



Supplemental Deed

Australian Unity Investment Real Estate Limited

ABN 86 606 414 368

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THIS DEED POLL is made on

2019

BY:

- (1) **Australian Unity Investment Real Estate Limited** (ABN 86 606 414 368) (the **Responsible Entity**)

RECITALS:

- (A) The Responsible Entity is the responsible entity of the Australian Unity Office Fund (ARSN 113 369 627) (the **Trust**) established under the constitution dated 23 March 2005 (as amended from time to time) (**Constitution**).
- (B) The Trust has been registered by the Australian Securities and Investments Commission (**ASIC**) as a managed investment scheme pursuant to section 601EB of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- (C) Units are officially quoted on the Australian Securities Exchange and, as at the date of this deed, there are 162,831,952 Units on issue.
- (D) The Responsible Entity (acting in its capacity as responsible entity of the Trust) and CHAB have agreed, by executing the SIA, to propose and implement the Scheme.
- (E) The Constitution must be amended to facilitate the Scheme.
- (F) Clause 26 of the Constitution provides that the Responsible Entity may, in accordance with the Corporations Act, by supplemental deed modify, add to or otherwise delete from, the Constitution.
- (G) Section 601GC(1)(a) of the Corporations Act provides that the constitution of a registered scheme may be modified by special resolution of the members of the registered scheme.
- (H) At a meeting of Members held on [●] 2019 convened in accordance with the Corporations Act and the Constitution, Members approved the Scheme Resolutions, including a special resolution to modify the Constitution by making the amendments to the Constitution now set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINED TERMS AND INTERPRETATION**

1.1 **Definitions**

Terms used in this deed have the same meaning as in the Constitution unless otherwise defined in this deed or the context requires otherwise. The following definitions also apply in this deed:

CHAB means CHAB Office Pty Limited (ACN 633 833 566) in its capacity as trustee for the CHAB Office Trust (ABN 57 232 539 578).

Effective Date means the date on which the amendments to the Constitution to facilitate the Scheme come into effect pursuant to section 601GC(2) of the Corporations Act.

Meeting Date means the date on which the Scheme Meeting is held.

Scheme has the same meaning given to it in the SIA.

Scheme Meeting has the same meaning given to it in the SIA.

Scheme Resolutions has the same meaning given to it in the SIA.

SIA means the Scheme Implementation Agreement dated 2 September 2019 entered into between the Responsible Entity (acting in its capacity as responsible entity of the Trust) and CHAB, as amended from time to time.

1.2 **Rules for interpreting this document**

- (a) The provisions of clauses 1.1 (Definitions) and 1.2 (Interpretation) of the Constitution apply to this deed as if set out in this deed.
- (b) A reference to time in this deed is a reference to the time in Melbourne, Victoria.

2. **AMENDMENTS TO THE CONSTITUTION**

With effect on and from the Effective Date, the Constitution is amended as follows:

- (a) in clause 1.1, by inserting the following definitions in alphabetical order:

Aggregate Scheme Consideration means the Transfer Price multiplied by the number of Scheme Units.

CHAB means CHAB Office Pty Limited (ACN 633 833 566) in its capacity as trustee for the CHAB Office Trust (ABN 57 232 539 578).

CHAB Scheme means the arrangement, in accordance with Guidance Note 15, under which CHAB will acquire all of the Scheme Units for the Aggregate Scheme Consideration, as set out in clause 41.

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities and other financial products operated by ASX Settlement Pty Ltd (ABN 49 008 504 532).

Condition Satisfaction Date has the meaning given to that term in the SIA.

Deed Poll means the deed poll dated 1 October 2019 executed by CHAB in favour of Scheme Participants.

Effective Date means the date on which the amendments to this constitution to facilitate the CHAB Scheme, including the insertion of clause 41, came into effect pursuant to section 601GC(2) of the Corporations Act.

Excluded Unit means a Unit on issue that is held by CHAB on the Record Date.

Guidance Note 15 means *Guidance Note 15: Trust Scheme Mergers* issued by the Takeovers Panel of Australia.

Implementation Date means the date which is 7 Business Days (as defined in the SIA) after the Record Date or such other date as the parties agree in writing.

Record Date means 7.00pm on the date that is 2 Business Days (as defined in the SIA) after the Effective Date or such other date as may be agreed by the parties in writing or as may be required by ASX.

Registry means the share registry of AOF, being Boardroom Pty Limited (ACN 003 209 836).

Scheme Meeting means the meeting of Members, held on [●] 2019 and convened in accordance with the Corporations Act and the SIA, to consider and, if thought fit, approve the Scheme Resolutions, and includes any adjournment of that meeting.

