**WORK ORDER**

**TERMS AND CONDITIONS**

These Terms and Conditions apply to any Work Order issued by the Manager for the provision of the Services.

These Terms and Conditions may be amended from time to time at the Manager’s sole discretion.

By accepting in writing, commencing any part of the Services, as may be specified in a Work Order, or undertaking any other similar activity in response to a Work Order (and within any timeframe specified for acceptance), the Supplier agrees:

#### to accept and be bound by the Work Order and these Terms and Conditions; and

1. that an Agreement is in place, and has been created, between the Supplier (as defined/stated in the Work Order) and Mirvac Real Estate Pty Ltd (ACN 003 342 452) of Level 26, 60 Margaret Street, Sydney NSW 2000 (as Manager) on the terms of the Works Order and these Terms and Conditions, as set out below:

# DEFINITIONS

In the Agreement, unless the context otherwise requires:

**Additional Services** means additional goods and/or services requested in a Variation Order by the Manager pursuant to clause 6a) of the Agreement or as specified separately on a Work Order.

 **Additional Services Charges** meansthe additional fees and charges for the provision of Additional Services, as determined in accordance with clause 6 of the Agreement or additional fees or charges associated with the provision of Additional Services.

**Agreed Service Frequencies** means those defined in the Work Order.

**Agreed Service Levels** means those nominated in the Work Order.

**Agreement** means the agreement constituted by a Work Order and these Terms and Conditions, including each of their annexures and schedules (each as may be varied by any Variation Order).

**Anniversary Date** means the date that is 12 months after the Commencement Date.

**Areas** means the area(s) listed in the Work Order.

**Authority** means any Commonwealth, State, Territorial and local Government departments, bodies, municipalities, instrumentalities and public, statutory and other authorities having jurisdiction over the Servicesor the Site(s), including any organisation, department or individual who has the legal right to any or all of the following; approve, license, register, stop or certify any part of the work being performed and or the method in which the work is performed and or the persons performing the work.

Bank Guarantee means a bank guarantee issued by a major Australian trading bank and which is in the form, on terms and of a type approved by the Manager and otherwise as described in any Separate Agreement (if such is in place) or otherwise in the Work Order.

Building Impact Works means any works or services that include or may result in the following (at the Site(s)):

1. isolations to the fire system;
2. isolations or connections at any electrical board or panel or communications panel not located in the Premises;
3. welding, grinding, heating, cutting;
4. roof access;
5. the drilling of holes /making of penetrations through walls or slabs;
6. the use of dangerous goods or hazardous substances;
7. the installation of heavy objects (such a compactus or safes);
8. works that will impact the quiet enjoyment of, or access to, other parts of the site;
9. the removal or modification of the Principal’s assets (such as lighting, sprinklers, ceilings, and AC plant); and
10. Works that require a Development Application or Construction Development Certificate or similar approval from any Authority prior to commencement.

Business Day means any day other than a Saturday, Sunday or public holiday in the State Jurisdiction unless defined otherwise in Business Hours.

Business Hours means the time of the day during which business is transacted at the Site(s), as may be amended by the Manager from time to time.

Commencement Date means the date identified as the Commencement Date in the Work Order.

Confidential Information means all confidential or proprietary information relating to the business, technology, customers or other affairs of a party, excluding information:

####  which is in or which enters the public domain other than through breach of the Agreement;

#### which a party can prove by contemporaneous written documentation was already known to it at the time of its receipt; or

#### which is independently developed by a party without breach of any obligation of confidentiality owed to the other party.

**Constitution** means the trust deed or constitution establishing the Trust as amended from time to time.

Contract Fees means the fees set out in the Work Order, as such fees are adjusted in accordance with the terms of the Agreement.

Contract Number means the number provided by the Manager in the Work Order and which must be quoted by the Supplier on any invoice for Contract Fees.

**Cost** means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.

**Dangerous Good and/or Hazardous Substance** means any chemical, agent, explosive, or substance the use of which has been classified by Law and is to be controlled by Law.

 **Documents** means quotations, reports, designs, drawings, calculations methods, techniques, plans, diagrams, documentation, samples, substitutions, measurements, sequences and procedures and other written information, discs, tapes and other electronic data prepared in connection with the Services, but only to the extent that they are accepted in writing by the Manager and/or issued by or on behalf of the Manager to the Supplier from time to time.

Electronic Trading includes electronic ordering, electronic goods received notes and electronic invoicing.

Employee(s) means the employees, the servants, associates, agents, consultants, suppliers and contractors of the Supplier.

Environmental Laws include any law regulating or otherwise relating to the Environment including, without limitation, any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

Exclusions mean equipment and/or areas not covered under the Agreement.

Force Majeure **Event** means an exceptional circumstance beyond the reasonable control of a party, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotions, malicious damage, sabotage, revolution and industrial strikes.

GST has the meaning given to it in the GST Law.

GST Lawhas the meaning given to that expression in the A New Tax System (Goods and Services) Act 1999 (as amended).

**Heavy Vehicle National Laws** means the Heavy Vehicle National Law and Regulations as they apply in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria, the Road Traffic (Administration) Act 2008 (WA) and the Road Traffic (Vehicles) Act 2012 (WA) and any other similar laws in any State or Territory (in force from time to time) and associated regulations; codes of practice; other compliance codes; directions on safety or notices issued by any relevant Authority; and standards, relevant and applicable to any part of the Services or the works under this Agreement.

**Incidents** means Near Miss, workplace injuries / illnesses and environmental impacts.

Insolvency Event means in relation to a party (**Insolvent Party**):

#### (a) the Insolvent Party ceases, or takes steps to cease, to conduct its business or is unable to pay its debts when they are due;

#### (b) the Insolvent Party enters, or resolves to enter, into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

#### (c) a liquidator, provisional liquidator, receiver, receiver and manager, official manager, administrator or similar official is appointed over any of the Insolvent Party’s assets or undertaking or an application or order is made or resolution is passed for winding-up the Insolvent Party.

**Insurance Policies** means those policies nominated in clause 20.

Intellectual Property Rights means all industrial and intellectual property rights both in Australia and throughout the world including copyrights, patents, registered and unregistered trademarks or service marks, trade and service names, brand names, inventions, discoveries, trade secrets, know how, software, circuit layouts, utility models, registered designs, confidential information and scientific, technical and product information.

**Invoicing Address** means the address in the Work Order.

Law(s) mean:

#### (a) any provision of a statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise; and

#### (b) any requirement, notice, order, code or direction received from or given by a statutory, public or other competent authority; and

#### (c) all applicable Australian Standards.

**Manager** means the entity identified in the Work Order as the ‘Manager’.

**Material Safety Data Sheets or MSDS** means a formal document containing important information about the characteristics and actual or potential hazards of a substance. It is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data, toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

**Mirvac Policies** means those policies that appear from time to time on [www.mirvacam.com.au](http://www.mirvacam.com.au) and/or which may otherwise be notified by the Manager to the Supplier from time to time.

**Near Miss** means an Incident that has occurred where there was the potential for a person to be injured or property damaged but, in the specific instance no injuries or damage occurred.

**Occupant** meansany person that is on site including but not limited to tenants, visitors and employees.

Parties means the Manager and the Supplier.

Principal(s) means each entity nominated as a Principal in Item 13 of Schedule 1 to the Work Order.

**Products** include materials, software, systems and equipment.

**Rates and Charges** means those charges identified in the Work Order forming part of any Additional Services that may be requested in writing from time to time by the Manager.

Required Reporting means the reporting obligations set out in clause 14.

Services means the supply of goods and/or services and the complete performance of all works to be supplied or performed by the Supplier pursuant to the Agreement, as may be described in the Work Order and as is applicable to each of the Site(s), including all Variations directed in writing from time to time by the Manager in accordance with clause 6 of these terms and conditions.

Site(s) means each site nominated in Item 12 of the Work Order and where the context requires, it means all, a combination of or any one of the Site(s) (each as applicable to the Services).

**Special Conditions** means those conditions set out in the Work Order.

**State Jurisdiction** means the jurisdiction and Laws applicable to the Site(s) where the Services are performed.

**Supplier** means the entity identified in the Work Order as the ‘Supplier’.

**SWMS** means **Safe Work Method Statement** whichin turnmeans a statement in respect of the Services that:

1. identifies the relevant work;
2. specifies the hazards relating to the work and any risks to health and safety associated with those hazards;
3. describes the measures to be implemented to control the risks; and describes how the control measures are to be implemented, monitored and reviewed, and includes, as appropriate, a description of the equipment used in the Works, the standards or codes to be complied with, the qualifications of the personnel supplying the Services (including competency certificates and licences of the personnel) and the training required to supply the services.

Tax Invoice means a document treated by the Commissioner of Taxation as a tax invoice entitling a recipient to an input tax credit.

**Term** means the Term nominated in the Work Order.

**Termination Date** means the date identified as the Termination Date in the Work Order.

Trust(s) means the managed investment scheme or trust listed in Schedule 1 for which the relevant Principal is stated to act as trustee or responsible entity.

**Variation** means an omission, addition or other change in the Services or a request for the provision of Additional Services at any Site(s) directed in writing from time to time by the Manager in accordance with clause 6 of these Terms and Conditions.

Variation Order means a written instruction issued by the Manager in accordance with clause 6 of the Agreement to the Supplier to perform any Variation.

**WHS Laws** means the Heavy Vehicle National Lawsand any law regulating or otherwise relating to occupational, work, health and safety including, without limitation:

(a) where the Site(s) is in NSW - the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW);

(b) where the Site(s) is in Victoria – the *Occupational Health and Safety Act 2004* (Vic) and the regulations under that Act, including the *Occupational Health and Safety Regulations 2017* (Vic), unless the *Work Health and Safety Act* (Vic) and the *Work Health and Safety Regulation* (Vic) have taken effect, in which event it means, from the date of their commencement, the *Work Health and Safety Act* (Vic) and the *Work Health and Safety Regulation* (Vic);

(c) where the Site(s) is in Queensland – the *Work Health and Safety Act 2011* (QLD) and the *Work Health and Safety Regulation 2011* (QLD);

(d) where the Site(s) is in the Australian Capital Territory – the *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT); or

(e) where the Site(s) is in Western Australia – the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Health and Safety Regulations* *1996* (WA), unless the Work Health and Safety Act (WA) and the Work Health and Safety Regulation (WA) have taken effect, in which event it means, from the date of their commencement, the Work Health and Safety Act (WA) and the Work Health and Safety Regulation (WA),

each as amended from time to time, and all approved Codes of Practice when relevant and applicable to any part of the Services, the Site and the works under this Agreement.

**WHS Principal Contractor** means ‘principal contractor’ within the meaning of:

(a) where the Site(s) is in NSW - the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW);

(b) where the Site(s) is in Queensland or the Australian Capital Territory - the *Work Health and Safety Act* 2011 and the *Work Health and Safety Regulation* 2011 in force in that State or Territory;

(c) where the Site(s) is in Victoria – the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2017* (Vic); or

(d) where the Site(s) is in Western Australia – the *Occupational Safety and Health Act* 1984 (WA) and the *Occupational Health and Safety Regulations* 1996 (WA),

each as amended from time to time.

