

# Partnership Agreement

between

## **David and Melissa Tonellato as trustee for Beatrice Street Super Fund**

as the First Partner

and

## **Hodari Pty Ltd as trustee for Axis Super Fund**

as the Second Partner

and

## **Three Forks Ranch Pty Ltd as trustee for Fallow Super Fund**

as the Third Partner

Relating to:

the conduct of the partnership between the Partners and related matters.



**PARTNERSHIP AGREEMENT** dated**PARTIES**

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**BETWEEN**

**David Tonellato and Melissa Tonellato** as trustees for **Beatrice Street Super Fund** (ABN 83 599 308 954) of 3 Newbury Street, Fulham SA 5024 (**First Partner**)

**AND**

**Hodari Pty Ltd** (ACN 608 821 183) as trustee for **Axis Super Fund** (ABN 84 337 923 811) of 8 John Walk, Flagstaff Hill SA 5159 (**Second Partner**)

**AND**

**Three Forks Ranch Pty Ltd** (ACN 608 767 997) as trustee for **Fallow Super Fund** (ABN 53 437 547 229) of 8 John Walk, Flagstaff Hill SA 5159 (**Third Partner**)

**INTRODUCTION**

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- A. The Partners are currently partners of a partnership known as the Axis Super Fund & Beatrice Street Super Fund & Fallow Super Fund Partnership (**Partnership**).
- B. Each Partner holds an Equity Share.
- C. The Partnership carries on the business of leasing primary production land .
- D. The Partners have agreed to formally record the terms and conditions on which they are in partnership.

**TERMS****PART A. UNDERSTANDING THIS AGREEMENT**

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**1. Dictionary**

In this Agreement:

1.1 **Accounting Period** means a Financial Year but if there is a Partnership Change during a Financial Year, means:

1.1.1 the period from 1 July to midnight the day before the Partnership Change took effect;

1.1.2 each period between Partnership Changes in that Financial Year (if there is more than one); and

1.1.3 the period from when the Partnership Change took effect (or if there is more than one, then from the day the last Partnership Change took effect) to 30 June next.

1.2 **Act** means the *Partnership Act 1891*.

- 1.3 **Agreement** means this Partnership Agreement.
- 1.4 **Business Day** has the meaning ascribed to that term in Section 9 of the Corporations Act 2001.
- 1.5 **Commencement Date** means 19 October 2015 .
- 1.6 **Equity Share** means in respect of each Partner, the proportions listed opposite their name in Schedule 1 or in such other proportion as may be unanimously agreed in writing by the Partners from time to time.
- 1.7 **Financial Accounts** means, in respect of the financial position of the Partnership:
- 1.7.1 a balance sheet;
  - 1.7.2 a profit and loss account; and
  - 1.7.3 any other accounts which are required or reasonably expected.
- 1.8 **Financial Year** means each period of twelve months commencing on 1 July.
- 1.9 **Partners** means the partners of the Partnership and at the date of this Agreement comprises of the First Partner, the Second Partner and the Third Partner.
- 1.10 **Partnership Liabilities** means all liabilities of the Partnership whether current or contingent.
- 1.11 **Profit** means any profit of the Partnership as shown in the Financial Accounts.

## 2. Interpretation

In this Agreement:

- 2.1 neuter includes masculine and feminine;
- 2.2 singular includes plural and vice versa;
- 2.3 reference to a person includes a corporation and partnership and vice versa;
- 2.4 headings do not affect interpretation;
- 2.5 reference to an Act of Parliament includes:
- 2.5.1 the Act as amended;
  - 2.5.2 any substituted Act; and
- 2.6 the introduction is correct and forms part of this Agreement.

**PART B. THE PARTNERSHIP**

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**3. Partnership**

The Partners agree to be partners in the business of the Partnership upon the terms of this Agreement.

**4. Partnership Act**

The Partnership is a professional partnership and subject to the provisions of the Act except to the extent that the terms of this agreement are inconsistent with that Act (and in that respect the terms of this agreement prevail to the extent permitted by law).

**5. Term**

5.1 The Partnership as constituted by this Agreement commenced on the Commencement Date.

5.2 The Partnership continues indefinitely and ends on the earlier of:

5.2.1 the time the Partnership disposes of all its assets and there is a final accounting under this Agreement; or

5.2.2 the time it ends under the other provisions of this Agreement.

5.3 For the avoidance of doubt, the Partnership will, notwithstanding the admission, insolvency, or expulsion of any Partner, continue until it is terminated under clause 30.

