

MALLESONS STEPHEN JAQUES

# Deed of Guarantee

Dated 29 November 2004

Multiplex Limited (ACN 008 687 063) and Multiplex Funds Management Limited (ACN 105 371 917) as responsible entity of the Multiplex Property Trust (ARSN 106 643 387) ("Guarantors")

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# Deed of Guarantee

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# Deed of Guarantee

## Details

Interpretation – definitions are at the end of the General Terms.

Parties	Guarantors
<b>Guarantors</b>	<b>Name</b>
	<b>Multiplex Funds Management Limited (ACN 105 371 917) as responsible entity of the Multiplex Property Trust</b>
	<b>ARSN</b>
	106 643 387
	<b>Address</b>
	1 Kent Street, Sydney NSW 2000
	<b>Telephone</b>
	(02) 9256 5000
	<b>Fax</b>
	(02) 9256 5001
	<b>Attention</b>
	Company secretary

	<b>Name</b>	<b>Multiplex Limited</b>
	<b>ACN</b>	008 687 063
	<b>Address</b>	1 Kent Street, Sydney NSW 2000
	<b>Telephone</b>	(02) 9256 5000
	<b>Fax</b>	(02) 9256 5001
	<b>Attention</b>	Company secretary

<b>Issuer</b>	<b>Name</b>	<b>Multiplex Funds Management Limited (ACN 105 371 917) in its capacity as responsible entity of Multiplex SITES Trust</b>
	<b>ARSN</b>	111 903 747
	<b>Address</b>	1 Kent Street, Sydney NSW 2000
	<b>Telephone</b>	(02) 9256 5000
	<b>Fax</b>	(02) 9256 5001
	<b>Attention</b>	Company secretary

**Recitals**

A The Issuer intends to issue Step-up, Income distributing, Trust-issued, Exchangeable Securities (“Multiplex SITES”) which are units in the Multiplex SITES Trust issued by the Issuer in accordance with the Multiplex SITES Terms and the Constitution.

**B** Investors will be invited to subscribe for Multiplex SITES at a Face Value of \$100.00 each.

**C** Each Guarantor has agreed to enter into this deed to provide a subordinated and several guarantee for the benefit of the Holders from time to time of the obligations of the Issuer to pay money which becomes due and payable in accordance with the Multiplex SITES Terms.

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**Governing law** New South Wales

**Date of guarantee and indemnity** See signing page

# Deed of Guarantee

## General terms

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### **1 Deed poll**

#### **1.1 Benefit**

This deed is executed as a deed poll by each Guarantor severally but not jointly and severally. Accordingly, each Holder has the benefit of, and is entitled to enforce, this deed even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.

This deed is granted for the benefit of each person who at any time is or becomes a Holder.

#### **1.2 Holder's independent rights**

Each Holder may enforce its rights under this deed independently from each other Holder.

#### **1.3 Holder bound**

Each Holder is bound by this deed. The Guarantee is given subject to and on the basis that each Holder is taken to have notice of, and be bound by, all the provisions of this deed and the Multiplex SITES Terms.

#### **1.4 Inspection of this deed**

The Guarantors must make available for inspection by the Holders, on reasonable notice during its normal business hours, a copy of this deed.

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### **2 Guarantee**

#### **2.1 Guarantee**

Subject to clause 2.3, the Guarantors each severally unconditionally and irrevocably guarantee the performance of the obligations of the Issuer to pay money which becomes due and payable on the Multiplex SITES under the Multiplex SITES Terms. If the Issuer does not pay a Holder's Debt on time and in accordance with the Multiplex SITES Terms then the Guarantors agree to pay the Holder's Debt to the Holder, but subject to the restrictions contained in clause 3 ("Guarantee Subordination"), on demand from the Holder.

#### **2.2 Nature of guarantee**

The guarantees in clause 2.1 ("Guarantee") are a continuing several obligation of each person constituting the Guarantors despite any intervening payment, settlement or other thing and are guarantees of the obligations of

the Issuer to pay money which becomes due and payable on the Multiplex SITES under the Multiplex SITES Terms by each person constituting the Guarantors.

### **2.3 Responsible entity of the Multiplex SITES Trust not part of Multiplex Group**

Notwithstanding anything to the contrary in this deed, if the responsible entity of the Multiplex SITES Trust ceases to be part of the Multiplex Group, the Guaratee will apply only in respect of the Redemption Amount and any Unpaid Distribution Amount payable on redemption or Exchange.

### **2.4 Principal obligation**

Each obligation of the Guarantors under this clause 2 constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this clause 2, any limitation on the liability of the Guarantors which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negatived.