Scheme Participant means each person registered as the holder of a Scheme Unit on the Record Date.

Scheme Resolutions means resolutions of Members to approve the CHAB Scheme including:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the steps required to implement the CHAB Scheme; and
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve the amendments to this deed to facilitate the implementation of the CHAB Scheme.

Scheme Transfer means, for each Scheme Participant, a proper instrument of transfer of their Scheme Units for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Units.

Scheme Trust Account means an Australian dollar denominated trust account in the name of the Responsible Entity and operated by the Responsible Entity (or by the Registry on behalf of the Responsible Entity) as trustee for the Scheme Participants.

Scheme Unit means a Unit on issue on the Record Date other than any Excluded Unit.

SIA means the Scheme Implementation Agreement dated 2 September 2019 entered into between the Responsible Entity (acting in its capacity as responsible entity of the Scheme) and CHAB, as amended from time to time.

Transfer Price means \$3.04 per Scheme Unit, subject to any reduction required under clause 4.4(b) of the SIA.

- (b) by deleting clause 19.6 and inserting a new clause 19.6 as set out below:

"19.6 Responsible Entity must not hold Units

Notwithstanding any other provision in this constitution, while the Responsible Entity is the trustee or responsible entity of the Scheme, the Responsible Entity (and any replacement responsible entity of the Scheme) must not:

- (a) hold any Units or Securities, in any capacity;
- (b) be a Member, in any capacity; or
- (c) otherwise be or become a beneficiary of the Scheme.

Notwithstanding any other provision of this constitution, this clause 19.6 is irrevocable and cannot be amended under clause 26."

- (c) by inserting a new clause 41 as set out below:

"41 CHAB Scheme

This clause 41 applies on and from the Condition Satisfaction Date.

41.1 Dealings in Units

- (a) For the purpose of establishing the persons who are Scheme Participants, dealings in Units will only be recognised if:
 - (i) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the Registry by the Record Date.
- (b) The Responsible Entity will register registrable transfers or transmission applications of the kind referred to in clause 41.1(a)(ii) by, or as soon as practicable after, the Record Date.
- (c) The persons shown in the Register, and the number of Scheme Units shown as being held by them, after registration of transfer and transmission applications of the kind referred to in clause 41.1(a)(ii), will be taken to be the Scheme Participants, and the number of Scheme Units held by them, on the Record Date.
- (d) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Participants, any transfer or transmission application in respect of Units received after the Record Date (or received prior to the Record Date not in registrable form) and prior to registration of CHAB as the holder of all Scheme Units under clause 41.4(c).
- (e) The Responsible Entity will, until CHAB has been entered into the Register as the holder of all the Scheme Units, maintain or procure the maintenance of the Register in accordance with this clause 41.1. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 41.1(a)(ii) will solely determine the persons who are Scheme Participants and their entitlements to the Scheme Consideration.
- (f) From the Record Date and until registration of CHAB as the holder of all Scheme Units under clause 41.4(c), no Member may deal with Units in any way except as set out in this clause 41 and any attempt to do so will have no effect.
- (g) As from the Record Date, and without limiting clause 41.6, (and, other than for CHAB, following the Implementation Date):
 - (i) all unit certificates and holding statements for Scheme Units will cease to have effect as documents of title in respect of those Scheme Units; and
 - (ii) each entry in the Register as at the Record Date relating to the Scheme Units will cease to have any effect other than as evidence of the entitlements of Scheme Participants to payment of the Transfer Price in respect of the Scheme Units.
- (h) As soon as practicable after the Record Date but before the Implementation Date, the Responsible Entity must give to CHAB

details of the names and addresses shown in the Register of all Scheme Participants and of the number of Scheme Units held by each of them on the Record Date in such form as CHAB may reasonably require.

41.2 Deposit of Aggregate Scheme Consideration

- (a) By no later than 10:00am on the date that is one Business Day before the Implementation Date, CHAB must, in consideration for the transfer of the Scheme Units under clause 41.4, deposit (or procure the deposit) in cleared funds into the Scheme Trust Account an amount equal to the Aggregate Scheme Consideration (less any amounts required to be withheld and remitted to the Australian Taxation Office (**ATO**) under clause 7.2(b) of the SIA).
- (b) The Responsible Entity must hold any amounts deposited into the Scheme Trust Account under clause 41.2(a) on trust for the Scheme Participants for the purpose of paying (or procuring the payment to) each Scheme Participant in accordance with clause 41.3 (except that the amount of any interest on the amounts deposited into the Trust Account (less any bank fees and other charges) will be to CHAB's account).
- (c) For the avoidance of doubt, any amounts deposited into the Scheme Trust Account under clause 41.2(a) shall not constitute Scheme Property.

