

LIMITED RECOURSE  
BORROWING ARRANGEMENT  
DEED OF HOLDING TRUST

CHELSEA HEIGHTS HOLDING TRUST FOR THE  
BENEFIT OF MY PENGUIN SMSF

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# CHELSEA HEIGHTS HOLDING TRUST FOR THE BENEFIT OF MY PENGUIN SMSF

THIS DEED IS DATED:

10/11/21 

## PARTIES:

1. THE TRUSTEE OF THE HOLDING TRUST: THEODORE AT MALIBU PTY LTD – ACN: 639 393 365 of 5/1A SOMME PARADE, EDITHVALE, VIC 3196 (the Trustee).
2. THE TRUSTEE OF THE SUPERANNUATION FUND: MY PENGUIN PTY LTD – ACN: 622 509 246 of UNIT 5/1A SOMME PARADE, EDITHVALE, VIC 3196 (the Trustee of the Fund).

## RECITALS:

1. MY PENGUIN SMSF is a regulated superannuation Fund as defined in 19 of the *Superannuation Industry (Supervision) Act 1993 (SISA)*.
2. MY PENGUIN PTY LTD – ACN: 622 509 246 of Unit 5/1A Somme Parade, Edithvale, VIC 3196 is the Trustee of the Fund.
3. The Superannuation Laws permit a superannuation fund to borrow funds to acquire a single acquirable asset where the legal title to the asset is held in a holding trust by the Trustee on behalf of the Trustee of the Fund with the lender's rights against the Trustee of the Fund only relate to the acquired asset (Limited Recourse Borrowing Arrangement).
4. The Trustee of the Fund intends to borrow funds from the Lender to acquire the property described in SCHEDULE 1 to the deed ("Trust Property") in accordance with a Limited Recourse Borrowing Arrangement.
5. The Trustee will hold the legal title to the Trust Property on behalf of the Trustee of the Fund pursuant to a Limited Recourse Borrowing Arrangement.
6. At all times the Trustee and the Trustee of the Fund are to ensure that the Lender's right against the Trustee of the Fund only relate to the Trust Property.

## TERMS OF THE HOLDING TRUST

Where words are capitalised their meaning is to be found in the Definitions in Section 7.

1. Establishment of the Holding Trust

- a) Pursuant to this deed the Trustee and the Trustee of the Fund hereby establish CHELSEA HEIGHTS HOLDING TRUST FOR THE BENEFIT OF MY PENGUIN SMSF.
- b) The Trustee acts as first Trustee of the Holding Trust and along with the Trustee of the Fund will borrow funds from the Lender for the acquisition of the Trust Property.
- c) The Trustee declares that it will hold the Trust Property for the absolute benefit of the Trustee of the Fund.
- d) The Holding Trust commences when the Trustee takes title to the Trust Property.
- e) The Trustee undertakes to deal with the Trust Property and exercise and perform all the rights, duties and powers relating to the Trust Property as evidenced by this Deed.

2. Ownership of the Trust Property

Upon acquisition of the Trust Property:

- a) the Trustee becomes the legal owner of the property.
- b) the Trustee acquires a vested and indefeasible interest in the Trust Property; and
- c) the Trustee holds the Trust Property for the absolute benefit of the Trustee of the Fund.

3. Transfer of Legal Ownership of the Trust Property

If the Trustee of the Fund makes one or more payments in accordance with, or as otherwise required by, section 67A(1)(c) of SISA or its successors, with the effect of extinguishing the loan in its entirety and the Lender in writing states it has no further claim on the Trust Property, the Trustee of the Fund may request the Trustee to transfer all of its right, title and interest in the Trust Property to the Trustee of the Fund and on receiving such request the Trustee will transfer all of its right, title and interest in the Trust Property to the trustee of the Fund.

4. Variation of Trust Deed

The Trustee may at any time, only on the written direction of the Trustee of the Fund as evidenced in a deed of variation, amend any or all clauses under this Trust Deed. This includes a Deed of Ratification and a Deed of Rectification.

5. Replacement Trustee

- a) The Trustee of the Fund may at any time by deed remove the Trustee and appoint a replacement Trustee.
- b) The Trustee may retire at any time and in these circumstances the Trustee of the Fund may appoint a replacement Trustee.

6. Additional Powers

- a) **Indemnities and Guarantees:** The Trustee can and may provide indemnities and guarantees in relation to any transaction, borrowing, acquisition or disposal of an asset or any other matter of thing and may do so at the direction of any party lending to the Trustee of the Bare Trust or the Trustee of the Fund.
- b) **Mortgage and Charge the Asset:** The Trustee can and may mortgage the Trust Property including enabling and providing a charge over the Trust Property for the benefit of any Lender to the Trustee of the Fund.

