than:
 - (i) in relation to the income year ending 30 June 2010 – 15%;
 - (ii) in relation to the income year commencing 1 July 2010 and all subsequent income years – 7.5%;
- (c) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), MacarthurCook will not be subject to taxation in respect of amounts referred to at paragraph (b), because of the operation of any other provision of the Tax Acts (or because of any related legislation or regulations which have the effect of imposing tax); and
- (d) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), no anti-avoidance rule applies or will apply, nor would the Commissioner seek to apply any anti-avoidance rule (including Part IVA of the ITAA 1936), having regard to the facts and circumstances relied upon by the Commissioner in issuing the ruling or rulings.

Final MIT Tax Law means the MIT Tax Law as amended by all Laws giving effect to the Proposed MIT Tax Law Amendments.

Full Repayment and Termination has the meaning given in clause 3.1(m)(ii).

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 whether foreign, federal, state, territorial or local and includes any minister (including, for

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

Heads of Agreement means the lease proposal in respect of 16 Rodborough Road, Frenchs Forest, dated 31 March 2010 and signed on behalf of the proposed lessee on 7 April 2010.

Hedge Transactions means any contract, agreement or arrangement settling out the terms and conditions of a derivative, swap, forward contract, futures contract or hedging transaction. It includes:

- (a) any master agreement as published by the International Swaps and Derivatives Association, Inc. from time to time, and any schedule to, and any derivative, transaction or confirmation under or as defined in, such a master agreement; and
- (b) any interest rate swap transactions, arrangements or agreements entered into by MacarthurCook in connection with the Loan Facility.

HRPT Board means the board of trustees of HRPT.

HRPT Break Fee means an amount of \$800,000.

HRPT Closing Certificate means a certificate to be given by HRPT in the form of Schedule 4.

HRPT Group means HRPT and its Related Bodies Corporate.

HRPT Provided Information means all information that is provided by or on behalf of HRPT to MacarthurCook or any of its Representatives to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.1 (and that is specifically identified as such by HRPT or any of its Representatives), and any updates to that information provided by or on behalf of HRPT to MacarthurCook or any its Representatives in accordance with clause 5.2(g).

Final HRPT Tax Ruling means a private ruling or rulings of the Commissioner under Division 359 of Schedule 1 to the TAA confirming to the effect, taking into account the Final MIT Tax Law, that:

- (a) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), MIF will continue to be a MIT;
- (b) HRPT and any Nominated Rulee will be liable to pay income tax (imposed under the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008*) on the Fund Payment Part of any distributions which it receives in relation to MIF, because of section 840-805 of the ITAA 1997 and that such tax will be levied at rates not greater than:
 - (i) in relation to the income year ending 30 June 2010 – 15%; and
 - (ii) in relation to the income year commencing 1 July 2010 and all subsequent income years – 7.5%;
- (c) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), HRPT and any Nominated Rulee will obtain a credit pursuant to section 18-32 of Schedule 1 to the TAA, for the tax withheld by MacarthurCook (as responsible entity of MIF) and any such credit will be applied in accordance with Division 3 of Part IIIB of the TAA;

- (d) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), the amounts subject to tax referred to at paragraph (b) of this definition, will represent non-assessable non-exempt income of HRPT and any Nominated Rulee in accordance with section 840-815 of the ITAA 1997 and will not be subject to taxation because of any other provision of the Tax Acts (or because of any related legislation or regulations which have the effect of imposing tax); and
- (e) in relation to the year ended 30 June 2010 and all future income years (subject to the maximum period allowed by the Commissioner), that no anti-avoidance rule applies or will apply, nor would the Commissioner seek to apply any anti-avoidance rule (including under Part IVA of the ITAA 1936), having regard to the facts and circumstances relied upon by the Commissioner in issuing the ruling or rulings.

Implementation Date means the date that is the next Business Days after the Record Date, or such other date as MacarthurCook and HRPT may agree in writing or as may be required by ASX.

Independent Expert means an independent expert to be engaged by MacarthurCook to prepare the Independent Expert's Report and express an opinion on the Scheme.

Independent Expert's Report means the report from the Independent Expert commissioned by MacarthurCook for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion the terms of the Scheme are fair and reasonable for MIF Unitholders and includes any update of that report by the Independent Expert.

Insolvency Event means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (b) **(arrangements)**
 - (i) the entry by the person into a compromise or arrangement with its creditors generally or, if it is a trustee, the creditors of its trust generally; or
 - (ii) the person executes a deed of company arrangement;
- (c) **(winding up)**
 - (i) a court makes an order for the winding up of the person; or
 - (ii) the making of an application or order for the winding up or dissolution of the person, other than where the application or order (as the case may be) is set aside within 14 days;
- (d) **(statutory demand)** being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) **(suspends payments)** the person suspends or threatens to suspend payment of its debts or, if it is a trustee, the debts of the trust;
- (f) **(insolvency)** the person is or becomes unable to pay its debts or, if it is a trustee, the debts of its trust, as and when they fall due within the meaning of the Corporations Act or is (or if it is a trustee, its trust is) otherwise presumed to be insolvent under the Corporations Act; or

- (g) **(analogous event)** any analogous event occurring in relation to that person under the laws of another jurisdiction.

provided that any event or circumstance referred to above in respect of a person which is fairly disclosed to HRPT in writing in the MIF Disclosed Information or Management Responses will not constitute an Insolvency Event in respect of that person for the purposes of this document.

Interim HRPT Tax Ruling has the same meaning given to Final HRPT Tax Ruling except that the words "taking into account the Final MIT Tax Law," are to be disregarded for the purpose of this definition.

Interim MIF Tax Ruling has the same meaning given to Final MIF Tax Ruling except that the words "taking into account the Final MIT Tax Law," are to be disregarded for the purpose of this definition.

ITAA 1936 means the *Income Tax Assessment Act 1936* (Cth).

ITAA 1997 means the *Income Tax Assessment Act 1997* (Cth).

Judicial Advice means confirmation from the Court under section 63 of the Trustee Act 1925 (NSW) that MacarthurCook would be justified in convening the Scheme Meeting and proceeding on the basis that amending the Trust Constitution as set out in the Supplemental Deed would be within the powers of alteration conferred by the Trust Constitution and section 601GC of the Corporations Act.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order, decree or policy of any Governmental Agency; and
- (b) any statute, regulation, proclamation, ordinance or by-law in:
 - (i) Australia; or
 - (ii) any other jurisdiction.

Lender means National Australia Bank Limited.

