



# **FOXES SUPER PROPERTY TRUST NO 3**

**Foxe Superannuation Fund Pty Ltd ACN 604 926 972 as trustee of the  
Foxe Superannuation Fund**

**Foxe Enterprises Pty Ltd ACN 142 898 191**

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**Brisbane**  
Maroochydore  
Southport  
Sydney  
Canberra  
Melbourne  
Adelaide

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## FOXES SUPER PROPERTY TRUST NO 3

DATE

6<sup>TH</sup> APRIL 2018

### DETAILS OF PARTIES

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Name	Foxe Superannuation Fund Pty Ltd as trustee of the Foxe Superannuation Fund
ACN	604 926 972
<b>Label</b>	<b>Trustee</b>
Address	Level 1 1454 Logan Road MOUNT GRAVATT QLD 4122

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Name	Foxe Enterprises Pty Ltd
ACN	142 898 191
<b>Label</b>	<b>Custodian</b>
Address	Level 1 1454 Logan Road MOUNT GRAVATT QLD 4122

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### BACKGROUND

- A. The Fund is a Regulated Fund and the Trustee is the trustee for the Fund.
- B. The SIS Act provides that, in limited circumstances, a trustee of a Regulated Fund may borrow funds to acquire an asset provided that:
- (a) the money is applied for the acquisition of a single acquirable asset;
  - (b) legal title to the investment is held by a third party on behalf of the trustee of the Regulated Fund; and
  - (c) the lender's rights against the trustee of the Regulated Fund for any default under the borrowing agreement relates are limited to the rights attached to the acquirable asset.
- C. The Trustee intends to borrow funds from one or more lenders to acquire a single acquirable asset under the arrangement described in B.
- D. The Custodian agrees to act as the third party described in B.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this document, unless expressed or implied to the contrary:

**Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.

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**Custody Fund** means the following assets transferred to the Custodian:

- (a) all right, title and interest of the Custodian from time to time in any asset acquired by the Custodian to be held under this document;
- (b) all income and other proceeds generated from the holding of the assets referred to in paragraph (a); and
- (c) any other amounts which accrue to the Custodian from time to time.

**Fund** means the Foxe Superannuation Fund.

**Initial Sum** means the \$10 the Trustee pays to the Custodian on the date of this document as set out in clause 2.1.

**Notice** means a notice, demand, certificate, consent, approval, waiver or communication given under this document.

**Regulated Fund** means a "regulated superannuation fund" within the meaning of section 19 of the *SIS Act* and a "complying superannuation fund" within the mean of Part 5 of the *SIS Act*.

**Security** means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including any set-off or "flawed-asset" arrangement), having the same or equivalent effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition.

**Security Trust** means the Foxe Super Property Trust No 3 created by operation of this document.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Vesting Date** means the date upon which the legal title to the last of the assets comprising the Custody Fund have been transferred to the Trustee.

## 1.2 Interpretation

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The Background (if any) and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;

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- (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
  - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
  - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
  - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
  - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
    - (A) excluding the day, or the day of the act or event; and
    - (B) including the day on which the purpose is to be fulfilled.

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- (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
    - (A) the day, or the day of the act or event; until
    - (B) the corresponding day in the next appropriate week, calendar month or year.
  - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
  - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
  - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

## **2. CUSTODIAN'S DECLARATION OF TRUST**

### **2.1 Declaration of Trust**

The Custodian:

- (a) acknowledges it has received the Initial Sum from the Trustee;
- (b) declares that it will hold the benefit of the Custody Fund on trust for the Trustee in accordance with the terms of this document; and
- (c) acknowledges that it will use the Initial Sum as part of the purchase price for a single acquirable asset, to form part of the Custody Fund.

### **2.2 Funds and information to be provided to Custodian**

The Custodian and the Trustee agree that the Trustee will:

- (a) provide to the Custodian all funds necessary to enable the Custodian to purchase any asset which is to form part of the Custody Fund; and
- (b) tell the Custodian when and where the purchase of any such asset is to occur.

### **2.3 Request to purchase and hold legal title**

When the Trustee notifies the Custodian of the information detailed in clause 2.2, it will be taken to have requested the Custodian to purchase and take legal title to that asset on its behalf.

