

## **Custodian Deed**

**Triveni Pty Ltd**

and

**Sangama Properties Pty Ltd**

HWL  
EBSWORTH  
LAWYERS

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264-278 George Street  
Sydney NSW 2000  
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## Custodian Deed

<b>Date</b>	30TH APRIL 2015
<b>Parties</b>	<p>Triveni Pty Ltd ACN 145 337 337 of 29 Marscay Street, Kellyville Ridge, NSW, 2155</p> <p style="text-align: right;">('the SMSF Trustee')</p> <p>Sangama Properties Pty Ltd ACN 149 978 138 of 29 Marscay Street, Kellyville Ridge, NSW, 2155</p> <p style="text-align: right;">('the Custodian')</p>
<b>Background</b>	<p>A. The SMSF Trustee is the trustee of the Super Fund.</p> <p>B. The SMSF Trustee has requested the Custodian to provide, and the Custodian has agreed to provide, custodian services to the Super Fund in relation to the Assets, on the terms and conditions of this Deed.</p>

NEW SOUTH WALES DUTY  
16-08-2016 0008692928-001  
SECTION (the Custodian)  
DUTY \$ \*\*\*\*\*500.00

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed (including the recitals) unless the context otherwise requires:

'**Account**' means any accounts established and maintained by the Custodian in the name of the Custodian and/or the Super Fund and/or in such other name as the SMSF Trustee direct in writing for any assets of the Super Fund from time to time received and accepted by the Custodian for the account of the SMSF Trustee;

'**ASIC**' means the Australian Securities and Investments Commission and any successor organisation;

'**APRA**' means the Australian Prudential Regulation Authority or any successor organisation;

'**Assets**' means the Assets to be held under the terms of this Deed, as detailed in Schedule 1 or any replacement assets;

'**Associate**' means a body corporate that is an associate of the Custodian or SMSF Trustees by application of Part 1.2, Division 2 of the Corporations Act;

'**ATO**' means the Australian Taxation Office or any successor organisation;

'**Bank Account**' means an account with a financial institution which has been approved by the SMSF Trustee in writing;

'**Business Day**' means a day other than a Saturday, Sunday or a public holiday or other holiday in the Jurisdiction;

'Cash' means cash from any source;

'Certificate of Title' means a document evidencing title to any assets of the Super Fund, including all scrip, certificates, deeds, documents or instruments creating or evidencing title to any Assets;

'Claim' includes any claim, demand, remedy, suit, injury, expense, payment, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;

'Commencement Date' means the date specified in Schedule 1;

'Communication' means any notice, report, letter or other document which relates to an Asset;

'Contracts' means the contracts and Leases referred to in clause 3 and any other agreement or obligations relating to the Assets;

'Corporations Act' includes the *Corporations Act 2001* (Cth) and the *Corporations Regulation 2001*;

'Deed' means this Custodian Deed;

'Jurisdiction' means the jurisdiction set out in Schedule 1;

'Land' includes any interest in land whether vested or contingent, freehold or leasehold, and whether at law or in equity included in the Assets;

'Lease' means a lease, licence or other right to occupy Land;

'Records' means all books and records maintained by the Custodian in relation to the Assets, the Bank Accounts and the Accounts;

**Relevant Borrowing** means a borrowing undertaken by the SMSF Trustee for the purposes of and in connection with the acquisition of the Assets;

'Securities' means units or other interests in managed investment funds, mutual funds or other collective investment funds, shares, stocks and other equity interests of every type, evidences of indebtedness, other instruments representing any of those interests or rights or obligations to receive, purchase, deliver or sell any of those interests;

'Security Interest' includes any mortgage, pledge, lien, charge or other security or any arrangement which gives a creditor a preferential right to an asset or its proceeds;

'Standards' means the Australian Accounting Standards and the Australian Auditing Standards issued by the Australian Accounting Research Foundation, as amended from time to time;

'Super Fund' means the Super Fund specified in Schedule 1;

'Trust Deed' means the trust deed of the Super Fund; and

'Trust Property' means the Assets held on separate trust by the Custodian under the terms of this Deed.

