

Brookfield

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Multiplex SITES Trust
ARSN 111 903 747

ASX Announcement

11 April 2011

Multiplex SITES Trust Supplemental Deed

Please see attached Supplemental Deed regarding amendments to the Complaints provision of the constitution of Multiplex SITES Trust, to be consistent with the new ASIC Regulatory Guide 165 ("Licensing: Internal and external dispute resolution") and best practice. A Consolidated Constitution is also attached for ease of reference.

Multiplex SITES trade on the Australian Securities Exchange under the symbol "MXUPA".

-- ends --

Multiplex SITES Investor Enquiries:

Link Market Services
1800 68 54 55

Third Supplemental Deed - Multiplex SITES Trust

Dated

11 April 2011

Brookfield Funds Management Limited (ACN 105 371 917)

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Third Supplemental Deed - Multiplex SITES Trust

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Third Supplemental Deed - Multiplex SITES Trust Details

Party	Responsible Entity as described below.	
Responsible Entity	Name	Brookfield Funds Management Limited
	ACN	105 371 917
	Address	Level 22 135 King Street SYDNEY NSW 2000
	Fax	+61 2 9322 2001
	Telephone	+61 2 9322 2000
	Attention	Company Secretary
	Recitals	A
	B	Under clause 22.1 of the Constitution, the Responsible Entity may, by deed, amend the Constitution in accordance with section 601GC of the Corporations Act.
	C	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: <ul style="list-style-type: none"> (a) by special resolution of the members of the scheme; or (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	D	The Responsible Entity wishes to amend the Constitution as set out in this deed.
	E	The Responsible Entity reasonably considers that the amendments to the Constitution contained in this deed will not adversely affect the rights of members of the Trust.

Governing law New South Wales

Date of supplemental deed See signing page

Third Supplemental Deed - Multiplex SITES Trust

General terms

1 Amendments to the Constitution

The Constitution is amended by:

- (a) replacing each reference in the Constitution to “Multiplex Funds Management Limited” with “Brookfield Funds Management Limited”;
- (b) in clause 24:
 - (i) inserting the text that is underlined; and
 - (ii) deleting the text that is shown as deleted,in the copy of clause 24 set out as Annexure 1 of this deed; and
- (c) in clause 29.1, inserting the following definition:

“**Complaint** means an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.”

2 No redeclaration etc

The Responsible Entity declares that it is not, by this deed:

- (a) redeclaring the Trust or declaring any trust;
- (b) resettling the Trust; or
- (c) causing the transfer, vesting or accruing of property in any person.

3 Effective time

The amendments made by this deed take effect from the date a copy is lodged with the Australian Securities and Investments Commission pursuant to section 601GC(2) of the Corporations Act.

4 Governing law

This deed is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

5 Interpretation

5.1 Terms defined in Constitution

The terms used in this deed have the same meaning as in the Constitution unless the contrary intention appears.

5.2 Definitions

These meanings apply unless the contrary intention appears:

Constitution means the trust deed dated 12 November 2004, as amended, under which the Trust was constituted.

Corporations Act means the Corporations Act 2001 (Cwlth).

Details means the section of this deed entitled "Details".

Trust means the Multiplex SITES Trust (ARSN 111 903 747).

5.3 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

5.4 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed.

EXECUTED as a deed

Annexure 1 (clause 1)

24 Complaints

If a Member submits to the Manager a eComplaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) ~~must, if the complaint is in writing,~~ acknowledge in writing receipt of the eComplaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the eComplaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle eComplaints;
- (c) must act in good faith to deal with the eComplaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the eComplaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the eComplaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the eComplaint:
 - (i) the determination in relation to the eComplaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for eComplaint.

Third Supplemental Deed - Multiplex SITES Trust
Signing page

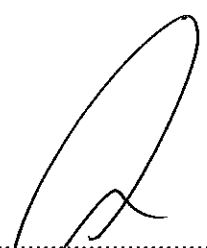
DATED: _____

EXECUTED by BROOKFIELD)
FUNDS MANAGEMENT)
LIMITED in accordance with section)
127(1) of the Corporations Act 2001)
(Cwlth) by authority of its directors:)


.....)
Signature of director)

Russell Todd Proutt)

.....)
Name of director (block letters))


.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable)
NEIL OLAFSSON)
COMPANY SECRETARY)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

Consolidated Constitution of Multiplex SITES Trust

Consolidated constitution prepared on 11 April 2011

Brookfield Funds Management Limited (“Manager”) (ACN 105 371 917)

This document is a consolidated copy of the constitution dated 12 November 2004 for Multiplex SITES Trust (ARSN 111 903 747) (“**Trust**”) (“**Original Constitution**”) as amended by the Supplemental Deed Poll dated 29 November 2004 the Supplemental Deed Poll dated 1 August 2005 and the Third Supplemental Deed dated 11 April 2011.

This is not a legally binding document. Reference should be made to the Original Constitution and each amending deed for the operative provisions. Section headings, indices and provisions in square brackets do not form part of the text.

Mallesons Stephen Jaques

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Constitution of Multiplex SITES Trust

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Constitution of Multiplex SITES Trust

Details

Interpretation – definitions are at the end of the General terms

Manager	Name	Brookfield Funds Management Limited
	ACN	105 371 917

Trust Name	Multiplex SITES Trust
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Governing law	New South Wales
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Date of deed	See Signing page
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General terms

1 Declaration of Trust

1.1 Declaration of Trust

This deed poll is declared by the Manager to be the constitution of the Multiplex SITES Trust.

1.2 Name

The Trust is called the Multiplex SITES Trust or by such other name as the Manager determines from time to time¹.

1.3 If Manager retires

If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

2 Assets held on trust

2.1 Assets held on trust

The Manager must hold the Assets on trust for Members².

2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

3 Units

3.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units, being Ordinary Units and SITES.

3.2 Units confer equal undivided interest

Subject to any special rights conferred upon the Units in a Class, each fully paid Unit confers an equal undivided interest. All Units in a Class rank equally.

¹ See Corporations Regulation 5C.1.02

² See section 601FC(2) of the Corporations Act

³ See section 601FC(1)(i)

3.3 Interest in Assets

A Unit confers an interest in the Assets as a whole, subject to the Liabilities. A Unit does not confer an interest in a particular Asset.

