

# Declaration of Custody Trust for The Turner Superannuation Fund

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Colin Turner Property Pty Ltd ACN 168511108

and

Colin & Greg Trading Pty Li

202/30  
Fischer Rd.

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**BETWEEN**

**Colin Turner Property Pty Ltd** ACN 168511108  
15A Kirra Road  
Allambie Heights NSW 2100  
Australia

**(Custodian)**

**AND**

**Colin & Greg Trading Pty Limited** ACN 003478484  
in its capacity as trustee for the Fund  
15A Kirra Road  
Allambie Heights NSW 2100  
Australia

**(Trustee)**

**Background**

- A The Fund is a Regulated Fund and the Trustee is the trustee for the Fund.
- B In limited circumstances, the law allows the trustee of a Regulated Fund to agree to borrow funds to acquire an investment for that Regulated Fund. The relevant law is in Part 7 of the SIS Act relating to borrowing by superannuation funds. The exceptions to the general prohibition on superannuation funds borrowing provide, among other things, that for a borrowing arrangement to be allowed:
- legal title to the investment must be held by a third party on behalf of the trustee of the Regulated Fund; and
  - the lender's rights against the trustee of the Regulated Fund for any default under the borrowing arrangement must relate only to the investment for which the trustee will purchase with the money it borrows.
- C The Trustee intends to borrow funds from a lender to acquire the Authorised Investment under an arrangement of the nature described in Recital B.
- D The Custodian agrees to act as the third party described in Recital B and to hold title to the Authorised Investment under this Deed.

**Operative provisions**

**A Custodian's Declaration of trust**

**What does the Custodian hold on trust?**

- 1 The Custodian declares that it will hold the benefit of the Custody Fund on trust for the Trustee under this Deed, with effect from the date:

- 1.1 that the Custodian purchases the Authorised Investment as contemplated by clause 3; or
  - 1.2 the date on which the Custodian receives any property to be held or applied in accordance with the trusts under this Deed.
- 2 The parties agree that the Trust is established and is to be maintained in connection with the limited recourse borrowing arrangement with the Lender.

#### **What information and money must the Trustee provide?**

- 3 The Custodian and the Trustee agree that:
  - 3.1 the details in the Schedule to this Deed are all the relevant details regarding the Authorised Investment; and
  - 3.2 the Trustee will provide to the Custodian all funds necessary to enable the Custodian to purchase the Authorised Investment identified in the Schedule.

When the Trustee does that, it will be taken to have requested the Custodian, and the Custodian will be taken to have agreed, to purchase and take legal title to the Authorised Investment under this Deed. The parties agree that the name of the Custody Trust will be the "Declaration of Custody Trust for The Turner Superannuation Fund".

#### **B Custodian to hold title**

##### **What title must the Custodian hold?**

- 4 The Custodian agrees that (subject to clause 7), it will maintain legal title to the Authorised Investment until the Trustee directs it under clauses 8 to 11 of this Deed.

##### **What bank accounts are to be used?**

- 5 The Trustee must:
  - 5.1 designate one or more bank accounts of the Fund into which all amounts referred to in clause 6 may be deposited; and
  - 5.2 advise the Custodian of the details of that bank account or those accounts.

##### **Income, accruals, accretions**

- 6 The Custodian agrees to deposit, or arrange for the deposit of, the following amounts into the Cash Account or as otherwise directed by the Trustee:
  - 6.1 any interest, income or other proceeds that the Authorised Investment generates; and
  - 6.2 any accretions or accruals attributable to the Authorised Investment.

##### **May the Custodian have listed securities held by a CHESS sponsor?**

- 7 If the Authorised Investment is listed securities, then the Custodian may engage a duly licensed CHESS sponsor to hold the Authorised Investment — as long as the Custodian first

obtains the Trustee's written consent. The Custodian may do that even though it has an obligation to maintain legal title to the Authorised Investments.

## **C Trustee to direct Custodian**

### **What interest does the Trustee have in the Authorised Investment?**

- 8 At all times up to and including the Vesting Date, the Trustee:
- 8.1 has a vested and indefeasible interest in the Authorised Investment and any other assets comprising the Custody Fund; and
  - 8.2 is absolutely entitled to the Authorised Investment and any other assets comprising the Custody Fund as against the Custodian.