**WHS Requirements** includes:

(a) all requirements relating to the Works or the Site(s) and arising under the relevant WHS Laws;

(b) all requirements relating to the Works or the Site(s) and arising under the relevant Environmental Laws; and

(c) all other work, health, safety and environmental requirements notified by the Manager to the Supplier from time to time.

Work Order means a written order entitled Work Order and issued by the Manager to the Supplier to provide Services at the Site(s) and which order is subject to these terms and conditions.

Work Order Number means the number referenced on a Work Order and/or Variation Order and which must be referenced on any invoice submitted by the Supplier for any Services and/or any Variation, including any Additional Services.

Workplace Controller means the appointment of the Supplier as the controller and/or manager of and for the Services and the areas of the Site(s) where the Services are performed.

# MANAGER’S CAPACITY AND LIMITATION OF LIABILITY

#### Each Principal is trustee or responsible entity of a Trust which has an interest in the Site(s) (or if more than one, any one of them).

#### The Manager has been appointed to provide certain management and administration services for the Site(s).

#### The Manager enters into the Agreement only in its capacity as agent for the applicable Principal of each of the Site(s) and in no other capacity.

#### The Manger can only act in accordance with the terms of the agreement under which the Manager is appointed the Principal’s agent and is not liable to the Supplier under any other circumstances. This limitation of the Manager’s liability applies despite any other provision of the Agreement and extends to all liabilities and obligations of the Manager in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Agreement.

#### The Manager is not obliged to do or refrain from doing anything under the Agreement (including, without limitation, incur any liability) unless the Manager’s liability is limited in the same manner as set out in clauses 2(c) and 2(d) of these terms and conditions.

# Services

#### The Supplier must provide the Services on the terms and conditions of, and in accordance with, the Agreement. In performing the Services the Supplier must comply with the Documents and the Mirvac Policies.

#### The Supplier must comply with all reasonable directions of the Manager in executing or supplying the Services.

1. The Supplier must comply with the Special Conditions.
2. The Supplier represents, warrants and agrees that the Contract Fees make full allowance for the Supplier to properly perform and comply with each of its obligations under the Agreement.

# Work, Health and Safety

* + 1. It is an essential requirement of this Agreement that the Supplier (including each of the Supplier’s employees, agents, consultants, contractors and others under its control):

(i) complies with all WHS Laws, Environmental Laws and WHS Requirements;

(ii) unless otherwise requested by the Manager, demonstrates to the satisfaction of the Manager that all persons under the Supplier’s control have completed all general industry occupational, health and safety induction training and undertaken a site specific induction;

(iii) complies with the requirements of all WHS Laws and any direction given by any statutory authority or by the Manager in relation to work health and safety concerning the Services or the Site(s);

(iv) will, to the extent required, be solely and entirely liable and responsible for the proper rehabilitation of all employees and others under its control (and in this regard, indemnifies and agrees to keep indemnified the Manager from and against all claims, costs, liabilities, penalties and damages suffered or incurred by the Manager and which arise from or in connection with any failure of the Supplier to properly rehabilitate all employees and others under its control); and

(v) to the extent that the Supplier is not the WHS Principal Contractor, complies with the requirements of the WHS Principal Contractor appointed for the Site(s).

(b) The Supplier must promptly, at its own cost and at the times and in the form requested by the Manager, prepare and issue to the Manager all documents (each to the satisfaction of the Manager) relating to or arising from the Supplier’s compliance with the occupational health and safety requirements, including but not limited to the preparation of:

(i) a safe work method statement or equivalent applicable to the Services;

(ii) documents requested by the Manager for the purposes of the Supplier obtaining a permit from the Manager to proceed with the Services;

(iii) any pre-qualification or pre-commencement checklist; and

(iv) any other documents requested by the Manager, including as part of the WHS Requirements.

(c) The Supplier agrees that the Manager has appointed the Supplier as the WHS Principal Contractor and the party with management or control of the Site(s) and:

(i) the Supplier has accepted its appointment as WHS Principal Contractor and further agrees to properly and completely fulfil and discharge all obligations (including under all relevant laws) applicable to a WHS Principal Contractor and to a person with management or control of a Site(s);

(ii) the Manager authorises the Supplier to exercise the authority necessary to discharge its responsibilities as WHS Principal Contractor under the requirements of all laws, including the WHS Laws;

(iii) where there is any inconsistency or ambiguity between the terms of this Agreement, the Supplier’s obligations as the WHS Principal Contractor and/or the WHS Laws, the requirements of the WHS Laws will prevail;

(iv) the Supplier’s appointment as WHS Principal Contractor shall be in force from the date the Supplier commences work on the Site(s) until the date on which the Services are completed (to the satisfaction of the Manager), unless sooner revoked by the Manager giving twenty-one (21) days notice in writing to the Supplier of its revocation or by the Manager taking over or cancelling this Agreement pursuant to any provision of the Contract or according to law;

(v) to the extent that the Supplier ceases to be WHS Principal Contractor with the approval of the Manager, the Supplier warrants that it will comply with the requirements of any subsequently appointed principal contractor and acknowledges and agrees that a failure to do so will constitute a substantial breach of this Agreement; and

(vi) the Manager, as a person conducting a business or undertaking that commissions the construction project and engages a principal contractor for the project, will provide the principal contractor any information known in relation to hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out, including any hazards and risks related to the design which could affect those who construct the building or structure.

(d) The Parties agree that they will comply with the terms set out in Schedule 11 to this Agreement, as applicable to the Site(s) and relevant State Jurisdiction, as if those terms were set out and included in this Agreement.

# VARIATIONS

## The Manager may give the Supplier written notice of a Variation to the Services which notice must state that it is given in accordance with this clause (**Variation Order**). The Variation Order may:

#### nominate a “Work Order Number”;

#### specify the goods and services to be provided under the Variation Order;

#### nominate the relevant Site(s) and Area; and

#### nominate a commencement date and (as applicable) the completion date for provision of the works, supplies and/or services covered by the Variation Order.

#### Within 5 Business Days of receiving a Variation Order, the Supplier must notify the Manager in writing, giving reasons:

#### where the Variation will likely involve additional cost, whether it has the capacity to carry out the proposed Variation and the anticipated cost; or

#### where the Variation will likely involve a cost saving, the anticipated saving amount.

#### The Supplier must implement (and where applicable, perform) each Variation which is directed and/or approved in writing by the Manager.

#### If the Supplier does not provide written notice in accordance with clause 6b) and the Manager otherwise directs that the Variation set out in the Variation Order is to be implemented, the Variation shall be deemed to be accepted by the Supplier.

#### Within a reasonable time following receipt of the Supplier’s notice in accordance with clause 6b) above or on the date the Variation is deemed accepted, the Manager will value the Variation and that valuation shall be added to or subtracted from the Contract Fees.

#### The Supplier must not carry out a Variation to the Services otherwise than in accordance with this clause and subject always to the issue of a Variation Order.

#

# TERM

#### The Agreement commences on the Commencement Date and continues in force until the Termination Date unless terminated sooner in accordance with clause 16.

#### The Supplier agrees to provide written notice to the Manager three (3) months prior to the Termination Date that the Agreement is due to expire in three (3) months.

#### At the Termination Date, unless notified in writing, the Agreement continues on a month to month basis until either party terminates the Agreement by giving the other party thirty (30) days’ notice in writing.

# Contract fees

## The Manager shall progressively pay the Supplier the Contract Fees subject to, and in accordance with, the Agreement and. Payment to the Supplier is subject always to:

##### any right of set off in accordance with the Agreement; and

##### the issue by the Supplier of a valid tax invoice for the amount approved for payment by the Manager and a statutory declaration stating that all payments to and/or on account of all employees and third parties have been paid by the Supplier.

## All payments are on account only and are not evidence of the value of work or an admission of liability or evidence that the Services have been executed satisfactorily by the Supplier or that the Supplier has properly performed its obligations under the Agreement.

1. The Manager may set off from any payment to the Supplier any amounts which are or will (in the Manager’s opinion) become due or payable from or by the Supplier to the Manager or any of the Principals.
2. If the Work Order does not specify the Contract Fees, the Supplier agrees that once the Services have been completed to the satisfaction of the Manager, the Manager will value the Services completed and certify the Contract Fees payable. The Manager’s decision shall be final and binding on the Supplier.

# gst

#### In the Agreement, expressions which are not defined, but which have a defined meaning in GST Law, have the same meaning.

#### All consideration which the Manager provides to the Supplier for a supply under the Agreement is exclusive of any GST payable on the supply.

#### If GST is payable by the Supplier, or by the representative member for a GST group of which the Supplier is a member, on a supply made under this document, The Manager will pay to the Supplier an amount equal to the GST payable on the supply.

#### Subject to clause 9e), The Manager will pay the amount referred to in clause 9c) in addition to and at the same time as the consideration for the supply is to be provided under the Agreement.

#### The Supplier must provide a Tax Invoice to the Manager before the Supplier is entitled to payment of an amount under clause 9c). The Manager can withhold payment of the amount until the Supplier provides a Tax Invoice.

#### If an adjustment event arises in respect of a taxable supply made by the Supplier under the Agreement, the amount payable by the Manager under clause 9c) will be recalculated to reflect the adjustment event and a payment will be made by the Manager to the Supplier or by the Supplier to the Manager as the case requires. Payment of the amount payable need not be made until the payor receives an adjustment note from the payee.

#### Where the Manager is required under this document to pay, reimburse or indemnify an expense or outgoing of the Supplier, the amount to be paid, reimbursed or indemnified by the Manager will be the sum of:

#### the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the Supplier is entitled; and

#### if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### This clause does not merge on the completion of the Agreement.

# UNNECESSARY INTERFERENCE

## The Supplier must at all times:

##### avoid interference with all Occupants and all members of the general public;

##### avoid unreasonable noise, vibration and disturbance when carrying out the Services;

##### take all necessary steps to avoid the interference of theServices with the use and occupation of the Site(s) and lands adjoining the Site(s) by any Occupants and all members of the general public;

##### comply at its own cost with any directionof the Manager regarding the continued use, access to and occupation of the Site(s)and lands adjoining theSite(s) by any Occupants and all members of the general public;

##### ensure the proper and continued provision and supply of all services, including electrical, mechanical, hydraulic, fire, lift and other services, to the Site(s) and all adjoining areas at all times;

##### use the lift(s), loading dock(s) and other common areas subject to all rules and guidelines regulating their use, as may be disclosed in any tenancy guidelines and as otherwise notified by the Manager from time to time; and

1. ensure that there is continuous safe access and egress to and from the Site(s) at all times.

# Standard of services

## The Supplier must perform and provide the Services in accordance with the Agreed Service Levels, the Agreed Service Frequencies and otherwise in a proper, workmanlike and diligent manner, in accordance with all applicable and/or relevant Australian Standards and to the highest and best standards (with the higher or better standard to apply in the event of a discrepancy).