### **2.5 Absolute liability**

- (a) The liability of the Guarantors under this clause 2 is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between the Issuer or the Guarantors and any one of the Holders, or amongst any two or more of the Issuer and the Guarantors.
- (b) This document binds each of the Guarantors once it has executed it, notwithstanding that:
  - (i) any person, whether named as a party or not, does not execute this deed;
  - (ii) the execution of this deed by any person is invalid, forged or irregular in any way; or
  - (iii) this deed is or becomes unenforceable, void or voidable against any other person.

### **2.6 Reinstatement of rights**

Under law relating to insolvency, a person may claim that a transaction (including a payment) in connection with the Guaratee or a Holder's Debt is void or voidable. If a claim is made and upheld, conceded or compromised, then each Holder is immediately entitled as against the Guarantors to the rights in respect of the Holder's Debt to which it was entitled immediately before the transaction.

## **2.7 Rights are protected**

Rights given to the Holders under the Guarantee, and the Guarantors' liabilities under them, are not affected by any act or omission of a Holder or any other person.

## **2.8 No merger**

The Guarantee do not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, or encumbrance, or other right or remedy to which a Holder is entitled; or
- (b) a judgment which a Holder obtains against the Guarantors, the Issuer or any other person in connection with a Holder's Debt.

## **2.9 Guarantor's rights are suspended**

As long as any Holder's Debt remains unpaid, the Guarantors may not:

- (a) reduce its liability under the Guarantee by claiming that they or the Issuer or any other person has a right of set-off or counterclaim against a Holder or any other party to this deed; or
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, or encumbrance given in connection with any Holder's Debt or any other amount payable under the Guarantee; or
- (c) claim an amount from the Issuer, or the other Guarantor of any Holder's Debt under a right of indemnity; or
- (d) claim an amount in the winding-up of the Issuer or of the other Guarantor.

## **2.10 Guarantor's right of proof limited**

The Guarantors agree not to exercise a right of proof after an event occurs relating to the insolvency of an Issuer or the other Guarantor.

## **2.11 Limited Recourse of Responsible Entity**

- (a) The Responsible Entity only enters into this deed in its capacity as responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this deed or the Multiplex SITES Terms is limited and can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of property of the Trust out of which the Responsible Entity is actually indemnified for the liability or by exercise of rights under this deed. This limitation of the Responsible Entity's liability applies despite any other provisions of this deed (except clause 2.11(c)) and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission,

agreement or transaction related to this deed or the Multiplex SITES Terms or the Trust.

- (b) Subject to clause 2.11(b), the parties may not sue the Responsible Entity in any capacity other than as responsible entity of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity (except in relation to property of the Trust or otherwise under this deed).
- (c) Clause 2.11(a) and (b) shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because, under this deed, or by operation of law, there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Trust, as a result of the Responsible Entity's fraud, negligence or breach of trust; or
- (d) It is acknowledged that the Responsible Entity is responsible under this deed for performing a variety of obligations relating to the Trust. No act or omission of the Responsible Entity (including any related failure to satisfy its obligations under this deed) will be considered to be fraud or negligence of the Responsible Entity for the purposes of clause 2.11(c) to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agent of the Responsible Entity and any person who has been delegated or appointed by the Responsible Entity).
- (e) It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Responsible Entity under or in connection with this deed will not be considered a breach of trust by the Responsible Entity unless the Responsible Entity has acted with negligence, or without good faith, in relation to the breach.

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### 3 Guarantee Subordination

#### 3.1 Ranking

- (a) The Guarantee constitutes direct and unsecured obligations of the Guarantors which are subordinated to the claims of all Senior Creditors of the Guarantors but rank at least equally with all other obligations of each Guarantor which are both unsecured and subordinated.
- (b) No amount is payable by a Guarantor in respect of the Guarantee if any amount is outstanding to a Senior Creditor except that a Guarantor may make payments under or in relation to a Guarantee if at the time the payment is made, no Winding-Up Event is subsisting in respect of that Guarantor.



- (c) Claims against the Guarantors under the Guarantee (including, without limitation, any indemnity contained in clause 2) shall in their liquidation or other winding up rank:
  - (i) ahead of all holders of Stapled Securities;
  - (ii) *pari passu* with other subordinated creditors of the Guarantors (other than any subordinated creditors whose claims are expressly agreed to rank after the claims of the Holders under or in relation to the Guarantee); and
  - (iii) after the claims of all Senior Creditors.
- (d) Holders waive, to the fullest extent permitted by law, any right to prove in any liquidation or following the occurrence of any other Winding-Up Event of either Guarantor as a creditor ranking for payment equally with any Senior Creditor. In particular, Holders cannot
  - (i) seek a Winding-Up or appoint a receiver;
  - (ii) require a payment from a Guarantor in connection with the Multiplex SITES prior to a Winding-up Event of the relevant Guarantor.
- (e) Nothing in this deed shall be construed as preventing the Guarantors from creating, issuing or allotting any Stapled Securities or any other form of equity securities, from creating, allotting or issuing, as the case may be, any debentures, notes or other forms of debt securities or incurring other liabilities.