### **How may the Trustee have the Authorised Investment transferred?**

- 9 The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the Authorised Investment and the other assets comprising the Custody Fund. The Custodian must do as directed. Before the Custodian transfers, or otherwise deals with, the Authorised Investment and any other asset comprising the Custody Fund as directed by the Trustee, the Custodian must notify the Lender in writing.

### **What information must the Custodian collect, provide etc?**

- 10 The Custodian will use its best endeavours to obtain information concerning the Authorised Investment. It will communicate all that information to the Trustee as soon as practicable. For example, the Custodian must provide the Trustee with any information it needs to help it exercise a discretion about, say, voting, or about participating in bonus issues, capital reductions, share buy backs, rights plans, and so on.

### **May the Trustee require the Custodian to execute charge documents?**

- 11 The Custodian must execute all documents the Trustee asks it to execute that are necessary to charge the Authorised Investment to secure the Trustee's payment to the Lender of all money owed in respect of the Authorised Investment.

## **D Restriction on Custodian's Discretion**

- 12 Notwithstanding any other provision to the contrary set out in this Deed, the exercise of any Discretion (if any) by the Custodian under this Deed requires the consent of the Trustee in all instances.

## **E Trustee's warranties**

- 13 The Trustee warrants that:
- 13.1 the Fund is a Regulated Fund;

- 13.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- 13.3 the Trustee's investment in the Authorised Investment accords with the Fund's written investment strategy;
- 13.4 the Trustee is the sole trustee of the Fund;
- 13.5 the Trustee has the power and authority to enter into this Deed;
- 13.6 the Trustee has the power and authority to purchase the Authorised Investment; and
- 13.7 this Deed is legally binding on it, and the Deed is enforceable against it in accordance with its terms.

## **F Duration of Trust**

### **When does the Trust start and end?**

- 14 The Trust commences on the date described in Clause 1 and terminates on the Vesting Date.

### **What must the Trustee do before the Vesting Date?**

- 15 Before the Vesting Date, the Trustee must ensure:
  - 15.1 that all money the Lender loaned to the Trustee in respect of the Authorised Investment has been repaid; and
  - 15.2 that any security or charge over the Authorised Investment has been discharged in full.

### **What must the Custodian and Trustee do on (or soon after) the Vesting Date?**

- 16 On the Vesting Date (or as soon as practicable after the Vesting Date) the Custodian must either:
  - 16.1 transfer the Authorised Investment and any other assets comprising the Custody Fund to the Trustee; or
  - 16.2 otherwise deal with the Authorised Investment and other assets comprising the Custody Fund as the Trustee may direct in writing.

## **G Replacement or resignation of Custodian**

### **May the Trustee add, remove, or replace the Custodian?**

- 17 At any time, the Trustee may by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.

### **What must an outgoing Custodian do?**

- 18 The outgoing Custodian must as soon as practicable after being removed or replaced:

- 18.1 sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment and in any other asset comprising the Custody Fund to the new or continuing custodian; and
- 18.2 sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investment or any other asset comprising the Custody Fund to the new or continuing custodian.

#### **What must a continuing Custodian do?**

- 19 If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment, and in any other asset comprising the Custody Fund, to the new custodian jointly with the continuing custodian.

#### **How may the Custodian resign?**

- 20 The Custodian may resign by providing at least 60 days written notice to the Trustee. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 18.1 to 18.2.

### **H Trustee indemnifies Custodian**

- 21 The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:
  - 21.1 in relation to the purchase of the Authorised Investment;
  - 21.2 by virtue of the Custodian holding legal title to the Authorised Investment; and
  - 21.3 as a consequence of the Custodian complying with any direction of the Trustee under this Deed.

### **I Trustee to pay Custodian's costs**

- 22 The Trustee indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
  - 22.1 the negotiation, preparation, execution, stamping and registration of this Deed;
  - 22.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Deed; and
  - 22.3 any amendment to, or consent, waiver or release of or under, this Deed.

## **J Notices to the parties**

23 All notices to be given to or demands to be made under this Deed must be in writing. They may be delivered in person or sent by mail or facsimile to the party's current business address.

24 All notices are to be treated as having been served:

- 24.1 if posted, 48 hours after the date of posting;
- 24.2 if delivered personally, on the actual date of receipt; and
- 24.3 if sent by facsimile, in the normal course of transmission.

## **K Jointly and Severally Liable**

25 If two or more persons or entities comprise a party to this Deed, then each person or entity is jointly and severally liable for the obligations of that party under this Deed.