3.4 Classes of Units

The Manager may issue Units of different Classes including, without limitation, SITES and Ordinary Units.

3.5 Rights attaching to Units

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. SITES entitle the Members holding SITES to a preferential distribution of Income up to the Specified Rate and to a preferential return of capital on termination as set out in this constitution.

3.6 No fractions of Units

Fractions of a Unit may not be issued by the Manager.

3.7 Rounding of fractions

Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this constitution, to be rounded down to the nearest whole Unit.

3.8 Rounding

Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

3.9 Consolidation, division and conversion of Units

Subject to the Listing Rules and the Corporations Act, Units may be consolidated, divided or converted in a ratio determined by the Manager⁴.

3.10 Transfer of Units if Officially Quoted

If the Units of a Class are Officially Quoted, those Units may be transferred in any manner permitted by the Operating Rules of the relevant CS Facility. The Manager may require before registration of any such transfer that there be provided to the Manager any documents which the rules of the uncertificated system require or permit the Manager to require be provided to it to authorise registration. This clause 3.10 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a Proper Transfer.

⁴ If applicable, refer Listing Rules, Chapter 7 - reorganisations of capital.

3.11 Form of transfer

Subject to this constitution, a Unit may be transferred in any form approved by the Manager, accompanied by any evidence reasonably required by the Manager to show the right of the transferor to make the transfer and (if the Manager requires) be presented for Registration duly stamped.

3.12 Registration

A transfer is not effective until Registered.

3.13 Manager may request holding lock or refuse to register transfer

If Units are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units approved by and registered on the CS Facility's electronic subregister or Units registered on an issuer-sponsored subregister, as the case may be; or
- (b) refuse to register a transfer of other Units in the Trust.

3.14 Manager must request holding lock or refuse to register transfer

The Manager must:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units approved by and registered on the CS Facility's electronic subregister or Units registered on an issuer-sponsored subregister, as the case may be; or
 - (b) refuse to register any transfer of other Units in the Trust;
- if:
- (c) the Listing Rules require the Trust to do so;
 - (d) the transfer is in breach of the Listing Rules or Restriction Agreement.

3.15 Notice of holding locks and refusal to register transfer

If in the exercise of its rights under clause 3.13 and 3.14 the Manager requests application of a holding lock to prevent a transfer of Units or refuses to register a transfer of a security it must give written notice of the request to the holder of the Units, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Manager.

3.16 Manager must retain instruments of transfer

The Trust must retain every instrument of transfer which is registered for such period as the Manager determines.

3.17 Return of refused transfers

If the Manager refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

3.18 Transfers if Units not Officially Quoted

If Units of a Class are not Officially Quoted, the Manager may only refuse to record any transfer in the Register if, in the opinion of the Manager:

- (a) the transfer does not comply with clause 3.11;
- (b) the creditworthiness of the proposed transferee suggests that the transfer would be materially prejudicial to the interests of the balance of the other Members or the Manager;
- (c) the transferee is not an investor who has the financial ability and willingness to accept the risks and lack of liquidity inherent in an investment in the Trust; or
- (d) there are material legal, tax or regulatory reasons which mean the transfer would be prejudicial to the balance of the other Members or the Manager.

3.19 Restricted Securities

The Manager must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Manager under the Listing Rules in relation to the Restricted Securities. During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

3.20 Joint tenancy

Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

3.21 Death, legal disability of Member

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.

3.22 Income entitlement of Units

Except as otherwise expressly provided in this constitution, the Manager may in its discretion issue Units on terms that such Units:

- (a) participate fully for Income of the Trust in respect of the Distribution Period in which they are issued;
- (b) do not entitle the holder of such Units to receive a distribution of Income of the Trust in respect of the Distribution Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a distribution of Income of the Trust in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Income of the Trust to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

4 Application Price for Units⁵

4.1 Units issued on or before First Closing Date

- (a) The first 10 Ordinary Units to be issued on the initial settlement of the Trust⁶ in accordance with clause 20.1 will be issued at an Application Price of \$1.00 per Unit payable in full on or before the time of issue.
- (b) The Manager may issue additional Ordinary Units on or before the First Closing Date at an Application Price of \$1.00 per Unit payable in full on or before the time of issue.
- (c) The Application Price for SITES issued on or before the First Closing Date will be \$100.00 per SITES payable in full on or before the time of issue.

4.2 Ordinary Units issued after First Closing Date

- (a) The Application Price for an Ordinary Unit issued in respect of an application accepted after the First Closing Date where there are Ordinary Units on issue must be calculated as:

$$\frac{\text{Net Asset Value} - \text{SITES Value}}{\text{number of Ordinary Units in issue}}$$

where the SITES Value means the number of SITES then on issue multiplied by the sum of \$100 plus the Accrued Income Entitlement of the SITES at that time.

- (b) The Application Price for an Ordinary Unit issued in respect of an application accepted after the First Closing Date where there are no Ordinary Units on issue will be \$1.00 per Unit.

⁵ Required to be included by Section 601GA(1)(a)

⁶ See "Duration of the Trust"

4.3 Determination of variables in clause 4.2

Each of the variables in clause 4.2 must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money, or the property against which Units are to be issued or vested in the Manager,

whichever happens later.

5 Application procedure

5.1 Application form

An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

5.2 Payment

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application; or
- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Manager decides.

5.3 Manager may reject

The Manager may reject an application in whole or in part without giving any reason for the rejection⁷.

5.4 Minimum amounts

The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time⁸.

5.5 Issue Date

Units are taken to be issued when:

⁷ Refer Listing Rule 10.11 if the Trust is Listed - restriction on issue of Units to related parties.

⁸ If the Trust is Listed, see "Small holdings".

- (a) the Manager accepts the application; or
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

5.6 Uncleared funds

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

6 Redemption Price of Units⁹

6.1 Redemption Price

- (a) A SITES must only be redeemed at a Redemption Price of \$100.
- (b) An Ordinary Unit must only be redeemed at a Redemption Price calculated as follows:
 - (i) The Redemption Price for an Ordinary Unit which is redeemed prior to the Trust becoming Listed is \$1.00; and
 - (ii) The Redemption Price of an Ordinary Unit is, except as provided in (i) above, to be determined in accordance with the following formula:

$$\frac{\text{Net Asset Value - SITES Value}}{\text{number of Ordinary Units in issue}}$$

less the Accrued Income Entitlement attributable to the Ordinary Unit and where the SITES Value means the number of SITES then on issue multiplied by the sum of \$100 plus the Accrued Income Entitlement of the SITES at that time.

