



## **COESLAW INVESTMENT UNIT TRUST**

### **FIXED UNIT TRUST**

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## Coleslaw Investment Unit Trust

### Date

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### Parties

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1. YAKHAD CHAVERIM INVESTMENTS PTY LTD - ACN 666 783 259 OF 268 CANTERBURY RD, SURREY HILLS, VIC 3127 (**'the Trustee'**); and
2. CHAU MINH LAM OF 16 JOEL PL, MOOROOLBARK, VIC 3138, YYZ SUPER PTY LTD - ACN 664 763 571 OF 268 CANTERBURY RD, SURREY HILLS, VIC 3127 AS TRUSTEE FOR YYZ SUPER FUND , SNWT FAMILY SUPER PTY LTD - ACN 664 768 218 OF 27 BELMONT RD W, CROYDON SOUTH, VIC 3136 AS TRUSTEE FOR SNWT FAMILY SUPERANNUATION FUND AND ERNEST THAI OF 13 BLACKBURN ST, SURREY HILLS, VIC 3127 AS TRUSTEE FOR TSALACH 818 SUPER FUND (**'the Unitholders'**).

### Background

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- A. The Unitholders and the Trustee wish to establish a trust in accordance with this Deed.
- B. To give effect to this wish the Unitholders have paid or will pay the Initial Sum to the Trustee on or before the Commencement Date.
- C. The Trustee has consented to act as trustee and hold the Trust Fund on trust subject to the terms set out in this Deed.
- D. For the avoidance of doubt, this Trust is intended to be administered as a fixed trust under the Tax Act with fixed entitlements for the Unitholders and in accordance with relevant ATO Practical Compliance Guidelines, determinations or rulings.

### The parties agree

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#### 1. Definitions

In this Deed unless the contrary intention appears:

1.1 **'Accounting Period'** means:

- 1.1.1 the period which commences on the Commencement Date and ends on the following 30 June;
- 1.1.2 each whole year ending on 30 June during the period between the Commencement Date and the Vesting Date; and
- 1.1.3 the period which commences on 1 July immediately prior to the Vesting Date and ends on the Vesting Date;

1.2 **'Applicable Law'** means the law of the Governing State;

- 1.3 **'ATO'** means the Australian Taxation Office and includes the Commissioner of Taxation;
- 1.4 **'Business Day'** means any day that banks in the Governing State are generally open for business but not a Saturday, Sunday, public holiday or bank holiday;
- 1.5 **'Capital Gain'** means those capital gains of the Trust Fund liable to be treated as assessable income for the purposes of the Tax Act but which are not income according to the accounting policy adopted under **clause 11**;
- 1.6 **'Commencement Date'** means the date of this Deed;
- 1.7 **'Encumbrance'** means any interest or power reserved in or over any interest in any asset (including any retention of title or security for the performance of any obligation) having a material adverse effect on the interest encumbered;
- 1.8 **'Externally Administered Body Corporate'** has the same meaning given to the term "Chapter 5 body corporate" in the *Corporations Act 2001* (Cth);
- 1.9 **'General Meeting'** means a general meeting of Unitholders;
- 1.10 **'Governing State'** means Victoria;
- 1.11 **'Initial Sum'** means the sum of \$100 being the initial Unit capital (that is, the total of the amount paid up on the initial Units in the Trust outlined in **Annexure A**);
- 1.12 **'Market Value'** means the market value calculated in accordance with the method for calculating Valuation Price under **clause 7.2.5**;
- 1.13 **'Net Income'** means the Trust Income for each Accounting Period;
- 1.14 **'Office'** means:
  - 1.14.1 the registered office of the Trustee, if the Trustee is a company; and
  - 1.14.2 the address of the Trustee, if the Trustee is a person, or if more than one, the address of any one of the Trustees;
- 1.15 **'Pay'** means pay or apply or Set Aside, and may be effected by:
  - 1.15.1 crediting such amount to the Unitholder in the books of the Trust Fund;
  - 1.15.2 drawing a cheque or other negotiable instrument in respect of the amount payable to the Unitholder; or
  - 1.15.3 payment in cash to the Unitholder;
- 1.16 **'Register'** means the Register of Unitholders referred to in **clause 6**;
- 1.17 **'Representative'** means a person authorised by a Unitholder to act as its representative under this Deed;
- 1.18 **'Set Aside'** in relation to a Unitholder includes crediting such Unitholder in the books of the Trust;

- 1.19 **'Taxable Income'** means an amount equal to the net income of the Trust Fund calculated in accordance with subsection 95(1) of the Tax Act plus any amount reduced under step 3 of the method statement in subsection 102-5(1) of the Tax Act, however excluding any amount which is included only by reason of Division 207 of the Tax Act;
- 1.20 **'Tax Act'** means the *Income Tax Assessment Acts* of 1936 and 1997 of the Commonwealth of Australia as applicable;
- 1.21 **'Trust'** means Coleslaw Investment Unit Trust created by this Deed;
- 1.22 **'Trustee'** means the trustee of the Trust from time to time;
- 1.23 **'Trust Fund'** means:
- 1.23.1 the Initial Sum;
  - 1.23.2 any money and other property having the nature of either capital or income acquired or accepted by the Trustee as an addition to the Trust Fund; and
  - 1.23.3 the investments and property for the time being representing those sums or any part of them including accretions to the Trust's assets;
- 1.24 **'Trust Income'** means, in respect of any Accounting Period, an amount equal to the Taxable Income of the Trust Fund for that Accounting Period. As an alternative, the Trustee may determine the **'Trust Income'** with respect to any Accounting Period to be either:
- 1.24.1 the sum of the net income of the Trust Fund determined for that Accounting Period according to the accounting policy adopted under **clause 11**; or
  - 1.24.2 any other basis as the Trustee determines.
- 1.25 **'Unit'** means a unit created under the provisions of this Deed and for the time being held by the Unitholders or the Trustee; and
- 1.26 **'Unitholder'** means the person for the time being registered under the provisions of this Deed as the holder of Units including, without limitation, the trustees of trusts or settlements and other legal entities for the time being holding Units including joint holders registered in the records of the Trust.
- 1.27 **'Unitholder's Approval'** means the approval of Unitholders given by resolution passed pursuant to **clause 8** or by execution of a deed referred to in **clause 8.8.5**;
- 1.28 **'Unitholder's Proportion'** means, with respect to the Units, a fraction:
- 1.28.1 where the numerator will be the number of issued Units held by that Unitholder; and
  - 1.28.2 where the denominator will be the total number of Units on issue;
- 1.29 **'Vesting Date'** means the earlier of:
- 1.29.1 the day prior to the day on which the rule against perpetuities would be offended; or



1.29.2 subject to Unitholder's Approval, any day the Trustee determines.

## 2. Interpretation

In this Deed unless the contrary intention appears:

- 2.1 the **singular** includes the plural and vice versa;
- 2.2 a **gender** includes all other genders;
- 2.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 2.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 2.5 a reference to a **clause** or **annexure** is to a clause of or annexure to this Deed;
- 2.6 a reference to a **request** or **notice** means a request or notice in writing;
- 2.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 2.8 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;
- 2.9 a reference to any **legislation** or legislative **provision** includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- 2.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 2.11 mentioning anything after **include, includes** or **including** does not limit what else might be included;
- 2.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 2.13 the **headings** are for convenience only and do not affect the interpretation of this Deed;
- 2.14 a reference to a **month** means a calendar month;
- 2.15 a reference to **dollars** means Australian dollars;
- 2.16 a reference to **time** means time in the Governing State;
- 2.17 the **Background** is part of this Deed.

## 3. The Trust

- 3.1 The trust created by this Deed will be known as **Coleslaw Investment Unit Trust**.

- 3.2 The Trustee declares that the Trustee holds the Trust Fund on trust subject to the terms of this Deed from the Commencement Date.