## The Supplier shall maintain sufficient inspection, test and other quality records and procedures to prove that specified requirements are being met. A copy of selected records and/or procedures shall promptly be submitted to, or promptly made available for inspection by, the Manager on request.

## The Supplier:

## (i) shall maintain a safe system of work and shall comply with and satisfy all duties and obligations under all WHS Laws; and

 (ii) must satisfy and comply with all WHS Laws and all WHS Requirements.

## Despite any other term of the Agreement, the Supplier must perform the Services at the times and on the days approved by the Manager in writing.

## The Supplier must within, and at the time(s), notified by the Manager rectify, at the Supplier's own cost and to the satisfaction of the Manager, all defects, faults, errors and/or omissions in or to the Services notified to the Supplier or of which the Supplier is or becomes aware. This clause survives termination or expiry of the Agreement and does not in any way limit the Manager's rights against the Supplier for breach of its obligations under the Agreement.

# supplier warranties

## Despite any other term of the Agreement, the Supplier is wholly responsible for the content and accuracy of the Documents employed, used or relied on by the Supplier in the provision of the Services notwithstanding that there may have been or be errors, omissions, discrepancies, inconsistencies or ambiguities in or between any Documents. Upon becoming aware of any errors, omissions, discrepancies, inconsistencies or ambiguities in or between any Documents, the Supplier shall bring that to the attention of the Manager and the Supplier shall at its own cost comply with the direction given by the Manager.

## Further, the Supplier agrees that it shall be deemed to have allowed for the higher or better quantum or standard of work in the event of any discrepancies, inconsistencies or ambiguities relating to issues of quantum or standard.

## The Supplier warrants that in the performance of the Services:

##### it has exercised and will continue to exercise the degree of skill, care and diligence expected of a skilled, professional and adequately resourced supplier experienced in providing the same or similar service as the Services;

##### it has and will continue to comply with all relevant Laws; and

##### the Services provided by the Supplier under the Agreement will be fit for their intended purpose(s) and will comply with all relevant Laws, industry codes and Australian Standards.

## The Supplier warrants that it will comply with, and pay all Employees in accordance with, all:

##### relevant Laws applicable to the employment of all Employees; and

##### applicable awards, agreements and other industrial instruments.

## The Supplier acknowledges that the Manager has entered into the Agreement in reliance on the warranties and representations contained in clause 12 of these terms and conditions and would not have entered into the Agreement if the Supplier had not made them.

## The Supplier warrants that it holds, and each of the Supplier's employees, agents, consultants and contractors (including their employees and workers) hold, current licenses and certificates attesting to their competency in the occupation for which they have been engaged to the extent required for the Services. The Supplier must promptly give the Manager a copy of all such certificates when requested by the Manager. The Supplier must not allow any person to perform duties for which a required licence or an approved certificate is not held. The Supplier further represents and warrants that all employees, agents, consultants and contractors, and others carrying out any part of the Services, will be, to the satisfaction of the Manager, suitably:

## qualified, experienced and trained; and

(ii) fit and able to perform all task(s) for which they are responsible.

## The Supplier warrants that it has thoroughly inspected the Site(s), including any prior work, existing structures, materials, conditions and the provision and location of all utilities and services to and from the Site(s) and the Services. The Supplier bears all risks arising form and/or in connection with the Site(s).

## The Supplier warrants that it has allowed for all necessary temporary Services and other plant, equipment or facilities that it may require for the purposes of undertaking the Services and performing its obligations under the Agreement.

## The Supplier shall maintain a safe system of work and shall comply with and satisfy all duties and obligations under all applicable WHS Laws.

## The Supplier warrants that it has:

## inspected the Site(s) and their surroundings;

## undertaken and relies on its own investigations and thorough due diligence of the Site(s) and their surroundings; and

## sufficiently informed itself of all matters concerning the Site(s) and their surroundings

## (the "**Site Conditions**").

## The Supplier is deemed to have allowed in the Contract Fees for (and bears absolutely the risk of) all Site Conditions and physical and other conditions on, under or in the Site(s) (including within all improvements on the Site(s)) whether or not known at the date of the Agreement.

# PAYMENT TERMS

a) The Supplier will provide a Tax Invoice to the Principals for any Contract Fees.

b) Contract Fees will be invoiced on a monthly basis.

e) Additional Services Charges are to be invoiced once a month. Invoices for Additional Service Charges must:

(i) reference the Work Order Number provided by the Manager with one Invoice per Variation Order; and

(ii) be split to indicate labour and materials and any applicable Rates and Charges references from Item 2 Schedule 3 of this Work Order;

c) All invoices presented for payment are to be original (copies not accepted) and shall:

a) include a description of the Services supplied and at what location;

b) be addressed to the Principal care of the Manager at the Invoicing Address;

c) include the Name, ABN, postal address, contact phone number, fax and email of the Supplier;

d) be identified as a tax invoice and clearly identify the cost net of GST, the amount of GST and the total cost inclusive of GST; and

e) include the Work Order Number or Contract Number as applicable.

Payment does not constitute approval or acceptance of the Services.

Undisputed Invoices that meet all of the requirements of the payment terms will be paid by the date being 30 business days following receipt of the Supplier’s invoice that complies with the requirements of this Agreement, subject always to the Supplier providing a declaration evidencing that all payments to and/or on account of all employees, contractors, consultants and suppliers have been made.

The Manager may, on behalf of the Principal, by written notice, dispute a Tax Invoice, detailing the reason the Tax Invoice is disputed and the amount in dispute.

# BANK GUARANTEE

## The Supplier must provide the Bank Guarantee if required by the Manager. The Bank Guarantee must be in the form and from a provider approved by the Manager and shall be delivered to the Manager by the date requested by the Manager.

## The Manager owns any interest earned on the Bank Guarantee (or any proceeds of that guarantee) and, to the extent permitted by law, the Manager does not hold the Bank Guarantee (or any proceeds of that guarantee) on trust for the Supplier.

## The Manager may, without notice to the Supplier, recover from the Bank Guarantee (including after having converted that guarantee into cash) any Cost the Manager claims to have incurred or loss suffered by the Manager as a result of the act, default or omission of the Supplier, including any breach of the Agreement or if an Insolvency Event occurs in relation to the Supplier. This clause survives termination or expiry of the Agreement.

## Unless the Manager is entitled to exercise its rights under clause 13(b) of these terms and conditions the Manager must return the Bank Guarantee to the Supplier within four (4) months after the Termination Date.

# Reporting

## The Supplier shall provide the Required Reporting in relation to the provision of the Services. The Supplier shall ensure that the Required Reporting is at all times in a form and to the standard required by the Manager and the Supplier shall comply with the Manager’s directions relating to the Required Reporting.

(a) Generic Requirements:

Where a system or process is in place which facilitates the recording of site attendance and/or to acknowledge the commencement or completion of works associated with any Services or Additional Services the Supplier is to use the system in addition to any other onsite logbooks.

The Supplier is to meet any statutory record keeping requirements associated with the performance of the Services

The Manager reserves the right to initiate new reporting practices and systems at any time and the Supplier must comply with the Manager’s requirements.

The provision or existence of any report shall not relieve the Supplier of any of its responsibilities under this Agreement.

(b) Immediate Reporting:

Incidents including Near Miss incidents are to be reported to the Manager as soon as safely possible but at least within ***24hrs*** of the occurrence. They must also be reported to all Authorities to the extent required by, and in accordance with, all relevant Laws.

Hazards that present an immediate risk to the occupants or visitors to the space must be reported within less than ***1 hour***

Defects noted during rounds that do not present an immediate hazard are to be reported to the Manager within ***24hrs***

(c) Records to be available for Inspection at any time:

The Supplier shall keep detailed records of the information listed below.

* + Full details of any repairs or replacements carried out.
	+ Full details of all call out attendances.
	+ SWMS or JSEAs
	+ A copy of approved permits
	+ Details of any defects noted during rounds
	+ Details of any potential hazards noted and corrective actions taken.
	+ The Visa conditions of employees subject to such conditions
	+ Employee training
	+ MSDS register
	+ Chemical Register
	+ Hazardous material Register

(d) As required

The Supplier will keep the Manager informed of any changes in regulations that may affect the delivery of the Services or Additional Services

Where specific reports, measurements, clearances or certificates are required in the scope of services identified in Item 1 of Schedule 2 of the Work Order the Supplier will provide these at the frequencies identified or if not identified within 1 month of the completion of the particular portion of the work requiring the reports, measurements, clearances or certificates

# THE MANAGER AUDIT

## The Supplier acknowledges that the Manager may arrange to carry out (itself or by others on its behalf) an audit of the supply of the Services or any other matter concerning the Agreement at any time during the Term. The Supplier shall comply with the Manager’s directions relating to any audit.

## The Supplier agrees to cooperate with any such audit and provide reasonable assistance and access to information which might be requested provided that such requests for cooperation and information will not unreasonably interfere with the Supplier’s normal business operations.

# termination

## The Manager, in its sole and absolute discretion, may terminate the Agreement at any time for any reason by providing the Supplier with 30 days’ notice in writing. If the Manager elects to terminate the Agreement under this clause the Parties agree that the Manager is only liable to pay the Supplier for any outstanding fees for the parts of the Services properly performed and completed (as assessed against the Contract Fees) up to the date specified in the notice of termination. The Manager is not bound by any implied duty of good faith.

## The Manager may immediately terminate the Agreement by written notice if an Insolvency Event occurs in respect of the Supplier, if the Supplier breaches any term of the Agreement or if any Employees of the Supplier engage in wilful misconduct, fraud or conduct contrary to the requirements of any Laws.

## The Supplier may terminate the Agreement by written notice if any amount payable under the Agreement is at least 60 days overdue, a written demand has been made and the amount remains unpaid after 10 Business Days.

## The Manager may, by notice in writing which notice must include the effective date of termination, terminate the Agreement if the Principal disposes of an interest in the Site(s) or the Principal terminates the Manager’s appointment as the Principal’s agent in respect of the Site(s).

# **INDEMNITY**

## The Supplier agrees to indemnify and keep indemnified the Manager and each Principal against all liability, actions, claims, demands, damages, costs and expenses incurred or suffered by the Manager or Principal in connection with or arising in any way out of the performance or non-performance of the Services or a breach by the Supplier of the Agreement or any other act or omission of the Supplier or the persons for whom it is responsible, including the Employees, except to the extent caused or contributed to by the Manager or the Principal.

# **ELECTRONIC TRADING**

## If requested by the Manager, the Supplier must participate in Electronic Trading and will be required to bear any costs for additional hardware, software, resources or other requirements that may be required by the Supplier to so participate.

# **Supplier SITE RESPONSIBILITIES**

## The Manager will provide the Supplier with adequate access to the Site(s). The Supplier must keep the area of the Site(s) where the Services are being performed neat and tidy, including removing waste generated by the Supplier at the time the relevant Services are being performed.