## **3. CUSTODIAN TO HOLD TITLE**

The Custodian agrees that it will maintain legal title to each asset of the Custody Fund until the Trustee directs it under clause 4.1.

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## **4. TRUSTEE TO DIRECT CUSTODIAN**

### **4.1 Trustee's interest in assets of the Custody Fund**

At all times the Trustee:

- (a) has a vested and indefeasible interest in the assets comprising the Custody Fund; and
- (b) is absolutely entitled to those assets as against the Custodian.

### **4.2 Transferral of assets of Custody Fund**

- (a) The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the assets comprising the Custody Fund. The Custodian must do as directed.
- (b) Before the Custodian transfers, or otherwise deals with, the assets comprising the Custody Fund, the Custodian must first seek consent from the Trustee in writing.

### **4.3 Information to be maintained by Custodian**

The Custodian will use its best endeavours to obtain information concerning the assets of the Custody Fund and the Custodian will communicate all that information to the Trustee as soon as practicable.

### **4.4 Custodian execution of documents**

The Custodian must execute all documents the Trustee asks it to execute that are necessary to charge the assets of the Custody Fund to secure the Trustee's payment to any lender of money owed in respect of those assets.

### **4.5 Trustee may acquire legal ownership**

For the avoidance of doubt only, the Trustee, in accordance with section 67A of the *SIS Act*, has the right to acquire the legal ownership of any asset comprising the Custody Fund by making one or more payments after acquiring a beneficial interest in the asset.

### **4.6 Power to Secure or Mortgage**

The Custodian may mortgage, charge or pledge any real or personal property of the Custody Fund or any interest in it wherever in the world it might be located.

### **4.7 Security**

- (a) By any Security over all or any of the present or future assets of the Custody Fund, or in any other manner which the Custodian considers appropriate, and with or without giving any other form of Security or acknowledgement, and whether alone or jointly or jointly and severally with others, the Custodian may give Security for:
  - (i) repayment of any financial accommodation provided or to be provided to any person;
  - (ii) payment of any debt or liability incurred or to be incurred by any person;
  - (iii) performance of any guarantee, indemnity, contract, covenants, obligation or other engagement by any person; or

- 
- (iv) payment of any interest, fees or charges connected with the Security.
  - (b) The Custodian may purchase, redeem or pay off any Security over any asset of the Custody Fund.

## **5. RESTRICTION ON CUSTODIAN'S DISCRETION**

Despite any other provision to the contrary set out in this document, the exercise of any discretion by the Custodian under this document requires the consent of the Trustee in all instances.

## **6. TRUSTEE'S WARRANTIES**

The Trustee warrants that:

- (a) the Fund is a Regulated Fund;
- (b) the Fund has a written investment strategy which accords in all respects with the *SIS Act*;
- (c) the Trustee's investment in each asset of the Custody Fund accords with the Fund's written investment strategy;
- (d) the Trustee is the sole trustee of the Fund;
- (e) the Trustee has the power and authority to enter into this document;
- (f) the Trustee has the power and authority to purchase each asset of the Custody Fund; and
- (g) this document constitutes its legally binding obligations, enforceable against it in accordance with its terms.

## **7. DURATION OF TRUST**

The Trust commences on the date of this document and terminates on the Vesting Date.

## **8. REPLACEMENT OR RESIGNATION OF CUSTODIAN**

### **8.1 Additional, removal or replacement of Custodian**

At any time, the Trustee may by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.

### **8.2 Outgoing Custodian**

The outgoing Custodian must as soon as practicable after being removed or replaced:

- (a) sign all documents and do all things necessary to transfer legal title to the assets comprising the Custody Fund to the new or continuing custodian; and
- (b) sign all documents and do all things necessary to transfer any charge or security in respect of the assets comprising the Custody Fund to the new or continuing custodian.

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### **8.3 Continuing Custodian**

If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title to the assets comprising the Custody Fund, to the new custodian jointly with the continuing custodian.

### **8.4 Resignation of Custodian**

The Custodian may resign by providing at least 60 days written notice to the Trustee. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 8.1 to 8.3.