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## 4 Notices

### 4.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender and marked for attention as set out or referred to in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### 4.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid post (airmail if appropriate) to the address set out or referred to in the Details ; or
- (c) sent by fax to the fax number set out or referred to in the Details.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

#### **4.3 When effective**

They take effect from the time they are received unless a later time is specified in them.

#### **4.4 Receipt - postal**

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

#### **4.5 Receipt - fax**

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

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### **5 General**

#### **5.1 Prompt performance**

If this deed specifies when the Guarantor agrees to perform an obligation, the Guarantor agrees to perform it by the time specified. The Guarantor agrees to perform all other obligations promptly.

#### **5.2 Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Guarantor in connection with this deed with the result that the Holder's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **5.3 Governing law**

This deed is governed by the law in force in the place specified in the Details. The Guarantors submit to the non-exclusive jurisdiction of the courts of that place.

#### **5.4 Serving documents**

Without preventing any other method of service, any document in a court action may be served on a party being delivered to or left at that party's address for service of notices under clause 5.2 ("Delivery").

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### **6 Interpretation**

#### **6.1 Definitions in the Multiplex SITES Terms**

A term which has a defined meaning in the Multiplex SITES Terms has the same meaning when used in this agreement unless it is expressly defined in

this deed, in which case the meaning in this deed prevails. The definitions in the Multiplex SITES Terms continue to apply to this agreement even if the Multiplex SITES Terms expire, terminate or otherwise come to an end.

## 6.2 Definitions

These meanings apply unless the contrary intention appears:

**Details** means the section of this guarantee and indemnity headed "Details".

**Guarantee** has the meaning given to it in clause 2.

**Holder's Debt** means in relation to each Multiplex SITES, all money which is then due and payable by the Issuer to the Holder in respect of that Multiplex SITES, whether present or future and whether in the form of interest or capital. It includes all income distributions to which the Holder has become entitled and all amounts due and payable to the Holder on the Realisation Date as determined in accordance with the Multiplex SITES Terms.

**Issuer** means the person or persons so described in the Details.

**Multiplex SITES Terms** means the terms and conditions of Multiplex SITES set out in an annexure to the PDS Prospectus.

**Responsible Entity** means Multiplex Funds Management Limited (ACN 105 371 917) in its capacity as responsible entity of the Trust or such other responsible entity of the Trust from time to time.

**Trust** means the Multiplex Property Trust (ARSN 106 643 387).

**Trust Deed** means the trust constitution dated 19 September 2003 declared by ADT Property Holdings Pty Limited (ACN 106 368 441) as amended by a supplemental deed on 8 October 2003 and further amended by supplemental deeds dated 8 October 2004.

**Trust Fund** means the property held on trust by the Responsible Entity under the Multiplex Property Trust Deed.

## 6.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed:

- (a) an agreement, representation or warranty in favour of two or more persons is for the benefit of them collectively and each of them individually;
- (b) anything (including an amount) is a reference to the whole and each part of it;
- (c) a document (including this deed) includes any variation or replacement of it;

- (d) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (f) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (g) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (h) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (j) the Corporations Act is a reference to the Corporations Act 2001 (Cwth).

#### **6.4 Number**

The singular includes the plural and vice versa.

#### **6.5 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this guarantee and indemnity.


**EXECUTED** as a deed poll

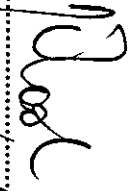
# Deed of Guarantee

## Signing page

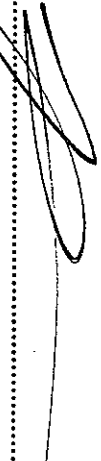
DATED: 29 November 2004


SIGNED, SEALED AND  
DELIVERED by **IAN O'TOOLE**  
and **Georgie KOSTAKS** .  
as attorneys for MULTIPLEX  
LIMITED under power of attorney  
dated 31 March 2004 in the presence  
of:

  
.....  
Signature of witness  
**KATHERINE HARVEY**  
.....  
LEGAL COUNSEL (FINANCE)  
Name of witness (block letters)

  
.....  
By executing this deed each  
attorney states that the attorney has  
received no notice of revocation of  
the power of attorney

SIGNED, SEALED AND  
DELIVERED by **IAN O'TOOLE**  
and **Georgie KOSTAKS** .  
as attorneys for MULTIPLEX  
FUNDS MANAGEMENT  
LIMITED as responsible entity of  
the Multiplex Property Trust under  
power of attorney dated 31 March  
2004 in the presence of:

  
.....  
Signature of witness  
**KATHERINE HARVEY**  
.....  
LEGAL COUNSEL (FINANCE)  
Name of witness (block letters)

  
.....  
By executing this deed each  
attorney states that the attorney has  
received no notice of revocation of  
the power of attorney