## **L Limitation**

26 Notwithstanding anything else to the contrary contained in this Deed the Custodian and the Trustee agree that:

- 26.1 the Custodian's rights against the Trustee for, in connection with, or as a result of (whether directly or indirectly) either of the following defaults are limited to rights relating to the Authorised Investment:
  - default on the relevant advance made by the Lender to the Trustee; or
  - default on the sum of the borrowing and charges related to that advance; and
- 26.2 if the Trustee has a right relating to the Authorised Investment (other than a right to acquire legal ownership of the Authorised Investment on repayment to the Lender of the relevant loan), then the Custodian's rights and the rights of any other person against the Trustee for, in connection with, or as a result of, (whether directly or indirectly) the Trustee's exercise of its right, are limited to rights relating to the Authorised Investment.

## **M Compliance with Superannuation Law**

27 The Custodian and the Trustee agree that all arrangements in respect of the Custody Trust as contained in, or referred to in, this Deed must be strictly in accordance with Superannuation Law including, without limitation, for the purpose:

- 27.1 of ensuring the concessional tax treatment of the Fund and of amounts paid into or out of the Fund; and
- 27.2 of the Fund's status as a Regulated Fund.

28 For this purpose:



- 28.1 The provisions of this Deed which (whether expressly or impliedly) confer or impose discretions, powers, rights or obligations on the parties are to be read as:
- 28.1.1 extending to confer or impose on the parties any discretions, powers, rights or obligations as may be necessary to ensure compliance with Superannuation Law; and
- 28.1.2 circumscribing any discretions, powers, rights or obligations of the parties to the extent necessary to ensure compliance with Superannuation Law; and
- 28.2 If a provision of this Deed (whether express or implied) is inconsistent with this purpose, then that provision must be read down to the extent necessary to ensure compliance with the requirements of this clause 28. If it is not possible to read down a provision of this Deed in that manner, then that provision is severable without effecting the validity or enforceability of the remaining part of that provision or of other provisions in this Deed.

## **N General and interpretation**

- 29 Time is of the essence of all obligations under this Deed.
- 30 This Deed may only be varied or replaced by a document executed by the parties.
- 31 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.
- 32 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Deed's termination.
- 33 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.
- 34 The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion.
- 35 This Deed is governed by, and interpreted under, the laws of the jurisdiction set in the Schedule.
- 36 If a party consists of more than one person, then this Deed binds them jointly and each of them severally.
- 37 This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.
- 38 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.
- 39 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

40 If it is not possible to read down a provision of this Deed in the manner described above, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

41 A reference in this Deed to:

41.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

41.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

41.3 a person includes the legal personal representatives, successors and assigns of that person;

41.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;

41.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

41.6 the singular includes the plural and vice versa; and

41.7 a gender includes the other genders.

42 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

## **O Definitions**

43 In this deed unless expressed or implied to the contrary:

**Authorised Investment** means the investment specified in the Schedule.

**Cash Account** means the account established under clause 5.

**Custody Fund** means the Authorised Investment together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Authorised Investment:

- all right title and interest of the Custodian from time to time in the Authorised Investment;
- all income and other proceeds generated from the holding of the Authorised Investment; and
- all other income, proceeds, accretions or accruals attributable to the Custody Trust.

**Custody Trust** means the trust created by operation of this Deed.

**Deed** means this trust deed, including all schedules.

**Discretion** means a right or power to act in accordance with one's own judgment.

**Fund** means The Turner Superannuation Fund.

**Lender** means each person from whom the Trustee is borrowing in order to acquire Authorised Investment, as identified in the Schedule.

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

**Schedule** means the schedule to this Deed.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth).

**Superannuation Law** means:

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the Superannuation Industry (Supervision) Regulations 1994 (Cth); and
- any lawful requirement in relation to the Fund by any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to superannuation.

It includes:

- changes to any such laws or requirements after the date of this Deed; and
- any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Trustee** means the trustee for the time being of the Fund, who as at the date of this Deed is the person identified on page 1.

**Vesting Date** means either:

- the date which is 80 years from the date of this Deed; or
- any earlier date the Custodian and Trustee jointly determine.

## Execution

Executed by the parties.

Dated: 2 November 2015

Executed by

Colin Turner Property Pty Ltd ACN

168511108, in accordance with section

127(1) of the *Corporations Act* 2001 (Cwth):

A handwritten signature in black ink, appearing to read 'C. S. Turner', written over a horizontal line.