**PART C. PROPERTY**

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**6. Partnership property**

6.1 The Partnership assets include the following:

6.1.1 approximately 600 acres of rural land in Coombe, South Australia, with sections of natural scrub and primary production land; and

6.1.2 any property bought by or on account of the Partnership after the start of the Partnership.

6.2 Each partner acknowledges that on that Partner ceasing to be a Partner, subject to clause 31 it does not have any interest in or proprietary right to any of the Partnership's assets.

**7. Separate property**

7.1 Unless all the partners otherwise agree, a Partner's separate property does not become a Partnership asset.

7.2 A Partner may allow the Partnership to use that property on any terms (including payment) agreed by the Partner with the Partnership.

**PART D. MANAGEMENT**

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**8. Bank account**

The Partnership must keep for the Partnership a separate current account with a bank selected by the Partners.

**9. Payments**

9.1 All payments by the Partnership must be drawn on the Partnership's bank account.

9.2 Unless the Partners otherwise decide, all cheques and the electronic transfer of funds by the Partnership must be signed by two Partners.

**10. Insurance**

The Partnership must keep in the name of and for the benefit of the Partnership:

10.1 insurance against loss or destruction of property to its full replacement or insurable value as the Partners decide from time to time;

10.2 any insurance required by law; and

10.3 public liability insurance to the sum of \$10 million (or any other sum the Partners determine from time to time) with respect to any one event or occurrence.

**PART E. PARTNERS' BENEFITS**

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**11. Benefits**

Unless the Partners otherwise unanimously agree a partner is entitled to the profit share specified in this Agreement.

**12. No fees or commissions**

Except as this Agreement expressly allows, a Partner may not charge any fee or commission for any work or thing done with respect to the Partnership.

**PART F. ACCOUNTS**

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**13. Current Accounts**

13.1 A Partner must have a current account in the books of the Partnership.

13.2 A current account must be credited with the relevant Partner's share of undrawn profits and must be debited with that Partner's drawings. A current account of a Partner must also be debited with its share of losses.

**14. Accounting Records**

14.1 The Partnership must keep usual and proper accounts in conformity with generally accepted accounting principles consistently applied from year to year.

14.2 Unless all the Partners agree, the accounts must not be removed from the place of business of the Partnership (or the principal place, if there is more than one).

15. **Financial Year**

The Partnership's financial year ends on 30 June in each year.

16. **Annual Accounts**

16.1 As soon as practicable after the end of the financial year, the Partnership must have the annual accounts prepared and give a copy to each Partner.

16.2 Each Partner is bound by the annual accounts unless a manifest error is discovered and communicated to the Partners within three months of receipt.

17. **Audit**

17.1 Unless the Partners otherwise decide, the annual accounts of the Partnership are not audited.

17.2 A Partner may at their own expense and upon at least 30 days' notice, perform an audit during each financial year of the Partnership's accounts and records.

18. **Dividing Profits**

The Profits of the Partnership for each Accounting Period shall be shared between the Partners in accordance with the Partner's Equity Share or as otherwise agreed in writing by the Partners.

19. **Interest**

Except as expressly provided to the contrary in this Agreement and except as the Partners otherwise decide, a Partner is not entitled to interest on amounts credited to any account of a Partner or loans by the Partner to the Partnership

20. **Bearing Partnership Losses**

The Partners are to bear the losses and the burden of all obligations and expenses incurred by the Partnership (including capital losses) in accordance with the Partner's Equity Share or as otherwise agreed in writing by the Partners, but a loss caused by wilful breach of this Agreement or reckless act or omission on the part of a Partner must be made good by the Partner responsible.

21. **Distribution of Profits**

On each 30 June, the Partnership must distribute profits to the Partners in accordance with the requirements of clause 18.

22. **Set Off**

If a Partner fails to perform their obligations to the other Partners pursuant to this Agreement or any claim is otherwise made by the other Partners against that Partner for money or damages then the Partnership may, without prejudice to other remedies, withhold any monies which may be held for such defaulting Partner and retain and set off such monies until the claim against such defaulting Partner, plus interest at a rate equal to the overdraft rate being charged by the bankers of the Partnership, has been satisfied or determined. In the case of an unliquidated claim against the Partner, these

rights of set off extend upon an interim basis (pending determination of the claim) to a reasonable estimate of the loss as estimated by the Partners.