4. **The Trust Fund**

4.1 **Entitlements of Unitholders**

- 4.1.1 The Trustee will hold the Trust Fund on trust for the Unitholders in proportion to each Unitholder's Proportion.
- 4.1.2 All Units will be of equal value.
- 4.1.3 Subject to the Trustee's right of indemnity for the proper payment of expenses with respect to the administration of the Trust, each Unit will:-
- (a) entitle the Unitholder, equally with the Unitholders owning all other Units, to the Trust Fund as an entirety; and
  - (b) not entitle the Unitholders to any particular security or investment comprised in the Trust Fund or any part of the Trust Fund.
- 4.1.4 Except as otherwise provided in this Deed, no Unitholder will accept a transfer of any property comprised in the Trust Fund.
- 4.1.5 The Trust Fund will initially be divided into the total number of Units set out in **Annexure A**.
- 4.1.6 Every Unitholder (treating joint Unitholders as one) named in **Annexure A** must on or before the Commencement Date pay to the Trustee the Issue Price per Unit multiplied by the number of Units Held as specified in the columns adjacent to their names in that Annexure and the Trustee will issue to each of them a certificate in accordance with **clause 6.2**.
- 4.1.7 For the avoidance of doubt, all Units must be issued and redeemed at Market Value.
- 4.1.8 As soon as practicable after the Vesting Date, the Trustee will (subject as hereinafter provided) sell, call in and convert into money or cause to be sold, called in and converted into money, the Trust Fund, and:-
- (a) within the period of six months (or later if approved by the Unitholders but not on a date that would offend the rule against perpetuities) from the giving of the notices to Unitholders provided for in the next sub-clause, divide the proceeds of such sale and conversion (less all proper costs and disbursements, commissions, brokerage fees and other outgoings and all proper provision for liabilities) in accordance with each Unitholder's Proportions at the Vesting Date;
  - (b) the Trustee will as soon as practicable after the termination of the Trust give to each Unitholder not less than one month's notice of the impending distribution;

- (c) the Trustee may in its discretion at the request of any Unitholder transfer to such Unitholder any assets of the Trust Fund in specie in satisfaction of the entitlement of the Unitholder on the termination of this Trust. The value of such in specie distribution must not exceed the proportionate entitlement of the Unitholder as provided in **clause 4.1.8(a)**;
- (d) the Trustee may postpone the sale and conversion of any part of the Trust Fund for such time as the Trustee thinks desirable in the interests of the Unitholders and will not be responsible for any loss attributable to such postponement;
- (e) the Trustee may if it thinks fit transfer any of the Trust Fund to the trustee of any other trust (whether or not the Trustee hereof is in any way associated with such other trust) on receiving market value of such investment at the date of transfer;
- (f) the Trustee may retain in its hands or under its control for as long as it thinks fit such part of the Trust Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust Fund or any of the investments provided that any such part of the Trust Fund or any investments so retained, to the extent that they are ultimately found not to be required, shall remain subject to the Trust for conversion and distribution contained in **clause 4.1.8(a)**.

4.1.9 Despite anything else express or implied in this Deed, the Unitholders have a vested and indefeasible interest in a share of the income and capital of the Trust in accordance with their Unitholder's Proportion. Any other provision of this Deed that is inconsistent with that vested and indefeasible interest does not apply, to the extent of the inconsistency. The Trustee must not exercise any power that is capable of defeating a Unitholder's interest in the income or capital of the Trust and any attempt to exercise such power is void.

## 4.2 Issues of Units

4.2.1 The Trustee may issue additional Units, from time to time in such manner as the Trustee thinks fit subject to the Units being issued at Market Value.

4.2.2 Unless all Unitholders waive the operation of this **clause 4.2.2**:

- (a) each issue of new Units will be offered in the first instance to existing Unitholders on a pro rata basis or as near to each Unitholder's Proportion and without involving fractions;
- (b) offers of new Units will be made by notice in writing (**'the Offer'**) to the Unitholders stating:
  - (i) the number of Units offered;
  - (ii) a time within which the Offer, if not accepted, will be deemed to be declined; and

- (iii) after the expiration of that time, or upon the earlier communication to the Trustee from each person to whom the Offer is made that they decline to accept the Units offered, the Trustee may dispose of those Units in such manner as it thinks most beneficial to the Trust Fund.
- (c) If the new Units cannot, because of their number, be offered precisely pro rata, the Trustee must offer as many of them as possible pro rata and may offer the rest to one or more Unitholders as the Trustee thinks fit.
- (d) The Trustee may require any new Unitholder to sign an application for Units being substantially in the form set out in **Annexure B**.

#### 4.3 **Redemption of Units**

The Trustee must at the written request of a Unitholder (**'the Departing Unitholder'**) redeem and cancel all or any Units held by the Departing Unitholder, on such terms and conditions (including an allowance for transaction costs if a realisation is necessary to permit the redemption) and in consideration for such payment or transfer of property as the Departing Unitholder and the Trustee agree, except that the Units must be redeemed at Market Value.

### 5. **The Income of the Trust**

#### 5.1 **Income**

- 5.1.1 The Trustee will collect, receive and obtain all dividends, interest, rents and other income from the investments of the Trust Fund.
- 5.1.2 The Trustee will pay out of the gross income of the Trust Fund all costs and disbursements and commissions, fees, taxes, management charges and other proper outgoings in respect of the investments and administration of the Trust Fund.
- 5.1.3 Until the Vesting Date the Trustee must before the expiration of each Accounting Period determine to Pay or accumulate all or any part of the Net Income for each Accounting Period.

#### 5.2 **Determination Rules**

The following rules will apply to any determination pursuant to **clause 5.1.3 ('Determination')**:

- 5.2.1 Any Determination to accumulate Net Income will be conditional upon the law governing this Deed giving effect to such determination at the end of the Accounting Period.
- 5.2.2 If the Trustee determines to Pay any or all of the Net Income, the Trustee must Pay that income to the Unitholders in accordance with their respective Unitholder's Proportions at the time of such Determination.

- 5.2.3 If at the end of the Accounting Period the amounts in respect of which Determinations have been made pursuant to **clause 5.1.3** exceed the Net Income of the Trust for that Accounting Period the amount of the excess will:
- (a) firstly, be deducted from the amounts which the Trustee has determined to accumulate; and
  - (b) secondly, be deemed to have been applied against the capital of the Trust Fund the value of which will be adjusted accordingly.
- 5.2.4 The Trustee may maintain two or more separate income accounts and may:
- (a) credit each income receipt to one or more of those income accounts as the Trustee thinks fit;
  - (b) debit each item of expenditure of a revenue nature to one or more of the income accounts as the Trustee thinks fit;
  - (c) credit any Capital Gain, dividend income which is derived by the Trust Fund and which is franked within the meaning of Part 3-6 of the Tax Act or any income which entitles the recipient to a credit of foreign tax pursuant to Division 18 of Part III of the Tax Act to one or more of the income accounts; and
  - (d) in the Trustee's discretion, Pay that income to any Unitholder to the exclusion of the other Unitholders subject to the overriding obligation of the Trustee to Pay the Net Income of the Trust Fund to or for the benefit of the Unitholders in proportion to each Unitholder's Proportions.
- 5.2.5 The Trustee's discretion to make a Determination is absolute and the Trustee will not be bound to give any reason for its Determination.

### 5.3 **Accumulation**

- 5.3.1 The amount of any accumulation pursuant to **clause 5.1.3** will be dealt with as an accretion to the Trust Fund, however, the Trustee may at any time Pay the whole or any part of any accumulation as if it was Net Income.
- 5.3.2 The Trustee will hold so much of the Net Income for each Accounting Period which is not the subject of a Determination under this Deed on trust for the Unitholders in accordance with each Unitholder's Proportions on the last day of such Accounting Period.
- 5.3.3 So much of the Net Income which is not the subject of a Determination and referred to in **clause 5.3.2** and any amount held by the Trustee on trust for any Unitholder pursuant to this **clause 5** will not form part of the Trust Fund, however, upon becoming subject to such trust the amount held by the Trustee for the Unitholder will, from that time, be held on trust by the Trustee as a separate trust fund for such person absolutely. The Trustee will, pending payment of that amount to such person, have the power to invest, apply or deal with such fund or any resulting income from that amount or any part of that amount in the manner authorised by this Deed.