Colin Turner, director

Executed by

Colin & Greg Trading Pty Ltd ACN

003478484, in its capacity as trustee for the

Fund, in accordance with section 127(1) of  
the *Corporations Act* 2001 (Cwth):

A handwritten signature in black ink, appearing to read 'C. S. Turner', written over a horizontal line.

Colin Turner, director

## **Schedule**

**Lender:** Colin Turner

**Lender Address for** 15A Kirra Road

**Notices:** Allambie Heights NSW 2100

**Lender Fax:**

**Loan Amount:** \$59,944

**Loan Term:** 15 years

**Authorised Investment:** 202/30 Fisher Road  
Dee Why NSW 2099  
Certificate of Title Follo Identifier 12/SP81193

**Jurisdiction:** New South Wales

**Settlement Date (if applicable):** 2 November 2015

# Loan Agreement

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**Colin Turner**

and

**Colin & Greg Trading Pty Limited ACN 003478484**

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**BETWEEN**

**Colin Turner**  
of 15A Kirra Road  
Allambie Heights NSW 2100  
Australia

**(Lender)**

**AND**

**Colin & Greg Trading Pty Limited** ACN 003478484  
in its capacity as trustee for the Fund  
of 15A Kirra Road  
Allambie Heights NSW 2100  
Australia

**(Borrower)**

**Background**

- A The Fund is a Regulated Fund and the Borrower is the trustee for the Fund.
- B The Borrower has asked the Lender to provide the Advance.
- C The Lender has agreed to provide the Advance in accordance with the terms and conditions in this Agreement.

**The parties agree**

**A The Advance the Borrower may borrow**

**When must the Lender make the Facility available to the Borrower?**

- 1 The Lender must make the Advance available to the Borrower at an agreed time on the Settlement Date and only if:
  - 1.1 the Borrower has complied with clauses 2 and 3; and
  - 1.2 the Lender is satisfied that no Event of Default has occurred and is continuing.



### **What must the Borrower do before the Settlement Date?**

- 2 At least 2 Business Days before the Settlement Date, the Borrower must give the Lender:
  - 2.1 written notice of the amount the Borrower will draw down; and
  - 2.2 the compliance letter, set out in Schedule 2, signed by the Borrower, with the attachments listed in that letter.

### **What must the Borrower do at Settlement?**

- 3 At Settlement, the Borrower must provide to the Lender:
  - 3.1 the security and cheques required under clause 16 and 18;
  - 3.2 an executed copy of the Custody Deed; and
  - 3.3 evidence to the Lender's satisfaction that the Custodian has (under the Custody Deed) taken title to the Authorised Investment free from all Encumbrances other than the security.

### **What happens to any amount not drawn at Settlement?**

- 4 If at Settlement the Borrower has not drawn on the full amount of the Advance, then the amount not drawn is cancelled.

### **What may the Borrower do with the Advance?**

- 5 The Borrower may use the Advance:
  - 5.1 as consideration for the Authorised Investment;
  - 5.2 for expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the Authorised Investment including but not limited to: conveyancing fees, taxes such as stamp duty, brokerage or loan establishment costs (but not expenses incurred in improving the Authorised Investment); and
  - 5.3 to refinance a borrowing (including any accrued interest on a borrowing) under an arrangement under section 67A of the SIS Act (or the predecessor of section 67A of the SIS Act).

## **B Interest the Borrower pays**

### **How is interest calculated and paid?**

- 6 The Loan accrues interest daily at the interest rate set in Schedule 1 (or at another rate agreed between the Lender and Borrower in writing from time to time). The interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.
- 7 The Borrower must pay the interest which accrues under clause 6 to the Lender annually in arrears.

**What default interest must the Borrower pay on late payments?**

- 8 If a payment is due and payable and the Borrower does not pay it on time, then the Borrower must pay interest on that amount.
- 9 The rate of interest is the rate set by the *Penalty Interest Rates Act 1983* (Vic) while the Borrower is in default. The interest is payable for the period beginning on and including the day on which the amount was due and ending on but excluding the date which is the earlier of:
- 9.1 the date on which all amounts outstanding under this Agreement are repaid after this Agreement ends for any reason; and
- 9.2 the date on which the Borrower pays all unpaid amounts, including any default interest (but not including repayments and interest not yet due).