6.2 Determination of variables

Each of the variables in clause 6.1(b)(ii) must be determined:

- (a) while the Trust is Liquid, as at the next Valuation Time after the Manager receives the redemption request, or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

6.3 Rounding

The Redemption Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1 cent.

⁹ Required to be included by Section 601GA(4) if the Manager wishes to offer Members a right to withdraw from the scheme.

6.4 Distribution of Accrued Income Entitlement

Except in relation to a redemption to which clause 6.1(b)(i) applies, immediately prior to the redemption of the Unit, the Manager is to distribute to the Member and the Member becomes presently entitled to the Accrued Income Entitlement in respect of the Unit. The Accrued Income Entitlement is to be paid at the time of payment of the Redemption Price.

6.5 If Accrued Income Entitlement not an income distribution

If the right of a Member to receive at the time of redemption of Units the Accrued Income Entitlement in relation to the Units would in the opinion of the Manager not be fully recognised as being an income distribution for the purposes of any Tax, the Manager may determine that the right shall not apply and in that event the reference to the deduction for Accrued Income in clause 6.1 and the entire clause 6.4 will not operate.

6.6 Final Distribution Payment and Make-up Distribution Payment

In the circumstances described in paragraph 4 of the Appendix to this Constitution, a Final Distribution Payment and a Make-up Distribution Payment must be made to Members holding SITES on the redemption of their SITES.

7 Redemption procedures¹⁰

7.1 Request for redemption

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid, the Manager may (but, subject to clause 7.16, is not required to) give effect to that request at the time and in the manner set out in this clause 7.

7.2 When Trust is Liquid

Clauses 7.3 and 7.4, apply only while the Trust is Liquid.

7.3 Manager may redeem

The Manager may decide to satisfy a redemption request either in relation to all or some of the Units which are the subject of the request.

7.4 Time for payment of Redemption Price

If the Manager decides to satisfy a redemption request¹¹ in respect of a Unit it must pay from the Assets the Redemption Price calculated in

¹⁰ These procedures must be fair to all Members: Section 601GA(4)

¹¹ There is no legal requirement to offer a right of withdrawal. When setting up a new trust the Manager can choose whether or not to offer such a right. For a registered scheme, if a right is offered, it must be specified in the constitution.

accordance with this constitution. The payment must be made within 60 days of the Manager's decision.

7.5 Manager not obliged to pay Redemption Price out of own funds

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

7.6 When Trust is not Liquid¹²

While the Trust is not Liquid¹³, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager, which if the Trust is a Registered Scheme is in accordance with the provisions of the Corporations Act¹⁴ and, if Units of the relevant Class are Officially Quoted, is in accordance with the Listing Rules. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust. The Manager may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.

7.7 Manager not obliged to make a withdrawal offer

The Manager is not at any time obliged to make a withdrawal offer.

7.8 Redemption request received before withdrawal offer

If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

7.9 Clauses applicable whether or not the Trust is Liquid

Clauses 7.10 and 7.11 apply whether or not the Trust is Liquid.

7.10 Sums owed to Manager

The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

7.11 Transfer of Assets

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the

¹² Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹³ For definition of a liquid scheme see Section 601KA(1)

¹⁴ Refer sections 601KB to 601KE

costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

7.12 Manager's power of compulsory redemption

Subject to the Listing Rules the Manager may, with the consent of a Member, redeem the Units of any Member without the need for a redemption request.

7.13 Buy-back of Units¹⁵

While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase Units and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

7.14 Discretionary redemption

Subject to the Corporations Act and the Listing Rules, if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

7.15 Manager as agent

The Manager is irrevocably appointed as agent of each holder of Units to do or cause to be done anything that is necessary or desirable to effect redemption.

7.16 Manager must redeem

Subject to clause 7.17, where Members holding in aggregate 5% or more of all SITES on issue make requests for redemption with respect to all (but not part) of such Members' holdings of SITES while a Realisation Event is subsisting, and provided that those requests are made no later than 20 Business Days after the Manager has given notice of the occurrence of such Realisation Event to Members holding SITES, then the Manager must redeem all of the SITES within 45 Business Days of the date on which the Manager gave such notice.

7.17 Restriction on issue and redemption of units

Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

¹⁵ See Listing Rule 7.36

8 Valuation of Assets

8.1 Manager may value

The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.¹⁶

8.2 Determination of Net Asset Value

The Manager may determine Net Asset Value at any time, including more than once on each day.

8.3 Valuation methods and policies

The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be determined in accordance with applicable accounting standards or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an independent valuer approved by the Manager at the expense of the Trust.¹⁷ The valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

9 Income and distributions to Members

9.1 Manager must determine distributable income

The Manager must determine the distributable income of the Trust for each Financial Year.

9.2 Distributable income

Unless the Manager determines otherwise prior to the end of the Financial Year, the distributable income of the Trust will be the net income of the Trust calculated in accordance with the Tax Act reduced by any amount which would be included in the assessable income of the Trust in accordance with section 6AC or Division 207 of the Tax Act.

9.3 Trust accounts

Notwithstanding that the distributable income of the Trust may, in accordance with this clause 9, be calculated in the same manner as the taxable income, the accounts of the Trust may be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for

¹⁶ See section 601FC(j) for Manager's obligations concerning valuation

¹⁷ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

calculating the distributable income of the Trust pursuant to clauses 9.1 and 9.2. The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

9.4 Distribution account

The distributable income of the Trust in respect of a Distribution Period is to be transferred to a special account in the name of the Manager and designated a Distribution Account. Any amount in the Distribution Account does not form part of the Assets but must be held by the Manager, on trust for distribution among the Members entitled to that distributable income. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

9.5 Present entitlement

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the distributable income of the Trust for the Financial Year, in the proportion that the Income Distributions made (or allocated under the clause next following) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) to all persons who are or have been Members at any time during the Financial Year.

