



## **HOLDING TRUST DEED OF ESTABLISHMENT**

### **EDEN HERMITAGE CUSTODY TRUST**

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# EDEN HERMITAGE CUSTODY TRUST

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## DATE:

## PARTIES:

1. **THE TRUSTEE:** Eden Hermitage Pty Ltd - ACN 611 173 632 of 43 Cathies Lane, Wantirna, VIC 3152 ("**the Trustee**").
2. **THE FUND** and **THE BENEFICIARY:** Enchanting Hornbill Pty Ltd - ACN 167 179 535 of 43 Cathies Lane, Wantirna, VIC 3152 as Trustee of Koh Family Super Fund ("**the Fund**" and "**the Beneficiary**").

## RECITALS:

1. The Trustee has acquired or intends to acquire the property described in **SCHEDULE 1** to the deed ("**Property**") as Holding Trustee for the Beneficiary.
2. The Trustee of the Holding Trust declares the terms and conditions of the Holding Trust as follows:

## 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) The Trustee declares that it holds the Property on Holding Trust for the Beneficiary and the Trust is established by the Trustee's execution of this deed.
- b) If the Beneficiary makes one or more payments in accordance with, or as otherwise required by, section 67A(1)(c) of the Superannuation Industry Supervision Act 1993 or its successors, the Beneficiary may request the Trustee to transfer all of its right, title and interest in any Property purchased to the Beneficiary and on receiving such request the Trustee will transfer all of its right, title and interest in any Property purchased to the Beneficiary.

### 2. Trustees

- a) The Trustee may retire at any time and in these circumstances the Beneficiary may appoint a replacement Trustee.

### 3. Trustee Property

- a) The Property will at all times be held by the Trustee upon Trust for the Beneficiary who has provided all of the purchase moneys.
- b) The Trustee has not and will not provide any of the purchase moneys and the real purchaser is the Beneficiary.
- c) The Trustee may only acquire Property that the Beneficiary is allowed to acquire under the Superannuation Laws.
- d) The Trustee undertakes to deal with the Property and exercise and perform all the rights, duties and powers relating to the Property only as directed by the Beneficiary.

### 4. Title to the Trustee Property

- a) The Beneficiary is and at all time has been absolutely entitled to the benefit of the Property together with all earnings, profits or gains accrued or to accrue in respect of the Property.

## 5. Variation of Trust Deed

- a) The Trustee may at any time, only on the written direction of the Beneficiary to the Trustee as evidenced in the deed of variation, amend any or all clauses under the Trust Deed.

## 6. Other Terms

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

## 7. DEFINITIONS AND INTERPRETATION

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

**Beneficiary** is the trustee of the SMSF who is absolutely entitled to Property held on Holding Trust by the Trustee.

**Fund** is the SMSF who is absolutely entitled to Property held on Holding Trust by the Trustee.

**Holding Trust** is Eden Hermitage Custody Trust created under this Deed.

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

**Property** includes the Property subject of the Holding Trust described in Item 1 of Schedule 1.

**Superannuation Laws** mean the *Commonwealth of Australia Constitution Act 1900*, *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.

**Trustee** means Eden Hermitage Pty Ltd - ACN 611 173 632 as trustee of the Holding Trust.

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

- i) a clause, annexure or schedule is a reference to a clause in or annexure of schedule to this deed;
- ii) a document (including this deed) includes any variation or replacement of it;
- iii) 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;
- iv) the singular includes the plural and vice versa;
- v) the word "including" when introducing a list of items does not exclude a reference to other items;
- vi) 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;
- vii) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- viii) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- ix) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- x) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- xi) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- xii) Headings are inserted for convenience and do not affect the interpretation of this Deed; and
- xiii) Where words are capitalised their meaning is to be found in the Definitions.

## **DEED EXECUTION**

This Deed is formally executed by being signed by the persons authorised to sign for:

### **The Trustees**

Eden Hermitage Pty Ltd - ACN 611 173 632 of 43 Cathies Lane, Wantirna, VIC 3152 by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001:

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**Eng Hung Koh**  
Director

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**Chuo Harn Lau**  
Director

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

### **The Beneficiaries**

Enchanting Hornbill Pty Ltd - ACN 167 179 535 of 43 Cathies Lane, Wantirna, VIC 3152 as Trustee of Koh Family Super Fund by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001:

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**Eng Hung Koh**  
Director

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**Chuo Harn Lau**  
Director

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**SCHEDULE 1.**  
**HOLDING TRUST PROPERTY**

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**ASSET BEING ACQUIRED:** Residential Investment Property