41.3 Payment to Scheme Participants

- (a) On the Implementation Date, subject to CHAB having satisfied its obligations under the Deed Poll and clause 7.2(a)(i) of the SIA, the Responsible Entity must pay (or procure the payment to) each Scheme Participant from the Scheme Trust Account the Transfer Price per Scheme Unit held by that Scheme Participant at the Record Date (less any amounts required to be withheld and remitted to the ATO under clause 7.2(b) of the SIA) in accordance with clause 41.3(b).
- (b) The obligations of the Responsible Entity under clause 41.3(a) will be satisfied by the Responsible Entity either:
 - (i) where a Scheme Participant has, before the Record Date, complied with the requirements of the Registry for nominating a bank account to receive distribution payments that is denominated in Australian currency, by electronic funds transfer to the account nominated by the Scheme Participant; or
 - (b) otherwise, by cheque sent by pre-paid post:
 - (A) in the case of Scheme Participants who are registered as holding the Scheme Units jointly – the address recorded in the AOF Unit Register on the Record Date of the person whose name appears first in the AOF Unit Register in respect of the joint holding; and
 - (B) otherwise – to the Scheme Participant's address recorded in the AOF Unit Register on the Record Date.

41.4 Transfer of Scheme Units to CHAB

On the Implementation Date, and subject to CHAB having satisfied its obligations under the Deed Poll and clause 7.2(a)(i) of the SIA and the Responsible Entity having paid each Scheme Participant the amounts owing to it under clause 41.3, all of the Scheme Units, together with all rights and entitlements attaching to those Scheme Units as at the Implementation Date, will be transferred to CHAB without the need for any further act by any Scheme Participant (other than acts performed by the Responsible Entity (or its directors or officers) as attorney or agent of the Scheme Participants under clause 41.5) by:

- (a) the Responsible Entity delivering to CHAB for execution duly completed Scheme Transfers to transfer all of the Scheme Units to CHAB, duly executed by the Responsible Entity (or any of its directors or officers) as attorney or agent of the Scheme Participants under clause 41.5;
- (b) CHAB executing the Scheme Transfers as transferee and delivering them to the Responsible Entity for registration; and
- (c) the Responsible Entity, immediately after receipt of the executed Scheme Transfers under clause 41.4(b), entering, or procuring the entry of, the name and address of CHAB in the Register as the holder of all the Scheme Units.

41.5 Covenants by Responsible Entity and Members

- (a) Each Scheme Participant and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the CHAB Scheme and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 41, the Responsible Entity has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the CHAB Scheme, the SIA and the transactions contemplated by them.
- (c) Each Scheme Participant, without the need for any further act, irrevocably:
 - (i) agrees to the transfer of all of their Scheme Units, together with all rights and entitlements attaching to those Scheme Units as at the Implementation Date, to CHAB in accordance with this clause 41;
 - (ii) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 41;
 - (iii) appoints the Responsible Entity and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any document or doing any other act necessary to give full effect to the CHAB Scheme, this clause 41, and the transactions contemplated by them, including providing to CHAB on behalf of that Scheme Participant a warranty by the Scheme Participant in the terms of the deemed warranty in clause 41.6(a);
 - (iv) consents to the Responsible Entity and CHAB doing all things and executing all deeds, instruments, transfers or other

documents as may be necessary or desirable to give full effect to the CHAB Scheme, this clause 41 and the transactions contemplated by them; and

- (v) appoints the Responsible Entity and each of its directors and officers, jointly and severally, to enforce the Deed Poll against CHAB on behalf of, and as agent and attorney for, the Scheme Participant.
- (d) The Responsible Entity, as agent and attorney for each Scheme Participant, may sub delegate its functions, authorities or powers under this clause 41.5 to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (e) Subject to the Responsible Entity having paid each Scheme Participant the amounts owing to it under clause 41.3, from the Implementation Date until the Responsible Entity registers CHAB as the holder of all Scheme Units in the Register, each Scheme Participant irrevocably appoints the Responsible Entity as its attorney and agent (and directs the Responsible Entity in such capacity) to appoint CHAB (or any nominee of CHAB) as its sole proxy and, where applicable, corporate representative for the purpose of:
 - (i) attending Member meetings;
 - (ii) exercising the votes attaching to the Scheme Units of which they are the registered holder in the Register; and
 - (iii) signing any Members' resolution,

and no Scheme Participant may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 41.5(e). The Responsible Entity undertakes in favour of each Scheme Participant that it will appoint CHAB (or any nominee of CHAB) as the Scheme Participant's proxy or, where applicable, corporate representative in accordance with this clause 41.5(e).