## 1.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) the *singular* includes the plural and conversely;
- (b) a *gender* includes all genders;
- (c) where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a *person* includes a body corporate, an unincorporated body or other entity and conversely;
- (e) a reference to a *clause* or *Schedule* is to a clause of or schedule to this Deed;
- (f) a reference to any *party* to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (g) mentioning anything after *include*, *includes* or *including* does not limit what else might be included;
- (h) a reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed;
- (i) a reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (j) a reference to the Custodian or the SMSF Trustee includes, where the context permits a reference to their respective officers, employees and agents or any of them;
- (k) a reference to the *knowledge, belief or awareness* of any person in relation to a matter means the knowledge, belief or awareness that the person would have if it had made all reasonable enquiries of others who could reasonably be expected to have information relevant to the matter and, where those enquiries would have prompted a reasonable person to make further enquiries, made those further enquiries; and
- (l) a reference to an accounting term is to be interpreted in accordance with the Standards and where not inconsistent with those Standards, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time.

## **2. APPOINTMENT OF THE CUSTODIAN**

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On and from the Commencement Date, the SMSF Trustee appoints the Custodian as custodian of the Assets on the terms and conditions of this Deed. The Custodian accepts that appointment.

## **3. RESPONSIBILITIES OF THE CUSTODIAN**

---

3.1 The Custodian's duties will be as follows:

- (a) to enter into contracts to purchase or dispose of the Assets at the direction of the SMSF Trustee;
- (b) subject to clause 13, to grant a Security Interest over or in relation to the Assets;

- (c) in accordance with clause 4, to hold the Assets separately from other property held by the Custodian;
- (d) to open and maintain a separate Bank Account for each Asset;
- (e) in accordance with written instructions from the SMSF Trustee, to transfer funds for the following purposes:
  - (i) in payment of expenses incurred in relation to the management of the Assets;
  - (ii) by way of distribution of income or profits to the Super Fund; and
  - (iii) in payment of an amount under a Relevant Borrowing directly to the lender under that Relevant Borrowing;
- (f) to enter into Leases in accordance with written instructions from the SMSF Trustee; and
- (g) to do such other things as are agreed in writing between the SMSF Trustee and the Custodian from time to time.

3.2 The Custodian must hold the Assets as follows:

- (a) in the case of Land, unless the SMSF Trustee directs otherwise, in its own name as legal owner. The Custodian must, unless the SMSF Trustee in writing directs otherwise, ensure that all Certificates of Title for the Land are held by the Custodian;
- (b) in the case of Cash, in a Bank Account;
- (c) in the case of any other Assets, in such manner approved by the SMSF Trustee in writing.

3.3 Subject to clause 3.4, the Custodian must not effect any transactions involving the Assets unless it has received instructions in writing from the SMSF Trustee and must only give effect to those transactions in accordance with those instructions.

3.4 Unless the Custodian receives written notice to the contrary, the Custodian may:

- (a) make payments in respect of any expenses incurred in holding the Assets or in carrying out its duties under this Deed, as long as all such payments are accounted for to the SMSF Trustee; and
- (b) endorse for collection cheques, drafts and other negotiable instruments.

3.5 The Custodian must promptly provide to the SMSF Trustee any Communication received by the Custodian (or a copy of it), in respect of the Assets.

3.6 The Custodian will enter into Contracts when directed to do so by the SMSF Trustee.

#### **4. ESTABLISHMENT OF TRUST**

---

4.1 The Custodian declares and the SMSF Trustee acknowledges and agrees:

- (a) that the Custodian will hold the each Asset on separate trust for the absolute benefit and entitlement of the SMSF Trustee; and
- (b) that the SMSF Trustee is absolutely and presently entitled to all the income and capital derived or deemed to be received by the Custodian in respect of the Trust Property; and

- (c) that the beneficial interest held by the SMSF Trustee in relation to the Trust Property is vested in possession and indefeasible as against the Custodian;
- (d) that the Custodian has no discretion in the performance of its duties and obligations under the separate trusts and must comply with any direction given by the SMSF Trustee in relation to the Trust Property.