Loan Facility means the Multicurrency Loan Facility Agreement between MacarthurCook (in its capacity as responsible entity for MIF) and the Lender dated 25 July 2008, as amended.

MacarthurCook Board means the board of directors of MacarthurCook (in its capacity as responsible entity of MIF).

MacarthurCook Break Fee means an amount of \$800,000.

Management Questions means the questions submitted, and confirmations sought, by or on behalf of HRPT in the Management Questionnaire.

Management Responses means the responses provided to the Management Questions in the Management Questionnaire by MacarthurCook.

Management Questionnaire means the document of that name dated the same date as this agreement which contains the Management Questions and the Management Responses.

Market Disruption Event means, during the period from the date of this agreement to 5:00pm on the day before the Meeting Date, either of the All Ordinaries Index published by the ASX or the Dow Jones Industrial Average closes for four or more consecutive days at a level which is 10% or more below the level at which those indexes closed on the last trading day before the date of this agreement.

Material Contract means any agreement, arrangement or understanding to which MacarthurCook (acting in its capacity as responsible entity of MIF) is party that:

- (a) is not terminable on 30 days or less notice without payment of penalty or premium;
- (b) requires or may result in expenditure by MacarthurCook (acting in its capacity as responsible entity of MIF) of \$100,000 or more in any year; and
- (c) is material to the business or operations of MIF.

Meeting Date means the date on which the Scheme Meeting is held.

MIF Closing Certificate means a certificate to be given by MacarthurCook in the form of Schedule 3.

MIF Disclosed Information means all information provided by MacarthurCook or its Representatives to HRPT and its Representatives prior to the date of this agreement pursuant to the Confidentiality Deed and the Due Diligence Protocols that is disclosed in the Data Room.

MIF Material Adverse Change means:

- (a) any event, occurrence or matter that individually or when aggregated with all such events, occurrences or matters has had or is reasonably likely to have an adverse effect on:
 - (i) the actual or forecast annual operating income of MIF, whether now or in the future, of 5% or more; or
 - (ii) the Net Assets, whether now or in the future, of 5% or more;
- (b) the termination of, or MacarthurCook receiving from a Third Party any notice of an intention to terminate, any Property lease which relates to any Property; or
- (c) any tenant of a Property:
 - (i) materially breaching or defaulting any material payment obligation owed by it in respect of the Property; or
 - (ii) suffering an Insolvency Event,

other than, in each case, an event, occurrence or matter:

- (d) that is required to be undertaken or procured by MacarthurCook pursuant to, or otherwise as contemplated by, the Transaction Documents (or that involves payment of transaction and advisory costs in relation to the Scheme or other transactions contemplated by this agreement of an amount in aggregate of no more than the amount that has been disclosed to HRPT or its Representatives prior to the date of this agreement, provided that HRPT must consider and, where reasonably incurred, consent to the payment of, any additional advisory costs which are directly referable to any regulatory intervention which occurs in

connection with the Scheme or other transactions contemplated by this agreement);

- (e) which HRPT and MacarthurCook agree is not a MIF Material Adverse Change; or
- (f) to the extent that event, occurrence or matter was fairly disclosed in writing in the MIF Disclosed Information or Management Responses prior to the date of this agreement.

MIF Provided Information means all information included in the Scheme Booklet, and any updates to that information prepared by or on behalf of MacarthurCook in accordance with clause 5.1(j), other than:

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

MIF Regulated Event means the occurrence of any of the following events, except as consented to in writing by HRPT:

- (a) MacarthurCook (acting in its capacity as responsible entity of MIF) converts all or any of MIF's securities into a larger or smaller number of securities;
- (b) MacarthurCook (acting in its capacity as responsible entity of MIF) reduces or resolves to reduce MIF's capital in any way;
- (c) MacarthurCook (acting in its capacity as responsible entity of MIF):
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement;
- (d) MacarthurCook (acting in its capacity as responsible entity of MIF) issues securities, or grants an option over or to subscribe for securities, or agrees to make such an issue or grant such an option;
- (e) MacarthurCook (acting in its capacity as responsible entity of MIF) issues, or agrees to issue, convertible notes or any other security or instrument convertible into securities;
- (f) MacarthurCook (acting in its capacity as responsible entity of MIF) agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a dividend, distribution of income, profits, assets or capital, with the exclusion of any distributions for the quarters ending 31 March 2010 or 30 June 2010, provided in the case of those distributions that the amount per MIF Unit of the distributions is materially consistent with the amount per MIF Unit of the distribution for the quarter ending 31 December 2009;
- (g) any change is made to the MIF Constitution;
- (h) MacarthurCook (acting in its capacity as responsible entity of MIF):
 - (i) acquires, leases or disposes of (including by grant of an Encumbrance);
 - (ii) agrees to acquire, lease or dispose of (including by grant of an Encumbrance); or

(iii) offers, proposes or announces a bid or tenders for,

any entity, business or asset (including by grant of an Encumbrance) with a value of more than \$100,000, other than as legally committed in any contract fairly disclosed to HRPT in writing in the MIF Disclosed Information or Management Responses before the execution of this agreement;

- (i) MacarthurCook (acting in its capacity as responsible entity of MIF) creates, or agrees to create, any mortgage, charge, lien or other Encumbrance over the whole, or a substantial part, of its business or assets other than in the ordinary course of its business;
- (j) other than as legally committed in any contract fairly disclosed in writing to HRPT in the MIF Disclosed Information or Management Responses before the date of this agreement, MacarthurCook (acting in its capacity as responsible entity of MIF) enters into any contract or commitment (or any series of related contracts or commitments) that:
 - (i) is not terminable on 30 days or less notice without payment of penalty or premium; or
 - (ii) requires or may result in expenditure by MacarthurCook (acting in its capacity as responsible entity of MIF) of \$100,000 or more in any year; or
 - (iii) MacarthurCook (acting in its capacity as responsible entity of MIF) undertakes capital expenditure in excess of \$100,000;
- (k) MacarthurCook (acting in its capacity as responsible entity of MIF) incurs any financial indebtedness or issues any indebtedness or debt securities other than unsecured trade payables arising under contracts for goods and services in the ordinary course;
- (l) MacarthurCook (acting in its capacity as responsible entity of MIF) makes any loans, advances or capital contributions to, or investments in, any other person;
- (m) MacarthurCook (acting in its capacity as responsible entity of MIF):
 - (i) changes the terms of any Material Contract;
 - (ii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or
 - (iii) waives any claims or rights under, or waives the benefit of any provision of, any Material Contract;
- (n) an Insolvency Event occurs in respect of MacarthurCook or MIF;
- (o) an obligation to pay any amount under the Loan Facility, or in respect of any of the NAB Hedge Transactions, is accelerated or a step is taken to enforce the Security or any other Security Interest granted in favour of the Lender or a Related Body Corporate of the Lender;

provided that a MIF Regulated Event will not include:

- (p) a matter that is required to be undertaken or procured by MacarthurCook pursuant to, or otherwise as contemplated by, the Transaction Documents (or that involves payment of transaction and advisory costs in relation to the Scheme or other

transactions contemplated by this agreement of an amount in aggregate of no more than the amount that has been disclosed to HRPT or its Representatives prior to the date of this agreement, provided that HRPT must consider and, where reasonably incurred, consent to the payment of, any additional advisory costs which are directly referable to any regulatory intervention which occurs in connection with the Scheme or other transactions contemplated by this agreement);

- (q) a matter to the extent that HRPT has provided its prior written consent, such consent not to be unreasonably withheld or delayed;
- (r) any actions required to enter into the lease for 16 Rodborough Road, Frenchs Forest, on terms consistent in all material respects with those documented in the Heads of Agreement (including as to the identity of the lessee); and
- (s) renewal of MIF's insurance arrangements on terms materially consistent with those described in document number 10.21 in the Data Room and otherwise in a manner consistent with the Management Responses.

MIF Unit means a unit on issue in MIF.

MIF Unitholder means a holder of a MIF Unit.

MIF Unit Register means the register of holders of MIF Units from time to time, as administered by MacarthurCook.

MIT means a Managed Investment Trust in relation to an income year for the purpose of section 12-400 of Schedule 1 to the TAA.

MIT Tax Law means each of the following:

- (a) Subdivision 12-H of Schedule 1 to the TAA;
- (b) Division 840 of the ITAA 1997;
- (c) the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* (Cth); and
- (d) any related Law.

NAB Hedge Transactions has the meaning given in clause 3.1(m)(ii).

Net Assets means total assets minus total liabilities of MIF.

Net Current Assets means the net amount given by deducting:

- (a) the aggregate of
 - the total liabilities (excluding the principal loan balance under the Loan Facility but only to the extent to which that balance is not more than \$46,400,000) of MIF and, to the extent not included in the total liabilities of MIF, any transactions costs relating to the Transaction, any Special Distribution or any other distributions permitted to be paid to MIF Unitholders under this agreement and all fees, charges and other costs payable by or on behalf of MacarthurCook (in its capacity as responsible entity for MIF) to Lender in connection with the satisfaction of the Condition Precedent in clause 3.1(m); from
- (b) the total assets of MIF (excluding Properties).

Net Income means net income as defined by section 95 of the ITAA 1936.

Nominated Rulee means any person who is a co-applicant in relation to the Final HRPT Tax Ruling and who acquires or is issued MIF Units under the Scheme or after the Implementation Date.

Nominee has the meaning given to that term in clause 15.13.

Non-Property Asset means any class or type of asset other than real property (or an interest in real property).

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 senior employees.

Proposed MIT Tax Law Amendments means any proposed amendment to the MIT Tax Law relating to:

- (a) the announcement by the Assistant Treasurer in press release No 20 titled "Key Amendment to The Withholding Tax Definition Of A Managed Investment Trust" issued on 10 February 2010 (**Press Release**);
- (e) the exposure draft legislation released by the Treasury on 16 April 2010 titled "Exposure Draft - Tax Laws Amendment (2010 Measures No. 3) Bill 2010: Managed Investment Trusts (MIT)" (**ED**); or
- (f) any other announcements, pronouncements, statements, exposure draft legislation, bills or press releases of any Governmental Agency, whether retrospective or prospective, which in each instance relate to the MIT Tax Laws or the subject matter of the Press Release or ED.

Properties means each property the freehold interest of which is owned or held by or on behalf of MIF.

Record Date means 7pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between HRPT and MacarthurCook or as may be required by ASX.

Regulatory Approval means each of the ASIC Modifications, the FIRB approval referred to in clause 3.1(a)(ii), the ASX Waivers and Confirmations, the Interim MIF Tax Ruling, the Final MIF Tax Ruling, the Interim HRPT Tax Ruling and the Final HRPT Tax Ruling.

Related Body Corporate has the meaning given in the Corporations Act.

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.

Responsibility Statement means a statement that is included in the Scheme Booklet in the form set out in Schedule 2 or in such other form as the parties reasonably agree.

Scheme means the arrangement under which HRPT acquires all of the MIF Units held by Scheme Participants, that is facilitated by amendments to the Trust Constitution as set out in the Supplemental Deed, subject to the Scheme Resolutions being approved by the requisite majorities of MIF Unitholders.

Scheme Booklet 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 MIF Unitholders, including the Independent Expert's Report, the Notice of Meeting, the Deed Poll and the Supplemental Deed.

Scheme Consideration means the consideration to be provided to Scheme Participants under the terms of the Scheme for the transfer to HRPT (and/or its nominee) of their Scheme Securities.

Scheme Meeting means the meeting of MIF Unitholders that is convened to consider resolutions to approve the Scheme.

Scheme Participant means each person who is a MIF Unitholder on the Record Date.

Scheme Resolutions means resolutions of the MIF Unitholders to approve the Scheme, and the other transactions contemplated by this agreement, including:

- (a) an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition by HRPT of all of the Scheme Securities;
- (b) a special resolution for the purpose of section 601GC(1) of the Corporation Act to approve the amendments to the Trust Constitution as set out in the Supplemental Deed and to authorise MacarthurCook to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments;
- (c) unless the parties agree otherwise, an ordinary resolution for the purpose of section 208 of the Corporations Act to approve the management arrangements contemplated by the condition precedent in clause 3.1(o) and Attachment C; and
- (d) such other resolutions as the parties consider reasonably necessary to give effect to the transactions contemplated by this agreement.

Scheme Securities means the MIF Units on issue as at the Record Date.

Security means the fixed and floating charge dated 28 October 2004 granted by MacarthurCook in favour of National Australia Bank Limited registered with the Australian Securities and Investment Commission as number 1100114.

Security Interest includes any guarantee, mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security but it excludes a charge or lien arising in favour of a government agency by operation of statute unless there is default for more than 30 days in payment of moneys secured by that charge or lien.

Special Board Committee means the special board committee comprising each of Tony Wood, Mark Thorpe-Apps and Chris Langford.

Special Distribution means a distribution of not less than \$0.01 per MIF Unit.