9.6 Income Distributions

Subject to the rights conferred on a Class of Units, the provisions of clause 3.22 and adjustment for any Accrued Income Entitlements, Final Distribution Payments or Make-up Distribution Payments paid immediately prior to the redemption of Units during the Distribution Period, an Income Distribution in respect of a Member in respect of a Distribution Period means an amount calculated by the Manager as follows:

- (a) while there are any Ordinary Units on issue, the Members holding SITES are entitled to receive in preference to the holders of Ordinary Units distributions up to a maximum calculated at the Specified Rate for the number of days in the Distribution Period for which the SITES have been in issue, such distributions to be allocated amongst the Members holding SITES based on the respective numbers of SITES of which they are the registered holders at the close of business on the Distribution Record Date, with such distributions to be paid from the Income for the Distribution Period credited to the Distribution Account.

Any excess Income for the Distribution Period credited to the Distribution Account after such allocation of Income to then holders of SITES shall be allocated amongst the Members holding Ordinary

Units based on the respective numbers of Ordinary Units of which they are the registered holders at the close of business on the Distribution Record Date;

- (b) while there are no Ordinary Units on issue, the Members holding SITES are entitled to all of the Income for the Distribution Period credited to the Distribution Account, to be allocated and distributed amongst the Members holding SITES based on the respective numbers of SITES of which they are the registered holders at the close of business on the Distribution Record Date.

9.7 Interim distributions

The Manager may determine to make interim distributions to Members holding SITES which are redeemed during a Distribution Period. If an amount of Income is paid to any holder of SITES on redemption pursuant to this clause 9.7 there is to be an equivalent reduction in the amount required to be transferred to the Distribution Account pursuant to clause 9.4 in respect of the relevant Distribution Period and the provisions of clause 9.6 will apply in relation to the balance of the Income of the Trust transferred to the Distribution Account.

9.8 Satisfaction of present entitlement

The present entitlement of a Member to distributable income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member holding SITES within two months after the Distribution Record Date or in accordance with clause 6.4. The Manager must have distributed all of the distributable income of the Trust for the Financial Year within two months after the end of the Financial Year.

9.9 Minimum distribution

The Manager may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the Manager as trustee of the Trust becoming assessable to pay tax under the Tax Act.

9.10 Other distributions

The Manager may at any time distribute any amount of capital to Members in addition to any other distributions to be made to Members in respect of a Distribution Period. The Manager must transfer capital to the Distribution Account for the purpose of enabling a distribution to Members. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Income. The distribution may be in cash or by way of additional Units.

9.11 Position on transfer of Units

Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

9.12 Deductions from distributable income

The Manager may deduct from any distributable income or other distribution payable to a Member any sums of money presently payable by the Member to the Manager.

10 Payments

10.1 Manner of payment to Members

Money payable by the Manager to a Member may be paid in any manner the Manager decides.

10.2 Unpresented cheques

Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed money.

10.3 Unsuccessful transfers

Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

10.4 Only whole cents to be paid

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

10.5 Payment to joint Members

A payment to any one of joint Members will discharge the Manager in respect of the payment.

10.6 Manager may deduct amounts

The Manager may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

11 Powers of the Manager

11.1 General powers

Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity, provided that (unless otherwise approved by a Special Resolution of Members) such powers are used in connection with the principal investment policy in clause 11.5 and for incidental purposes.

11.2 Contracting powers¹⁸

Without limiting the effect of clause 11.1, the Manager in its capacity as trustee of the Trust has power to:

- (a) incur all types of obligations and liabilities including guarantees¹⁹; and
- (b) enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Manager.

11.3 Borrowing powers

The Manager may not borrow or raise money whether or not on security over the Assets.

11.4 Investment powers

Without limiting the effect of clause 11.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.²⁰

11.5 Principal investment policy

The principal investment policy of the Manager in relation to the Trust is investment in the Multiplex Hybrid Investment Trust. The Manager may vary the principal investment policy, provided reasonable notice is given to Members in order that Members may, if they see fit, dispose of their Units prior to the variation taking effect.

11.6 Power of delegation²¹

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to

¹⁸ Required to be included by Section 601GA(3)

¹⁹ If the Trust is Listed, refer to Listing Rule 13.2. The total liabilities of a listed trust must not exceed 60% of its total tangible assets.

²⁰ Subject to Section 601FC(4)

²¹ See also Section 601FB

any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

11.7 Protection and assistance for those dealing with agents and delegates

The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

11.8 Agents and delegates may be associates

The agent or delegate may be an associate of the Manager.²²

11.9 Exercise of discretion

The Manager may in its absolute discretion decide how and when to exercise its powers.

11.10 Instructions from Members with respect to voting rights attached to Assets

The Manager may in its absolute discretion seek, and act on, instructions from Members on how the Manager should exercise voting rights attached to Assets.

11.11 Registration and Listing of the Trust

Without limiting the effect of clause 11.1, the Manager may in its capacity as trustee of the Trust apply for registration of the Trust as a Registered Scheme and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.

11.12 Timing of Listing of the Trust

The Manager may apply for the Trust to be Listed and SITES to be Officially Quoted at any time after the First Closing Date and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect a Listing.

12 Retirement of Manager

12.1 Voluntary retirement

The Manager may retire as the responsible entity of the Trust as permitted by law²³. If permitted by law or by any relief from the Corporations Act granted by the ASIC, the Manager may appoint its successor by deed.

²² Subject to Part 5C.7

²³ See Section 601FL. The change does not take effect until ASIC alters its records: Section 601FJ.

12.2 Compulsory retirement

The Manager must retire as the responsible entity of the Trust when required by law²⁴.

12.3 Release

When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.²⁵

12.4 Retirement benefit

The Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement, or
- (b) its retirement as Manager,

and is not required to account to Members for such remuneration or benefit.

13 Notices to Members

13.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

13.2 Cheques payable to Members

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member²⁶.

13.3 Joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

²⁴ See Section 601FM and 601FA.

²⁵ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

²⁶ See "Manager may rely" under "Rights and liabilities of Manager"

13.4 Receipt of communications

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax (except a fax containing a notice of meeting of Members) is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act²⁷, the Manager may determine²⁸ the time at which other forms of communication will be taken to be received.

14 Notices to the Manager

14.1 Form of notices

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

14.2 When notice effective

The notice is effective only at the time of receipt.

14.3 Signing of notices

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member²⁹ unless the Manager dispenses with this requirement.

15 Meetings of Members

15.1 Convening of meetings

The Manager may at any time convene a meeting of Members, and must do so if the Corporations Act requires.³⁰

15.2 Manager may determine

Subject to the specific provisions of this constitution relating to meetings of Members and to the Corporations Act³¹, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

15.3 Notice of meeting

Notice of a meeting of Members must be given in accordance with the Corporations Act.