- 5.3.4 All Net Income payable to Unitholders under this **clause 5** will be payable to them separately and income received by the Trustee will not be received or construed as received by or on behalf of the Unitholders jointly or otherwise.

## 6. Register of Unitholders

- 6.1 The Trustee must keep the Register which will contain the following particulars:
- 6.1.1 the name(s) and address of each Unitholder;
  - 6.1.2 the number of Units that each Unitholder holds and the distinctive numbers or letters of the certificates held by each Unitholder (if applicable);
  - 6.1.3 the date on which the name and number of Units held by that Unitholder was entered in the Register; and
  - 6.1.4 any other details considered necessary by the Trustee.
- 6.2 The Trustee must issue to each Unitholder a certificate for the Units held by that Unitholder. The certificate will:
- 6.2.1 be substantially in the same form set out in **Annexure C**;
  - 6.2.2 state the name, address and number of Units held by the Unitholder;
  - 6.2.3 bear a distinctive number or letter;
  - 6.2.4 be prima facie evidence that the person named in the certificate is entitled to the number of Units specified in that certificate; and
  - 6.2.5 be signed by the Trustee or, if the Trustee is a company, by any director of that company.
- 6.3 Subject to **clause 6.6**, no notice of any trust (express, implied or constructive) will be entered in the Register.
- 6.4 Subject to **clauses 9.2 and 9.4**, the person entered in the Register as the Unitholder will be the only person recognised by the Trustee as entitled to:
- 6.4.1 the Units registered in its name; or
  - 6.4.2 exercise the rights and privileges of the Unitholder pursuant to this Deed.
- 6.5 Except where this Deed otherwise provides:-
- 6.5.1 no person will be recognised by the Trustee as holding any Unit upon trust; and
  - 6.5.2 the Trustee will not be bound by or be compelled to recognise (even when having notice of such interest);
    - (a) any equitable, contingent, future or partial interest in any Unit; or
    - (b) any other rights in respect of any Unit,

except an absolute right in the Unitholder to the Units that Unitholder is entitled.

6.6 Units held by a trustee in respect of another trust may be marked in the Register in such a way as to identify them as being held in respect of that trust, however:

6.6.1 no liability will be created by any such marking; and

6.6.2 the Trustee will not be affected by notice of any trust recorded in this manner.

6.7 Each person who becomes registered as a Unitholder:

6.7.1 will be deemed to have agreed to become a party to this Deed; and

6.7.2 will be entitled to the benefit of and will be bound by the terms and conditions of this Deed.

## 7. Unit Transfer

### 7.1 Transfer

7.1.1 Units may be transferred by a written transfer instrument in a form approved by the Trustee and must be executed by or on behalf of the transferor and the transferee.

7.1.2 A transferor of Units remains the holder of the Units the subject of a transfer until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units. A transfer of Units does not pass the right to any unpaid distributions on the Units made prior to registration of the transfer and entry of the transferee's name in the Register.

7.1.3 A Unitholder may only transfer a Unit or Units if the requirements prescribed by **clause 7.2** and **7.3** are first satisfied unless:

(a) the Unitholders other than the Unitholder proposing to transfer the Units unanimously waive or modify those requirements; or

(b) the Unitholder is the only registered holder of Units.

### 7.2 Transfer of Units

#### 7.2.1 Transfer Notice

(a) A Unitholder proposing to transfer a Unit or Units (**'the Transferring Unitholder'**) must give notice in writing to that effect (**'the Transfer Notice'**) to the Trustee.

(b) The Trustee will then be the Unitholder's agent for the sale of any Units proposed to be transferred (**'the Sale Units'**).

(c) A Transfer Notice must specify the number of Sale Units however if a Transfer Notice is given in respect of more than one Unit it will be deemed to be a separate notice in respect of each Unit.

- (d) A Transfer Notice may specify the price at which the Transferring Unitholder wishes to sell each Unit (**'the Offer Price'**).
- (e) A Transfer Notice must be unconditional.
- (f) If the Transfer Notice does not specify an Offer Price, the Transfer Notice will constitute an offer to sell the Sale Units at Market Value (**'the Valuation Price'**).
- (g) If a Transfer Notice does specify an Offer Price, it will constitute an offer to sell at the Offer Price.
- (h) A Transfer Notice is not revocable except with the written approval of the Trustee.

#### 7.2.2 **Offers**

- (a) Upon receipt of a Transfer Notice, the Trustee must within 14 days give notice in writing (**'the Offer Notice'**) to all Unitholders.
- (b) The Offer Notice must:
  - (i) state that the Trustee has received the Transfer Notice;
  - (ii) specify the number of Sale Units; and
  - (iii) specify the Offer Price (if any).
- (c) The Offer Notice must offer the Sale Units to existing Unitholders (other than the Transferring Unitholder) in proportion to each Unitholder's Proportions (without involving fractions) as if the Units held by the Transferring Unitholder had not been issued.
- (d) The Offer Notice must specify that if a Unitholder does not accept in whole or in part the offer made to that Unitholder within one month from the date it is received (as determined in accordance with **clause 22.2**) the offer will be deemed to be rejected either in whole or in part (as appropriate).

#### 7.2.3 **Acceptance**

- (a) Any Unitholder may at any time within one month from the date of receiving the Offer Notice (as determined in accordance with **clause 22.2**) give written notice (**'the Acceptance Notice'**) to the Trustee that that Unitholder (**'the Transferee Unitholder'**) wishes to purchase one or more of the Units offered to that Unitholder.
- (b) If the Transferring Unitholder has nominated an Offer Price, the Acceptance Notice will constitute an acceptance of the offer to purchase the number of Units specified in the Acceptance Notice at the Offer Price.
- (c) If the Transfer Notice does not specify an Offer Price, the Acceptance Notice will constitute an acceptance of the offer to purchase the



- number of Units specified in the Acceptance Notice at the Valuation Price.
- (d) A Transferee Unitholder may not insist on the Valuation Price being fixed before an Acceptance Notice has to be given.
  - (e) The giving of an Acceptance Notice binds the proposing Transferee Unitholder to buy according to this **clause 7.2** notwithstanding that the Valuation Price has yet to be fixed.
  - (f) If a Transferee Unitholder wishes to buy more than the number of Units offered to him or her in the Offer Notice, that Transferee Unitholder's Acceptance Notice:
    - (i) must specify the number of additional Units the Transferee Unitholder wishes to purchase; and
    - (ii) will constitute an offer to buy the additional Units at the same price as the Transferee Unitholder has agreed to buy the Units offered to him or her in the Offer Notice.
  - (g) Any Sale Units not accepted by a Unitholder will be used to satisfy offers for additional Units from any Transferee Unitholders. If there are an insufficient number of those Sale Units to satisfy in full all the offers for additional Units, those unaccepted Sale Units will be distributed amongst the Transferee Unitholders who made the offers pro rata as close as may be to the number of Units held by each of them. No Transferee Unitholder can be required to take more Sale Units than are specified in that Transferee Unitholder's Acceptance Notice.
  - (h) If after the distribution of additional Units under **clause 7.2.3(g)** there remain some unsold Sale Units and any Transferee Unitholder who by his or her Acceptance Notice has offered to buy more of the Sale Units than have so far been allocated to him or her, the procedure prescribed in **clause 7.2.3(g)** will be repeated until either all the Sale Units have been taken up or there are no Transferee Unitholders remaining who have not been allocated the number of additional Units specified in his or her Acceptance Notice. For the purposes of the repeated procedure any Units to which the Transferee Unitholder has become entitled by reason of the giving of the Acceptance Notice are to be ignored in making the pro rata calculation required by **clause 7.2.3(g)**.
  - (i) After the one month period referred to in **clause 7.2.3(a)** has expired, the Trustee must give written notice to the Transferring Unitholder and each Transferee Unitholder of the name of each Transferee Unitholder and of the number of the Units specified in the Transfer Notice to which each Transferee Unitholder is entitled and the price of each Unit to be transferred. The Transferring Unitholder must then transfer the Sale Units to the relevant Transferee Unitholders at the relevant price and the Transferee Unitholder must pay the relevant amount to the Transferring Unitholder.