## **PART G. PARTNERS' MEETINGS**

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### **23. Convening Partners' Meetings**

23.1 At any time, a Partner may call a Partners' meeting.

23.2 At least 48 hours' notice of any meeting and the agenda and relevant papers must be given to all Partners, unless all Partners waive that requirement.

### **24. Conduct**

Subject to this Agreement, the Partners may meet and regulate their meetings as they decide.

### **25. Quorum**

25.1 Unless the Partners otherwise decide, the quorum for a Partners' meeting is a majority of the Partners.

25.2 A Partners' meeting with a quorum may exercise any of the Partners' powers.

### **26. Voting**

26.1 The Partners or must not vote upon a matter not on the agenda accompanying the notice of meeting, unless all Partners waive that requirement.

26.2 Partners have 1 vote each unless the Partners unanimously agreed otherwise from time to time.

26.3 A resolution of a Partners' meeting is carried by a majority of votes calculated in accordance with this clause 26 unless otherwise expressly stated in this Agreement.

26.4 The chairman of the meeting does not have a casting vote.

## **PART H. CHANGES IN THE COMPOSITION**

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### **27. Assignment**

27.1 A Partner must not assign their benefits or obligations under this Agreement without the prior written consent of all of the other Partners.

27.2 The other Partners may refuse that consent without giving any reason.

### **28. New Partners**

28.1 The admission of a New Partner to the Partnership will not terminate the Partnership between the Partners and will not create a new partnership between the Partners and the newly admitted Partner to the intent that the Partnership will endure unless otherwise dissolved or wound up according to this Agreement.

- 28.2 The Partners may admit a New Partner to the Partnership on terms approved by a unanimous resolution of the Partners.
- 28.3 Within 60 clear days after being accepted as a Partner (or any longer period agreed) the New Partner must agree in writing to comply with this Agreement. If the New Partner does not do so, their acceptance as a Partner is void.
- 28.4 The interest of a New Partner under this Agreement is subject to all existing liabilities of the Partnership but otherwise a New Partner does not become liable to the creditors of the Partnership for anything done before they became a Partner.

## **PART I. DISSOLUTION AND WINDING UP**

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### **29. No Dissolution**

A Partner is not entitled to dissolve the Partnership (and all of the Partners jointly and separately bind themselves, and their respective legal personal representatives never to take any legal proceedings of any kind for the dissolution of the Partnership), otherwise than in accordance with clause 30.

### **30. Dissolution of the Partnership**

The Partnership may be dissolved:

30.1 by a unanimous resolution to that effect passed by the Partners; or

30.2 by order of the Court.

subject always to clause 31.3.

### **31. Winding Up**

31.1 Upon the dissolution of the Partnership for any cause a full and general account of the assets liabilities and transactions of the Partnership must be taken and the assets and property thereof must with all convenient speed be realised and sold and the debts due to the Partnership must be called in and the proceeds must be applied as provided in the Act and the Partners or their legal personal representatives (as the case may be) must execute and deliver all such instruments for facilitating and effecting the realisation and division of the property and assets of the Partnership and for their mutual indemnity and release and otherwise as may be requisite or proper.

31.2 Upon the dissolution of the Partnership, any Partner is entitled to initiate and participate in the winding up of the affairs of the Partnership. If the Partners fail to take the necessary steps to wind up the affairs of the Partnership with all convenient speed or any Partner is frustrated by 1 or more other Partners in causing the affairs of the Partnership to be wound up with all convenient speed, then any Partner is entitled to the appointment of a receiver to wind up the affairs of the Partnership at the cost of the Partnership.

31.3 Notwithstanding any other provision in this Agreement to the contrary:

31.3.1 upon any sale of any of the property of the Partnership pursuant to this clause any Partner may bid for and purchase any of such property on any sale by auction or tender; and

31.3.2 before any sale of any property of the Partnership pursuant to this clause, unless the Partners unanimously agree otherwise, any Partner seeking the dissolution of the Partnership (**Dissolving Partner**) for any reason:

- (a) must negotiate in good faith with the other Partners (**Continuing Partners**) an exit of the Partnership on the basis that in lieu of monetary payment to each Partner, the Dissolving Partner receives assets of the Partnership to the value of their respective Equity Share; but
- (b) failing agreement under clause 31.3.2(a), is deemed to have offered to sell their Equity Share to the Continuing Partners in proportions equal to the Continuing Partners Equity Shares or as otherwise agreed and negotiate the sale price in good faith and failing agreement of the sale price, one or more of the Continuing Partners may accept the Dissolving Partners deemed offer to sell their Equity Shares, and appoint by agreement a valuer (**Dissolution Valuer**) to determine the fair market value of the Equity Share of the Dissolving Partner. In default of agreement, any Partner may request the President of The Institute of Chartered Accountants in Australia (or nominee) to nominate a Dissolution Valuer to determine the fair market value. The Dissolution Valuer acts as an independent expert, not an arbitrator and decision will be conclusive and final and binding on the parties (except in the case of a manifest error). The costs and expenses of the Dissolution Valuer must be shared in accordance with the participating Partners' Equity Share.

## **PART J. MISCELLANEOUS**

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### **32. Access**

A Partner and its Nominated Individual personally and by agents:

- 32.1 may have free access to the property and facilities of the Partnership;
- 32.2 may inspect and copy the documents and records (in eye or machine-readable form) of the Partnership at any time during usual business hours.

### **33. The Act**

The Act applies to the Partnership. However, the express terms of this Agreement prevail over the Act to the extent of any inconsistency.

### **34. Notice**

- 34.1 Notice can only be in writing signed by a Partner its Nominated Individual or its agent ("**the sender**").
- 34.2 Notice can only be given to a Partner ("**the recipient**"):
  - 34.2.1 personally to the recipient's Nominated Individual;

34.2.2 by security or certified post to the recipient's last known place of business or residence. Notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post.

**35. Legal proceedings**

35.1 If a Partner or its Nominated Individual becomes a party to legal proceedings with respect to the Partnership or its operations, they must give written notice to the other Partners within 48 hours.

35.2 The Partnership may defend or settle such legal proceedings as it decides (whether in conjunction with its insurers or otherwise).

35.3 This clause does not apply where any loss from the suit will not fall on the Partnership.

**36. Severance**

If any provision of this Agreement is or is held by a court of competent jurisdiction to be invalid void or unenforceable it will be severed from this Agreement and the remainder of the provisions of this Agreement will remain in full force and effect.

**37. Costs**

The costs of preparing this Agreement are a Partnership expense.

**38. Nature of the relationship**

38.1 The Partners are in a fiduciary relationship.

38.2 A partner must act in good faith in exercising their rights and in performing their obligations under this Agreement and in dealings with the other Partners with respect to the Partnership.

**39. Other documents**

During the term of this Agreement, the Partners must and must procure that its Nominated Individuals must do everything reasonably required to carry out this Agreement.

**40. Entire Agreement**

40.1 This Agreement is the whole contract between the Partners about the Partnership.

40.2 No provisions are implied except by any mandatory operation of law.

40.3 This Agreement supersedes any prior contract or obligation between the Partners about the Partnership.

**41. Amendment**

This Agreement can only be amended in writing signed by all Partners.

**42. Governing law**

42.1 This Agreement is governed by the laws in South Australia.

42.2 The courts of South Australia have non-exclusive jurisdiction with respect to this Agreement.

43. **Signing and Counterparts**

This agreement may be executed in counterparts (including by facsimile and PDF email copies of the agreement) and both executed counterparts together are deemed to be an original of this agreement.

**EXECUTED** as an agreement.

**EXECUTED** by **David Tonellato** as )  
trustee for the **BEATRICE STREET** )  
**SUPER FUND** in the presence of: )

.....  
Signature of **David Tonellato**

.....  
Signature of Witness

.....  
Print Name of Witness

**EXECUTED** by **Melissa Tonellato** as )  
trustee for the **BEATRICE STREET** )  
**SUPER FUND** in the presence of: )

.....  
Signature of **Melissa Tonellato**

.....  
Signature of Witness

.....  
Print Name of Witness

**EXECUTED** by **Hodari Pty Ltd** (ACN 608  
821 183) as trustee of **the AXIS SUPER  
FUND** in accordance with s 127(1) of the  
*Corporations Act 2001*:

.....  
Signature of Director

.....  
Print Name of Director

.....  
Signature of Director/Secretary

.....  
Print Name of Director/Secretary

**EXECUTED** by **Three Forks Ranch Pty Ltd** (ACN 608 767 997) as trustee of **FALLOW SUPER FUND** in accordance with s 127(1) of the *Corporations Act 2001*:

.....  
Signature of Director

.....  
Print Name of Director

.....  
Signature of Director/Secretary

.....  
Print Name of Director/Secretary