## In providing the Services the Supplier must:

## minimise and manage waste so as to reduce the amount sent to landfill and maximise the use of reclaimed materials and materials/products with a high recycled content;

## minimise the use of material resources and the production of waste through, for example, efficient design, logistics, stock control, the use of prefabricated / pre-sized materials, minimise packaging and efficient construction techniques;

## use reclaimed products and materials, and products and materials with a high recycled content, where feasible;

## collect relevant data to monitor the Supplier’s progress towards, and achievement of, applicable targets for resource efficiency and waste management, copying the data to the Manager as required; and

## engage with the Manager in relation to potential environmental initiatives to be applied to the Services or the Site(s).

## (c) In supplying the Services the Supplier will use only suitably qualified and competent Employees, personnel, tradesmen and technicians experienced and thoroughly trained in all aspects of the Services. The Supplier must ensure that all Employees and agents it engages:

##### are suitably clothed with appropriate uniforms, identification badges or labels and security passes;

##### are suitably trained and competent in work, health, safety and environmental practices and procedures;

##### comply with the Manager’s requirements for use of the Site(s), including security and behaviour requirements; and

##### attend at the Supplier’s sole cost any site induction program required by the Manager.

## (d) The Supplier must have full knowledge of and comply with and ensure that its Employees comply with all relevant WHS Laws and exercise all necessary precautions for the protection of all persons, property and the environment on the Site(s).

## (e) The Supplier shall ensure that equipment used in providing the Services complies with any and all Laws and that all Employees employed by the Supplier in the execution of the Agreement are qualified, suitably fit and able and, where applicable, licensed in the correct and safe use of such equipment. Ladders, scaffolding, electrical equipment and any other materials or equipment used in the execution and performance of the Services and any equipment or materials must be maintained in a safe condition (in accordance with manufactures specifications) and when not in use must be properly stored and secured so as to prevent unauthorised use thereof.

## (f) Prior to using any Dangerous Good and/or Hazardous Substance the Supplier must notify the Manager of the intention to use the Dangerous Good and/or Hazardous Substances and must obtain the Manager’s approval prior to use.

## The Supplier must not store any Dangerous Goods and/or Hazardous Substances on the Site(s) in excess of the quantities approved by the Manager and then only in storage which can be locked and properly labelled in sealed containers clearly marked with the name and quantity of the Dangerous Goods and/or Hazardous Substance contained therein and the maximum capacity of the container including the necessary safety instructions for its use.

## Current Material Safety Data Sheets and a chemical register are to be maintained on site by the Supplier and made available to the Supplier’s Employees.

## The Supplier must have a formal complaints process in place and further, if a complaint is received in relation to the provision of services under the contract, the provider must immediately advise the Manager of the details (regardless of whether or not it involves an employee of the Manager) and how it proposes to deal with the complaint.

# INsurance

## The Supplier must take out and maintain the Insurance Policies for the duration of the Services and with an insurer and on terms approved by the Manager.

Insurance Policies:

(a) Public Liability insurance covering the Manager, the Principal, the Supplier and subcontractors for an amount not less than A$20,000,000 in respect of any one occurrence;

(b) Workers Compensation insurance as applicable for all Employees;

(c) Comprehensive Vehicle insurance for all vehicles used on site.and

(d) Any other insurance policy requested by the Manager.

# confidentiality

## Each Party must keep the Confidential Information of the other party confidential, and must not disclose any such Confidential Information to any person except:

#### with the consent of the Party who supplied the Confidential Information;

#### to Employees, legal advisers, auditors and other consultants, provided the recipient is bound by similar obligations and the other party is first notified of such disclosure; or

#### if the recipient is required to do so by law.

## A Party must, at the request of the disclosing party, return or destroy all documents or materials containing Confidential Information.

# PRIVACY CLAUSE

## In this clause, “**Personal Information**” has the meaning given to that term in the *Privacy Act 1988 (Cth)* as amended from time to time.

## Any personal information collected by either Party or any Employee of the Supplier must be collected, used, disclosed, secured and maintained in accordance with the *Privacy Act 1988 (Cth*) as amended from time to time and any other applicable privacy laws governing the collection, use or storage of personal information (**Privacy Laws**).

## Both Parties will at all times perform their obligations under the Agreement in such a manner as not to be in violation of the Privacy Laws.

# INTELLECTUAL PROPERTY

## Except as expressly stated in the Agreement, nothing in the Agreement is intended to grant either Party any intellectual property rights in material which has not been expressly assigned or licensed by the terms of the Agreement.

## The Manager retains ownership of all Intellectual Property Rights in any data provided by it to the Supplier under the Agreement to enable the Supplier to provide the Services.

# ASSIGNMENT AND SUBCONTRACTING

# The Supplier must not assign or otherwise part with its rights under the Agreement without the Manager’s prior written approval.

# The Supplier must not subcontract any part of the Services without the Manager’s prior written approval. In any event, the Supplier is always liable for the acts and omissions of its Employers, subcontractors, consultants and suppliers (as if they were the acts and omissions of the Supplier).

# The Supplier must ensure that each proposed subcontractor for carrying out any part of the Services is suitably qualified, licensed and skilled to perform the relevant work concerned and must give the Manager with each request for approval of a subcontractor, the name, address, experience, qualifications and licences held by the proposed subcontractor, together with any other information reasonably requested by the Manager.

# No solicitation

## Neither Party will directly or indirectly solicit for employment any person who is, or has been the Employee of the other Party and who has been directly involved with the provision of the Services for a period being the earlier of:

# 12 months after the expiration of the Term; or

# 12 months after that employee ceases to be directly involved in the provision of the Services;

without the other Party’s written consent.

# Supplier to provide Transition Assistance

#

Upon termination or expiry of the Agreement (for whatever reason) the Supplier agrees to promptly:

1. return all property and information owned or provided by the Manager;
2. provide any data and information reasonably requested by the Manager which has been created or is held by the Supplier in the course of providing the Services under the Agreement; and
3. provide any other assistance and cooperation as might be reasonably requested by the Manager.

# Principal’s Limitation of Liability

The Parties agree that, to the extent a Principal acts in the capacity of a trustee or responsible entity, the liability of the Principal is limited in accordance with the relevant and/or applicable sections of Schedule 1 to these terms and conditions.

# civil liability

(a) In this clause “**Civil Liability Act**” means:

(i) where the applicable State Jurisdiction is that of the State of New South Wales – the *Civil Liability Act 2002* (NSW);

(ii) where the applicable State Jurisdiction is that of the State of Victoria – the *Wrongs Act 1958* (Vic);

(iii) where the applicable State Jurisdiction is that of the State of Queensland – the *Civil Liability Act 2003* (Qld);

(iv) where the applicable State Jurisdiction is that of the State of Western Australia – the *Civil Liability Act 2002* (WA); and

(v) where the applicable State Jurisdiction is that of the Australian Capital Territory – the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT).

(b) To the maximum extent permitted by law:

* + 1. the parties agree that the Civil liability Act will not have any application to the Agreement, the performance of the Services, or any of the obligations of the Supplier under the Agreement or at Law;
		2. the Supplier's agreement of sole responsibility and the indemnities contained in the Agreement shall apply despite the provisions of the Civil Liability Act; and
		3. the parties agree that their rights, obligations and liabilities will be those which would exist if the Civil Liability Act did not apply.

# general

## (a) Notices

#### Any notice or communication to or by a party shall be addressed to the persons nominated in Item 5 of Schedule 1 to the Work Order.

## Notice of Claims

## The Supplier acknowledges and agrees that the Manager will not be liable upon any claim by the Supplier (or a third party claiming through the Supplier) in respect of any matter arising under the Agreement or the Services unless the claim, together with full particulars of it, is lodged in writing with the Manager not later than 14 business days after the date of occurrence of events or circumstances on which the claim is based.

## Governing Law and Jurisdiction

#### The Agreement is governed by the laws of the State Jurisdiction and the Parties irrevocably submit to the non-exclusivejurisdiction of the courts of the State Jurisdiction (as applicable to each Site).

Without limiting or affecting the Supplier’s obligations under the Agreement, where there is more than one Site, the State Jurisdiction will apply separately to each Site as if the parts of the Services performed on the relevant Site were the only Services to be performed under the Agreement (and anything arising from, relating to or in connection with the relevant Site will be subject to the State Jurisdiction applicable to that Site as if it were the only Site on which the Services were to be performed).

In the event the parties cannot agree which State Jurisdiction applies, the parties agree that the Manager will (in its absolute and unfettered discretion without any implied obligation of good faith) nominate which State Jurisdiction is to apply and that nomination shall be final and binding on the parties.

##

## Waivers

#### A failure or delay in the exercise, or partial exercise, of a right arising from a breach of the Agreement does not result in a waiver of that right.

## Entire Agreement

The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all previous agreements in respect of its subject matter.

## **Variation**

A variation of any term of the Agreement must be in writing and signed by the parties. For the avoidance of doubt, this clause does not apply to Variations to the Services.

## Force Majeure

#### Neither party is liable for any delay or failure to perform its obligations, other than an obligation to pay money, pursuant to the Agreement if such delay is due to Force Majeure Event, provided it promptly notifies the other party of the circumstances of the Force Majeure Event. Performance of that party’s obligations shall be suspended for the duration of the Force Majeure Event, provided that if the Force Majeure Event exceeds 20 Business Days, either party may immediately terminate the Agreement in respect of the affected Service by written notice.

## **Warranty**

##  Each party warrants to the other that entering into and performing its obligations under the Agreement does not breach any of its contractual obligations to any other person.

## **Inconsistency**

#### To the extent that there is any inconsistency between the standards specified in the Agreement to which the Supplier must adhere, then the higher standard will take precedence.

## **Severability**

If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

## **Survival**

Clauses 11, 12, 13, 20, 21, 22, 23, 24, 25, 26, 27 and 28 shall survive termination or expiry of the Agreement.

#  Heavy Vehicle National Laws

1. The Supplier warrants that it, and the Supplier’s subcontractors, are familiar with and have the capability and resources to comply with the Heavy Vehicle National Laws.
2. The Supplier must at all times during the term of and provision or performance of the Services:
	1. comply with its obligations under the Heavy Vehicle National Laws and upon request, provide the Manager with evidence of such compliance;
	2. consult, cooperate and coordinate with the Manager in relation to compliance with the Heavy Vehicle National Laws;
	3. take all reasonable steps to prevent any contravention of the Heavy Vehicle National Laws;
	4. where physical entry onto the site is required for the purposes of performing the Services, cooperate, consult and coordinate all activities with the Manager and any other duty holders who have a duty in relation to a shared safety matter or are performing works in the immediate vicinity of the Services.
3. The Supplier agrees to cooperate with and do all things necessary to assist the Manager or its officers, employees or agents in discharging their obligations under the Heavy Vehicle National Laws. This includes cooperating fully with any monitoring activities undertaken by the Manager to satisfy itself that the Heavy Vehicle National Laws have been complied with and will continue to be complied with.
4. In addition to any other conditions contained in this Agreement, the Supplier may only subcontract part of the performance of this Agreement if the Supplier first:
	1. satisfies itself that any such subcontractor has in place a system and work practices to ensure its compliance with the Heavy Vehicle National Laws; and
	2. provides any such subcontractor with sufficient information, instruction, training and supervision to ensure compliance with the Heavy Vehicle National Laws in the provision or performance of the Services.