4.2 The name of the trust is specified in Schedule 1.

## **5. TRUSTEE TO PROVIDE FUNDS**

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The SMSF Trustee must provide the Custodian with all monies which may be required by the Custodian to enable the Custodian to hold and maintain the Assets and to otherwise perform and comply with the terms of this Deed or any Security Interest which the SMSF Trustee has requested the Custodian to grant over or in relation to any Assets pursuant to clause 13.

## **6. INCURRING OF EXPENSES AND REIMBURSEMENT**

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Any expenditure incurred by the Custodian in respect of the Assets including rates, taxes, fees, insurances, repairs and maintenance and other such expenses, is incurred by the Custodian as agent for and on behalf of the SMSF Trustee.

The Custodian is entitled to reimbursement from the SMSF Trustee for any expenditure properly incurred in respect of holding and maintaining the Assets under the terms of this Deed.

## **7. TRANSFER OF ASSETS BY THE CUSTODIAN**

---

- 7.1 The Custodian must upon receipt of a written request from the SMSF Trustee transfer the Asset to which the Relevant Borrowing relates to the SMSF Trustee or otherwise deal with such Asset in such manner as the SMSF Trustee directs.
- 7.2 Subsequent to receiving a request under clause 7.1 in respect of a particular Asset, upon the Custodian making available to the SMSF Trustee all monies held or receivable by the Custodian in respect of that Asset, the Asset itself, any documents of ownership in respect of the Asset and any form of transfer duly executed by the Custodian whereby the Asset is capable of being transferred to the SMSF Trustee:
  - (a) the obligations of the Custodian as custodian under this Deed in respect of that Asset will be discharged in full; and
  - (b) the SMSF Trustee must immediately cause the Asset to be registered in the name of the SMSF Trustee.

## **8. PROTECTION OF CUSTODIAN**

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- 8.1 Except for its own fraud, wilful breach of this Deed or negligence, where the Custodian in good faith performs its functions or duties or exercises its powers and obligations in accordance with the terms of this Deed, then subject to clause 8.2:
  - (a) the Custodian is not personally liable; and
  - (b) without prejudice to the Custodian's right of indemnity at law or in equity, the Custodian is indemnified out of the Assets,

against any Claim, which the Custodian suffers, incurs or is liable for arising from any thing which it, as Custodian, does or fails to do.

- 8.2 The Custodian will not in any circumstances be entitled to an indemnity, reimbursement or recompense from the SMSF Trustee personally even if the SMSF Trustee have an interest in any part of the Assets, except as expressly provided in clause 6.

## **9. RECORDS**

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- 9.1 The ownership of the Assets must be held in accordance with this Deed.
- 9.2 The Custodian must keep accurate and detailed records of all receipts, disbursements and other transactions for each Asset. All Records must be open to inspection during normal business hours by the SMSF Trustee or persons duly authorised by the SMSF Trustee.
- 9.3 Without limiting clauses 9.1 and 9.2, all Records must be kept in the form reasonably requested by the SMSF Trustee.

## **10. CLAIMS AND PROCEEDINGS**

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- 10.1 The Custodian must immediately notify the SMSF Trustee of any Claim or potential Claim relating to the Assets of which it is notified in writing and give full details of all relevant circumstances.
- 10.2 The SMSF Trustee will be responsible for managing any Claim of the kind referred to in clause 10.1 (including bringing, defending or settling any proceeding relating to the Claim). However, the Custodian must, at the SMSF Trustee's expense, provide all information and assistance that the SMSF Trustee may reasonably require in relation to managing the Claim.
- 10.3 The Custodian agrees to institute and join in legal proceedings in connection with the Assets if requested to do so by the SMSF Trustee where it is necessary for the Custodian to be a party on record in connection with those proceedings to protect the interests or rights of the SMSF Trustee, provided that the SMSF Trustee:
- (a) will be responsible for managing the conduct of any such proceedings;
  - (b) must pay any expenses incurred by the Custodian in relation to any such proceedings; and
  - (c) must immediately notify the Custodian of any matter of which it becomes aware which might reasonably affect the Custodian, including by the incurring of any liability, the making of any Claim, adverse publicity or reputational risk or other like circumstance.