Special Distribution Payment Date means the date on which the Scheme Consideration is paid to Scheme Participants in accordance with the Scheme.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a bona fide Competing Proposal that the Special Board Committee determines, acting in good faith and in order to satisfy what the Special Board Committee considers to be their fiduciary or statutory duties (and after having taken advice from its financial and legal advisers):

- (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 MIF Unitholders than the Transaction, 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.

Supplemental Deed means a document substantially in the form of Attachment B, pursuant to which MacarthurCook (in its capacity as responsible entity of MIF) will amend the Trust Constitution.

TAA means the *Taxation Administration Act 1953* (Cth).

Tax means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government Agency, except where the context requires otherwise. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

Tax Acts means the TAA, ITAA 1936 and ITAA 1997.

Tax Law means any Law relating to Tax.

Tax Return means any return relating to Tax including any document which must be lodged with a Government Agency administering a Tax or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, schedule or election and any attachment).

Termination Date has the meaning given to that term in the Loan Facility.

Third Party means any of the following:

- (a) a person other than HRPT or a member of the HRPT Group; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which no member of the HRPT Group has agreed to be a participant.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as HRPT and MacarthurCook may agree in writing or as may be required by ASX.

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

Transaction means the proposed transaction pursuant to which HRPT will acquire all of the Scheme Securities under the Scheme, in consideration for the provision of the Scheme Consideration.

Transaction Documents means:

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

Treasurer means the Treasurer of the Commonwealth of Australia.

Trust Constitution means the deed poll establishing MIF, as amended from time to time.

2 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
 - (vi) this agreement includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and

- (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- (k) a reference to "best endeavours" does not include payment of a sum of money which is not commercially reasonable in the reasonable opinion of the party who would be required to make that payment or undertake that obligation; and
- (l) a reference to "fair disclosure" or "fairly disclosed" means disclosure in sufficient detail to allow HRPT to identify the nature and effect of the matter disclosed; and
- (m) a reference to the Independent Expert concluding that the Scheme is either "fair and reasonable" or "not fair but reasonable" includes a reference to such a conclusion regardless of whether the Independent Expert also concludes that the Scheme is or is not in the best interests of MIF Unitholders or makes no conclusion as to whether the Scheme is or is not in the best interests of MIF Unitholders.

**Schedule 1 —
Indicative Timetable**

Event	Date
MacarthurCook lodges draft Scheme Booklet with ASIC	Monday, 11 June 2010
Despatch of Scheme Booklet completed	Monday, 5 July 2010
Scheme Meeting	Thursday, 29 July 2010
Effective Date	Tuesday, 3 August 2010
Record Date	Tuesday, 10 August 2010
Implementation Date	Wednesday, 11 August 2010

Schedule 2 — Responsibility Statement

- (a) Except as provided in paragraphs (b) and (c) the information in this Scheme Booklet has been provided by MacarthurCook as responsible entity for MIF and is the responsibility of MacarthurCook as responsible entity for MIF. HRPT and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of any such MIF Provided Information.
- (b) HRPT has provided and is responsible for information contained in sections [insert] of this Scheme Booklet, including information as to the funding arrangements it has made to provide the Scheme Consideration, and information as to HRPT's opinions, views, intentions and decisions in relation to MIF (collectively the **HRPT Information**). MacarthurCook and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of the HRPT Information.
- (c) The Independent Expert, [insert], has provided and is responsible for the information contained in section [insert] of this Scheme Booklet. Neither MacarthurCook nor HRPT assumes any responsibility for the accuracy or completeness of the information contained in section [insert]. The Independent Expert does not assume any responsibility for the accuracy or completeness of the information contained in this Scheme Booklet other than that contained in section [insert].

**Schedule 3 —
MIF Closing Certificate**

This MIF Closing Certificate is given pursuant to clause 3.1(l) of the Scheme Implementation Agreement dated 3 May 2010 between MacarthurCook Fund Management Limited as responsible entity for MacarthurCook Industrial Property Fund and HRPT Properties Trust (the SIA).

Terms in this certificate have the same meaning as those terms in the SIA.

After due and careful enquiry, so far as MacarthurCook is aware:

- (a) no fact, matter or circumstance has arisen that makes any representation or warranty of MacarthurCook contained in clause 9.2 of the SIA false or inaccurate or otherwise qualifies any such representation or warranty as at the time such representation or warranty is taken as being given; and.
- (b) as at the time of giving this certificate, MacarthurCook has no reason to believe that MIF's Net Current Assets on the Implementation Date will be less than \$1.

Dated [#]

[insert name]

Director

MacarthurCook Fund Management Limited as responsible entity of MacarthurCook Industrial Property Fund.

**Schedule 4 —
HRPT Closing Certificate**

This HRPT Closing Certificate is given pursuant to clause 3.1(p) of the Scheme Implementation Agreement dated 3 May 2010 between MacarthurCook Fund Management Limited as responsible entity for the MacarthurCook Industrial Property Fund and HRPT Properties Trust (the **SIA**).

Terms in this certificate have the same meaning as those terms in the SIA.

After due and careful enquiry, to the best of the knowledge and belief of HRPT, no fact, matter or circumstance has arisen that makes any representation or warranty of HRPT contained in clause 9.1 of the SIA false or inaccurate or otherwise materially qualifies any such representation or warranty as at the time such representation or warranty is taken as being given.

Dated [#]

[insert name]
Officer
HRPT Properties Trust

Execution page

Executed as an agreement.

Signed for **HRPT Properties Trust** by an authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness (print)

Name of authorised officer (print)

Signed for **MacarthurCook Fund Management Limited** in its capacity as responsible entity of **MacarthurCook Industrial Property Fund**:

Signature of director

Signature of director/~~secretary~~

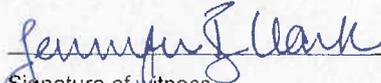
Name of director (print)

MARK THORPE - APPS.
Name of director/secretary (print)

Execution page

Executed as an agreement.

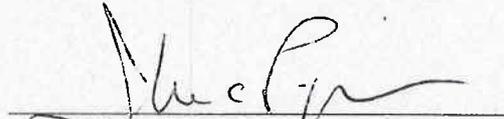
Signed for **HRPT Properties Trust** by an authorised officer in the presence of:



Signature of witness

Jennifer B. Clark

Name of witness (print)



Signature of authorised officer

John C. Popeo

Name of authorised officer (print)

Signed for **MacarthurCook Fund Management Limited** as responsible entity of **MacarthurCook Industrial Property Fund**:

Signature of director

Name of director (print)

Signature of director/secretary

Name of director/secretary (print)

**Attachment A —
Deed Poll**

Deed Poll

By

HRPT Properties Trust (HRPT)

In favour of each Scheme Participant

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

T +61 2 9263 4000
F +61 2 9263 4111

DX 10348 SSE

www.gtlaw.com.au

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Date:

Party

HRPT Properties Trust a real estate investment trust formed under the laws of the State of Maryland of 400 Centre Street, Newton MA 02458-2076, United States of America (HRPT).