The Supplier must immediately inform the Manager upon becoming aware of any non-conformance by it or its subcontractors (if any) of the Heavy Vehicle National Laws, whether the subject of regulatory investigation or not. The Supplier must cooperate with the Manager in relation to the investigation of the non-conformance, and where appropriate, take steps to immediately rectify the non-conformance.

1. In relation to the performance of the Services, the Supplier must notify the Manager of any:
2. warning or caution;
3. request for information or production of documents;
4. infringement notice;
5. fine;
	1. commencement of prosecution proceedings by any State or Territory road safety Authority or authorised officer in respect of any breach or suspected breach of any Heavy Vehicle National Laws in respect of the Services. The Supplier further undertakes to provide the Manager with a copy of any such warning, request, notice, fine or proceedings and any response or submissions made by or on behalf of the Supplier within 7 days of receiving or making the same.
6. In the event of any breach or suspected breach of the Heavy Vehicle National Laws by the Supplier in relation to the Services, the Manager will be entitled to, in its sole and absolute discretion:
	1. report any breach or suspected breach of the Heavy Vehicle National Laws to any relevant Authority, including disclosing any or all documentary materials in relation to the circumstances of any such breach or suspected breach; and/or
	2. require the Supplier to explain to the reasonable satisfaction of the Manager and within a timeframe set by the Manager:
		* 1. the circumstances of the breach or suspected breach;
			2. any steps taken to respond to the breach or suspected breach; and
			3. any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.
7. In addition to any other rights or entitlements of the Manager under and despite anything to the contrary contained in any other provision of this Agreement, in the event of any breach or suspected breach of the Heavy Vehicle National Laws by the Supplier in relation to the Services provided under this Agreement, or any breach by the Supplier of any of clauses 30(a) to 30(e) of this Agreement (inclusive) or any failure of the Supplier to respond to the reasonable satisfaction of the Manager to any request issued in accordance with clause 30(f)(ii), the Manager will be entitled, in its sole and absolute discretion:
	1. not to pay for the provision of the Services in circumstances of breach of the Heavy Vehicle National Laws;
	2. to require that the person responsible for any breach, including any subcontractors are not used or engaged to provide services to or on behalf of the Manager in future;
	3. not purchaser any further services from any person responsible for any breach of the Heavy Vehicle National Laws;
	4. suspend this Agreement (or any part of it) without further payment until such time as the breach is remedies to the satisfaction of the Manager; and
	5. terminate this Agreement with immediate effect by giving written notice to the Supplier.

**SCHEDULE 1 – PRINCIPAL’S LIMITATION OF LIABILTY**

**Office & Industrial**

|  |
| --- |
| **NEW SOUTH WALES** |
| **Site** | **Principal** | **Applicable Trust** | **Limitation of Liability Clause** |
| **101-103 Miller St, North Sydney (inc Greenwood Plaza)** | Mirvac Funds Limited (ACN: 002 561 640)  | Mirvac Commercial Trust  | Clause 1 |
| EFM Pty Limited (ABN 12 125 059 396) | Eureka Miller Street Trust | Clause 2 |
| **10-20 Bond Street, Sydney**  | Mirvac REIT Management Ltd (ACN: 002 060 228)  | 10-20 Bond Street Trust | Clause 1  |
|  |  |  |  |
| **One Darling Island, Pyrmont** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Bay Centre, Darling Harbour** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **40 Miller St, North Sydney**  | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Quay West Retail/Carpark - 113 Harrington Street** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **200 George Street Sydney** | Mirvac George Street Pty Ltd (ACN 098 668 896) | Mirvac George Street Trust | Clause 1 |
| AMP Capital Investors Limited | AMP Capital Wholesale Office Fund | Clause 1 |
| **37 Pitt St, Sydney** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac Pitt Street Trust | Clause 1 |
| **51 Pitt St, Sydney** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac Pitt Street Trust | Clause 1 |
| **6-8 Underwood St, Sydney** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac Pitt Street Trust | Clause 1 |
| **271 Lane Cove Rd, North Ryde** | Mirvac Projects Pty Limited (ACN 001 069 245) |  | Clause 1 |
| **Nexus Industry Park Building 1, Prestons** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Nexus Industry Park Building 2, Prestons** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Nexus Industry Park Building 3, Prestons** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Nexus Industry Park Building 5, Prestons** | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **1-47 Percival Street, Smithfield**  | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **8 Chifley Square, Sydney** | Mirvac 8 Chifley Pty Limited  | Mirvac 8 Chifley Trust | Clause 1 |
| **60 Margaret St and The Met Centre, Sydney** | Mirvac Funds Limited (ACN: 002 561 640)  | Mirvac Commercial Trust | Clause 1 |
| One Managed Investment Funds Limited | CC Athena Trust |  |
| **275 Kent Street, Sydney** | Merlin Australia Sub Pty Ltd (ACN 169 197 353) | Mirvac Commercial No. 1 Sub Trust  | Clause 7 |
| Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac Commercial No. 3 Sub Trust | Clause 1 |
| **55 Coonara Ave, Pennant Hills** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Pennant Hills Office Trust | Clause 1 |
| **39 Britton St** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) | Mirvac Property Trust No 7 | Clause 1 |
| **8 Brabham Dr** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) | Mirvac Property Trust No 7 | Clause 1 |
| **34-38 Anzac Ave** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) | Mirvac Property Trust No 7 | Clause 1 |
| **39 Herbert St Towers** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130)Mirvac Capital Pty Limited (ACN 096 525 405) | Mirvac Property Trust No 3Mirvac Property Trust No 4 | Clause 1 |
| **39 Herbert St Units** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130)Mirvac Capital Pty Limited (ACN 096 525 405) | Miorvac Property Trust No 3Mirvac Property Trust No 4 | Clause 1 |
| **Hoxton Park Distribution Centre** | Mirvac Projects Pty Limited (ACN 001 069 245)The Trust Company (Australia) Limited (ABN 21 000 000 993) | Aviva Investors Australian Logistics Property Trust  |  |
| **36 Gow St** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) | Mirvac Padstow Trust No 1 | Clause 1 |
| **274 Victoria Rd** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130)Mirvac Capital Pty Limited (ACN 096 525 405) | Mirvac Rydalmere Trust No 2Mirvac Rydalmere Trust No 1 | Clause 1 |

|  |
| --- |
| **VICTORIA**  |
| **Site** | **Principal** | **Related Trust** | **Limitation of Liability Clause** |
| **2 Riverside Quay** | Mirvac Funds Limited (ACN 002 561 640) |  | Clause 1 |
| **1 Southbank Blvd** | Mirvac Funds Limited (ACN 002 561 640) | Mirvac Property Trust | Clause 1 |
| **4 Riverside Quay** | Mirvac Funds Limited (ACN 002 561 640) | Mirvac Property Trust | Clause 1 |
| **6 Riverside Quay** | Mirvac Funds Limited (ACN 002 561 640) | Mirvac Property Trust | Clause 1 |
| **Royal Domain Centre, 380 St Kilda Rd, Melbourne** | Mirvac Funds Limited (ACN: 002 561 640) | 380 St Kilda Road Trust | Clause 1 |
| **47-67 Westgate Drive, Altona North** | Mirvac REIT Management Ltd (ACN: 002 060 228) | JFIF Victoria Trust | Clause 1 |
| **26 Hardcourt Dr** |  |  |  |
| **90 Collins St, Melbourne** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac 90 Collins Street Trust | Clause 1 |
| **367 Collins Street, Melbourne** | Mirvac Commercial Sub SPV Pty Ltd | 367 Collins Street Trust | Clause 1 |
| Mirvac Commercial Sub SPV Pty Ltd | 367 Collins Street No 2 Trust | Clause 1 |
| **664 Collins Street, Melbourne** | Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) |  | Clause 1 |
|
| **699 Bourke Street, Melbourne** | Mirvac Commercial Sub SPV Pty Ltd (ACN 125 706 130) | Mirvac Bourke Street No.1 Sub-Trust | Clause 1 |
|  |  |  |
| **QUEENSLAND**  |
| **Site** | **Principal** | **Related Trust** | **Limitation of Liability Clause** |
| **189 Grey St, Brisbane**  | Mirvac Funds Limited (ACN: 002 561 640) | Mirvac Property Trust | Clause 1 |
| **340 Adelaide St, Brisbane**  | BNY Trust Company of Australia Limited (ACN: 050 294 052) | Meridian Investment Trust No 1, Meridian Investment Trust No 2, Meridian Investment Trust No 3, Meridian Investment Trust No 4, Meridian Investment Trust No 5 and Meridian Investment Trust No 6 jointly. | Clause 4 |
| **AUSTRALIAN CAPITAL TERRITORY** |
| **Site** | **Principal** | **Related Trust** | **Limitation of Liability Clause** |
| **23 Furzer Street, Woden**  | BNY Trust Company of Australia Limited (ACN: 050 294 052) | Meridian Investment Trust No 1, Meridian Investment Trust No 2, Meridian Investment Trust No 3, Meridian Investment Trust No 4, Meridian Investment Trust No 5 and Meridian Investment Trust No 6 jointly. | Clause 4 |
|  |  |  |  |
| **Site** | **Principal** | **Related Trust** | **Limitation of Liability Clause** |
| **Allendale Square, 77 St Georges Terrace, Perth** | Mirvac Capital Pty Ltd (ABN: 81 096 525 405) | Mirvac Allendale Square Trust | Clause 1 |
| **David Malcolm Justice Centre, Barrack Street, Perth** | Mirvac (Old Treasury) Pty Ltd (ACN 149 174 407) | Mirvac (Old Treasury) Trust | Clause 1 |