## **11. NO REMUNERATION**

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The Custodian agrees and acknowledges that it will not receive any remuneration with respect to its performance of its duties or obligations under the terms of this Deed.

## **12. REPRESENTATIONS AND WARRANTIES**

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- 12.1 The SMSF Trustee represents and warrants to the Custodian as follows:
- (a) it has the power to enter into and perform its obligations under this Deed and this Deed is binding on it;
  - (b) this Deed does not violate any obligation by which the SMSF Trustee is bound, whether arising by contract, operation of law or otherwise; and
  - (c) it is authorised to enter into this Deed under the Trust Deed and by entering into this Deed the SMSF Trustee is not in breach of any provision of the Trust Deed.



12.2 The Custodian represents and warrants as follows:

- (a) it has the power to enter into and perform its obligations under this Deed and this Deed is binding on it;
- (b) it will not claim or grant any Security Interest over any Asset in its favour except as approved by the SMSF Trustee under this Deed; and
- (c) this Deed does not violate any obligation by which the Custodian is bound, whether arising by contract, operation of law or otherwise.

### 13. LIMITED RECOURSE

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13.1 If the Custodian receives written notice from the SMSF Trustee to grant a Security Interest over or in relation to any Assets, the Custodian must only act on those instructions if:

- (a) it is satisfied that the Security Interest is being granted solely in connection with the Relevant Borrowing for that Asset; and
- (b) it is satisfied that the lender's recourse under the Relevant Borrowing (whether on default under the borrowing or for the sum of the borrowing and charges related to the borrowing) is limited to rights under the Security Interest related to that Asset,

and nothing in this Deed obliges the Custodian to accept any personal liability under or in respect of any Relevant Borrowing and if the Custodian does accept any such personal liability it does so:

- (c) of its own volition; and
- (d) without any right of recourse as against the Assets, the Super Fund or the SMSF Trustee.

### 14. GST

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14.1 Words or expressions used in this clause 14 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

14.2 For the purposes of this Deed where the expression 'GST inclusive' is used in relation to an amount payable or other consideration to be provided for a supply under this Deed, the amount or consideration will not be increased on account of any GST payable on that supply.

14.3 Any consideration to be paid or provided for a supply made under or in connection with this Deed, unless specifically described in this Deed as GST inclusive, does not include an amount on account of GST.

14.4 Despite any other provision in this Deed, if a party ("**Supplier**") makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is specifically described in this Deed as GST inclusive):

- (a) the consideration payable or to be provided for that supply under this Deed but for the application of this clause ("**GST exclusive consideration**") is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

14.5 If a payment to a party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

14.6 The Supplier will provide a tax invoice.

## **15. CONFIDENTIALITY**

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15.1 Subject to clause 15.3, each party agrees that it will treat as confidential all information provided to it by the other party regarding the other's business and operations.

15.2 Subject to clause 15.3, all such information provided by a party will only be used by any other party for the purpose of giving effect to this Deed and, except as may be required in carrying out this Deed, must not be disclosed to any third party without the prior written consent of the party providing the information.

15.3 The obligations in clauses 15.1 and 15.2 do not apply to any information:

- (a) that is publicly available when provided or which becomes publicly available later (other than through a breach of this Deed); or
- (b) that is reasonably requested or required to be disclosed by any bank or regulatory examiner (including ASIC, APRA or the ATO) of the Custodian or the SMSF Trustee, any auditor of the parties, by judicial or administrative process or otherwise by applicable law, regulation or the Trust Deed.