In favour of each holder of MIF Units as at the Record Date (**Scheme Participants**).

Recitals

- A On 3 May 2010, MacarthurCook Fund Management Limited (ACN 004 956 558) (in its capacity as responsible entity of the MacarthurCook Industrial Property Fund) (**MacarthurCook**) and HRPT entered into a scheme implementation agreement (**Scheme Implementation Agreement**).
 - B MacarthurCook has agreed in the Scheme Implementation Agreement to propose the Scheme to MIF Unitholders, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, HRPT (and/or the Nominee) will acquire all of the Scheme Securities from the Scheme Participants for the Scheme Consideration.
 - C Under the Scheme Implementation Agreement, HRPT has agreed, subject to the satisfaction or waiver of certain conditions, to execute this deed poll for the purpose of covenanting in favour of the Scheme Participants that it will observe and perform its obligations under the Scheme.
-

1 Defined terms and interpretation

1.1 Definitions

Terms defined in the Scheme Implementation Agreement have the same meaning in this deed poll, unless the context makes it clear that a definition is not intended to apply.

1.2 Rules for interpreting this deed

The rules specified in Part 2 of Schedule 1 of the Scheme Implementation Agreement apply in interpreting this deed poll, unless the context makes it clear that a rule is not intended to apply.

1.3 Nature of deed poll

- (a) HRPT acknowledges that this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it.
- (b) Under the Scheme, each Scheme Participant appoints MacarthurCook as its agent and attorney to enforce this deed poll against HRPT on behalf of that Scheme Participant.

2 Condition precedent and termination

2.1 Condition precedent

Each of HRPT's obligations under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of HRPT under this deed poll will automatically terminate, and the terms of this deed poll will be of no further force or effect, if the Scheme Implementation Agreement is terminated in accordance with its terms before the Scheme becomes Effective.

2.3 Consequences of termination

If the obligations of HRPT under this deed poll are terminated under clause 2.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) HRPT is released from its obligations to further perform this deed poll except those obligations contained in clause 11.
- (b) each Scheme Participant retains any rights, powers or remedies that the Scheme Participant has against HRPT in respect of any breach of its obligations under this deed poll that occurred before termination of this deed poll.

3 Compliance with Scheme obligations

Subject to clause 2, in consideration of the transfer to HRPT (and/or the Nominee) of the Scheme Securities in accordance with the Scheme, HRPT covenants in favour of each Scheme Participant to:

- (a) do all those things which it is required to do under the Scheme or which the Scheme contemplates will be done by HRPT; and
- (b) without limiting the generality of paragraph (a), provide (or procure the provision by the Nominee) to each Scheme Participant, the Scheme Consideration on the Implementation Date in accordance with the terms of the Scheme.

4 Warranties

HRPT represents and warrants in favour of each Scheme Participant at the date of this deed poll:

- (a) **investment trust:** it is a real estate investment trust validly existing under the laws of its place of organisation;
- (b) **trust power:** it has the trust power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **trust authorisations:** it has taken all necessary trust action to authorise the entry into of this deed poll and has taken or, if the condition precedent referred to in clause 2.1 is satisfied or waived, will take all necessary trust action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;

- (d) **binding obligations:** this deed poll is valid and binding upon it;
- (e) **solvency:** it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (f) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed poll; and
- (g) **no default:** the execution and performance by it of this deed poll does not conflict with or result in the breach of or default under any provision of its constitution or any writ, order or injunction, judgement, law, rule or authorisation binding on it.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until HRPT has completely performed its obligations under this deed poll or the earlier termination of this deed poll under clause 2.

6 Further assurances

HRPT will do all things and execute all deeds, instruments, transfers or other documents as may be necessary to give full effect to the provisions of this deed poll and the transactions contemplated by it.

7 Notices

- (a) A notice, consent or other communication (**Notice**) under this deed poll is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail to that person's address;
 - (B) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (C) in the case of copies provided to HRPT, sent to the email address identified in clause 7(c).
- (b) A Notice that complies with this clause 7 is regarded as given and received:
 - (i) if it is delivered or sent by fax:
 - (A) by 5.00pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and

(ii) if it is sent by mail:

(A) within Australia - 3 Business Days after posting; or

(B) to or from a place outside Australia - 7 Business Days after posting.

(c) A person's address, email and fax number are those set out below, or as the person notifies the sender:

HRPT:

Address: 400 Centre Street, Newton, MA 02458, USA
Fax number: + 1 617 928 1305
Attention: Secretary

and copied to:

Company: Gilbert + Tobin
Address: Level 37, 2 Park Street, Sydney NSW 2000
Fax number: 02 9263 4111
Attention: Marko Komadina

Company: HRPT
Email: jclark@reitmr.com
Attention: Jennifer Clark

8 Remedies cumulative

- (a) The rights, powers and remedies provided to HRPT and the Scheme Participants in this deed poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

9 Variation

A provision in this deed poll may only be varied by HRPT if the variation is agreed to by MacarthurCook, which agreement MacarthurCook may give or withhold in its absolute discretion without reference to or approval by any Scheme Participant being required. HRPT will enter into a further deed poll in favour of the Scheme Participants giving effect to any such amendment.

10 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party 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 is not valid or binding on the party granting that waiver unless made in writing.

11 Costs and stamp duty

All stamp duty that may be payable on or in connection with this deed poll and any instrument effected by, executed under or pursuant to this deed poll must be borne by HRPT (and/or the Nominee). HRPT must indemnify each Scheme Participant on demand against any liability for those costs and that stamp duty.

12 Assignment

The rights and obligations of HRPT and each Scheme Participant under this deed poll are personal. They cannot be assigned, encumbered or otherwise dealt with and neither HRPT nor any Scheme Participant may attempt, or purport, to do so without the prior written consent of MacarthurCook and HRPT (which consent may be given or withheld in the parties' absolute discretion).

13 Governing law and jurisdiction

This deed poll is governed by the laws of New South Wales. HRPT submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed poll.

Execution page

Executed as a deed poll.