**Office & Industrial Limitation of Liability Clauses**

|  |  |
| --- | --- |
| **Clause Number** | **Applicable Clause** |
| 1. **(Mirvac)**
 | * 1. The Manager enter into this agreement as agent for the applicable Mirvac Principal (**Principal**) identified in Item 13 of Schedule 1 in its capacity as the responsible entity or trustee of the Applicable Trust identified in Item 13 of Schedule 1 constituted under the trust deed establishing the applicable Trust (**Trust**) as amended from time to time (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this agreement is limited and can be enforced against the Principal only to the extent to which the Principal having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Principal’s liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement
	2. No party to this agreement or any person claiming through or on behalf of them will be entitled to:
		+ 1. claim from or commence proceedings against the Principal in respect of any liability in any capacity other than as the responsible entity or trustee of the Trust;
			2. seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Principal or prove in any liquidation, administration or arrangement of or affecting the Principal, except in relation to the assets of the Trust; or
			3. enforce or seek to enforce any judgment in respect of a liability under this agreement or otherwise against the Principal in any capacity other than as responsible entity or trustee of the Trust.
	3. This clause does not apply to any obligation or liability of the Principal to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Principal’s indemnification, or loss of the Principal’s right of indemnification, out of the assets of the Trust as a result of Principal’s failure to properly perform its duties as responsible entity or trustee of the Trust.
	4. Nothing in clause (c) will make the Principal liable to any claim for an amount greater than the amount which a party would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Principal 's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
	5. The Principal, through its agent the Manager, is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.
 |
| **(EFM)** | 1. The Manager enters into this Agreement as agent for EFM Pty Limited (**Principal**) in the Principal’s capacity as trustee of the Eureka Miller Street Trust (**Trust**) constituted under the trust deed dated 14 December 2007 as varied from time to time (**Trust Deed**) and in no other capacity. A liability arising under or in connection with this Agreement can be enforced against the Principal only to the extent to which it can be satisfied out of the assets of the Trust out of which the Principal is actually indemnified for the liability. This limitation of the Principal’s liability applies despite any other provision of the Agreement and extends to all liabilities and obligations of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement or any deed, agreement or other instrument collateral with this Agreement or given or entered into under this Agreement.
2. Subject to paragraph (a) and (c) the parties (other than the Principal) may not make any demand or take any action against the Principal or seek the appointment of a liquidator, administrator, receiver or similar person to the Principal or prove in any liquidation, receivership, administration or arrangement of or affecting the Principal, in respect of any act, matter or thing arising directly or indirectly from this Agreement.
3. The limitation of liability of the Principal to the extent of indemnification out of the assets of the Trust shall only be excluded to the extent that the Principal’s proven fraud, negligence or breach of trust results in a reduction in indemnification out of the assets of the Trust. The Principal is not to be regarded as being negligent or in breach of trust to the extent to which any failure by the Principal to satisfy its obligations under this Agreement has been caused or contributed to by a failure by any person to fulfil its obligations in relation to the Trust or any other act or omission of another person.
4. No attorney, agent, receiver, or receiver and manager appointed in accordance with this Agreement has authority to act on behalf of the Principal in any way which exposes the Principal to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Principal for the purpose of paragraph (c).
5. The Principal is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Principal’s liability is limited in the same manner as set out in paragraph (a) to (c).
6. The Principal is released from its obligations under this Agreement on the appointment of a new or replacement trustee of the Trust if the new or replacement trustee takes on the Principal’s obligations and liabilities under this Agreement.
7. This clause applies despite any other provision of this Agreement or any principle of equity or law to the contrary.
 |
| 1. **(Investa)**
 |  * + 1. Despite any other provision of this Agreement the Manager enters into this Agreement as agent for Investa Listed Funds Management Limited (**Principal**) in the Principal’s capacity as responsible entity of the [\*] (**Trust**) constituted under the trust deed establishing the Trust (**Trust Deed**) and in no other capacity.
		2. Any liability or obligation of the Principal arising under or in connection with this Agreement is limited and can be enforced against the Principal only to the extent to which it can be satisfied out of the property of the Trust out of which the Principal is actually indemnified for the liability under the Trust Deed.
		3. The limitation of the Principal’s liability under this clause applies despite any other provision of this agreement and extends to all liabilities and obligations of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
		4. Despite any other provision of this agreement, the Principal is not obliged to do or refrain from doing anything under this agreement unless the Principal’s liability is limited in the manner set out in this clause.
		5. The Supplier must not take any action of any kind against the Principal in any capacity other than as the trustee of the Trust.
		6. Despite any other provision of this agreement:
			1. the limitation of the Principal’s liability under this clause shall, subject to paragraph (ii) immediately below, not apply to any obligation or liability of the Principal to the extent that it is not satisfied because there is a reduction in the extent of the Principal’s indemnification out of the assets of the Trust as a result of the Principal’s fraud, negligence or breach of trust; and
			2. nothing in this clause shall make the Principal liable to any claim for an amount greater than the amount which the Supplier would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Principal’s right of indemnification out of the assets of the Trust had not been prejudiced by fraud, negligence or breach of trust.
 |
| **4 (BNY)** | **(a) Principal’s capacity**The Manager enters into this Agreement as agent for BNY Trust Company of Australia Limited (**Principal**) of Schedule 1 in the Principal’s capacity as trustee of the each relevant Trusts identified in Item 12 of Schedule 1(**Trust**), constituted under the trust deed establishing the relevant Trust (**Trust Deed)** and in no other capacity. **(b) Enforcement of liability against Trust assets only**Except to the extent expressly provided by paragraph (d):(i) a liability or obligation arising under or in connection with this Agreement or the Trust is limited to and can be enforced against the Principal only to the extent to which it can be satisfied out of assets of the Trust out of which the Principal is actually indemnified for the liability;(ii) the Principal will have no personal liability to any other party to this Agreement and the other parties waive their rights and release the Principal from any personal liability; and(iii) this limitation of the Principal’s liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of, undertaken or incurred by, or devolving on, the Principal arising from, or in any way connected with, any conduct, omission, representation, warranty, agreement, transaction or other matter or thing under or related to this Agreement.The Principal is not obliged to do anything or refrain from doing anything under or in connection with this Agreement (including incur a liability) unless the Principal’s liability is limited in the same manner as set out in this clause or otherwise in a manner satisfactory to the Principal (in its absolute discretion).**(c) Claims against Principal**The parties other than the Principal may not sue the Principal in any capacity other than trustee of the Trust, including seeking the appointment of a receiver, or a liquidator, an administrator or any similar person to the Principal or prove in any liquidation, administration or arrangements of or affecting the Principal.**(d) Breach**The provisions of this clause limiting the Principal’s liability will not apply to any liability or obligation of the Principal to the extent that it is not satisfied because under this Agreement or any other Trust Document or by operation of law there is a reduction in the extent of the Principal’s indemnification out of the assets of the Trust, as a result of the Principal’s fraud, gross negligence or wilful misconduct. In no circumstances, however, will the Principal be personally liable for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought (except to the extent that there is a determination by a relevant court of fraud by the Principal).**(e) Acts or omissions**The parties agree that:(i) the Mirvac REIT Management Limited (**Trust Manager**) is responsible under this Agreement and the transaction documents that relate to the Trust (**Trust Documents**) for performing a variety of obligations relating to the Trust;(ii) no act or omission of the Principal will constitute fraud, gross negligence or wilful misconduct of the Principal to the extent to which the act or omission was caused or contributed to by any failure of the Trust Manager, the Supplier or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trust Manager, the Supplier or any other person or any of their respective agents or contractors; and(iii) no attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of the Principal in a way which exposes the Principal to any personal liability and no act or omission of such a person will be considered fraud, gross negligence or wilful misconduct of the Principal.**(e) No personal liability for force majeure**In no event will the Principal be personally liable for any failure or delay in the performance of its obligations under this Agreement or any Trust Document because of circumstances beyond its control including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, labour dispute, any statute, ordinance, code or other law which restricts or prohibits the Principal from performing its obligations under this deed or any Trust Document, the inability to obtain or the failure of equipment or the interruption of communications or computer facilities to the extent, in each case, that these occurrences are beyond the control of the Principal and any other causes beyond the Principal’s control. |
| **5 (MTAA)** | Despite anything else in this Agreement, the Supplier acknowledges and agrees that:* + 1. the Manager enters into this Agreement as agent for MTAA Superannuation Fund (60 Margaret St, Sydney) Property Pty Limited (**Principal**) and any other trustee for the time being of the MTAA Superannuation Fund (60 Margaret St, Sydney) Property Trust (**Trust**) constituted by or pursuant to the Trust deed dated 9 March 1988 as varied (**Trust Deed**) and in no other capacity;
		2. the Principal is not liable to pay or satisfy any obligations under this Agreement, and shall have not liability to the Supplier except to the extent of the Principal’s right of indemnity out of the assets of the Trust;
		3. if those assets are insufficient the Supplier shall not seek to recover any shortfall by bringing proceedings against the Principal personally or applying to have the Principal wound up; and
		4. the Supplier waives it rights and releases the Principal from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Trust.
 |
| **6 (AMP)** | All provisions of this Agreement will have effect and be applied subject to this clause. For the purposes of this clause:**Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Principal under or in respect of this Agreement whether express or implied by statute or other legal requirements or arising howsoever. **Assets** includes all assets, property and rights of personal or any nature whatsoever. (b) The parties (other than the Principal) acknowledge that the Manager entered into this Agreement as agent of the Principal in its capacity as trustee or responsible entity of the Trust.(c) Any liability of the Principal arising in connection with this Agreement is limited to the extent that Principal is able to be indemnified for that liability out of the assets of the Trust under the Trust Constitution. Each party (other than the Principal) acknowledges and agrees that it may enforce its rights against Principal with respect to the non-observance of Principal’s Obligations under this document only to the extent necessary to enforce its rights, powers and remedies against the Principal in respect of the assets of the Trust by subrogation or otherwise.(d) However, despite anything in this clause, the Principal is liable to the extent that a liability under this document arises out of the Principal's own fraud, negligence, wilful default, breach of trust or breach of duty which disentitles it from any indemnity out of the assets of the Trust in relation to the relevant liability in this clause.(e) Any document to be entered into by the parties under the terms of this document where possible must include a clause identical to this clause (with necessary changes being made). |
| **(7) Blackstone** | * + - 1. The Principal’s liability to any person in connection with this agreement (or any transaction in connection with it) is limited, and can be enforced against the Principal, only to the extent to which:
				1. the liability can be satisfied out of the assets of the Trust by the Principal exercising its right of indemnity out of the assets of the Trust; and
				2. the Principal is actually indemnified for the liability.