## **16. NOTICES**

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16.1 Any demand, consent, notice or other communication authorised or required to be given or made under this Deed must be in writing and may be given by facsimile post or hand on the facsimile number or at the address specified in Schedule 2 or on another facsimile number or at another address as may be notified by the addressee.

16.2 Subject to sub-clause 16.3 a notice:

- (a) given by facsimile shall be deemed to be given on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages, the correct destination facsimile machine number and the result of the transmission as 'OK'. If a notice would be deemed to be given or made after normal business hours of the recipient, the notice is taken to be given on the next following Business Day;
- (b) sent by prepaid post to have been given where posted to an address in the same country as the sender's on the second Business Day following the day on which it was posted or where posted to an address in another country on the seventh Business Day following the day on which it was posted; and
- (c) delivered by hand during normal business hours of the recipient on a Business Day is taken to have been given on that day, or in any other case a hand delivery shall be deemed to have been given on the Business Day following the day of delivery.

16.3 Despite clause 16.2 any communications received by the recipient after 4.00 p.m. (or such other time as agreed by the parties from time to time) will be taken to have been received on the next Business Day, but the Custodian will use reasonable endeavours to process any communication received by it as soon as possible after receipt.

## **17. TERM AND TERMINATION**

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- 17.1 This Deed is deemed to have commenced on the Commencement Date and will continue until terminated in accordance with clause 17.2 or 17.3.
- 17.2 This Deed may be terminated by either the SMSF Trustee or the Custodian by notice to the other party and such termination will take effect 90 days after the date of delivery unless a different period is agreed to in writing by the SMSF Trustee and the Custodian.
- 17.3 Either party may terminate this Deed immediately by written notice to the other upon the happening of one or more of the following events:
- (a) the other party goes into liquidation, receivership or voluntary administration or an official trustee or administrator is appointed with respect to its undertaking, property or assets, or any part of them;
  - (b) the other party commits a significant and material breach of this Deed which is not remedied by that other party within 10 Business Days (or such longer period agreed between the parties) of it being required to do so;
  - (c) the other party enters into an arrangement or composition with any of its creditors or proposes to do so; or
  - (d) the making of an order or the passing of a resolution for the winding up of the other party, or if a petition for such order is presented or a meeting is convened for the purposes of considering such a resolution (unless the winding up is for the purpose of a reconstruction or an amalgamation).
- 17.4 Where this Deed is terminated the Custodian will continue to hold the Assets, under and in accordance with the terms of the Deed, until the SMSF Trustee appoint a new custodian or requires the Assets to be transferred to it. The Custodian will then transfer the Assets to such new custodian or as the SMSF Trustee direct.

## **18. AMENDMENT**

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This Deed may be amended only by another document in writing executed by the parties.

## **19. GOVERNING LAW**

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This Deed is governed by the laws of the Jurisdiction. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **20. ASSIGNMENT**

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The rights and obligations of each party under this Deed are personal. They cannot be assigned, charged or otherwise dealt with, and neither party shall attempt or purport to do so, without the prior written consent of the other.

## **21. STAMP DUTY AND COSTS**

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The SMSF Trustees are responsible for all costs arising out of the preparation of this Deed and the SMSF Trustee shall bear any stamp duty (including any fines and penalties) chargeable on this Deed and any instrument entered into under this Deed. The SMSF Trustees must indemnify the Custodian on demand against any liability for that stamp duty (including fines and penalties).

## 22. FORCE MAJEURE

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Where a party is unable, wholly or in part, because of anything which is not reasonably within its control other than lack of funds ('force majeure') to carry out any obligation under this Deed, and it:

- (a) gives the other party prompt notice of that force majeure with reasonably full particulars and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable endeavours to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by the continuance of that force majeure. Any obligation to pay money is not excused by force majeure, save for any obligation of the Custodian to pay money where the Custodian is entitled to an indemnity from the SMSF Trustee under this Deed in relation to the Assets and there is insufficient money in the Super Fund to pay such money.

## 23. DISPUTE RESOLUTION

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23.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) or any alternative dispute resolution process unless it has complied with this clause.