41.6 Status of Scheme Units

- (a) Each Scheme Participant warrants to CHAB and the Responsible Entity, and authorises the Responsible Entity to warrant to CHAB as agent and attorney for the Scheme Participant, that all of their Scheme Units (and any rights and entitlements attaching to those Units) which are transferred to CHAB under this clause 41 or otherwise pursuant to the CHAB Scheme will, at the date of the transfer of them to CHAB, be fully paid and free from all mortgages, charges, liens, encumbrances, security interests (including "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those Units) to CHAB pursuant to the CHAB Scheme.
- (b) Subject to the Responsible Entity having paid each Scheme Participant the amounts owing to it under clause 41.3, CHAB will be beneficially entitled to the Scheme Units transferred to it under this

clause 41 or otherwise pursuant to the CHAB Scheme pending registration by the Responsible Entity of the name and address of CHAB in the Register as the holder of those Scheme Units.

41.7 Effect of clause 41

This clause 41:

- (a) binds the Responsible Entity and all Scheme Participants, including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions at the Scheme Meeting; and
- (b) overrides the other provisions of this constitution to the extent of any inconsistency (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

41.8 Responsible Entity's limitation of liability

Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to Members, beyond the extent to which the Responsible Entity is actually indemnified out of the assets of the Scheme, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the CHAB Scheme.

41.9 Implementation of CHAB Scheme

- (a) Subject to the Corporations Act, the Responsible Entity, CHAB and any of their respective directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 41 even if they have an interest (financial or otherwise) in the outcome or in the act, matter or thing or any consequence thereof.
- (b) The Responsible Entity may amend the terms of the CHAB Scheme if:
 - (i) such amendment is not inconsistent with the approval given by the Scheme Participants or such amendment does not adversely affect the rights of Scheme Participants whose Units are to be transferred under the CHAB Scheme; and
 - (ii) such amendment is approved in writing by CHAB.

This clause 41 shall apply to the CHAB Scheme as amended.

41.10 Unclaimed monies

- (a) The *Unclaimed Moneys Act 2008* (Vic) will apply in relation to any amount payable to a Scheme Participant under the CHAB Scheme which becomes "unclaimed money" (as defined in section 3 of that Act).
- (b) The Responsible Entity may cancel a cheque issued on account of the Transfer Price paid in respect of a Scheme Unit if the cheque:
 - (i) is returned to the Responsible Entity; or

- (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.

41.11 Orders of court or Government Agency

- (a) The Responsible Entity may deduct and withhold from the Transfer Price which would otherwise be payable to a Scheme Participant in respect of a Scheme Unit, any amount which CHAB or the Responsible Entity determine is required to be deducted and withheld from that consideration under any applicable law including any order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency (including any amounts required to be withheld and remitted to the ATO under clause 7.2(b) of the SIA).
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the CHAB Scheme as having been paid to the person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Government Agency.
- (c) If written notice is given to the Responsible Entity (or the Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency which:
 - (i) requires consideration that would otherwise have been payable or provided to a Scheme Participant under the CHAB Scheme to instead be paid or provided to a Government Agency or other third party (either through payment of a sum or the issuance of a security) then the Responsible Entity shall be entitled to procure that payment or provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of that consideration in accordance with that order, direction or notice will be treated for all purposes under the CHAB Scheme as having been paid or provided to that Scheme Participant); or
 - (ii) that prevents the Responsible Entity from providing consideration to any particular Scheme Participant under the CHAB Scheme, or the payment or provision of such consideration is otherwise prohibited by applicable law, the Responsible Entity will be entitled to retain the Transfer Price to which that Scheme Participant would otherwise be entitled for a Scheme Unit under the CHAB Scheme until such time as provision or payment of the Transfer Price for that Scheme Unit under the CHAB Scheme is permitted by that order, direction or notice or otherwise by law."

3. BINDING PROVISIONS

The provisions of this deed are binding on and are made for the benefit of the Responsible Entity, each Member and all persons claiming through them.

4. **NO RESETTLEMENT OR DECLARATION**

The Responsible Entity confirms that it is not by this deed:

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

5. **NO MERGER**

Each obligation set out in this Supplemental Deed which is capable of having future operation continues in force after the Effective Time although this Supplemental Deed has otherwise been fully performed.

6. **GOVERNING LAW**

This deed is governed by the laws in force in Victoria, Australia. The Responsible Entity submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

EXECUTED as a deed poll.

EXECUTED by **AUSTRALIAN UNITY
INVESTMENT REAL ESTATE LIMITED
AS RESPONSIBLE ENTITY OF
AUSTRALIAN UNITY OFFICE FUND:**

Signature of director

Signature of director/secretary

Name

Name