²⁷ See Section 601FC(1)(d)

²⁸ See Section 252G(4)

²⁹ See "Manager may rely" under "Rights and liabilities of Manager"

³⁰ Refer Part 2G.4

³¹ Refer Part 2G.4

15.4 Quorum

The quorum for a meeting of Members is at least 2 Members present in person or by representative or proxy holding or representing the holders of at least 10% of the Units on issue unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

15.5 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Manager decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

15.6 Chairman

Subject to the Corporations Act³² the Manager may appoint a person to chair a meeting of Members.

15.7 Role of chairman

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this clause 15.7 is final.

15.8 Postponement or cancellation

The chairman has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit.

³² Refer Part 2G.4 and Section 601FC(1)

15.9 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

15.10 Contents of notice or postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

15.11 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

15.12 Business at postponed meeting

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

15.13 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager

notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

15.14 Proxies and voting

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

15.15 Proxies containing some of the required information

The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

15.16 Adjournment of meeting

The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

15.17 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

15.18 Demand for a poll

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

15.19 Declaration of poll

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

15.20 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

15.21 Poll

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

15.22 Equality of votes - no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

15.23 Entitlement to vote

Subject to any rights or restrictions for the time being attached to any Class or Classes of Units and to this constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of Units which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

15.24 Joint Members' vote

If a Unit is held jointly and more than one Member votes in respect of that Unit, only the vote of the Member whose name appears first in the Register counts.

15.25 Vote of Member of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise

any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

15.26 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

15.27 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Manager or by the chairman of the meeting before the vote is cast.

15.28 Meetings by technology

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

15.29 Other attendees

The Manager and the auditor of the Trust may attend and speak at any meeting, or invite any other person to attend and speak.

15.30 Meetings of Class holders

If any meeting of the holders of a Class is required to be held the foregoing provisions of this clause 15 will to the maximum extent permitted by the Corporations Act apply with any necessary amendments.

16 Rights and liabilities of Manager

16.1 Holding Units

The Manager and its associates may hold Units in the Trust in any capacity³³.

16.2 Other capabilities

Subject to the Corporations Act³⁴, nothing in this constitution restricts the Manager (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

16.3 Manager may rely

The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

³³ See Section 601FG, Section 253E and Part 5C.7

³⁴ Refer Part 5C.7

16.4 Reference to exercising power or discretion

The reference to exercising any power or discretion includes carrying out the Manager's functions and duties and identifying Members' rights and interests.

17 Limitation of liability and indemnity in favour of Manager

17.1 Manager not liable except to the extent Corporations Act imposes liability

The Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

17.2 Limitation on Manager's liability

Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.

17.3 Indemnity in favour of Manager

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³⁵.

17.4 Indemnity includes acts and omissions of an agent or delegate

To the extent permitted by the Corporations Act³⁶, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

17.5 Indemnity in addition to indemnity allowed by law

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

18 Liability of Members

18.1 Liability limited

Subject to clauses 18.2 and 18.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

³⁵ See Section 601GA(2)

³⁶ See Sections 601FB(2) and 601GA(2)

18.2 Recourse limited to the Assets

In the absence of separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

18.3 Tax and User Pays Fees

The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

18.4 Joint Members

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which clause 18.3 applies, and User Pays Fees.

18.5 Deficiency in the Assets

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

18.6 Restrictions on Members

Except as otherwise set out in this constitution, a Member:

- (a) must not interfere with any rights or powers of the Manager under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

19 Remuneration and expenses of the Manager

19.1 Management fee

Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee equal to the Manager's reasonable estimate of its costs, including all overheads and whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate, in providing its services as Manager for which it is not otherwise reimbursed pursuant to clause 19.3. This fee is to be payable from time to time upon demand by the Manager. The Manager may make a demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs. The entitlement to this fee commences from the date the Trust commences and continues to the date of final distribution in accordance with clause 21.3. The Manager must produce a statement within 1 month from the

end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

19.2 Waiver of fees

The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

19.3 Expenses

All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust³⁷ are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a registered scheme;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units and other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (i) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;

³⁷ Refer Section 601GA(2)(b)

- (j) financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (l) preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.3(n) must be repaid;
- (o) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums³⁸ in respect of, compliance committee members;
- (p) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (q) the preparation, implementation, amendment and audit of the compliance plan;
- (r) the appointment of any compliance officer to undertake compliance work for the Trust;
- (s) the preparation of reports including compliance reports;
- (t) the promotion of the Trust generally;
- (u) recording, responding to and dealing with any complaints from Members in connection with the Trust;
- (v) complying with any law, and any request or requirement of the ASIC; and
- (w) the admission of the Trust to any stock exchange, the Official Quotation of Units and compliance with the rules of such an exchange.

³⁸ See Section 601JG

19.4 GST

The User Pays Fees and other fees payable by an applicant or Member and the fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

20 Duration of the Trust

20.1 Initial settlement

The Trust commences when such person as is nominated by the Manager subscribes \$10 for 10 Ordinary Units in the Trust. Such person must be issued with 10 Ordinary Units in return for that payment.

20.2 Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Manager as the date of termination of the Trust in a notice given to Members, which notice the Manager must not give until at least 30 days after all SITES have been redeemed; and
- (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁹.

21 Procedure on termination

21.1 Realisation of Assets

Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

21.2 Audit of winding up

If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

³⁹ See Part 5C.9 on winding up

21.3 Distribution following termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members as follows:

- (a) First, to the Members holding SITES of an amount equal to their Accrued Income Entitlements plus the Redemption Price of their SITES plus, if they are entitled to this, a Final Distribution Payment and a Make-up Distribution Payment or if there is insufficient money available to make this payment in full the available amount is to be paid to them proportionately based on their respective numbers of SITES held as at termination; and
- (b) Secondly, the balance (if any) to the Members holding Ordinary Units proportionately based on their respective numbers of Ordinary Units held as at termination. If there are no Ordinary Units on issue such balance (if any) shall be distributed to the Members holding SITES proportionately based on their respective numbers of SITES held as at termination.

The Manager may distribute proceeds of realisation in instalments.