23.2 In respect of a dispute arising out of this Deed:

- (a) A party claiming that a dispute has arisen must notify the other party giving details of the dispute;
- (b) After receipt of the notice of dispute, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by negotiation within a reasonable time of it being referred to them;
- (c) If the dispute is not settled under clause 23.2(b) within a reasonable time of notification of a dispute by either party, the parties agree the following will apply:
  - (i) the parties shall endeavour to settle the dispute by mediation conducted in accordance with the ACDC mediators' guidelines;
  - (ii) the costs of the appointment of the mediator shall be borne equally by the parties. The costs incurred in the mediation shall be borne by the party or parties as determined by the mediator;
  - (iii) in the event that a dispute cannot be resolved in accordance with clause 23.2(c)(i) or, if at any time, either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may, by notice in writing of not less than 14 days to the other, refer the dispute to legal action and the service of such notice under this sub-clause shall be a condition precedent to the commencement of any litigation proceedings in respect of such a dispute.

23.3 The parties agree that, after a dispute has been referred to negotiation or mediation under clause 23.2:

- (a) except in relation to a clause 17.3 termination, neither party will terminate this Deed; and
- (b) each party will continue to perform its obligations under this Deed,

at least until after the mediation process is completed.

**24. COUNTERPARTS**

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This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

**25. ENTIRE AGREEMENT**

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This Deed contains all the contractual arrangements of the parties with respect to the transactions to which it relates. It supersedes all earlier conduct by the parties with respect to those transactions.

**Schedule 1**

**Commencement Date:** the date of this Deed

**Super Fund:** Sebastin Super Fund

**Assets:** Lot 1211 (No 19) Tempe Street, Bardia, New South Wales, 2565

**Jurisdiction:** New South Wales

**Name of Trust:** Sangama 3 Property Trust

**Schedule 2**  
**ADDRESS FOR SERVICE (CLAUSE 16.1)**

**SMSF Trustee**

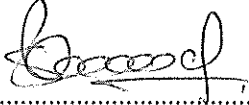
Attention: Directors  
Address: 29 Marscay Street, Kellyville Ridge, NSW, 2155  
Facsimile No:

**Custodian**

Attention: Directors  
Address: 29 Marscay Street, Kellyville Ridge, NSW, 2155  
Facsimile No:

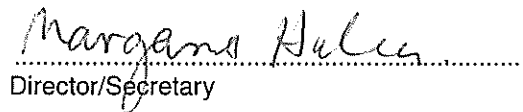
**EXECUTED AS A DEED**

Executed by Triveni Pty Ltd in accordance )  
with section 127 of the *Corporations Act* )  
2001 (Cth): )



.....  
Director

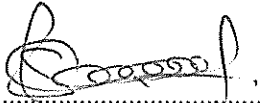
.....  
VENU SEBASTIN  
.....  
(Print) Full Name



.....  
Director/Secretary

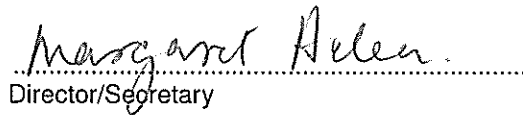
.....  
MARGARET HELEN SEBASTIN  
.....  
(Print) Full Name

Executed by Sangama Properties Pty Ltd )  
in accordance with section 127 of the )  
*Corporations Act* 2001 (Cth): )



.....  
Director

.....  
VENU SEBASTIN  
.....  
(Print) Full Name



.....  
Director/Secretary

.....  
MARGARET HELEN SEBASTIN  
.....  
(Print) Full Name



# STATUTORY DECLARATION

We, Venu Sebastin and Margaret Helen Sebastin both of 29 Marscay Street, Kellyville Ridge in the State of New South Wales make the following declaration under the *Statutory Declarations Act 1959*:

1. We are the Directors of Sangama Properties Pty Ltd ACN 149 978 138 as trustee of the Sangama 3 Property Trust (**Custodian**).
2. On \_\_\_\_\_ the Custodian and Triveni Pty Ltd ACN 145 337 337 as trustee of the Sebastin Super Fund (**Beneficial Owner**) entered into a custodian deed (**Custodian Deed**) in respect of the property known as Lot 1211 (No 19) Tempe Street, Bardia, New South Wales, 2565 (**Property**).
3. All purchase moneys for the Property, including the deposit, was paid by the Beneficial Owner. I attach evidence showing that the deposit and balance of purchase moneys was paid by the Beneficial Owner marked "Annexure A".
4. The intention of all parties' at all times was that the Custodian would hold the Property in trust for the Beneficial Owner absolutely.
5. The Custodian was incorporated prior to the date of the Custodian Deed.
6. I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Declared  
at Bellarista  
on 10 of June 2015

Before me,

Sutharini  
Signature of person before whom the declaration  
is made

Margaret Helen  
Signature of person making the declaration

Dr. SASIKARAN SUTHARINI . 14, ARABELLA PLACE  
Full name, qualification\* and address of person  
before whom the declaration is made (in printed letters) BELLAVISTA  
NOW 2153

# STATUTORY DECLARATION

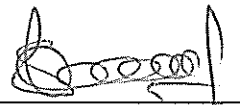
We, Venu Sebastin and Margaret Helen Sebastin both of 29 Marscay Street, Kellyville Ridge in the State of New South Wales make the following declaration under the *Statutory Declarations Act 1959*:

1. We are the Directors of Triveni Pty Ltd ACN 145 337 337 as trustee of the Sebastin Super Fund (**Beneficial Owner**).
2. On 30th APRIL 2015 the Beneficial Owner and Sangama Properties Pty Ltd ACN 149 978 138 (**Custodian**) entered into a custodian deed (**Custodian Deed**) in respect of the property known as Lot 1211 (No 19) Tempe Street, Bardia, New South Wales, 2565 (**Property**).
3. All purchase moneys for the Property, including the deposit, was paid by the Beneficial Owner. I attach evidence showing that the deposit and balance of purchase moneys was paid by the Beneficial Owner marked "Annexure A".
4. The intention of all parties' at all times was that the Custodian would hold the Property in trust for the Beneficial Owner absolutely. The name of the trust is Sangama 3 Property Trust.
5. The Beneficial Owner was incorporated prior to the date of the Custodian Deed.
6. The Sebastin Super Fund (**SMSF**) was established prior to the date of the Custodian Deed.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Declared  
at Bellavista  
on 10 of June 2015

Before me,



\_\_\_\_\_  
Signature of person making the declaration



\_\_\_\_\_  
Signature of person before whom the declaration is made

Dr. SASIKARAN SUTHARINI  
Full name, qualification\* and address of person  
before whom the declaration is made (in printed letters)

14. ARABELLA PLACE  
BELLAVISTA  
NSW 2153.

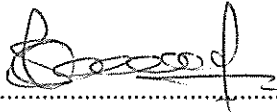
**Ownership Certificate**

Custodian: Sangama Properties Pty Ltd ACN 149 978 138  
Beneficial Owner: Triveni Pty Ltd ACN 145 337 337 as trustee of the Sebastin Super Fund  
Property: Lot 1211 (No 19) Tempe Street, Bardia, New South Wales, 2565

This document certifies that the Custodian holds the legal title in the Property on the terms specified in the custodian deed established on 30th APRIL 2015 between the Custodian and Beneficial Owner named the Sangama 3 Property Trust.

The Beneficial Owner is entitled to obtain a transfer of the legal title to the Property on the condition that all money payable to the Custodian and to any mortgagee on the title for the Property is paid.

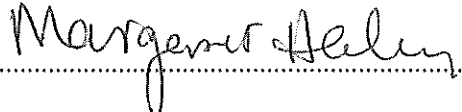
Executed by Sangama Properties Pty Ltd in )  
accordance with section 127 of the )  
Corporations Act 2001 (Cth): )



Director

VENU SEBASTIN

(Print) Full Name



Director/Secretary

MARGARET HELEN SEBASTIN

(Print) Full Name

**Persons before whom a statutory declaration may be made**

The following persons may witness a statutory declaration made under the *Statutory Declarations Act, 1959* in accordance with regulation 4 of the *Statutory Declarations Regulations, 1993*.