#### 7.2.4 Excess Units

- (a) If any Sale Unit is not accepted for sale in accordance with **clause 7.2.3 ('the Excess Sale Unit')** the Trustee may attempt, but is not bound, to find a willing and suitable purchaser for that Excess Sale Unit at a price not less than the price offered to the existing Unitholders.
- (b) If the Trustee finds such a purchaser within one month from the last day on which an Acceptance Notice can validly be served on the Trustee by a Unitholder, the Trustee must give an appropriate notice to the Transferring Unitholder. The Transferring Unitholder must then, on receiving the price for the Excess Sale Unit, transfer the Excess Sale Unit to that purchaser.
- (c) If the Trustee does not find such a person within that one month period, the Transferring Unitholder may at any time within the following three months sell that Excess Sale Unit to any person at a price not less than the price offered to the existing Unitholders.

#### 7.2.5 Valuation Price

As soon as necessary, the Trustee must determine the fair market value of the Sale Units, (**'the Valuation Price'**) in accordance with the following provisions:

- (a) the value of each Unit based on a market value of the assets and liabilities of the Trust determined by a licensed valuer; or
- (b) the value of each Unit based on a market value of the assets and liabilities of the Trust not determined by a licensed valuer, but which nevertheless is accurate; or
- (c) the value of each Unit determined by reference to a value of the Trust which is sufficiently close to its net asset value.

7.2.6 The Trustee may appoint a chartered accountant or a certified practising accountant and/or a suitably qualified valuer to advise the Trustee in determining the Valuation Price,

### 7.3 Transfer Procedure

- 7.3.1 For a transfer of Units the written transfer instrument must be left at the Office together with any fee the Trustee requires. The transfer must be accompanied by a certificate for the Units dealt with in the transfer, unless the Trustee waives production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate and of evidence required by the Trustee of the transferor's right to transfer the Units.
- 7.3.2 Subject to the powers vested in the Trustee by this Deed, the Trustee must register all registrable transfer forms and issue certificates to the transferee without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

**7.4 Right to Refuse Registration**

- 7.4.1 The Trustee may, in its absolute discretion and without assigning any reason, decline to register any transfer of Units unless it is a transfer made under either **clause 7.2, 7.5 or 7.6** or in accordance with **clause 7.1.3(a) or 7.1.3(b)**.
- 7.4.2 The Trustee may, in its absolute discretion, refuse to register any transfer of Units on which stamp duty is payable but unpaid.

**7.5 Title on Death**

- 7.5.1 The legal personal representative of a deceased Unitholder who was the sole holder of Units is the only person whom the Trustee will recognise as having any title to the deceased Unitholder's Units.
- 7.5.2 If a deceased Unitholder was a joint holder of Units, the other joint holder is the only person whom the Trustee will recognise as having any title to the deceased Unitholder's Units.
- 7.5.3 The estate of the deceased Unitholder will not be released from any liability to the Trust in respect of the Units.
- 7.5.4 The Trustee may register a transfer to a transferee who dies before the transfer is registered.

**7.6 Transmission**

- 7.6.1 Subject to the *Bankruptcy Act* 1966 (Cth), any person who becomes entitled to a Unit in consequence of the death or bankruptcy of a Unitholder may, subject to producing to the Trustee evidence of their entitlement, acceptable to the Trustee:-
- (a) elect to be registered as the holder of the Unit by giving to the Trustee a written notice of election signed by them; or
  - (b) transfer the Unit to a person nominated by them by signing a transfer of units and giving it to the Trustee, subject to **clause 7.6.2**.
- 7.6.2 The limitations, restrictions and provisions of this Deed relating to the right to transfer, and the registration of transfer of Units, apply to a transfer referred to in **clause 7.6.1(b)** as if the death or bankruptcy of the Unitholder had not occurred and a Transfer Notice had been given under **clause 7.2.1** without specifying a price. However, the Trustee, acting reasonably must extend any relevant time periods that would otherwise apply. For clarity and without limitation, if the Trustee is satisfied that probate of the Will of a deceased Unitholder is intended to be sought, an extension of time by the Trustee would be a reasonable exercise of this power.
- 7.6.3 Where two or more persons are jointly entitled to any Unit in consequence of the death of the registered holder, they will be considered to be joint holders of the Unit.

- 7.6.4 Any person who is registered under this **clause 7.6** must indemnify the Trustee against all liabilities, costs, losses and expenses incurred by the Trustee as a result of registering the person.
- 7.6.5 For clarity and without limitation, evidence under **clause 7.6.1** may include evidence of a Will of the Unitholder, whether or not probate of that Will has been granted.

## 8. General Meetings

### 8.1 Convening General Meeting

- 8.1.1 The Trustee may, at any time, convene a General Meeting.
- 8.1.2 The Trustee will convene a General Meeting upon a request from Unitholder(s) with a total of at least five percent of the votes that may be cast at a General Meeting.

### 8.2 Notice

- 8.2.1 Subject to **clause 8.2.2**, at least 21 days written notice of any General Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Unitholders.
- 8.2.2 A Trustee may call a General Meeting on less than 21 days' notice if Unitholders with at least 95 percent of the votes that may be cast at the General Meeting agree in writing beforehand.
- 8.2.3 A notice convening a General Meeting:
  - (a) must specify the place, date and time of the meeting;
  - (b) must, if the meeting is to be held in two or more places, specify the technology that will be used;
  - (c) must state the general nature of the business to be transacted at the meeting; and
  - (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 8.2.4 The Trustee may postpone or cancel any General Meeting whenever it thinks fit (other than a meeting convened as the result of a request under **clause 8.1.2**) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Trust.
- 8.2.5 The failure or accidental omission to send a notice of a General Meeting to any Unitholder or the non-receipt of a notice by any Unitholder does not invalidate the proceedings at or any resolution passed at the General Meeting.

### 8.3 Quorum

- 8.3.1 No business may be transacted at a General Meeting unless a quorum of Unitholders is present when the meeting proceeds to business.
- 8.3.2 A quorum of Unitholders is two Unitholders. If there is only one Unitholder, then **clause 8.8.4** will apply.
- 8.3.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
- (a) if the meeting was convened on the requisition of Unitholders, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place five Business Days after the meeting, or to another day, time and place determined by the Trustee; and
    - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, it is automatically dissolved.

### 8.4 Chair

- 8.4.1 The Trustee will nominate the chair for every General Meeting.
- 8.4.2 If there is no chair or the chair is not present within 15 minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting the Unitholders present may elect a chair.
- 8.4.3 If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

### 8.5 Adjournment

- 8.5.1 The chair may, with the consent of any General Meeting at which a quorum is present, and will, if directed by a meeting at which a quorum is present, adjourn the meeting.
- 8.5.2 An adjourned General Meeting may take place at a different venue to the initial meeting.
- 8.5.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- 8.5.4 If a General Meeting has been adjourned for more than 21 days, at least three Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Unitholders.

## 8.6 Resolutions

- 8.6.1 Subject to **clause 8.6.2**, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 8.6.2 Subject to **clause 8.8.5**,
- (a) resolutions for the purposes of **clause 18** (Change of Trustee) are carried if Unitholders, having a total of at least seventy-five percent (75%) of the Units on issue, are in favour of the resolution; and
  - (b) resolutions for the purposes of **clause 21** (Variation of Trust Deed) are carried if all Unitholders unanimously are in favour of the resolution.
- 8.6.3 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
- (a) the chair;
  - (b) at least three Unitholders entitled to vote on the resolution; or
  - (c) Unitholders with a total of at least five percent of the votes that may be cast on the resolution on a poll.
- 8.6.4 If there is an equality of votes, the chair does not have a casting vote.
- 8.6.5 Unless a poll is demanded, a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 8.6.6 A poll may be demanded:
- (a) before a vote is taken;
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.