Signed for **HRPT Properties Trust** by an authorised officer in the presence of:

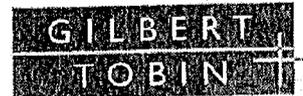
Signature of witness

Signature of authorised officer

Name of witness (print)

Name of authorised officer (print)

**Attachment B —
Supplemental Deed**



LAWYERS

Supplemental Deed

MacarthurCook Industrial Property Fund (ARSN 104 606 573)

MacarthurCook Fund Management Limited (ACN 004 956 558)

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

T +61 2 9283 4000
F +61 2 9283 4111

DX 10348 SSE

www.gtlaw.com.au

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Date:

Party

MacarthurCook Fund Management Limited (ACN 004 956 558) (Trustee) in its capacity as trustee of the **MacarthurCook Industrial Property Fund (ARSN 104 606 573) (Trust)**

1 Recitals

- A The Trustee is a public company limited by shares, incorporated in Australia and registered in Victoria. Its registered office is at Level 16, 323 Castlereagh Street, Sydney, New South Wales, Australia 2000.
- B The Trustee is the responsible entity of the MacarthurCook Industrial Property Fund (ARSN 104 606 573) (Trust) established under the constitution dated 4 April 2003 (as amended from time to time) (Constitution).
- C The Trust has been registered by the Australian Securities and Investments Commission (ASIC) as a managed investment scheme pursuant to section 601EB of the Corporations Act 2001 (Cth) (Corporations Act).
- D Units are Officially Quoted and, as at the date of this deed, 98,468,806 Units were on issue.
- E HRPT Properties Trust is a real estate investment trust formed under the laws of the State of Maryland of 400 Centre Street, Newton MA 02458-2076, United States of America (HRPT).
- F The Trustee (acting in its capacity as responsible entity of the Trust) and HRPT agreed, by executing an implementation agreement dated 3 May 2010, to propose and implement the Scheme.
- G The Constitution must be amended to facilitate the Scheme.
- H Clause 23 of the Constitution provides that, subject to the Corporations Act, the Trustee may by deed or as otherwise permitted by the Corporations Act amend the Constitution.
- I Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of the Unit Holders.
- J At a meeting of Unit Holders held on [•] 2010 convened in accordance with the Corporations Act and the Constitution, Unit Holders approved the Scheme Resolutions, including a special resolution to modify the Constitution to make the amendments to the Constitution now set out in this deed.
- K The Scheme was subject to satisfaction or waiver in accordance with the SIA of all of the Conditions Precedent.
- L All of the Conditions Precedent (other than the Condition Precedent in clause 3.1(d) of the SIA, being the Condition Precedent requiring lodgement of this deed by Trustee with ASIC pursuant to section 601GC(2) of the Corporations Act) have been satisfied or waived in accordance with the SIA.
- M Pursuant to section 601GC(2) of the Corporations Act, the Trustee must lodge a copy of the modifications to the Constitution made by special resolution of Unit

Holders which are now set out in this deed with ASIC and the amendments to the Constitution cannot take effect until a copy is lodged with ASIC.

2 Defined terms & interpretation

2.1 Defined terms

Terms used in this deed have the same meaning as in the Constitution unless otherwise defined in this deed or the context requires otherwise.

Conditions Precedent has the same meaning given to it in the SIA.

Effective means the coming into effect, pursuant to section 601GC(2) of the Corporations Act, of the modifications to the Constitution set out in this deed.

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

Meeting Date means the date on which the Scheme Meeting is held.

Scheme means an arrangement facilitated by the amendments to the Constitution contained in this deed under which HRPT (and/or the Nominee) acquires Units from Unit Holders.

Scheme Meeting means the meeting of Unit Holders that is convened to consider the Scheme Resolutions.

Scheme Resolutions means the resolutions of the Unit Holders to approve the Scheme set out in the notice of meeting of Unit Holders dated [•] 2010.

SIA means the scheme implementation agreement dated 3 May 2010 entered into between the Trustee (acting in its capacity as responsible entity of the Trust) and HRPT.

2.2 Interpretation

Clause 36.2.1 of the Constitution applies to this deed as if set out in this deed.

3 Amendments to the Constitution

With effect on and from the Effective Date, the Constitution is amended as follows:

- (a) in clause 36.1, by inserting the following definitions in alphabetical order:

Aggregate Scheme Consideration means the amount equal to the Scheme Consideration multiplied by the number of Scheme Units.

CHES means the Clearing House Electronic Subregister System for the electronic transfer of securities and other financial products operated by ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532.

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

Deed Poll means the deed poll dated [•] executed by HRPT in favour of Scheme Participants.

Distribution means the distribution that is, or may be, paid to Unit Holders in accordance with clause 14 in respect of the 3 month period ending 30 June 2010.

Effective means the coming into effect, pursuant to section 601GC(2) of the Corporations Act, of the amendments to this Constitution to facilitate the Scheme, including the insertion of clause 37.

Effective Date means the date on which the amendments to this constitution to facilitate the Scheme, including the insertion of clause 37, came into effect pursuant to section 601GC(2) of the Corporations Act.

Entity has the meaning given in section 64A of the *Corporations Act*.

HRPT means HRPT Properties Trust of 400 Centre Street, Newton MA 02458-2076, United States of America.

Implementation Date means the date that is the next Business Days after the Scheme Record Date, or such other date as the Responsible Entity and HRPT may agree in writing or as may be required by ASX.

Managing Trustee means a managing trustee of HRPT.

Nominee means [insert]

Registry means Computershare Investor Services Pty Limited.

Scheme means an arrangement facilitated by the amendments to this Constitution, including the insertion of clause 37, under which HRPT (and/or the Nominee) acquires all of the Scheme Units from Scheme Participants for the Scheme Consideration.

Scheme Consideration means A\$0.40 cash for each Scheme Unit held by a Scheme Participant, but if the Trust declares or pays any distribution [(other than the Distribution or the Special Distribution)] after 3 May 2010 and before the Scheme is implemented, it means A\$0.40 cash for each Scheme Unit held by a Scheme Participant less the total amount per Scheme Unit of all such distributions and all such dividends [(other than the Distribution or the Special Distribution)], the record date for which is a date occurring after 3 May 2010 and on or before the Implementation Date.

Scheme Meeting means the meeting of Unit Holders, held on [*] and convened in accordance with the Corporations Act and the SIA, to consider the Scheme Resolutions.

Scheme Participant means each person who is registered in the Register as a Unit Holder as at the Scheme Record Date.

Scheme Record Date means 7:00pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between HRPT and the Responsible Entity or as may be required by ASX.

Scheme Resolutions means the resolutions of the Unit Holders set out in the notice of meeting of Unit Holders dated [*].