**Does this clause affect the Borrower's obligations to pay?**

- 10 The Borrower's obligation to pay each amount which is due and payable under this Agreement on the date on which it falls due remains in place and is unaffected by clauses 6 to 10.

**C Borrower's obligations to repay**

**When must the Borrower repay the Loan?**

- 11 The term of the Loan is 15 years starting on the date Settlement occurs (**Term**). The Borrower must repay the Loan at the end of the Term which is 30 April 2029.

**What repayments must the Borrower pay?**

- 12 In addition to the interest payable under clauses 6 to 10, the Borrower must repay the amount of the Loan in equal annual payments over the Term. The Borrower must make the final equal payment on the final day of the Term, which is 30 April 2029.

**How may the Borrower repay the loan early?**

- 13 On any date, the Borrower may prepay all, or some, of the Loan without having to pay any premium or any penalty.
- 14 If the Borrower repays the Loan early, then it must pay all interest owing at the time.

**How is the Borrower to pay amounts due?**

- 15 The Borrower must pay all amounts owing under this Agreement:
- 15.1 in the lawful currency of Australia;
- 15.2 by the payment method set in Schedule 1;
- 15.3 without any set off or counterclaim whatsoever; and

- 15.4 free and clear of — and without any deductions or withholdings for or on account of — any Taxes.

## **D Security the Borrower provides**

### **What security must the Borrower provide?**

- 16 At Settlement, the Borrower must provide the Lender with:
- 16.1 a first ranking mortgage or charge over the Authorised Investment in a form acceptable to the Lender; and
  - 16.2 a personal guarantee from each member of the Fund (in their personal capacity) in a form acceptable to the Lender. (However, if before Settlement the Lender has told the Borrower in writing that a guarantee from any certain Members is not required, then the Borrower does not have to provide that guarantee.)

### **Limited recourse**

- 17 Notwithstanding anything else to the contrary contained in this Agreement (including that any such clause is not expressed to be subject to this clause 17 or clauses 21, 22, 23, and 24) the Lender and the Borrower agree that:
- 17.1 the Lender's rights against the Borrower for, in connection with, or as a result of (whether directly or indirectly) either of the following defaults, are limited to rights which the Lender has relating to the Authorised Investment:
    - 17.1.1 default on the Advance; or
    - 17.1.2 default on the sum of the borrowing and charges related to the Advance; and
  - 17.2 if the Borrower has a right relating to the Authorised Investment (other than a right to acquire legal ownership of the Authorised Investment on repayment of the Loan), then the Lender's rights and the rights of any other person against the Borrower for, in connection with, or as a result of, (whether directly or indirectly) the Borrower's exercise of its right, are limited to rights relating to the Authorised Investment.

### **What requirements apply if the mortgage is over land?**

- 18 If the Authorised Investment is land, then the mortgage the Borrower provides under clause 16 must be in registrable form. Also the Borrower must arrange for the Lender to be provided with cheques payable:
- 18.1 to the relevant registry to pay any registration fees; and
  - 18.2 to the relevant revenue office to pay any stamp duty.

### **When will the Lender release the security?**

- 19 As soon as practicable after the Borrower repays the Loan in full (including all interest due), the Lender will provide a release of the security the Borrower provided under clause 16.

### **E Borrower's representations and warranties**

- 20 The Borrower represents and warrants to the Lender that:
- 20.1 the Fund is a Regulated Fund;
  - 20.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
  - 20.3 the Borrower's investment in the Authorised Investment accords with the Fund's written investment strategy;
  - 20.4 the Authorised Investment is either a collection of assets of which the assets have the same market value as each other and are identical to each other, or it is a single acquirable asset, for the purposes of the SIS Act;
  - 20.5 the Borrower is the sole trustee of the Fund;
  - 20.6 the Borrower has the power and authority to enter into this Agreement;
  - 20.7 the Borrower has the power and authority to purchase the Authorised Investment; and
  - 20.8 this Agreement constitutes the Borrower's legally binding obligations, and is enforceable against the Borrower.