## 8.7 Taking a Poll

- 8.7.1 A poll will be taken in the manner that the chair directs.
- 8.7.2 The result of the poll will be the resolution of the Unitholders at the General Meeting at which the poll was demanded.
- 8.7.3 The chair may determine any dispute about the admission or rejection of a vote.
- 8.7.4 The chair's determination, if made in good faith, will be final and conclusive.
- 8.7.5 A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.

- 8.7.6 After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 8.8 Written Resolutions

- 8.8.1 If all the Unitholders have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by a Unitholder.
- 8.8.2 For the purposes of **clause 8.8.1**, separate copies of a document may be used for signing by one or more Unitholders if the wording of the resolution and statement is the same in each copy.
- 8.8.3 Any document referred to in this **clause 8.8** may be in the form of a facsimile transmission or other electronic medium.
- 8.8.4 If the Trust has one Unitholder, a resolution may be passed by that Unitholder recording it and signing the record.
- 8.8.5 In addition to any other method of providing their approval, all Unitholders may sign a deed referred to in **clause 18** or **21** approving a change of Trustee or a variation to the Trust Deed

## 9. Unitholders' Voting Rights

### 9.1 Votes of Unitholders

- 9.1.1 Subject to this Deed and particularly **clause 9.1.2**:
- (a) every Unitholder has the right to vote;
  - (b) on a show of hands every Unitholder has one vote; and
  - (c) on a poll, every Unitholder has one vote for each Unit held by them.
- 9.1.2 A Unitholder is not entitled to vote or to be counted in a quorum unless all sums payable by the Unitholder in respect of that Unitholder's Units have been paid. This provision does not apply if a quorum cannot be met without including those Unitholders.
- 9.1.3 If two or more joint Unitholders purport to vote, the vote of the joint Unitholder whose name appears first in the Register will be accepted, to the exclusion of the other joint Unitholder or Unitholders.
- 9.1.4 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- 9.1.5 An objection under **clause 9.1.4** must be referred to the chair of the General Meeting, whose determination is final.
- 9.1.6 A vote which the chair does not disallow pursuant to an objection is valid for all purposes.

- 9.1.7 A person who has satisfied the Trustee not less than 24 hours before a General Meeting that it is entitled to a Unit by operation of law may exercise all rights attached to the Unit in relation to a General Meeting, as if the person were the registered holder of the Unit.
- 9.1.8 If a Unitholder appoints one proxy, that proxy may vote on a show of hands but if a Unitholder appoints two proxies, neither proxy may vote on a show of hands.
- 9.1.9 A proxy may demand or join in demanding a poll.

**9.2 Appointment of proxy**

- 9.2.1 A Unitholder who is a natural person may appoint one or two proxies by a written appointment signed by the Unitholder or the Unitholder's attorney.
- 9.2.2 A Unitholder that is a corporation may appoint one or two proxies by a written appointment under the Unitholder's common seal or signed by a director, secretary or attorney of the Unitholder.
- 9.2.3 A proxy need not be a Unitholder.
- 9.2.4 If a Unitholder appoints two proxies and the appointment does not specify the proportion of the Unitholder's voting rights to be exercised by each proxy, then subject to **clause 9.1.8**, each proxy may exercise one-half of the votes.
- 9.2.5 An appointment of a proxy must be in a form approved by the Trustee and the following form will be taken to be approved by the Trustee unless the Trustee notifies the Unitholders of a different form:

**#A Unit Trust**

I/We ..... of  
..... being a Unitholder  
/Unitholders of the abovenamed Trust, hereby appoint  
..... of  
..... or failing him,  
....., as my/our proxy to vote for me/us on  
my/our behalf at the general meeting of the Trust, to be held on the .....  
day of ....., and at any adjournment general meeting.

Signed this      day of

This form is to be used \*in favour of / \*against the resolution.

\* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

- 9.2.6 An instrument appointing a proxy will be valid if it contains the following information:
  - (a) the Unitholder's name and address;



- (b) the Trust's name;
- (c) the proxy's name and address or the office held by the proxy; and
- (d) the meetings at which the proxy may be used or if it is a standing appointment.

9.2.7 An appointment of a proxy may be a standing appointment.

9.2.8 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.

9.2.9 A proxy's appointment is valid at an adjourned meeting.

9.2.10 Not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, the instrument appointing a proxy or attorney (if any) must be:

- (a) deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
- (b) transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

9.2.11 An undated proxy will be taken to be dated on the day that it is received by the Trustee.

### 9.3 **Validity of Proxy Votes**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor dies, becomes of unsound mind, revokes the proxy or power or transfers the Units in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Trustee before the relevant meeting or adjourned meeting.

### 9.4 **Representatives of Corporations**

9.4.1 Any Unitholder which is a corporation (**'the Corporate Unitholder'**) may authorise a natural person to act as its Representative at any General Meeting.

9.4.2 A Representative may exercise at the relevant General Meeting all the powers which the Corporate Unitholder could exercise if it were a natural person. When its Representative is present at a meeting, the Corporate Unitholder will be considered to be personally present at the meeting.

9.4.3 The chair of a General Meeting may:

- (a) permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment; or
- (b) allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chair his or her status as a Representative within a period prescribed by the chair of the General Meeting.

## 10. Administration of Trust Fund

### 10.1 Minutes

The Trustee must keep minutes of all resolutions and proceedings.

### 10.2 Books and Records

The Trustee must keep books of account and records of the Trust Fund.

### 10.3 Corporate Trustee

If any Trustee is a corporation, the powers, discretions and authorities vested in the Trustee by this Deed may (subject to its constituent documents) be exercised for and on behalf of that Trustee by its board of directors.

### 10.4 Valuations

10.4.1 The Trustee may at any time obtain a valuation of any property of the Trust Fund from a person the Trustee considers appropriately qualified or experienced and may rely on that valuation in exercising any of its powers under this Deed.

10.4.2 The Trustee must, if directed by the Unitholders in General Meeting to do so, appoint a competent valuer or expert to value the property and assets of the Trust Fund.

## 11. Accounting Policy

### 11.1 Accounting

The Trustee must pursuant to this **clause 11** record and account for all:

- 11.1.1 income from the investment of and other accretions to the Trust Fund; and
- 11.1.2 outgoings whether on capital or revenue account.

### 11.2 Method of accounting

The Trustee may:

- 11.2.1 decide whether the income, accretions, expenditure and outgoings of the Trust Fund are capital or income and whether they are to be accounted for on the basis of receipts or accruals; and

11.2.2 account for some part of the Trust Fund on one basis and the rest of the Trust Fund on another basis.

**11.3 Variation of method of accounting**

The Trustee may vary the basis of accounting for the whole or any part of the income, accretions, expenditure and outgoings of the Trust Fund from one Accounting Period to the next as the Trustee thinks appropriate.

**11.4 Annual accounts & financial statements**

Subject to **clauses 11.2** and **11.3**, the Trustee will ensure that annual accounts and financial statements of the Trust are prepared for each Accounting Period in accordance with the Trustee's directions.

**11.5 Treatment of income and capital**

11.5.1 Despite anything contained in **clauses 11.2** to **11.4**, the Trustee may for any Accounting Period elect to account for the whole or some part of the Trust Fund on the basis which is used to calculate its Taxable Income for that Accounting Period, in which case:

- (a) the accruals, accretions, losses and outgoings which go to make up the Taxable Income of the Trust Fund will be treated on revenue account for all the purposes of this Deed; and
- (b) all other accruals, accretions, losses and outgoings will be treated on capital account.

11.5.2 The Trustee may determine whether any sum received or disbursed is on account of capital or revenue, or partly on account of capital and partly on account of revenue and in what proportions.