7. Other Terms

This Deed is to be interpreted according to the laws of the State or Territory of the Commonwealth of Australia in which the Trustee of the Fund resides or in such other State or Territory as the Trustee of the Fund at any time nominates by way of written notice delivered to the Trustee.

8. Definitions and Interpretation

**Definitions:** These meanings apply unless the contrary intention appears;

**Trustee of the Holding Trust** means THEODORE AT MALIBU PTY LTD – ACN: 639 393 365 of 5/1A Somme Parade, Edithvale, VIC 3196 as a trustee of the Holding Trust.

**Lender** means any person providing finance under this Limited Recourse Borrowing Arrangement.

**Moneys** includes cash, property and any other form of property which may be used as a medium of exchange.

**Trust Property** is the property described in Schedule 1 of this Deed.

**Trustee of the Fund** is the trustee of MY PENGUIN SMSF who is beneficially entitled to the Property held on holding trust by the Trustee.

**SISA** means the *Superannuation Industry Supervision Act 1993*.

**Superannuation Laws** includes the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001, the Corporations Regulations, the Social Security Act 1991 (C'th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C'th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

**Interpretations:** be relied upon in this Deed unless the context otherwise requires;

- a) a clause, annexure or schedule is a reference to a clause in or annexure of schedule to this deed;
- b) a document (including this deed) includes any variation or replacement of it;
- c) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the Corporations Act, and the definition of Control;
- d) the singular includes the plural and vice versa;
- e) the word "including" when introducing a list of items does not exclude a reference to other items;
- f) the word "includes" when introducing a term or definition does not exclude a reference to the meaning of that term under the common or Superannuation Laws;
- g) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- h) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- i) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- j) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;

- k) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- l) Headings are inserted for convenience and do not affect the interpretation of this Deed; and
- m) Where words are capitalised their meaning is to be found in the Definitions.

**EXECUTED BY**

**1: THE TRUSTEE OF CHELSEA HEIGHTS HOLDING TRUST**

THEODORE AT MALIBU PTY LTD - ACN: 639 393 365 by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:



**SIGN HERE**

10/11/21


**DATE HERE**

.....  
Craig Harold Theodore  
Director/Secretary

.....  
Date

**2: THE TRUSTEE OF MY PENGUIN SMSF**

MY PENGUIN PTY LTD - ACN: 622 509 246 by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:



**SIGN HERE**

10/11/21

**DATE HERE**

.....  
Craig Harold Theodore  
Director/Secretary

.....  
Date



# SCHEDULE 1: HOLDING TRUST PROPERTY

The Trustee of the Fund intends to borrow funds from the Lender to acquire the property described below (“**Trust Property**”) in accordance with a Limited Recourse Borrowing Arrangement.

|                             |   |
|-----------------------------|---|
| <b>Asset to be Acquired</b> | 7/107 Wells Rd, Chelsea Heights, VIC 3196 |
| <b>Consideration</b>        | \$420,000                                 |
| <b>Loan Amount</b>          | \$294,000                                 |
| <b>Loan Term</b>            | 30 Years                                  |
| <b>Loan Interest Rate</b>   | 4.95%                                     |

# LIMITED RECOURSE BORROWING ARRANGEMENT (LRBA)

MY PENGUIN SMSF

MINUTES OF THE TRUSTEE OF MY PENGUIN  
SMSF ESTABLISHING THE LRBA

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# MINUTES OF THE TRUSTEE OF MY PENGUIN SMSF

**Date of Meeting** 10/11/21 

**Name of Fund** MY PENGUIN SMSF

**Held at** Unit 5/1A Somme Parade, Edithvale, VIC 3196

**Attended by** CRAIG HAROLD THEODORE

**Chairperson** Craig Harold Theodore was elected as chairperson.

**Purpose of Meeting** Acquisition of an LRBA Single Acquirable Asset and Execution of the LRBA Holding Trust Deed.

**TABLE OF MOTION TO ACQUIRE AN LRBA SINGLE ACQUIRABLE ASSET TO BE HELD IN CUSTODY IN THE HOLDING TRUST:**

The Trustee of the Super Fund and the Trustee of the Holding Trust hereby agree to execute the Holding Trust Deed tabled at this meeting between Craig Harold Theodore as a director of MY PENGUIN PTY LTD – ACN: 622 509 246 of Unit 5/1A Somme Parade, Edithvale, VIC 3196 acting as a Trustee for MY PENGUIN SMSF and Craig Harold Theodore as a director of THEODORE AT MALIBU PTY LTD – ACN: 639 393 365 of 5/1A Somme Parade, Edithvale, VIC 3196 acting as a Trustee for CHELSEA HEIGHTS HOLDING TRUST for the acquisition of the single acquirable asset on the terms contained in the Deed.