 * + - 1. Payment by the Principal of an amount equal to the amount (if any) it receives under its right of indemnity in respect of any such liability constitutes a complete discharge by the Principal of that liability.
			2. If any other party to this agreement does not recover all money owing to it arising from non-performance of the Principal’s obligations under this agreement by enforcing the rights in this agreement, it may not seek to recover the shortfall by:
				1. bringing proceedings against the Principal in its personal capacity; or
				2. applying to have the Principal wound up or proving in the winding up of the Principal.
 |

**Retail**

**Principals Limitation of Liability**

|  |  |  |  |
| --- | --- | --- | --- |
| **Shopping Centre or Complex**  | **Principal** | **Trust** | **Clause #** |
| **ACT** |  |
| Cooleman Court, Weston, ACT | Mirvac Retail Sub SPV Pty Limited | Mirvac Retail Sub Trust No. 1. | 5 |
| **NSW** |  |
| Birkenhead Point Outlet Centre, Drummoyne, NSW | Mirvac Retail Sub SPV Pty LimitedMirvac Capital Pty Limited | Mirvac Retail Sub Trust No. 2Mirvac Retail Sub Trust No. 3 | 812 |
| Broadway Shopping Centre, Broadway, NSW | Mirvac Retail Sub SPV Pty LimitedPerron Investments Pty Ltd | Mirvac Broadway Sub TrustNo Trust | 2 |
| Bay Street, Ultimo, NSW | Mirvac Retail Sub SPV Pty LimitedPerron Investments Pty Ltd | Mirvac Bay Street TrustNo trust | 18 |
| Smail Street, Ultimo, NSW | Mirvac Retail Sub SPV Pty LimitedPerron Investments Pty Ltd | Mirvac Smail Street TrustNo trust | 19 |
| Cherrybrook Village, Cherrybrook, NSW | BNY Trust Company of Australia Limited | Meridian Investment Trust No 1;Meridian Investment Trust No 2;Meridian Investment Trust No 3;Meridian Investment Trust No 4;Meridian Investment Trust No 5; andMeridian Investment Trust No 6 or any of them (as the case requires). | 7 |
| East Village, Zetland, NSW  | Joynton North Pty Limited  | Joynton North Property Trust | 14 |
| Greenwood Plaza, North Sydney, NSW | Mirvac Funds Limited The Trust Company (Australia) Limited | Mirvac Commercial Trust TGA Miller Street Trust  | 1316 |
| Harbourside Shopping Centre, Darling Harbour, NSW | Mirvac Retail Sub SPV Pty Limited | Mirvac Harbourside Sub Trust | 4 |
| Rhodes Shopping Centre, Rhodes, NSW | Mirvac Retail Sub SPV Pty LimitedPerron Investments Pty Ltd | Mirvac Rhodes Sub Trust No Trust | 3 |
| South Village,Kirrawee, NSW | Mirvac Capital Pty Limited Kirrawee South Centre Pty Limited  | Mirvac Kirrawee Trust No.1Kirrawee South Centre Trust | 2021 |
| St Marys Village, St Marys, NSW | Mirvac Funds Limited | Mirvac Property Trust | 1 |
| Stanhope Village, Stanhope Gardens, NSW | Mirvac Funds Limited | Mirvac Property Trust | 1 |
| Tramsheds, Forest Lodge, NSW | Mirvac Retail Sub SPV Pty Limited | Mirvac Retail Sub Trust No 4 | 9 |
| MetCentre, Sydney, NSW | Mirvac Funds LimitedOne Managed Investments Funds Limited | Mirvac Commercial TrustCC Athena Trust | 1317 |
| **QLD** |  |
| Kawana Shoppingworld, Buddina, QLD | Mirvac Funds LimitedISPT Pty Ltd | Mirvac Property Trust ISPT Kawana Trust | 115 |
| Orion Springfield Central, Springfield, QLD  | Perpetual Nominees Limited | Springfield Regional Shopping Centre Trust  | 6 |
| Toombul Shopping Centre, Nundah, QLD | Mirvac Retail Sub SPV Pty LimitedMirvac Capital Pty Limited | Mirvac Toombul Trust No.1Mirvac Toombul Trust No.2 | 1011 |
| **VIC**  |  |
| Moonee Ponds Central, Moonee Ponds, VIC | Mirvac Funds Limited | Mirvac Property Trust  | 1 |

## **Trust: Mirvac Property Trust**

If the Principal is Mirvac Funds Limited **and** the Trust is Mirvac Property Trust, this clause applies.

#### The Principal (in this clause called “**Trustee**”) enters into this document only in its capacity as Trustee of the Mirvac Property Trust ("**Trust**") constituted under the trust deed settling the Trust dated 9 April 1987 as varied from time to time ("**Constitution**") and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, document or transaction related to this document.

#### No party to this document may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Constitution or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of Trustee’s **failure to properly perform its duties as Trustee of the Trust.**

#### Nothing in paragraph (c) shall make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee’s right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Broadway Sub Trust)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Broadway Sub Trust, this clause applies.

#### Mirvac Retail Sub SPV Pty Limited (**"Trustee"**) enters into this document only in its capacity as trustee of the Mirvac Broadway Sub Trust (**"Trust"**) constituted under the trust deed settling the Trust dated 28 November 2006 as varied from time to time (**"Deed"**) and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document may sue the Trustee in any capacity other than as the trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Deed or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) shall make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Rhodes Sub Trust)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Rhodes Sub Trust, this clause applies.

#### Mirvac Retail Sub SPV Pty Limited (**"Trustee"**) enters into this document only in its capacity as trustee of the Mirvac Rhodes Sub Trust (**"Trust"**) constituted under the trust deed settling the Trust dated 28 November 2006 as varied from time to time (**"Deed"**) and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document may sue the Trustee in any capacity other than as the trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Deed or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) shall make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Harbourside Sub Trust)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Harbourside Sub Trust, this clause applies**.**

#### Mirvac Retail Sub SPV Pty Limited (**Trustee**) enters into this document only in its capacity as Trustee of the Mirvac Harbourside Sub Trust (**Trust**) constituted under the trust deed settling the Trust dated 17 October 2013 (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the responsible entity or trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as responsible entity or trustee of the Trust.

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust. Nothing in this paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.|

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Retail Sub Trust No. 1)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Retail Sub Trust No. 1, this clause applies.

#### Mirvac Retail Sub SPV Pty Limited (**"Trustee"**) enters into this document only in its capacity as trustee of the Mirvac Retail Sub Trust No. 1 (**"Trust"**) constituted under the trust deed settling the Trust dated 15 January 2007 as varied from time to time (**"Deed"**) and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document may sue the Trustee in any capacity other than as the trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Deed or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) shall make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Perpetual Nominees Limited \\ Trust: Springfield Regional Shopping Centre Trust)**

If the Principal is Perpetual Nominees Limited, this clause applies.

#### Definitions

In this **clause**:

**Trustee** means Mirvac Funds Management Limited ACN 067 417 663.

#### Extent of liability

#### The Principal enters into this document only as agent of the Trustee. The Licensor can only act in accordance with the terms of the document under which the Licensor is appointed as the Trustee’s agent and is not liable under any circumstances to any party under this document. This limitation of the Licensor’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Licensor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### Limitation on liability

#### The Licensor is not obliged to do or refrain from doing anything under this document (including, without limitation, incur any liability) unless the Licensor’s liability is limited in the same manner as set out in clauses (b) to (e).

#### No authority

#### No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Licensor in a way which exposes the Licensor to any liability.

#### Representations

#### If, whether by the express provisions of this document or by implication of law, the Licensor makes or is taken to have made any representation or warranty then, except for the representations and warranties that can only be within the Licensor’s actual corporate knowledge, those representations and warranties are taken to have been made by the Trustee.

## **Limitation of Liability (Licensor: BNY Trust Company of Australia Limited \\ Trust: Meridian Investments)**

If the Principal is BNY Trust Company of Australia Limited **and** the Trust is Meridian Investments, this clause applies.

#### Definitions

In this **clause**:

**Trust** means Meridian Investment Trust No 1, Meridian Investment Trust No 2, Meridian Investment Trust No 3, Meridian Investment Trust No 4, Meridian Investment Trust No 5 and Meridian Investment Trust No 6 or any of them (as the case requires).

**Trust Document** means the documents governing the Trust.

**Trust Manager** means the manager of the Trust.

#### Principal’s capacity

The Principal enters into this document only in the Principal’s capacity as trustee of the Trust and in no other capacity.

#### Enforcement of liability against Trust assets only

##### Except to the extent expressly provided by clause (e):

##### a liability or obligation arising under or in connection with this document or the Trust is limited to and can be enforced against the Principal only to the extent to which it can be satisfied out of the assets of the Trust out of which the Principal is actually indemnified for that liability;

##### the Principal will have not personal liability to any other party to this document and the other parties waive their rights and release the Principal from any personal liability; and

##### this limitation of the Principal’s liability applies despite any other provision of this document and extends to all liabilities and obligations of, undertaken or incurred by, or devolving on, the Principal arising from, or in any way connected with, any conduct, omission, representation, warranty, agreement, transaction or other matter or thing under or related to this document.

##### The Principal is not obliged to do anything or refrain from doing anything under or in connection with this document (including incur a liability) unless the Principal’s liability is limited in the same manner as set out in this clause or otherwise in a manner satisfactory to the Principal (in the Principal’s absolute discretion).

#### Claims against Principal

The parties other than the Principal may not sue the Principal in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, or a liquidator, an administrator or any similar person to the Principal or prove in any liquidation, administration or arrangements of or affecting the Principal.

#### Breach

The provisions of this clause limiting the Principal’s liability does not apply to any liability or obligation of the Principal to the extent that it is not satisfied because under this document or any other Trust Document or by operation of law there is a reduction in the extent of the Principal’s indemnification out of the assets of the Trust, as a result of the Principal’s fraud, gross negligence or wilful misconduct. In no circumstances, however, will the Principal be personally liable for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought (except to the extent that there is a determination by a relevant court of fraud by the Principal).

#### Actions or omissions

The parties agree that:

##### the Trust Manager and other persons are responsible under this document and the other Trust Documents in relation to the Trust for performing a variety of obligations relating to the Trust;

##### no act or omission of the Principal constitutes fraud, gross negligence or wilful misconduct of the Principal to the extent to which the act or omission was caused or contributed to by any failure of the Trust Manager or any other person to fulfil the Principal’s obligations relating to the Trust or by any other act or omission of the Trust Manager or any other person or any of their respective agents or contractors; and

##### no attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Principal in a way which exposes the Principal to any personal liability and no act or omission of such a person will be considered fraud, gross negligence or wilful misconduct of the Principal.

#### No personal liability for force majeure

In no event will the Principal be personally liable for any failure or delay in the performance of the Principal’s obligations under this document or any Trust Document because of circumstances beyond the Principal’s control including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, labour dispute, any statute, ordinance, code or other law which restricts or prohibits the Principal from performing the Principal’s obligations under this document or any Trust Document, the inability to obtain or the failure of equipment or the interruption of communications or computer facilities to the extent, in each case, that these occurrences are beyond the control of the Principal and any other causes beyond the Principal’s control.

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Retail Sub Trust No. 2)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Retail Sub Trust No 2, this clause applies**.**

#### Mirvac Retail Sub SPV Pty Limited **(Trustee)** enters into this document only in its capacity as Trustee of Mirvac Retail Sub Trust No. 2 **(Trust)** constituted under the trust deed settling the Trust dated 22 May 2014 **(Trust Deed)** and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which the Lessee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Retail Sub Trust No.4)

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Retail Sub Trust No 4, this clause applies.

#### The Principal enters into this document only in its capacity as Trustee of the Trust constituted under the Trust Deed and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the responsible entity or trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as responsible entity or trustee of the Trust.

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as responsible entity or trustee of the Trust. Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

#### In this **clause**:

**Trust** means the Mirvac Retail Sub Trust No 4;

**Trustee** means the trustee of the Trust; and

**Trust Deed** means the trust deed of the Trust dated 15 October 2014.

## **Limitation of Liability (Licensor: Mirvac Retail Sub SPV Pty Limited \\ Trust: Mirvac Toombul Trust No. 1)**

If the Principal is Mirvac Retail Sub SPV Pty Limited **and** the Trust is Mirvac Toombul Trust No.1, this clause applies.