**12. Indemnity**

**12.1 Trustee's Responsibility**

Except in relation to a breach of trust knowingly or wilfully committed by the Trustee:

- 12.1.1 the Trustee is not personally responsible or liable in respect of the execution or purported or attempted execution of, or failure or neglect to exercise or carry out any of the Trustee's duties, authorities, powers or discretions;
- 12.1.2 the Trustee is entitled to be indemnified out of the Trust Fund against all liabilities incurred by the Trustee as trustee of the Trust; and
- 12.1.3 the Trustee is entitled to a lien on, and may use the Trust Fund for the indemnity and generally for the payment of all proper costs and expenses of performing the Trustee's duties under this Deed.

**12.2 Trustee's Right of Indemnity**

The Trustee's right of indemnity is limited to the right described in this **clause 12**. The Trustee has no right to be indemnified by any of the Unitholders against any liability incurred by the Trustee as trustee of the Trust.

**13. Remuneration**

**13.1 Outside interests**

It is lawful for any Trustee:

13.1.1 to be a director or other officer of any company in which any of the money forming part of the Trust Fund is for the time being invested; and

13.1.2 to receive and retain for its own use all remuneration and expenses from time to time fixed in conformity with the constitution of that company.

**13.2 Remuneration**

Any Trustee may charge and be paid out of the Trust Fund such remuneration as the Trustee in its absolute discretion thinks fair and reasonable, having regard to the work done and responsibility assumed in connection with the Trust.

**13.3 Solicitors, accountants and professionals**

Any Trustee or director or officer of a corporate Trustee being a solicitor, accountant or other professional person:

13.3.1 may be employed or engaged to transact any business or do any act required to be done in connection with the Trust; and

13.3.2 is entitled to be paid all proper costs, charges, fees and expenses for any professional business or act done by them or their firm in relation to the Trust as they or their firm would have been entitled to receive in respect of that business if they had not been a Trustee or a director of a Trustee.

**14. General Powers**

**14.1 All powers at law**

Except as expressly provided, the Trustee has in addition to all the specific powers provided in this Deed:

14.1.1 all the powers, authorities and discretions of a natural person;

14.1.2 all powers, authorities and discretions conferred by the common law, equity and by legislation on trustees; and

14.1.3 will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories.

**14.2 Trustee may act as if beneficial owner**

The Trustee may generally with respect to the Trust Fund perform or engage in any transaction or dealing as might have been done if the Trustee was the beneficial owner of the Trust Fund.

**14.3 Acts binding on Unitholders**

The decisions and actions of the Trustee whether actually made or taken in writing or implied from the actions of the Trustee are conclusive and binding on all the Unitholders and others who in the future acquire any interest under this Deed.

**14.4 Partnership**

The Trustee may exercise all the powers and authorities vested in the Trustee by this Deed solely or jointly, or in partnership, or otherwise in conjunction with any other person or persons, whether those persons act on their own behalf or as trustees of any other trust.

**14.5 Delegation of Powers and Powers of Attorney**

The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and execute any power of attorney or other instrument necessary to effectuate that delegation.

**15. Investment Powers of Trustee**

**15.1 General investment powers**

Without limiting any of the Trustee's other powers in **clauses 14, 16 and 17**, the Trustee may invest the Trust Fund or any part of it in any form of investment the Trustee thinks fit and desirable, including:

- 15.1.1 any one or more of the investments sanctioned by law in any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- 15.1.2 payment of premiums on any policy of assurance on the life of any person, whether or not any such policy stands in the name of the Trustee;
- 15.1.3 the purchase of lands of any tenure anywhere in the world, including the purchase of any lands subject to any Encumbrance;
- 15.1.4 the acquisition by original subscription or by purchase or otherwise:
  - (a) the shares or options of any class or type, whether fully paid or not, in any corporate entity; or
  - (b) debentures, notes, bonds or other holdings or securities in any corporate entity;
- 15.1.5 the securities or an option over the securities of any company notwithstanding any restriction on the right of the transfer of such securities, the appointment of directors, or otherwise;

- 15.1.6 the purchase, sale, hire or lease of any real or personal property;
- 15.1.7 the purchase or acquisition of units or sub-units of any fixed, hybrid or other non-fixed trust;
- 15.1.8 placing funds on deposit with any financial institution or company with or without interest (and notwithstanding a Unitholder has an interest in any such institution, company or trust); and
- 15.1.9 in any business or businesses carried on by the Trustee.

## 15.2 **Power to Vary Investment**

The Trustee may at any time vary or realise an investment of any part of the Trust Fund and reinvest money resulting from the realisation in any form of investment.

## 15.3 **Set Aside Capital or Income**

The Trustee may provide and set aside out of the capital or income of the Trust Fund to discharge or reduce any Encumbrance, debt or liability affecting the Trust Fund or any part of it.

## 15.4 **Blending Investments**

Despite any other provision of this Deed except **clause 4.1.9**, the Trustee may from time to time blend or mix for the purposes of investment any moneys which the Trustee holds upon trust with other moneys (whether or not such moneys are subject to any other settlement or trust and whether or not the Trustee is trustee of such other settlement or trust) and to join with any other person or persons including a trustee of another trust in making common investment including carrying on any business partnership or joint enterprise.

## 15.5 **Derivatives & cryptocurrencies**

- 15.5.1 The Trustee may enter into, grant, acquire, participate in or deal with in any manner (including for the purpose of risk management, enhancing investment return or substitution for physical holdings) any financial arrangement, option-based interest rate risk management products, including without limitation any interest rate cap/collar/floor agreement, interest rate swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, futures contract, derivatives agreement, or any other like contract and any hedging, swapping or like arrangement whether or not related to any other property forming part of the Trust Fund, and including any instrument under which a right or option in respect of a financial arrangement may be exercised
- 15.5.2 The Trustee may purchase, acquire, invest in any form of cryptocurrency including Bitcoin or any digital token.
- 15.5.3 The Trustee may give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract or obligation under or in connection with any transaction of the type referred to in **sub-clause 15.5.1** or **15.5.2**.

**15.6 Leasing, Asset Finance, Hire Purchase or Equipment Finance Facility**

15.6.1 The Trustee may at any time lease, licence, rent, exchange or take on lease or take on bailment or on hire purchase any real or personal property or any interest in any real or personal property and in particular (without limitation) any chattels, machinery, plant and stock-in-trade from or to any person and on any such terms to which the Trustee agrees.

**16. Banking and Borrowing Powers of Trustee**

**16.1 Bank Accounts**

The Trustee may open accounts of every description with any bank or other financial institution and in doing so:

16.1.1 conduct and operate those accounts in accordance with the customs, usages and practices of the relevant financial institution, including the power to operate any account in overdraft;

16.1.2 agree to the institution debiting any account with interest, costs, charges, expenses, liabilities and government imposts incurred by the institution at any time on behalf of the Trustee; and

16.1.3 borrow or raise money; and

16.1.4 secure the payment of any money or the performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or entered into by the Trustee in any way the Trustee thinks fit.

**16.2 Negotiable Instruments**

The Trustee may draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

**16.3 Borrowings**

16.3.1 The Trustee may borrow or raise moneys for any purpose the Trustee thinks fit, notwithstanding that the Trust Fund may already be wholly invested or applied or that the money to be borrowed or raised may exceed the value of the Trust Fund.

16.3.2 No lender need enquire whether the borrowing is necessary or as to its purpose or as to the application of the money borrowed.

**16.4 Security**

The Trustee may grant an Encumbrance over assets of the Trust Fund to secure the payment of money to any person, on such terms as the Trustee thinks fit, and to join with any person in executing any mortgage or other document to secure the payment of money either jointly to the Trustee and that person or only to that person.

**16.5 Validity of Security**

16.5.1 No Encumbrance given or created by the Trustee to or in favour of any person or corporation over or in respect of the Trust Fund or any part of it will be invalid by reason of:

- (a) any error or omission (whether of law or fact) on the part of the Trustee or its advisers; or
- (b) of any breach of duty or trust whatsoever;

unless it is proved to have been committed, made or omitted in personal conscious fraudulent bad faith by the Trustee.

16.5.2 All persons claiming any beneficial interest in the Trust Fund are deemed to have had notice of **clause 16.5.1**.