The asset is to be acquired by the Trustee of the Holding Trust on behalf and for the beneficial interest of the Trustee of the Fund pursuant to a **Limited Recourse Borrowing Arrangement** and in accordance with the Superannuation Laws.

The Trustee proposes to acquire the following Asset for market value consideration – unless the Superannuation Laws allow otherwise:

|                             |   |
|-----------------------------|---|
| <b>Asset to be Acquired</b> | 7/107 Wells Rd, Chelsea Heights, VIC 3196 |
| <b>Consideration</b>        | \$420,000                                 |
| <b>Loan Amount</b>          | \$294,000                                 |
| <b>Loan Term</b>            | 30 Years                                  |
| <b>Loan Interest Rate</b>   | 4.95%                                     |

**TRUSTEE RESOLUTIONS**

The Trustee has resolved to acquire the Asset proposed for the consideration as shown and hold it in a Holding Trust pursuant to the LRBA rules under the SIS Act 1993.

There being no further business the meeting is closed.

**EXECUTED BY THE TRUSTEE:**

MY PENGUIN PTY LTD - ACN: 622 509 246 by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:



**SIGN HERE**

10/11/21

**DATE HERE**

.....  
 Craig Harold Theodore  
 Director/Secretary

.....  
 Date

# LIMITED RECOURSE BORROWING ARRANGEMENT (LRBA)

MINUTES OF THE TRUSTEE OF CHELSEA  
HEIGHTS HOLDING TRUST FOR THE BENEFIT  
OF MY PENGUIN SMSF

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# MINUTES OF THE TRUSTEE OF CHELSEA HEIGHTS HOLDING TRUST FOR THE BENEFIT OF MY PENGUIN SMSF

Date of Meeting 10/11/21 

Name of Holding Trust CHELSEA HEIGHTS HOLDING TRUST

Name of Super Fund MY PENGUIN SMSF

Held at 5/1A Somme Parade, Edithvale, VIC 3196

Attended by CRAIG HAROLD THEODORE

Chairperson Craig Harold Theodore was elected as chairperson.

Purpose of Meeting Acquisition of an LRBA Single Acquirable Asset

## TABLE OF MOTION TO ACQUIRE AN LRBA SINGLE ACQUIRABLE ASSET TO BE HELD IN CUSTODY IN THE HOLDING TRUST:

Craig Harold Theodore as a director of MY PENGUIN PTY LTD – ACN: 622 509 246 of Unit 5/1A Somme Parade, Edithvale, VIC 3196 acting as a Trustee for MY PENGUIN SMSF and Craig Harold Theodore as a director of THEODORE AT MALIBU PTY LTD – ACN: 639 393 365 of 5/1A Somme Parade, Edithvale, VIC 3196 acting as a Trustee for CHELSEA HEIGHTS HOLDING TRUST hereby agree to acquire the single acquirable asset on the terms contained in the Holding Trust Deed.

The asset is to be acquired by the Trustee of the Holding Trust on behalf and for the beneficial interest of the Trustee of the Fund pursuant to a **Limited Recourse Borrowing Arrangement** and in accordance with the Superannuation Laws.



The Trustee of the Holding Trust proposes to acquire the following Asset for market value consideration – unless the Superannuation Laws allow otherwise:

|                             |   |
|-----------------------------|---|
| <b>Asset to be Acquired</b> | 7/107 Wells Rd, Chelsea Heights, VIC 3196 |
| <b>Consideration</b>        | \$420,000                                 |
| <b>Loan Amount</b>          | \$294,000                                 |
| <b>Loan Term</b>            | 30 Years                                  |
| <b>Loan Interest Rate</b>   | 4.95%                                     |

**TRUSTEE RESOLUTIONS**

The Trustee has resolved to acquire the Asset proposed for the consideration as shown.

There being no further business the meeting is closed.

**EXECUTED BY THE TRUSTEE:**

THEODORE AT MALIBU PTY LTD - ACN: 639 393 365 by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:



**SIGN HERE**

10/11/21

**DATE HERE**

.....  
 Craig Harold Theodore  
 Director/Secretary

.....  
 Date