Scheme Transfer means, for each Scheme Participant, 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 Scheme Units.

Scheme Units means all of the Units on issue as at the Scheme Record Date.

SIA means the scheme implementation agreement dated 3 May 2010 entered into between the Responsible Entity (acting in its capacity as responsible entity of the Trust) and HRPT.

Special Distribution means a distribution of not less than \$0.01 per Unit to be paid in accordance with clause 37.2A.

- (b) by inserting a new clause 37 as set out below:

“37 Scheme

37.1 Dealings in Units

- (a) For the purpose of establishing the persons who are Scheme Participants, dealings in Units will only be recognised if:
- (i) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant Units by the Scheme Record Date; and
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the Registry by 7:00pm on the Scheme Record Date.
- (b) The Responsible Entity will register registrable transfers or transmission applications of the kind referred to in clause 37.1(a)(ii) by, or as soon as practicable after, the Scheme Record Date.
- (c) The persons shown in the Register, and the number of Units shown as being held by them, after registration of transfer and transmission applications of the kind referred to in clause 37.1(a), will be taken to be the Scheme Participants, and the number of Units held by them, on the Scheme Record Date.
- (d) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Participants, any transfer or transmission application in respect of Units received after the Scheme Record Date (or received prior to the Scheme Record Date not in registrable form) and prior to registration of HRPT (and/or the Nominee) as the holder of all Scheme Units under clause 37.3(iii).
- (e) The Responsible Entity will, until HRPT (and/or the Nominee) has been entered into the Register as the holder of all the Scheme Units, maintain or procure the maintenance of the Register in accordance with this clause 37.1. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 37.1(a) will solely determine the persons who are Scheme Participants and their entitlements to the Scheme Consideration.
- (f) From the Scheme Record Date and until registration of HRPT (and/or the Nominee) as the holder of all Scheme Units under clause 37.3(iii), no Unit Holder may deal with Units in any way except as set out in this clause 37 and any attempt to do so will have no effect.
- (g) As from the Scheme Record Date (and, other than for HRPT (and/or the Nominee), following the Implementation Date):

- (i) all unit certificates and holding statements for Scheme Units will cease to have effect as documents of title in respect of those Scheme Units; and
 - (ii) each entry in the Register as at the Scheme Record Date relating to the Scheme Units will cease to have any effect other than as evidence of the entitlements of Scheme Participants to the Scheme Consideration in respect of the Scheme Units.
- (h) As soon as practicable after the Scheme Record Date and in any event at least 3 Business Days before the Implementation Date, the Responsible Entity must give to HRPT details of the names and addresses shown in the Register of all Scheme Participants and of the number of Scheme Units held by each of them on the Scheme Record Date in such form as HRPT may reasonably require.

37.2 Scheme Consideration

- (a) On or before 12:00pm on the Implementation Date, in consideration for the transfer of the Scheme Units to HRPT (and/or the Nominee), HRPT must satisfy its obligations to pay (or procure the payment to) each Scheme Participant the Scheme Consideration in respect of each Scheme Unit registered in the name of that Scheme Participant by depositing (or procuring the deposit of) in cleared funds an amount equal to the Aggregate Scheme Consideration into an account in the name of the Responsible Entity.
- (b) The Responsible Entity is to procure that the Aggregate Scheme Consideration be held by the Responsible Entity on trust for the Scheme Participants (except that any interest on the amount will be for the account of HRPT (and/or the Nominee)) for the purpose of sending the Scheme Consideration to the relevant Scheme Participants within five Business Days after the Implementation Date by dispatching or procuring the dispatch to each relevant Scheme Participant by pre-paid post to their registered address a cheque in an Australian bank in the name of that Scheme Participant for an amount (rounded down to the nearest whole cent) equal to the total amount of cash to which they are entitled.

37.2A Special Distribution

If the Scheme becomes Effective, the Responsible Entity will pay to each Scheme Participant the Special Distribution for each of the Scheme Units registered in the name of that Scheme Participant. The Special Distribution will be paid to Scheme Participants at the same time as the Scheme Consideration is paid to Scheme Participants.

37.3 Transfers to HRPT

On the Implementation Date, subject to HRPT satisfying its obligations to pay (or procure the payment of) the Scheme Consideration in the manner contemplated by clause 37.2(a), all of the Scheme Units, together with all rights and entitlements attaching to those Scheme Units as at the Implementation Date, will be transferred to HRPT (and/or the Nominee) without the need for any further act by any Scheme Participant (other than acts performed by the Responsible Entity (or its directors or officers) as attorney or agent of the Scheme Participants under clause 37.4) by:

- (i) the Responsible Entity delivering to HRPT for execution duly completed Scheme Transfers to transfer all of the Scheme Units to HRPT (and/or the

Nominee), duly executed by the Responsible Entity (or any of its directors or officers) as attorney or agent of the Scheme Participants under clause 37.4;

- (ii) HRPT (and/or the Nominee) executing the Scheme Transfers as transferee and delivering them to the Responsible Entity for registration; and
- (iii) the Responsible Entity, immediately after receipt of the executed Scheme Transfers under clause 37.3(ii), entering, or procuring the entry of, the name and address of HRPT (and/or the Nominee) in the Register as the holder of all the Scheme Units.

37.4 Covenants by Responsible Entity and Unit Holders

- (a) Each Scheme Participant and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.
- (b) Each Scheme Participant, without the need for any further act, irrevocably:
 - (i) agrees to the transfer of all of their Scheme Units to HRPT (and/or the Nominee) in accordance with this clause 37;
 - (ii) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 37;
 - (iii) appoints the Responsible Entity and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any document or doing any other act necessary to give full effect to the Scheme, this clause 37, and the transactions contemplated by them, including providing to HRPT (and/or the Nominee) on behalf of that Scheme Participant a warranty by the Scheme Participant in the terms of the deemed warranty in clause 37.5(a);
 - (iv) consents to the Responsible Entity and HRPT (and/or the Nominee) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Scheme, this clause 37 and the transactions contemplated by them; and
 - (v) appoints the Responsible Entity to enforce the Deed Poll against HRPT on behalf of and as agent and attorney for the Scheme Participant.
- (c) The Responsible Entity, as agent and attorney for each Scheme Participant, may sub delegate its functions, authorities or powers under this clause 37.4 to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (d) From the Implementation Date until the Responsible Entity registers HRPT (and/or the Nominee) as the holder of all Scheme Units in the Register, each Scheme Participant is deemed to have appointed the Responsible Entity as its attorney and agent (and directed the Responsible Entity in such capacity) to appoint each Managing Trustee of HRPT (or other nominee of HRPT) severally as its sole proxy and, where applicable, corporate representative to attend Unit Holder meetings, exercise the votes attaching to the Scheme Units of which they are the registered holder and sign any Unit Holders' resolution, and no Scheme Participant may attend or vote at any of those

meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 37.4(c). The Responsible Entity undertakes in favour of each Scheme Participant that it will appoint each Managing Trustee of HRPT (or other nominee of HRPT) severally as the Scheme Participant's proxy or, where applicable, corporate representative in accordance with this clause 37.4(c).