**16.6 Grant of Guarantee**

16.6.1 The Trustee may:

- (a) give any guarantee or indemnity (with or without security, solely or jointly with any other person, and with or without remuneration) for the payment of money or the performance of any contract, obligation or undertaking by any person;
- (b) grant any Encumbrance over any assets (both present and future) of the Trust Fund to secure that guarantee and or indemnity; and
- (c) grant, give, execute or register any interest under the *Personal Property Securities Act 2009* (Cth) over all or part of the assets (both present and future) of the Trust Fund.

16.6.2 This power may be exercised even if there is no contractual, legal, or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the guarantee and or indemnity will be given.

**16.7 Loan Trust Fund**

The Trustee may lend any part of the Trust Fund to any person (including any Unitholder) with or without interest with or without security and upon such terms and conditions as the Trustee determines.

**17. Specific Powers of Trustee**

**17.1 Conduct Business**

The Trustee may conduct and terminate any trade, business or profit making undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name.



**17.2 Employ**

The Trustee may employ and pay remuneration to any person (including a Unitholder or Trustee) in connection with:

- 17.2.1 the conduct of any trade, business or profit making undertaking or scheme carried on by the Trustee; or
- 17.2.2 anything required to be done pursuant to this Deed.

**17.3 Incorporate Company**

- 17.3.1 The Trustee may register any company (including a company to act as trustee of the Trust Fund or any part of it) in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability for any purpose, including to acquire the Trust Fund or any part of it.
- 17.3.2 The consideration in the case of a sale of the Trust Fund or any part of it to a company incorporated pursuant to this **clause 17.3** may consist wholly or partly of fully paid shares, stock, debentures or debenture stock or other securities of the company, and may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital in the Trustee's hands.

**17.4 Investment in Private Companies**

- 17.4.1 If the Trustee invests the Trust Fund or any part of it in the stocks or shares of any proprietary or private company, then the Trustee will be responsible only for so much of the stock or shares and the dividends and income from them as is actually transferred and paid to the Trustee.
- 17.4.2 The Trustee is excused from attending any meetings of the company and is authorised from time to time to appoint and give such proxy as it thinks fit to represent the Trustee at any general meeting of the company.
- 17.4.3 Nothing in this **clause 17.4** will oblige the Trustee to:
  - (a) investigate the accounts or management or control of the company;
  - (b) enquire into or in any manner to question or bring an action, suit or proceedings, or in any other manner whatsoever to seek to interfere with the management, government or control of the company by its directors; or
  - (c) take any step or bring any action, suit or proceedings, or in any other manner whatsoever to seek to vary the articles of association or constitution of the company or wind up the company.

**17.5 Exercise of Voting Rights**

- 17.5.1 The Trustee may exercise or concur in exercising the voting and other rights attaching to any securities for the time being forming part of the Trust Fund so as to become a director or other officer or employee of any company, and

to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that company.

17.5.2 The Trustee will have the sole and absolute discretion in the exercise of all rights appertaining to the share or other investments comprised in the Trust Fund and no Unitholder will have any right with respect to the Trust Fund to attend meetings of shareholders or to vote or take part in or consent to any corporate or shareholder's action or, save as expressly provided by this Deed, to interfere with or question the exercise or non-exercise by the Trustee of the rights and powers of the Trustee as the owner of the investment of the Trust Fund.

#### 17.6 **Determination of Questions**

The Trustee may determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.

#### 17.7 **Legal Proceedings**

The Trustee may institute and defend proceedings at law and pursue them to such final determination or compromise as the Trustee thinks fit.

#### 17.8 **Engagement of Professionals**

17.8.1 The Trustee may:

- (a) employ and pay for such professional or other assistance (including assistance from a partner or a director of a Trustee) as the Trustee considers necessary in the discharge of the duties of the Trustee; and
- (b) act on the opinion, advice of or information obtained from a financial adviser, accountant, barrister, solicitor, valuer, surveyor, broker, auctioneer or any other advisor or expert.

17.8.2 The Trustee is not responsible for any loss, depreciation or damage caused by acting or not acting in accordance with the opinion, advice or information referred to in **clause 17.8.1(b)**.

#### 17.9 **Residential Property**

The Trustee may purchase a residential property and permit any one or more of the Unitholders to live in and have the use and occupation of the residential property rent free or otherwise for whatever period expiring on or before the Vesting Date. During that period the Trustee may out of the Trust Fund:

17.9.1 insure the property against loss or damage;

17.9.2 keep it and all buildings, erections and improvements on the land in good and tenantable condition; and

17.9.3 pay all rates and taxes assessed on the land or on the owner or occupier of the land or payable in respect of the land.

## 18. Change of Trustee

### 18.1 Retirement of Trustee

- 18.1.1 Any Trustee may retire upon giving one month's notice in writing to the Unitholders of that Trustee's desire to do so.
- 18.1.2 After receiving notice in writing from any Trustee in accordance with **clause 18.1.1**, the Unitholders may appoint a substitute Trustee by resolution passed pursuant to **clause 8.6.2**. If the retiring Trustee is the sole Trustee, the Unitholders will as soon as practicable appoint a substitute Trustee of the Trust Fund by resolution passed pursuant to **clause 8.6.2**.
- 18.1.3 A new Trustee so appointed will execute a deed whereby the new Trustee will undertake to the Unitholders jointly and severally all of the obligations of the retiring Trustee and from the date of the deed the retiring Trustee will be released from all further obligation under this Deed.
- 18.1.4 A Trustee will upon retirement take such action as is necessary to vest or cause to be vested in any new and/or continuing Trustee or Trustees the Trust Fund and all books documents records and other property relating to the Trust Fund.

### 18.2 Removal of Trustee

- 18.2.1 Subject to Unitholder's Approval pursuant to **clause 8.6.2**, the Unitholders may remove the Trustee as a trustee of the Trust by written notice to that Trustee signed by those Unitholders in favour of the removal.
- 18.2.2 A Trustee is automatically removed as trustee of the Trust if:
- (a) being a company:
    - (i) it goes into liquidation or a receiver is appointed in respect of any of its property; or
    - (ii) has a liquidator, receiver, administrator or official manager appointed or becomes an Externally Administered Body Corporate;
    - (iii) it is wound up otherwise ceases to exist.
  - (b) being an individual:
    - (i) they die or become mentally incapacitated (as determined by a suitably qualified medical professional); or
    - (ii) they commit an act of bankruptcy.

### 18.3 Appointment of Trustee

- 18.3.1 Subject to Unitholder's Approval pursuant to **clause 8.6.2**, the Trustee may by deed appoint a person or corporation to be the trustee of the Trust whether in addition to or in replacement of a trustee.

- 18.3.2 Any requirement under any State or Territory trust law that the minimum number of trustees must be two and is capable of being expressly excluded by this Deed is expressly excluded.

**18.4 Trustee's Covenants**

The Trustee covenants with the Unitholders that it will act as trustee under the Trust until the Trust is determined or the Trustee has retired or been removed from the Trust in accordance with this **clause 18**.

**18.5 Costs and No Requirement to Register**

- 18.5.1 The costs, charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee will be recouped from the Trust Fund.

- 18.5.2 Any deed replacing, removing or adding a trustee is not required to be registered as may be contemplated by the law of any state or territory (as amended or replaced from time to time).

- 18.5.3 Notwithstanding anything else to the contrary, any deed (or other document) evidencing the replacement, appointment, retirement or change of the Trustee of the Trust shall take effect according to its terms even if that document has not been registered.

**19. Conflict of Interest**

The Trustee shall have the power generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a corporate Trustee has or may have a direct or personal interest (whether as trustee of any other settlement or in their personal capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any unit trust or beneficiary of any discretionary trust or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

**20. Third Party Dealings**

**20.1 Third Party Dealings**

No person dealing with the Trustee need:

- 20.1.1 enquire as to the adequacy of the powers of the Trustee in relation to any dealing or as to the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by this Deed;

- 20.1.2 enquire as to the propriety or regularity of any transaction affecting the Trust Fund or any part of it; or

- 20.1.3 see to the application of any money paid to the Trustee or to any person at the Trustee's direction.