### **F Borrower's default**

#### **What may the Lender do if an Event of Default occurs?**

- 21 If an Event of Default occurs, then the Lender may, without notice to the Borrower (unless the Lender is required by statute to give notice), enforce its rights under the security the Borrower provides or procures under clause 16.
- 22 If an Event of Default occurs then the Lender's rights under the security the Borrower provides under clause 16 (but not including pursuant to any personal guarantee) are limited in the manner set out in clause 17.
- 23 If the Lender, having enforced the Lender's rights under the security the Borrower provides under clause 16, does not recover all of the money owing to it under this Agreement, then the Lender may not seek to recover the shortfall by:
- 23.1 bringing proceedings, taking action or exercising rights against the Borrower; or
  - 23.2 applying to have the Borrower wound up or proving in the winding up of the Borrower.
- 24 However, nothing in clauses 17, 21, 22, 23 and 24:

- 24.1 releases the Borrower from its obligations under this Agreement except to the extent that this clause is a limitation on liability to pay money under this Agreement; or
- 24.2 prevents the Lender from obtaining equitable relief in connection with this Agreement or proceeding against the Borrower to the extent necessary to enforce its rights in respect of the Advance (or other money owing under this Agreement) or against the Borrower or to the extent allowed by this Agreement provided that the Lender may not obtain an order requiring payment of any amount which could not otherwise be recovered from the Borrower under this Agreement.

### **What are the Events of Default?**

- 25 Each of the following is an Event of Default (unless the Lender, in writing, waives its rights):

#### **Fund Ceases as a Regulated Fund**

- 25.1 The Fund ceases to be a Regulated Fund;

#### **Non Payment**

- 25.2 The Borrower fails to pay on time any amount which is due and payable by it under this Agreement;

#### **Other Obligations**

- 25.3 The Borrower does not comply with any provision of this Agreement (other than a failure referred to elsewhere in this clause);

#### **Misrepresentation**

- 25.4 Any representation or warranty the Borrower makes in this Agreement is untrue or misleading (whether by omission or otherwise) in any material respect;

#### **Insolvency or Receivership**

- 25.5 The Borrower is unable to pay its debts — including its debts relating to the Fund, or
- 25.6 A receiver (or receiver and manager), administrator, provisional liquidator or liquidator is appointed to the Borrower, or in respect of any property of the Borrower (including property of the Fund), or
- 25.7 A resolution is passed or proceedings are commenced to wind up the Borrower or the Fund, or
- 25.8 Any composition or arrangement is made with the creditors of the Borrower or the Fund;

### **Cross Default**

- 25.9 Any other loan or debt of the Borrower, including in respect of the Fund, becomes repayable or payable before its due date other than solely at the option of the Borrower;

### **Encumbrances**

- 25.10 The Borrower creates any Encumbrance, or permits any Encumbrance to exist, or agrees to create or give an Encumbrance over any of its property, including property of the Fund (other than an Encumbrance which the Lender consented to in writing); and

### **Compulsory Acquisition**

- 25.11 Any governmental agency compulsorily acquires any part of the Borrower's property, or
- 25.12 The Borrower (whether or not as trustee of the Fund) sells or divests itself of all of, or a material part of, its property under a binding order from a government agency and the Borrower does not receive compensation for the acquisition, sale or disposal which is acceptable to, and on terms which are acceptable to, the Lender.

## **G Borrower indemnifies the Lender for costs**

- 26 The Borrower indemnifies the Lender against — and must pay the Lender on demand the amount of — all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
- 26.1 the negotiation, preparation, execution, stamping and registration of this Agreement;
- 26.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Agreement; and
- 26.3 any amendment to, or consent, waiver or release of or under, this Agreement.

## **H Compliance with Superannuation Law**

- 27 The parties agree that all arrangements in respect of the borrowing contained in or referred to in this Agreement must be strictly in accordance with Superannuation Law including, without limitation, for the purpose of ensuring:
- 27.1 the concessional tax treatment of the Fund and of amounts paid into or out of the Fund; and
- 27.2 the Fund's status as a Regulated Fund.
- 28 For this purpose:
- 28.1 The provisions of this Agreement which (whether expressly or impliedly) confer or impose discretions, powers, rights or obligations on the parties are to be read as:

- 28.1.1 extending to confer or impose on the parties any discretions, powers, rights or obligations as may be necessary to ensure compliance with Superannuation Law; and
- 28.1.2 circumscribing any discretions, powers, rights or obligations of the parties to the extent necessary to ensure compliance with Superannuation Law; and
- 28.2 If a provision of this Agreement (whether express or implied) is inconsistent with this purpose, then that provision must be read down to the extent necessary to ensure compliance with the requirements of this clause 28. If it is not possible to read down a provision of this Agreement in that manner, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or of other provisions in this Agreement.