21.4 Constitution applies until date of final distribution

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 21.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

22 Amendments to this constitution

22.1 Manager may amend

If the Corporations Act allows⁴⁰, this constitution may be amended:

- (a) by Resolution⁴¹; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

22.2 Statutory requirements

If the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be

⁴⁰ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁴¹ The required majority for such a Resolution under section 601GC(1)(a) is 75%.

incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 22.1 does not apply to provisions deemed by this clause 22.2 to be incorporated in the constitution.

22.3 Class rights

The rights attaching to Units in a Class cannot be cancelled, varied or adversely affected without a Special Resolution of Members and a Special Resolution of Members of the Class affected.

23 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁴².

24 Complaints

If a Member submits to the Manager a Complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must acknowledge in writing receipt of the Complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle Complaints;
- (c) must act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the Complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the Complaint:

⁴² See section 601JF

- (i) the determination in relation to the Complaint;
- (ii) the remedies (if any) available to the Member; and
- (iii) information regarding any further avenue for Complaint.

25 Listing rules

25.1 While the Trust is admitted to the official list of the ASX

While the Trust is admitted to the official list of the ASX, the following clauses apply.

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
- (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

25.2 Change in the text of the Constitution due to clause 26.1

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 25.1 is not a modification of, or the repeal or replacement of the constitution for the purposes of subsection 601GC(1) and (2) of the Corporations Act. Clause 22.1 does not apply to changes in the text of the constitution because of the operation of clause 25.1.

26 Small Holdings

26.1 Application of this clause

This clause 26 applies while the Units are Officially Quoted.

26.2 Manager's right to sell Small Holdings

Subject to the provisions of this clause 26, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holding without request by the Small Holder or New Small Holder.

26.3 Divestment Notice

If the Manager determines that a Member is a Small Holder or New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or New Small Holder, the number of Units making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under the Divestment Notice;
- (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CS Facility initiate a holding adjustment to move those Units from that CS Facility to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with the those Operating Rules.

26.4 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

26.5 Manager can sell Relevant Units

At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:

- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
- (b) the Relevant Units of a Member who is a New Small Holder.

26.6 No obligation to sell

The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 26 but unless the Relevant Units are sold within 10 weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

26.7 Manager as Member's attorney

To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.

26.8 Conclusive evidence

A statement in writing by or on behalf of the Manager under this clause 26 is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 26 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

26.9 Registering the purchaser

The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 26.

26.10 Payment of proceeds

Subject to clause 26.11, where:

- (a) Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause; and
- (b) the certificate for the Relevant Units (unless the Manager is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Manager,

the Manager must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this clause is at the risk of the Member to whom it is sent.

26.11 Costs

In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 26, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In the case of a sale of the Relevant Units of a Small Holder, the Manager or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.

26.12 Remedy limited to damages

The remedy of a Member to whom this clause applies, in respect of the sale of the Relevant Units of that Member is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this clause 26 and its liability is limited to the value of the Relevant Units at the time of sale.

26.13 Dividends and voting suspended

Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 26, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a Small Holder. Any distributions that would, but for this clause 26.13, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

26.14 12 month limit

If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 26.15).

26.15 Effect of takeover bid

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may

give a Divestment Notice to a Member who is a Small Holder, despite clause 26.14 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.

27 Credit Rating

27.1 Trust may be rated

The Manager may arrange to have the Trust or a Class given a credit rating by a Credit Rating Agency.

27.2 Compliance by the Manager

Subject to clause 27.3, during such period as a credit rating is maintained in respect of the Trust or a Class, the Manager will comply with all undertakings given or made to the Credit Rating Agency from time to time in order to maintain any credit rating assigned to the Trust or Class. The obligation of the Manager to comply with such undertakings will at all times be subject to the following:

- (a) the undertakings given or made to the Credit Rating Agency must not be inconsistent with the powers of the Manager in relation to making investments of, or otherwise dealing with, the Assets as provided for in this Constitution;
- (b) compliance with those undertakings does not constitute a breach of the duties of the Manager contained in this Constitution or imposed by any relevant statute or regulation from time to time; and
- (c) compliance with those undertakings does not limit any protection, benefit or indemnity conferred on the Manager under this Constitution.

27.3 Notice to cease credit rating

The Manager must give not less than 90 days' notice to the Credit Rating Agency of its intention to cease to have the Trust or a Class assigned a credit rating, and during the notice period it must continue to comply with all written undertakings given or made to the Credit Rating Agency.

27.4 Release from undertakings

After the expiry of the notice period the Manager will be released from any undertakings given or made to the Credit Rating Agency.

27.5 Notice to Holders on change to or cessation of credit rating

The Manager must notify Members:

- (a) upon receipt of notice from the Credit Rating Agency of any change to or suspension or withdrawal of the credit rating for the Trust or a Class;

- (b) if the Manager notifies the Credit Rating Agency of its intention to cease to have the Trust or a Class assigned a credit rating, as soon as possible upon either event occurring.

27.6 Copies of undertakings

The Manager must keep copies of all written undertakings given or made to the Credit Rating Agency in relation to a credit rating assigned to the Trust or a Class available for inspection by Members during ordinary business hours at its registered office.

28 References to Corporations Act

Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a Registered Scheme.

29 Interpretation

29.1 Definitions

In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Accrued Income Entitlement: in relation to a Unit means the Manager's estimate of the appropriate share of the distributable income of the Trust accrued from the commencement of the Distribution Period to the date as at which the calculation is to be made.

Application Price: the application price for a Unit calculated in accordance with this constitution⁴³.

Approved Valuer: any person, independent of the Manager, who is duly qualified to value any Assets of the Trust.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the Distribution Account.

ASX: the Australian Stock Exchange Limited or the market operated by it as the context requires.

⁴³ See "Application Price for Units"

Business Day: a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

Class: A class of Units, being Ordinary Units or SITES.

Complaint: means an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Corporations Act: the Corporations Act 2001 (Cwlth).

Credit Rating Agency: any credit rating agency determined by the Manager and notified to Members from time to time.

CS Facility: a “prescribed CS facility” as defined in the Corporations Act.

CS Facility Operator: the operator of a CS Facility.

Details: means the section of this constitution headed “Details”.

Distribution Account: the special account so designated pursuant to clause 9.4.

Distribution Record Date: the last day of each calendar quarter.