## **9. TRUSTEE INDEMNIFIES CUSTODIAN**

The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:

- (a) in relation to the purchase of the assets comprising the Custody Fund;
- (b) by virtue of the Custodian holding legal title to the assets comprising the Custody Fund; and
- (c) as a consequence of the Custodian complying with any direction of the Trustee under this document.

## **10. TRUSTEE TO PAY CUSTODIAN'S COSTS**

The Trustee indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this document;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this document; and
- (c) any amendment to, or consent, waiver or release of or under, this document.

## **11. NOTICES**

### **11.1 Service of Notice**

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post, email or fax to the party's address specified in this document, or any other address notified by a party to the other party as its address for service.

### **11.2 Effective Service**

- (a) A Notice given in accordance with clause 11.1 takes effect when received, or at a later time specified in it.

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- (b) A Notice is taken to be received at the time specified below:
- (i) if hand delivered – when delivered;
  - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
  - (iii) if sent by email – when, under the *Electronic Transactions (Queensland) Act 2001* (Qld), an electronic communication is taken to be received;
  - (iv) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### 11.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;
- (c) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

### 11.4 Additional Provisions Regarding Email

- (a) A Notice given by email is taken to be in writing, whether or not the email is printed by the addressee.
- (b) A Notice given by email is taken to be signed by the party if:
  - (i) the party's name is typewritten into the Notice; or
  - (ii) the party's handwritten signature (which may be a digital image or copy of the signature) appears in the Notice.
- (c) If:
  - (i) the originator of an email requests a read receipt from the addressee; and
  - (ii) the originator receives a read receipt from the addressee specifying the time and date that the email was read or received,

the email is taken to be received no later than the time and date specified in the read receipt.

A read receipt does not by itself amount to an admission by the recipient regarding the content or effect of a Notice.

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- (d) Nothing in this clause 11 affects the provisions of the *Electronic Transactions (Queensland) Act 2001* (Qld) regarding attribution of electronic communications.

## **12. MISCELLANEOUS**

### **12.1 No Merger**

None of the rights and obligations of a party under this document merge:

- (a) on completion of any transaction contemplated by this document;
- (b) with any security interest, guarantee, judgement or other right or remedy that a party may hold at any time; or
- (c) as a consequence of anything done under this document,

and those rights and obligations at all times remain in full force and effect.

### **12.2 Amendment**

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

### **12.3 Severability**

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

### **12.4 Conflict of Interest**

A party's rights and remedies under this document may be exercised even if it involves a conflict of interest or a party has a personal interest in their exercise.

### **12.5 Governing Law**

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

### **12.6 Counterparts**

This document may be executed in any number of counterparts. A party may execute this document by signing any counterpart. All counterparts together are taken to constitute one instrument.

### **12.7 Formation of deed by electronic communications**

- (a) This deed may be entered into by electronic communication between the parties if a full and legible copy of this deed showing the signature of each party (and witness's signature where applicable) is communicated by fax or email to each other party.

- (b) An electronic communication by a party in accordance with clause 12.7(a) constitutes consent by that party to the deed being entered into by electronic communication.

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## Execution

**Executed** as a deed.

**EXECUTED BY FOXE SUPERANNUATION  
FUND PTY LTD ACN 604 926 972 AS  
TRUSTEE OF THE FOXE  
SUPERANNUATION FUND**



\_\_\_\_\_  
Signature of director

PHILLIP OWEN FOXE  
Name (BLOCK LETTERS)



\_\_\_\_\_  
Signature of director

SUZANNE ELLEN FOXE  
Name (BLOCK LETTERS)

6.4.18  
\_\_\_\_\_  
Date signed

**EXECUTED by FOXE ENTERPRISES PTY  
LTD ACN 142 898 191:**



\_\_\_\_\_  
Signature of director

PHILLIP OWEN FOXE  
Name (BLOCK LETTERS)



\_\_\_\_\_  
Signature of director

SUZANNE ELLEN FOXE  
Name (BLOCK LETTERS)

6.4.18  
\_\_\_\_\_  
Date signed