## **I Notices to the parties**

- 29 All notices to be given to or demands to be made under this Agreement must be in writing. They may be delivered in person or sent by mail or facsimile to the party's current business address.
- 30 All notices are to be treated as having been served:
  - 30.1 if posted, 48 hours after the date of posting;
  - 30.2 if delivered personally, on the actual date of receipt; and
  - 30.3 if sent by facsimile, in the normal course of transmission.

## **J General and interpretation**

- 31 Time is of the essence of all obligations of the Borrower under this Agreement.
- 32 This Agreement may only be varied or replaced by a document executed by the parties.
- 33 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement — including to complete the purchase of Authorised Investment.
- 34 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Agreement's termination.
- 35 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 36 The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.
- 37 This Agreement is governed by, and interpreted under, the laws of the jurisdiction set in Schedule 1.
- 38 If a party consists of more than one person, then this Agreement binds them jointly and each of them severally.

- 39 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- 40 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.
- 41 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 42 If it is not possible to read down a provision of this Agreement in the manner described in clause 41, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.
- 43 A reference in this Agreement to:
- 43.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 43.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 43.3 a person includes the legal personal representatives, successors and assigns of that person;
  - 43.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;
  - 43.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - 43.6 the singular includes the plural and vice versa; and
  - 43.7 a gender includes the other genders.
- 44 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

## K Definitions

- 45 In this agreement, unless expressed or implied to the contrary:

**Advance** means the principal amount specified in Schedule 1.

**Agreement** means this loan agreement, including all schedules and appendices.

**Authorised Investment** means the investments specified in Schedule 1.

**Business Day** means a day on which banks are open for general banking business in the jurisdiction identified in Schedule 1.

**Custodian** means the custodian identified in Schedule 1.



**Custody Deed** means a Declaration of Custody Trust, in a form agreed by the Lender, between the Custodian and the Borrower.

**Encumbrance** means an interest or power by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created, and where the interest or power:

- is reserved in or over any asset including without limitation, retention or reservation of title; or
- is created or otherwise arising in or over any asset under a mortgage, security interest, charge, debenture, lien, pledge, trust or power.

**Event of Default** means any of the events or circumstances described in clauses 21 and 25.

**Fund** means The Turner Superannuation Fund.

**Loan** means at any time the principal amount of the Advance outstanding at that time.

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

**Settlement** means settlement of the transaction on the Settlement Date by which:

- the Borrower uses some, or all, of the Advance to purchase the Authorised Investment; and
- the Custodian takes legal title to the Authorised Investment on the terms of the Custody Deed.

**Settlement Date** means the date and time for Settlement as described in Schedule 1.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Superannuation Law** means

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ; or
- any lawful requirement in relation to the Fund or any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to the superannuation.

It includes:

- changes to any such laws or requirements after the date of this Agreement; and
- any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income.

**Term** has the meaning given by clause 11.

## Execution

Executed by the parties.

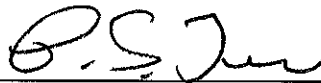
Dated: 2 November 2015

### Signed sealed and delivered

by Colin Turner, in the presence of:



Signature of witness




Signature of individual



Name of witness (please print)

Executed by

Colin & Greg Trading Pty Limited ACN  
003478484, in its capacity as trustee for the  
Fund, in accordance with section 127(1) of  
the *Corporations Act* 2001 (Cwth):



Colin Turner, director

## **Schedule 1**

**Advance:** \$59,944

**Interest Rate:** 4.8%

**Authorised Investment:** 202/30 Fisher Road  
Dee Why NSW 2099  
Certificate of Title Folio Identifier 12/SP81193

**Settlement Date:** 2 November 2015

**Custodian:** Colin Turner Property Pty Ltd ACN 168511108  
15A Kirra Road  
Allambie Heights NSW 2100  
Australia  
Fax

**Payment method:** electronic funds transfer to the Lender's account as advised by the  
Lender from time to time

**Jurisdiction:** New South Wales

## **Schedule 2**

### **Compliance Letter**

Attached to this Schedule is an executed copy of the letter dated on or about the Settlement.

Date of 2 November 2015 from the trustee of The Turner Superannuation Fund to the lender concerning the fund's compliance with superannuation law.