Distribution Period: each quarterly period ending on (and including) 31 March, 30 June, 30 September and 31 December each year but:

- (a) for the first distribution period, the period from (and including) the First Closing Date to (and including) 31 March 2005; and
- (b) for the last distribution period, the period to the date of distribution on winding up of the Trust (or, in the case of SITES, to and including the date of their redemption).

Divestment Notice: a notice given under clause 26.3 to a Small Holder.

Final Distribution Payment: has the meaning given in the Appendix to this Constitution.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

This is not a determination of the Trust's financial year under section 323D of the Corporations Act.

First Closing Date: means the date of allotment of SITES pursuant to the First PDS pursuant to which SITES are offered to the public or such other date as is determined by the Manager.

First PDS: means the first product disclosure statement issued in relation to the Trust whether or not that product disclosure statement is combined with any other offer document.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Income: the distributable income of the Trust determined pursuant to clause 9.

Income Distribution: in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 9.6.

Issuer Sponsored Holding: a holding on an electronic sub-register maintained by the Trust in accordance with the Listing Rules.

Liabilities: all present liabilities of the Trust including any provision which the Manager decides should be taken into account in accordance with accounting standards in determining the liabilities of the Trust, but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Liquid: has the same meaning as in the Corporations Act⁴⁴ provided that the Trust will be regarded as Liquid if ASIC relief is obtained, allowing SITES to be redeemed as if the Trust was Liquid.

Listed:

- (a) in the case of the Trust, the Trust being listed on the ASX; and
- (b) in the case of the Units, the Units being Officially Quoted,
- (c) and **Listing** has a corresponding meaning.

Listing Date the date on which the Trust is first Listed.

Listing Rules: the listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

Make-up Distribution Payment: has the meaning given in the Appendix to this Constitution.

⁴⁴ Refer Part 5C.6

Manager:

- (a) until the Trust is registered with ASIC as a managed investment scheme, Brookfield Funds Management Limited or any replacement Manager appointed by it; and
- (b) from the time the Trust is registered with ASIC as a managed investment scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act.

Market Value in relation to a Unit is the closing price on SEATS of the Units.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Minimum Holding: means the amount from time to time determined by the Manager pursuant to clause 5.4.

Multiplex Hybrid Investment Trust: a new trust, so named, to be established prior to the First Closing Date.

Multiplex Limited: Multiplex Limited (ACN 008 687 063).

Multiplex Group: means Multiplex Limited and Multiplex Property Trust and any entity which those entities must consolidate in its accounts in accordance with Australian accounting standards.

Multiplex Property Trust: Multiplex Property Trust (ARSN 106 643 387).

Net Asset Value: the value of the Assets calculated in accordance with clause 8 less the Liabilities.

New Small Holder: a Member who is the holder or a joint holder of a New Small Holding.

New Small Holding: a holding of Units (arising upon a transfer of a parcel of Units) arising after the date on which clause 26 comes into effect, the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units as provided under the Listing Rules.

Officially Quoted: quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

Operating Rules: the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated Units as amended, varied or waived (whether in respect of the Trust or generally) from time to time.⁴⁵

Ordinary Unit: an undivided share in the beneficial interest in the Trust, having the rights, obligations and restrictions as set out in the constitution.

⁴⁵ See also the definition in CA 761A.

Proper Transfer: has the meaning given in Division 4 of Part 7.11 of the Corporations Regulations 2001.

Quarter: each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of Termination of this Trust or the date of retirement of the Manager or commences on the date of commencement of the Trust and **Quarterly** is to be interpreted accordingly.

Quarter End Date: each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Trust or retirement of the Manager is another date, that date.

Realisation Event means any of the following:

- (a) if either Multiplex Limited or Multiplex Property Trust breaches a restriction on paying a cash dividend or cash distribution or redeeming, reducing, cancelling or buying-back its shares or units respectively pursuant to the SITES Terms of Issue; or
- (b) a Winding Up Event occurs with respect to any of Multiplex Property Trust, Multiplex Limited and, for so long as the respective Manager or the trustee of the Multiplex Hybrid Investment Trust is a company in the Multiplex Group, the Trust and the Multiplex Hybrid Investment Trust.

Redemption Price: the redemption price of a Unit calculated in accordance with this constitution⁴⁶.

redemption request: a written request to the Manager to redeem Units.

Register: the register of Members kept by the Manager under the Corporations Act.

Registered: recorded in the Register.

Registered Scheme: has the same meaning as in the Corporations Act.

Registration: recording in the Register.

Relevant Period: the period specified in a Divestment Notice under clauses 26.3 and 26.4.

Relevant Units: the Units specified in a Divestment Notice.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or

⁴⁶ See "Redemption Price of Units"

- (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁴⁷.

Restriction Agreement: means a restriction agreement within the meaning and for the purposes of the Listing Rules.

Restricted Securities: has the same meaning as in the Listing Rules.

SEATS: has the same meaning as in the ASX Market Rules.

SITES: step-up, income distributing, trust issued, exchangeable securities being a Unit with an undivided and preferential share in the beneficial interest in the Trust, having the rights, obligations and restrictions set out in this constitution and in the SITES Terms of Issue.

SITES Terms of Issue: the terms of issue of SITES as these SITES terms of issue may from time to time be varied in accordance with their terms.

Small Holder: a Member who is a holder or a joint holder of a Small Holding.

Small Holding: a holding of Units created by the transfer of a parcel of Units the aggregate Market Value of which at the relevant date was less than a marketable parcel of Units as provided under the Listing Rules.

Special Resolution: a Resolution where the required majority is 75%.

Specified Rate: in relation to SITES means the maximum rate per annum at which distributions may be paid to the Members holding SITES being the Distribution Rate including any step up made by the Manager as set out in the Appendix to this Constitution.

Tax: means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

Tax Act: means the Income Tax Assessment Act 1936 (*1936 Act*), the Income Tax Assessment Act 1997 (*1997 Act*) or both the 1936 Act and the 1997 Act, as appropriate.

Trading Day: those Business Days on which buying and selling occurs through the Stock Exchange Automated Trading System.

⁴⁷ Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

Trust: the trust constituted under or governed by this constitution.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution, being an Ordinary Unit and/or SITES as the context requires.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Manager considers should be borne by that Member.

Valuation Time: a time at which the Manager calculates Net Asset Value.