#### Mirvac Retail Sub SPV Pty Limited (**Trustee**) enters into this document only in its capacity as Trustee of Mirvac Toombul Trust No.1 (**Trust**) constituted under the trust deed dated 27 April 2016 (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.

#### This clause does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in clause (c) will make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## Limitation of Liability (Licensor: Mirvac Capital Pty Ltd\\ Trust: Mirvac Toombul Trust No.2)

If the Principal is Mirvac Capital Pty Ltd **and** the Trust is Mirvac Toombul Trust No. 2, this clause applies.

#### Mirvac Capital Pty Limited (**Trustee**) enters into this document only in its capacity as Trustee of Mirvac Toombul Trust No.2 (**Trust**) constituted under the trust deed dated 27 April 2016 (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in clause (c) will make the Trustee liable to any claim for an amount greater than the amount which the Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Mirvac Capital Pty Ltd\\ Trust: Mirvac Retail Sub Trust No. 3)**

If the Principal is Mirvac Capital Pty Ltd **and** the Trust is Mirvac Retail Sub Trust No. 3, this clause applies.

#### Mirvac Capital Pty Limited (Trustee) enters into this document only in its capacity as Trustee of the Mirvac Retail Sub Trust No. 3 (Trust) constituted under the trust deed settling the Trust dated 5 August 2014 (Trust Deed) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which the Lessee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause**.**

## **Limitation of Liability (Licensor: Mirvac Funds Limited \\ Trust: Mirvac Commercial Trust)**

If the Principal is Mirvac Funds Limited **and** the Trust is Mirvac Commercial Trust, this clause applies.

#### Mirvac Funds Limited ("Trustee") enters into this document only in its capacity as Trustee of the Mirvac Commercial Trust ("Trust") constituted under the trust deed settling the Trust dated 30 June 1975 as varied from time to time ("Deed") and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

#### No party to this document may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

#### The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Deed or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of Trustee’s failure to properly perform its duties as Trustee of the Trust.

#### Nothing in paragraph (c) shall make the Trustee liable to any claim for an amount greater than the amount which the Lessee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee’s right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Limitation of Liability (Licensor: Joynton North Pty Limited \\ Trust: Joynton North Property Trust)**

If the Principal is Joynton North Pty Limited **and** the Trust is Joynton North Property Trust, this clause applies.

#### The Lessee acknowledges that the Lessor enters into this document in its capacity only as trustee of the Trust and in no other capacity.

#### Any liability arising under or in connection with this document is limited to and can be enforced against the Lessor only to the extent to which it can be satisfied out of the property of the Trust from which the Lessor is actually indemnified for liability.

#### No party to this document may sue the Lessor in its capacity other than as trustee of the Trust nor seek the appointment of any party to the Lessor except in relation to the property of the Trust.

## **Limitation of Liability (Licensor: ISPT Pty Limited \\ Trust: ISPT Kawana Trust)**

If the Principal is ISPT Pty Limited **and** the Trust is ISPT Kawana Trust, this clause applies.

* + 1. ISPT owns its interest in the Property in its capacity as trustee of the ISPT Trust and ISPT’s Obligations are incurred by ISPT solely in its capacity as trustee of the ISPT Trust.
		2. Except in the case and to the extent of a reduction in the extent of ISPT’s indemnification out of the Assets of the ISPT Trust as a result of ISPT’s fraud, negligence, breach of trust or breach of duty:

##### ISPT is not liable to pay or satisfy an Obligation out of any Assets out of which ISPT is not entitled to be and is in fact not indemnified in respect of any liability incurred by it as trustee of the ISPT Trust;

##### a Party or any person claiming through or on behalf of them may enforce its rights against ISPT arising from or in connection with the non-performance of ISPT’s Obligations only to the extent of ISPT’s (as trustee) right of indemnity out of the Assets of the ISPT Trust;

##### if those Assets are insufficient, no Party or any person claiming through or on behalf of them may seek to recover any shortfall by bringing proceedings against ISPT personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to ISPT or prove in any liquidation, administration or arrangement of or affecting ISPT; and

##### each Party and any person claiming through or on behalf of them waives its rights and releases ISPT from all personal liability in respect of any Loss which it may suffer or incur as a result of any:

* + - * 1. breach of this agreement by ISPT; or
				2. non-performance by ISPT of ISPT’s Obligations,

which cannot be paid or satisfied out of the Assets out of which ISPT is entitled to be and is in fact indemnified in respect of the breach or non-performance by it as trustee of the ISPT Trust.

* + 1. ISPT in its personal capacity and in its capacity as trustee of the ISPT Trust warrants as at the date of this document:

##### ISPT has the power under the ISPT Trust to enter into and observe its Obligations under this document and it has entered into this document in its capacity as trustee of the ISPT Trust;

##### there are no limitations under the ISPT Trust on ISPT's right of indemnity against the Assets of the ISPT Trust other than for ISPT's fraud, negligence, breach of trust or breach of duty.

* + 1. No attorney, agent or other person appointed by ISPT for the purposes of this Deed has authority to act on behalf of ISPT in a way which exposes ISPT to any personal liability and no act or omission of such a person will be considered fraud, negligence, breach of trust or breach of duty by ISPT for the purposes of paragraph (b).
		2. This clause will not merge and will continue to apply after expiration or termination of this document.
		3. For the purposes of this **clause**:

##### **Assets** includes all assets, property and rights real or personal of any nature;

##### **ISPT** means ISPT Pty Ltd ACN 064 041 283;

##### **ISPT Trust** means the ISPT Kawana Trust;

##### **Loss** means all loss, cost, damage, liability, death, injury or other detriment, including legal costs, consequential loss, special loss and economic loss; and

##### **Obligation** means any obligation to be observed, performed, met, undertaken or incurred by ISPT under or in respect of this document or any deed, agreement or other instrument collateral with this document or given or entered into under this document.

## **Limitation of Liability (Licensor: The Trust Company (Australia) Pty Limited \\ Trust: TGA Miller Street Trust)**

If the Principal is The Trust Company (Australia) Limited **and** the Trust is TGA Miller Street Trust, this clause applies.

#### The Trustee enters into this document in its capacity as trustee of the Trust and in no other capacity.

#### The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.

#### A Trustee Liability may be enforced against the Trustee only to the extent to which:

##### the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and

##### there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).

#### Subject to paragraph (e), no person will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,

##### enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;

##### take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or

##### in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.

#### The restrictions in paragraphs (d) and (c) do not apply to any Trustee Liability to the extent to which there is, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.

#### Each other party to this document agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of paragraph (e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.

#### No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of paragraph (e).

#### This limitation of the Trustee’s Liability applies despite any other provisions of this document and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or its performance.

#### The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in paragraphs (a) to (h).

#### In this clause, "**Trust**" means the TGA Miller Street Trust.

### In this clause, "Trust Deed" means the trust deed for the TGA Miller Street Trust dated 28 June 2017.

### In this clause, "Trustee" means The Trust Company (Australia) Limited as trustee for the TGA Miller Street Trust.

### In this clause, "Trustee Liability" means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

## **Limitation of Liability (Licensor: One Managed Investment Funds Limited \\ Trust: CC Athena Trust)**

### If the Principal is One Managed Investment Funds Limited and the Trust is CC Athena Trust, this clause applies.

#### The parties acknowledge and agree that:

##### the Trustee enters into this document in the capacity as trustee of the Trust and in no other capacity;

##### except in the case of any liability of the Trustee under or in respect of this document resulting from the Trustee's fraud, negligence or breach of trust, the recourse for any person to the Trustee in respect of any obligations and liabilities of the Trustee under or in respect of this document is limited to the extent to which the Trustee is entitled to be and is in fact indemnified from the Assets of the Trust; and

##### if any party (other than the Trustee) does not recover the full amount of any money owing to it arising from non-performance by the Trustee of any of its obligations, or non-payment by the Trustee of any of its liabilities, under or in respect of this document by enforcing the rights referred to in paragraph (a)(2) that party may not (except in the case of fraud, negligence or breach of trust by the Trustee) seek to recover the shortfall by:

#### bringing proceedings against the Trustee in its personal capacity; or

#### applying to have the Trustee wound up.

#### In this **clause**:

### Assets means the property, rights and income of the Trust.

### Trust means the CC Athena Trust established under the trust deed of the Trust.

### Trustee means One Managed Investment Funds Limited ACN 117 400 987.

## **Mirvac Bay Street Trust - Trustee’s Limitation of Liability**

#### Mirvac Retail Sub SPV Pty Limited ACN 122 863 521as trustee for the Mirvac Bay Street Trust (in this clause 18, the “**Trustee**”) enters into this agreement only in its capacity as trustee of the Mirvac Bay St Trust (**Trust**) constituted under the trust deed of the Trust as amended from time to time (**Trust Deed**) and in no other capacity. A liability arising under or in connection with this agreement is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.

#### No party to this agreement or any person claiming through or on behalf of them will be entitled to:

##### claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;

##### seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

##### enforce or seek to enforce any judgment in respect of a liability under this agreement or otherwise against the Trustee in any capacity other than as trustee of the Trust.

#### This clause does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as trustee of the Trust.

#### Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which the Manager would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

#### The Trustee is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Mirvac Smail Street Trust - Trustee’s Limitation of Liability**

1. Mirvac Retail Sub SPV Pty Limited (Trustee) enters into this document only in its capacity as trustee of the Mirvac Smail Street Trust (Trust) constituted under the trust deed of the Trust as amended from time to time (Trust Deed) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
2. No party to this document or any person claiming through or on behalf of them will be entitled to:
3. claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
4. seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
5. enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as trustee of the Trust.
6. This clause does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as trustee of the Trust.
7. Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
8. The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraph (a) to (d) of this clause

## **Mirvac Kirrawee Trust No. 1 - Trustee’s Limitation of Liability**

* + 1. Mirvac Capital Pty Limited (**Trustee**) enters into this document only in its capacity as Trustee of Mirvac Kirrawee Trust No.1 (**Trust**) constituted under the trust deed dated 18 July 2006 (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
		2. No party to this document or any person claiming through or on behalf of them will be entitled to:
			1. claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;
			2. seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
			3. enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.
		3. This clause does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.
		4. Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
		5. The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## **Kirrawee South Centre Trust - Trustee’s Limitation of Liability**

* + 1. Kirrawee South Centre Pty Limited (**Trustee**) enters into this document only in its capacity as Trustee of Kirrawee South Centre Trust (**Trust**) constituted under the trust deed dated 31 August 2017 (**Trust** **Deed**) and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee’s liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
		2. No party to this document or any person claiming through or on behalf of them will be entitled to:
			1. claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the Trustee of the Trust;
			2. seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
			3. enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in any capacity other than as Trustee of the Trust.
		3. This clause does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee’s indemnification, or loss of the Trustee’s right of indemnification, out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.
		4. Nothing in paragraph (c) will make the Trustee liable to any claim for an amount greater than the amount which Licensee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
		5. The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.