20.2 **Fraud**

In the absence of fraud on the part of a person dealing with the Trustee, the dealing is deemed to be within the powers of the Trustee and to be valid and effective.

20.3 **Discharge of liability**

The receipt of the Trustee or the receipt of any person paid at the direction of the Trustee is a valid discharge from all liability in respect of the payment.

21. **Variation of Trust Deed**

21.1 **Power to vary**

Subject to **clauses 21.2** and **21.3** and Unitholders Approval pursuant to **clause 8.6.2**, the Trustee may at any time by deed:

21.1.1 add to, alter, vary, modify, delete or otherwise amend any provision of this Deed; and/or

21.1.2 declare any new or other trusts, powers or discretions concerning the Trust Fund or any part of it.

21.2 **Rule against perpetuities**

The Trustee cannot exercise the powers in **clause 21.1** to infringe the rule against perpetuities (if applicable).

21.3 **Restrictions on power**

The new or other trusts, powers, discretions, alterations or variations may not affect the beneficial entitlement to any amount already Set Aside for or vested in any Unitholder unless that Unitholder consents in writing.

22. **Notice**

22.1 **Deemed to have been given**

A notice under this Deed is deemed to have been given if it is in writing by the sender or its agent and is:

22.1.1 In respect of the Trustee, delivered to the Office; or in respect of a Unitholder, to their address specified in the Register of Unitholders;

22.1.2 sent by pre-paid post to the address of the Trustee or Unitholders specified in **clause 22.1.1**;

22.1.3 sent by facsimile transmission to the recipient's last known facsimile number or by electronic mail to the recipient's last known email address; or

22.1.4 sent or delivered to the recipient in accordance with the *Corporations Act 2001* (Cth) or any other legislation.

**22.2 When received**

A notice given in accordance with this **clause 22** is deemed to have been received:

22.2.1 if delivered or transmitted by facsimile or other electronic communication;

(a) on the day of transmission or delivery if the transmission or delivery occurred before 5.00 pm on a Business Day; and

(b) otherwise, on the next Business Day.

22.2.2 if sent by pre-paid post, on the third Business Day after (but not including) the day of posting.

**22.3 Two or more persons**

Where two or more persons comprise the Trustee or a Unitholder or a duly appointed representative of either, notice to one of them is effective notice to all of them.

**23. General**

**23.1 Assignment**

The rights and obligations of each party under this Deed are personal and cannot be assigned, charged or otherwise dealt with, without the prior written consent of all parties.

**23.2 Counterparts**

This Deed and any document required by this Deed may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile or any other electronic communication (however, for the avoidance of doubt, the counterpart Deed itself must be executed in accordance with the law).

**23.3 Entire Agreement**

This Deed records the entire agreement between the parties as to its subject matter. Any prior negotiations, agreements, arrangements, representations and understandings as to the subject matter of this Deed are superseded by this Deed.

**23.4 Further assurance**

Each party must promptly execute all documents and do all things that another party reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

**23.5 Governing law**

This Deed is governed by the laws of the Governing State.

**23.6 Jurisdiction**

The parties submit to the jurisdiction of the Courts of the Governing State and the Commonwealth of Australia. Any proceeding brought in the Federal Court of Australia must be instituted in the Registry of the Governing State.

**23.7 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this Deed or upon the execution of any other agreement or other document in connection with the subject matter of this Deed.

**23.8 Preparation of Document**

No party will be deemed to be the author or drafter of this Deed or any part of it.

**23.9 Preservation of rights**

All rights under this Deed are in addition to and do not abrogate, limit or reduce any other rights that party may have.

**23.10 Relationship**

Unless otherwise specified, nothing in this Deed creates a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.

**23.11 Severance**

Any provision of this Deed that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Deed but only to the extent necessary to avoid that effect. All other provisions of this Deed continue to be valid and enforceable.

**23.12 Time is of the essence**

Unless otherwise specified, time is of the essence in this Deed.

**23.13 Waiver**

A right or obligation under this Deed cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

**24. Costs**

**24.1 Legal costs**

The Trustee must pay from the Trust Fund the costs in relation to the negotiation, preparation and execution of this Deed and any document required by this Deed.

**24.2 Stamp duty**

The Trustee must pay from the Trust Fund all stamp duty, registration fees and any other fees charged by any government authority or body in respect of this Deed and any document required by this Deed.

## Annexure A

## Register of Unitholders – Coleslaw Investment Unit Trust

Folio No.1

Name: **Yakhad Chaverim Investments Pty Ltd - ACN 666 783 259** acting in its capacity as trustee of the Coleslaw Investment Unit Trust or otherwise the trustee or trustees for the time being of the Coleslaw Investment Unit Trust

Address: 268 CANTERBURY RD, SURREY HILLS, VIC 3127

Name and address of Unitholder	Units held	Unit numbers	Unit certificate no. (if applicable)	Issue Price Per Unit	Fully Paid	Date Units acquired	Date Units redeemed or disposed of	Date Entered
Chau Minh Lam of 16 JOEL PL, MOOROOLBARK, VIC 3138	2	1 - 2	1	\$20.00	Yes	Commencement Date of Trust		
YYZ SUPER PTY LTD - ACN 664 763 571 of 268 CANTERBURY RD, SURREY HILLS, VIC 3127 as trustee for YYZ Super Fund	1	3 - 3	2	\$20.00	Yes	Commencement Date of Trust		
SNWT FAMILY SUPER PTY LTD - ACN 664 768 218 of 27 BELMONT RD W, CROYDON SOUTH, VIC 3136 as trustee for SNWT FAMILY SUPERANNUATION FUND	1	4 - 4	3	\$20.00	Yes	Commencement Date of Trust		
Ernest Thai of 13 BLACKBURN ST, SURREY HILLS, VIC 3127 as trustee for Tsalach 818 Super Fund	1	5 - 5	4	\$20.00	Yes	Commencement Date of Trust		



**Annexure B**

**APPLICATION FOR UNITS  
COESLAW INVESTMENT UNIT TRUST**

The Trustee(s)

**Coleslaw Investment Unit Trust**

I/We, [*Name of prospective unitholder*] of [*address*] apply for [*Number of Units*] Units payment for which has been made to the Trustee of \$[*consideration*] in full for the Units.

I/We hereby agree to accept the Units allotted and to be bound by the terms of the deed establishing the **Coleslaw Investment Unit Trust (“Deed”)** and of any amendments to that Deed.

I/We hereby authorise my/our name and address to be placed on the register of unitholders in respect of the Units.

Dated

.....

[*insert name of prospective Unitholder*]



**Executed** as a Deed

**The Trustee**

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EXECUTED by  
**Yakhad Chaverim Investments Pty Ltd**  
**ACN: 666783259**  
in accordance with subsection 127(1)  
of the Corporations Act 2001

\_\_\_\_\_  
**Director**  
Chau Minh Lam

\_\_\_\_\_  
**Director**  
YuanYuan Zhao

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**The Unitholder**

---

Signed, Sealed and Delivered by Chau Minh Lam in the presence of:

\_\_\_\_\_  
**Chau Minh Lam**  
Unitholder

\_\_\_\_\_  
Witness Name / Signature

**The Unitholder**

---

EXECUTED by  
**YYZ SUPER PTY LTD**  
**ACN: 664 763 571**

in accordance with subsection 127(1)  
of the Corporations Act 2001

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**Director**  
YuanYuan Zhao

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**Director**  
Wanting Cui

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**The Unitholder**

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EXECUTED by  
**SNWT FAMILY SUPER PTY LTD**  
**ACN: 664 768 218**

in accordance with subsection 127(1)  
of the Corporations Act 2001

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**Director**  
Wanting Cui

---

**Director**  
Shuonan Zhou

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**The Unitholder**

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Signed, Sealed and Delivered by Ernest Thai as trustee for Tsalach 818 Super Fund in the presence of:

---

**Ernest Thai**  
Unitholder

---

Witness Name / Signature