37.5 Status of Scheme Units

- (a) Each Scheme Participant is deemed to have warranted to the Responsible Entity in its own right and on behalf of HRPT (and/or the Nominee) that all their Scheme Units (including any rights and entitlements attaching to those Units) which are transferred to HRPT (and/or the Nominee) under this clause 37 or otherwise pursuant to the Scheme will, at the date of the transfer of them to HRPT (and/or the Nominee), be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those Units) to HRPT (and/or the Nominee) pursuant to the Scheme.
- (b) HRPT (and/or the Nominee) will be beneficially entitled to the Scheme Units transferred to it under this clause 37 or otherwise pursuant to the Scheme pending registration by the Responsible Entity of the name and address of HRPT (and/or the Nominee) in the Register as the holder of those Scheme Units.

37.6 Effect of clause 37

This clause 37:

- (a) binds the Responsible Entity and all Scheme Participants, including those who do not attend the Scheme Meeting, those who do not vote at that meeting and those who vote against the Scheme Resolutions at that meeting; and
- (b) overrides the other provisions of this Constitution to the extent of any inconsistency.

37.7 Responsible Entity's limitation of liability

Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever beyond the assets of the Trust to Unit Holders arising, directly or indirectly, from the Responsible Entity 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 Scheme.

37.8 Implementation of Scheme

- (a) The Responsible Entity may do any act, matter or thing pursuant to this clause 37 notwithstanding that it has an interest in the act, matter or thing or any consequence thereof.
- (b) The Responsible Entity may amend the terms of the Scheme if:
 - (i) such amendment is not inconsistent with the approval given by the Scheme Participants or such amendment does not adversely affect the rights of Scheme Participants whose Units are to be transferred under the Scheme; and

(ii) such amendment is approved in writing by HRPT.

This clause 37 shall apply to the Scheme as amended."

(c) *[other amendments as agreed by the parties]*

4 No resettlement or redeclaration

The Trustee confirms that it is not by this deed:

- (a) resettling or redeclaring the Trust; or
 - (b) effecting or causing the transfer, vesting or accruing of any property comprising the assets of the Trust to or in any person.
-

5 Governing law

This deed will be governed by the laws of the State of Victoria.

Executed as a deed poll.

Sealed and delivered by **MacarthurCook
Fund Management Limited** as responsible
entity of the **MacarthurCook Industrial
Property Fund** by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

**Attachment C —
Management terms**

Terms Sheet

Fadi C. Khoury
Partner
Grosvenor Place, 225 George Street
Sydney NSW 2000
Tel: +61 (0)2 9330 8685
fadi.khoury@nortonrose.com
Our ref: 2675885

Subject	Terms
1. Form of agreement	<p>Terms to be documented as amendments to the MIF constitution (Constitution), in a direct agreement with HRPT Properties Trust (HRPT) and any affiliate of HRPT, as unitholders of MIF, and in an agreement with Reit Management & Research LLC (RMR), as appropriate for the applicable terms. A reference to HRPT in this document also includes a reference to any affiliate of HRPT which also holds units in MIF.</p> <p>The intention is to enter into documents that reflect the agreement between MacarthurCook Funds Management Limited (MCK) and RMR to equally benefit from investment management activities in relation to Australian and New Zealand office and industrial properties on behalf of HRPT.</p> <p>It is assumed that HRPT will acquire 100% of the units in MIF.</p>
2. Contracting entities	See above.
3. Term	<p>The appointment of MCK as responsible entity of MIF (RE) is ongoing, subject to the following which aim to mirror, in substance, the termination rights in the RMR/HRPT management agreement:</p> <ul style="list-style-type: none"> ○ HRPT termination by notice: HRPT may remove MCK as RE on giving 60 days' notice to MCK. In such event, all the other agreements will also terminate. ○ MCK termination by notice: MCK may retire as RE on 60 days notice to HRPT. In such event, all the other agreements will also terminate. ○ Accelerated termination for 'cause' (ie material and unremedied breach).
4. Management	<p>MCK will provide day to day management services in respect of MIF.</p> <p>HRPT, in its capacity as unitholder in MIF, will have approval/veto rights in respect of significant decisions concerning MIF.</p> <p>Any liability flowing from an action taken by MCK as a result of HRPT exercising its rights as unitholder to direct MCK, does not accrue to MCK.</p>

5. **Fees**
- All fees payable in AUD converted at the date the fee becomes payable.
- All fees are shown exclusive of applicable GST or other taxes that may apply from time to time (other than taxes in respect of management fees received by MCK)
- Existing RE fee entitlements in Constitution to be deleted and replaced with the following:
- Business Management fee**
- MCK is entitled to a business management fee calculated as 0.5% of the Annual Average Invested Capital of MIF (ie, the average aggregate historical cost of MIF's assets).
- Property Management fee**
- MCK is entitled to a property management fee calculated as 50% of (x) 3% of gross rents of MIF less (y) amounts paid by MIF to third party property managers.
-
6. **Expense reimbursement**
- MCK to continue to have a right to reimbursement by MIF of expenses (including third party costs) incurred in relation to the operation of MIF (and is no worse off than under current MIF Constitution).
- MCK is not entitled to be reimbursed in respect of:
- 'in house' expenses, namely rent of premises and remuneration of personnel;
 - payment of fees to affiliates of MCK;
- HRPT to cover expenses for travel and accommodation expenses incurred in connection with travel to the US contemplated in the Constitution.
- Expenses to be reimbursed in AUD.
-
7. **Representations and warranties relating to Australian compliance**
- MCK will maintain its AFS licence to enable it to operate MIF as a registered scheme. RMR acknowledges that it has been provided with information to enable it to undertake due diligence with respect of the business of MIF prior to the date of entry into the relevant agreements.
- MCK is to be responsible for MIF's compliance with Australian legal/regulatory requirements. MCK will delegate certain of these functions to AIMS.
-
8. **Arbitration and jurisdiction**
- There is to be a binding arbitration process, with Singapore as the venue.