

# **Unit 1/2 Malibu Circuit Bare Trust Deed**

**BARE TRUST DEED**

Prepared under license from:  
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This Deed of Trust is made on:

19/3/20

DATE HERE

**BETWEEN:**

The Parties named in Item 1 of the Schedule

**DEFINITION**

For the purpose of this Deed the term "the Property" shall refer to the single acquirable asset, which is the subject of this Deed, as defined in accordance with section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth).

**BACKGROUND:**

- A. The Custodial Trustee acquired the Property as trustee for the Beneficiary.
- B. The Beneficiary paid the deposit for the acquisition of the Property.
- C. The funds provided by the Beneficiary for the purchase of the Property will include funds, which the Beneficiary has borrowed from a financier.
- D. The Custodial Trustee acquired the Property solely for the benefit of the Beneficiary.
- E. The Custodial Trustee has legal title to the Property.

**OPERATIVE PART:**

- 1. In this deed, unless the context requires another meaning, a reference-
  - 1.1 to the singular includes the plural and vice versa;
  - 1.2 to a gender includes all genders;
  - 1.3 to a party means a party to this Deed including their successors, executors, administrators and permitted assigns.
- 2. Capitalised terms in this deed have the meaning set out in the Schedule, which forms part of this deed.
- 3. Any clause binding a party consisting of more than one person binds each of those persons separately, together or in any combination.
- 4. The Custodial Trustee acknowledges and declares that it holds the Property on trust on behalf of the Beneficiary as and from the date the Property was acquired.
- 5. The Beneficiary acknowledges and confirms that it holds the beneficial interest in the Property as and from the date of acquisition by the Custodial Trustee subject to the provisions of this deed.

6. The Beneficiary is entitled to the full beneficial ownership and interest in the Property and any income, rents, profits, dividends or other rights accruing from it.
7. The Custodial Trustee confirms and agrees that:
  - 7.1 The Property is the sole and absolute property of the Custodial Trustee subject to the Beneficiary's rights as contained in this deed and the Custodial Trustee has the authority and power to hold the Property on behalf of the Beneficiary;
  - 7.2 It will not deal in any way with the Property without the prior written consent of the Beneficiary.
  - 7.3 It will not transfer legal title to the property to the Beneficiary until such time as the Beneficiary has made one or more payments to extinguish its borrowing obligations in respect of the property in accordance with the provisions of section 67A(1)(c) of the *Superannuation Industry (Supervision) Act 1993* (Cth).
8. The Custodial Trustee irrevocably appoints the Beneficiary to be its attorney with power to execute all instruments of transfer and do the acts the Custodial Trustee could personally execute or do in relation to the Property and the income and rights accruing from it and the Custodial Trustee undertakes to ratify everything the Beneficiary may do pursuant to this power of attorney.
9. At the written request of the Beneficiary the Custodial Trustee must execute all necessary documents transferring the Property to the Beneficiary.
10. Except in the case of fraud or willful misconduct on the part of the Custodial Trustee the Beneficiary indemnifies the Custodial Trustee against any loss, expense, liability or damage the Custodial Trustee may sustain or incur in relation to the Property;
- 10A Custodial Trustee's liability and indemnity
  - 10A.1 No personal liability

The Custodial Trustee is not personally liable for the consequences of any act, error or omission, whether of law or of fact or generally for any breach in exercising or carrying out or failing to exercise or carry out any power contained in this deed unless the Custodial Trustee fails to act honestly or intentionally or recklessly breaches its obligations.
  - 10A.2 Indemnity

The Custodial Trustee is entitled to be indemnified from the assets of the trust being the Property against any expenses, liability or claim that is incurred by or made against the Custodial Trustee in that capacity, unless it is attributable either to the Custodial Trustee's dishonesty or to an act or omission by the Custodial Trustee which the Custodial Trustee knows is a breach of trust.
11. In relation to the replacement of the Custodial Trustee the parties confirm and agree that:

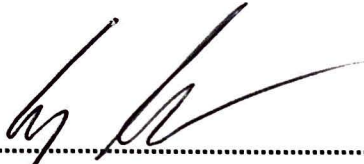
- 11.1 the Custodial Trustee may resign at any time by giving not less than 30 days' prior notice to the Beneficiary;
  - 11.2 the Beneficiary may remove the Custodial Trustee by giving not less than 30 days' prior notice to the Custodial Trustee; and
  - 11.3 on any notice of resignation or removal the Beneficiaries may appoint a successor Custodial Trustee whose appointment will be effected by its execution of a deed substantially in the form of this deed and the successor Custodial Trustee will have all the rights, powers and obligations of the retiring Custodial Trustee who will be discharged from its rights, powers and obligations apart from any liabilities arising out of anything done or omitted to be done by it while it was acting as Custodial Trustee.
12. The parties must do all things and execute all further documents necessary to give full effect to this deed.
  13. This deed is governed by the laws of the State in which the property is acquired ("the said State") and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the said State.
  14. Beneficiary hereby agrees that it will not direct the Custodial Trustee to transfer legal title to the property to the Beneficiary until such time as the Beneficiary has made 1 or more payments to extinguish its borrowing obligations in respect of the property.

## SCHEDULE

<b>Custodial Trustee:</b>	Theodore At Malibu Pty Ltd (A.C.N. 639-393-365) of Unit 5 1a Somme Pde, Edithvale VIC 3196
<b>Beneficiary:</b>	My Penguin Pty Ltd (A.C.N. 622-509-246) of Unit 5 1A Somme Pde Edithvale VIC 3196 in its capacity as Trustee for My Penguin SMSF
<b>Description of Asset:</b>	Real Property Unit 1 2 Malibu Circuit Carrum Downs VIC 3201

**EXECUTED** as an Agreement by the parties on the date specified herein.

**EXECUTED** for and on behalf of Theodore At Malibu Pty Ltd (A.C.N. 639-393-365) in its capacity as Trustee of Unit 1/2 Malibu Circuit Bare Trust Deed in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*



**SIGN HERE**

.....  
**Craig Harold Theodore**  
**Sole Director/Secretary**

**EXECUTED** for and on behalf of by My Penguin Pty Ltd (A.C.N. 622-509-246) in its capacity as Trustee of My Penguin SMSF in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*



**SIGN HERE**

.....  
**Craig Harold Theodore**  
**Sole Director/Secretary**