- (a) a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in an occupation listed in Part 1;
- (b) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (c) a person listed in Part 2.

**Part 1 Occupations**

Item	Occupation
101	Chiropractor
102	Dentist
103	Legal practitioner
104	Medical practitioner
105	Nurse
106	Optometrist
107	Patent attorney
108	Pharmacist
109	Physiotherapist
110	Psychologist
111	Trade marks attorney
112	Veterinary surgeon

**Part 2 Other persons**

Item	Person
201	Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
202	Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the <i>Consular Fees Act 1955</i> )
203	Bailiff
204	Bank officer with 5 or more continuous years of service
205	Building society officer with 5 or more years of continuous service
206	Chief executive officer of a Commonwealth court
207	Clerk of a court
208	Commissioner for Affidavits
209	Commissioner for Declarations
210	Credit union officer with 5 or more years of continuous service
211	Employee of the Australian Trade Commission who is: <ul style="list-style-type: none"><li>(a) in a country or place outside Australia; and</li><li>(b) authorised under paragraph 3 (d) of the <i>Consular Fees Act 1955</i>; and</li><li>(c) exercising his or her function in that place</li></ul>

Item	Person
233	Registrar, or Deputy Registrar, of a court
234	Senior Executive Service employee of: (a) the Commonwealth or a Commonwealth authority; or (b) a State or Territory or a State or Territory authority
235	Sheriff
236	Sheriff's officer
237	Teacher employed on a full-time basis at a school or tertiary education institution
238	Member of the Australasian Institute of Mining and Metallurgy

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**SMSF STRUCTURE OVERVIEW**

**The law**

Section 67A of the *Superannuation Industry (Supervision) Act 1993* provides an exception enabling an SMSF to borrow money. In summary, an SMSF may borrow money under an arrangement whereby:

- the money is or has been applied for the acquisition of a single acquirable asset (including expenses incurred in connection with the borrowing for example, conveyancing fees and stamp duty); or
- the money is applied to refinance a previous borrowing; and
- the acquirable asset is held on trust so that the Superannuation Trustee acquires a beneficial interest in the acquirable asset; and
- the rights of the lender against the Superannuation Trustee in the event of default is limited to the single acquirable asset.

**The law in practice**

- The SMSF selects a property and must ensure firstly that the property type is permitted under their lender's policy and satisfies the requirements of section 67A.
- The purchase must usually be an arms length transaction, that is, the property must be purchased from an unrelated party. There is an exception for 'business real property'. The business use test requires the real property to be used 'wholly and exclusively in one or more businesses' carried on by any entity. In this case, the property may be purchased from and/or leased to a 'related party' of the SMSF.
- The legal title to the property must be held on trust by a trustee known as a Custodian/Bare Trustee/Holding Trustee/Property Trustee (we refer to this trustee as the Custodian). The Custodian and Superannuation Trustee must be separate entities. Lender's policy usually requires that the Custodian be a corporate entity to avoid the merging of trust interests.
- Care must be taken with establishing the Custodian Deed to ensure that there are no adverse GST, taxation or stamp duty consequences

We remind you that our role is limited to the establishment of the Custodian Trust. We are not providing your client with legal advice in relation to the structuring of this transaction, the compliance of the SMSF, the loan to the SMSF, stamp duty or the conveyance. We understand that your client is receiving this advice independently.

- The beneficial interest to the property is held by the SMSF.
- The lender will lend to the SMSF on a limited recourse basis. The lender's recourse is limited to the property. Usually the following is provided as security to the lender for a loan to an SMSF:
  1. Mortgage provided by the Custodian over the purchased property;
  2. Guarantee by the Custodian limited to the purchased property;
  3. Guarantee by the members of the SMSF (often limited to the loan amount);



STRUCTURE DIAGRAM