Winding-Up Event means any of the following events occurring with respect to an entity:

- (a) the entity resolves in general meeting, or by special resolution in lieu of a general meeting, to be wound up or to appoint a liquidator;
- (b) an administrator, liquidator or provisional liquidator is appointed to the entity;
- (c) a court makes an order to wind up, or for the appointment of a liquidator to, the entity (other than to effect a solvent reconstruction or amalgamation);
- (d) a receiver, receiver and manager, administrative receiver, statutory manager or similar officer is appointed to all or substantially all of the assets and undertaking of the entity;
- (e) the entity enter into a compromise, arrangement or composition with, or assignment for the benefit of, its creditors or a class of them; or
- (f) any entity which is a trust, the trust terminates or the responsible entity of the trust resolves to terminate the trust or a court makes an order to wind up the trust (other than to effect a solvent construction).

29.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;

- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (i) a reference to dollars or \$ is a reference to the currency of Australia.

29.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

29.4 Constitution legally binding⁴⁸

This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

29.5 Severance

If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

29.6 Governing law

This constitution is governed by the law in force in the place specified in the Details.

29.7 Other obligations excluded

Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

⁴⁸ Refer Section 601GB

Appendix – SITES Distributions

1. Distribution

Each Member holding SITES will have a present entitlement on the last day of each Distribution Period, in priority to any entitlement of the Members holding Ordinary Units, to receive payments of distributions of all income of the Trust in an amount up to the Priority Distribution Payment for the Distribution Period.

In respect of each Distribution Period, the Priority Distribution Payment will be an amount, accruing on a daily basis, calculated according to the following formula:

$$\text{Priority Distribution Payment} = \frac{\text{Distribution Rate} \times \text{Face Value} \times N}{365}$$

Where

Distribution Rate means:

- (a) for the first Distribution Period the higher of:
 - (i) the Bank Bill Rate determined on the last day of the book build process (as described in the First PDS), plus the Margin; and
 - (ii) the Bank Bill Rate determined on the First Closing Date plus the Margin; and
- (b) for each subsequent Distribution Period, the **Bank Bill Rate** plus the **Margin**.

Margin (expressed as a percentage), means:

- (a) for each Distribution Period from (and including) the First Closing Date to (but excluding) the Step-up Date the Book Build Margin; and
- (b) for each Distribution Period from (and including) the Step-up Date, the Book Build Margin plus 2.00% per annum.

N means in respect of:

- (a) the first Distribution Period, the number of days from (and including) the First Closing Date to (and including) the first Record Date;
- (b) each subsequent Distribution Period, the number of days from (but excluding) the preceding Record Date to (and including) the next following Record Date; and
- (c) the last Distribution Period, the number of days from (but excluding) the preceding Record Date to (and including) the date of redemption.

2. Distributions only from Trust income derived and not cumulative

- (a) If, and to the extent, in any Distribution Period, the income of the Trust to which a Member holding SITES is entitled is less than the Priority Distribution Payment for that Distribution Period, the entitlement of the Member holding SITES is limited to that income.
- (b) It is expected that the only income to which the Trust will become entitled will be the income received by the Manager as a unitholder of the Multiplex Hybrid Investment Trust. Accordingly if, and to the extent, the Multiplex Hybrid Investment Trust does not distribute sufficient income to the Trust to enable the Trust to derive sufficient income to pay all or any part of a Priority Distribution Payment, the shortfall need not be paid.
- (c) No further entitlement accrues on any part of a Priority Distribution Payment which is not payable because the Trust does not have sufficient income to distribute that amount.

3. Notice to Members

If the Manager determines that it will not have sufficient income to make a distribution equal to the full amount of the Priority Distribution Payment on a Distribution Payment Date, the Manager must give Members holding SITES written notice of that position at least five Business Days prior to that Distribution Payment Date.

4. Final Distribution Payment and Make-up Distribution Payment

- (a) At the time of redemption of any SITES, Members holding such SITES shall be paid, as a distribution, the amount of the Priority Distribution Payment calculated for the final Distribution Period ending on the date of redemption, less any amount which has been paid or is payable as an Accrued Income Entitlement pursuant to clause 6.4 of the Constitution (a “**Final Distribution Payment**”).
- (b) If, at the time of redemption of any SITES, Members holding SITES have not become entitled to any of the four previous Priority Distribution Payments, the Manager must, at the time it pays the Redemption Price in respect of those SITES, distribute to the Members holding such SITES an additional amount (a “**Make-up Distribution Payment**”) being the aggregate amount of so much (if any) of the Priority Distribution Payments for the preceding four Distribution Periods to which Members holding SITES have not become entitled; provided that, in any event, the Make-Up Distribution Payment shall not be more than the total amount of the Priority Distribution Payments calculated for each of those four Distribution Periods less the Final Distribution Payment.

Final Distribution Payments and Make-up Distribution Payments may be made either as income distributions, if applicable, or as a capital payment.

Bank Bill Rate means for a Distribution Period the rate (expressed as a percentage per annum) equal to the average mid-rate for bills for a term of three months as

displayed on the Reuters BBSW page (or any page which replaces that page) on the first Business Day of that Distribution Period (or in the case of the first Distribution Period, as determined in accordance with paragraph 1(a) above), or if there is a manifest error in the calculation of that average rate or that average rate is not displayed by 10.30am (Sydney time) on that date, the rate calculated by the Manager having regard to the extent possible to:

- (a) the rates otherwise bid and offered for bills of three months or for funds of that tenor displayed on Reuters BBSW page (or any page which replaces that page) at that time on that date; and
- (b) if bid and offer rates for bills of three months are not otherwise available, the rates otherwise bid and offered for funds of that tenor at or around that time on that date.

Book Build Margin means the initial margin determined in accordance with the book build process as described in the First PDS.

Distribution Payment Date means 11 Business Days after the last day of each Distribution Period.

Face Value means \$100.

Record Date means, in relation to a Distribution Payment Date or any other date on which payments are to be made to Members holding SITES, 5.00 pm (Sydney time) on the date which is the last day of the Distribution Period to which that Distribution Payment Date relates (or such other period determined by the directors of the Issuer before such Distribution Payment Date or other date).

Step-up Date means the first day of the first Distribution Period commencing after the fifth anniversary of the First Closing Date.

Terms used in this Appendix which are defined in the main body of the constitution bear the same meaning in this Appendix.