

Greendale Borrowing Trust

Property Custodian
Trust Deed

Limited recourse
borrowing
arrangement

Property Custodian Trust Deed

Date of This deed

22-01-2019

Trust Name

Greendale Borrowing Trust

Trustee of Property Custodian Trust - Legal Owner

Name of Trustee Company: GREENDALE PROPERTY NOMINEE PTY LTD

A.C.N.: 627083514

Registered Address: 107 Graham Road ROSSMORE NSW 2557

Trustee of Self Managed Superannuation Fund - Beneficial Owner

Name of Trustee Company: GREENDALE SUPER CO PTY LTD

A.C.N: 627082428

Registered Address: 107 Graham Road ROSSMORE NSW 2557

Name of Self Managed Superannuation Fund

Greendale Super Fund

Underlying Property

367 Greendale Road Greendale NSW 2745

Lender

Frank Normoyle

107 Graham Road ROSSMORE NSW 2557

Thomas Normoyle

61 George Road LEPPINGTON NSW 2179

Mary Murray

107 Graham Road ROSSMORE NSW 2557

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I. Background

1. GREENDALE SUPER CO PTY LTD (“the SMSF Trustee”) is the *trustee of the Greendale Super Fund (“SMSF”). The Greendale Super Fund is a *complying superannuation fund as per SIS Act.
2. Member(s)* of the Greendale Super Fund act as the trustees of the SMSF in their capacity as Directors of GREENDALE SUPER CO PTY LTD, being the corporate trustee of SMSF. The members of the SMSF wish to purchase an *asset for the SMSF, this asset is real property located at 367 Greendale Road Greendale NSW 2745 (“Underlying Property”). None of the members are *disqualified persons as defined in the SIS Act. All of the members agree to all the provisions of this deed by executing this deed.
3. The trustee of this trust is GREENDALE PROPERTY NOMINEE PTY LTD (A.C.N. 627083514) of 107 Graham Road ROSSMORE NSW 2557 (“PCT Trustee”), who has agreed to hold the Underlying Property “as trustee for” the trustee of the SMSF (and the SMSF) who is the *beneficial owner of the Underlying Property. The PCT Trustee is a *corporation as per *corporation act.
4. The legal title to the Underlying Property will be held by the PCT Trustee, under this deed, “as trustee for” the trustee of the SMSF (and the SMSF) who is the beneficial owner of the Underlying Property. The Underlying Property is to be held by the PCT Trustee under a bare trust relationship with the SMSF Trustee who will hold the beneficial interest* in the Underlying Property at all times.
5. The Underlying Property is an asset of the SMSF (being an investment of the SMSF) and is not a prohibited acquisition by the SMSF (acquirable asset) under provisions of *superannuation Law or by any Act of the *regulator. Further, the investment is consistent with SMSF’s investment strategy formulated by members of the SMSF in consultation and with agreement of all members of the SMSF.
6. The SMSF Trustee has requested in a prescribed format to , Frank Normoyle of 107 Graham Road ROSSMORE NSW 2557, Thomas Normoyle of 61 George Road LEPPINGTON NSW 2179, Mary Murray of 107 Graham Road ROSSMORE NSW 2557 (“Lender”) to provide a loan, upon certain terms and conditions, to the SMSF Trustee, to assist the SMSF Trustee to acquire the Underlying Property.
7. The Lender has agreed to lend the SMSF Trustee the principal sum (\$1400000) on terms set out in the loan document attached as Annexure “A” for the purpose of acquisition of the Underlying Property to be held by the PCT Trustee on bare trust for the SMSF Trustee.
8. The SMSF Trustee has agreed to allow the Lender to place a charge or *mortgage over the beneficial interest of the SMSF Trustee in the Underlying Property held by the PCT Trustee in the manner and form at the discretion of the Lender. For the avoidance of doubt, all parties to this deed agree that:
 - this charge is permitted under the limited recourse borrowing arrangement provisions and complies with the SIS Act and SIS Regulations*, in particular Regulation 13.14 and Regulation 13.15;
 - the *borrowing by the SMSF Trustee is consistent with the terms permitting such borrowings specified in section 67A & 67B of the SIS Act.

9. To purchase the Underlying Property under this limited recourse borrowing arrangement, including *GST and *transaction costs (if any), the SMSF Trustee will use the balance of any one or more member(s') accounts (superannuation interests) or reserve accounts as its own funds as (part) payment of the deposit or *initial payment under the limited recourse loan arrangement.
10. The balance of the member(s') accounts under clause 9 can be from an *accumulation account or *account based pension account or other account of any one or more member(s) or any reserve account maintained by the trustee.

Member(s) or *employers of member(s) of the SMSF or those who are allowed to contribute to the SMSF under its governing rules, may by *fund-capped *contributions *contribute *concessional or *non-concessional contributions to the SMSF or by eligible *spouse contributions may contribute to the SMSF up to the *age-based limit, for this purpose.
11. The SMSF Trustee agrees to pay all the money's required to purchase the Underlying Property either from its funds or from the principal sum borrowed from the Lender. The SMSF Trustee may direct the Lender to pay the principal sum directly to the vendor of the Underlying Property.
12. The SMSF Trustee has a right (but not an obligation) under this deed to acquire legal ownership of the Underlying Property by making all payments (by one or more instalments) to the Lender and acquiring the legal interest in the Underlying Property directly from the PCT Trustee at any time.
13. The Lender and the PCT Trustee agree and acknowledge that the SMSF Trustee has the right (but not an obligation) to acquire the legal title of the Underlying Property from the PCT Trustee at any time. (Under current *SIS Act (specifically 67(1)) & *SIS Regulations the SMSF trustee cannot hold legal title of the underlying property if the lender is owed any principal amount).

In the bare trust relationship created by this trust, the legal title of the underlying property may be transferred from PCT Trustee to SMSF Trustee at any time.
14. The SMSF Trustee declares that it has the power to enter into this deed, borrow money from the Lender, and nominate the PCT Trustee to hold legal title to the Underlying Property, under its governing rules.
15. In the case of death of any member of the SMSF after the date of this deed, a *legal personal representative or *reversionary beneficiary* of the member will be bound by the terms of this deed and the terms of borrowing arrangements put in place by the member before his or her death.
16. This deed is governed by the law of New South Wales and all parties agree to the jurisdiction of the courts of New South Wales.

Purpose of the deed

17. All parties agree that this deed is to assist member(s) of the SMSF in the acquisition of the Underlying Property. This deed and the loan agreement as annexed to this deed are intended to be within the scope and requirements of section 67A & 67B of SIS Act. This deed complies with superannuation law. In particular, this agreement qualifies as a limited recourse borrowing arrangement as defined in section 67A & 67B and other relevant sections of the SIS Act. This deed qualifies for concessional treatment on borrowings under the SIS Act as amended from time to time.

II. Interpretation and Definitions

Interpretation

18. In this deed, unless the contrary intention appears:
- a reference in the singular includes a reference to the plural and vice versa.
 - a reference to the SIS Act, *SIS Regulations and the *Tax Act include all amendments made to those Acts from time to time.
 - a person includes a firm, partnership, joint venture, association or corporation. Also, a person includes their *legal personal representative, assignors or successors.
 - all references to a gender include the other gender.
 - this deed includes this document as varied or replaced regardless of any change in the identity of the various parties listed in this deed.
 - the headings in this deed are for guidance only and shall not affect the interpretation of the deed.

Definitions

19. In this deed, unless the contrary intention appears:

account means an account established by the SMSF Trustee in accordance with the SMSF deed for the administration of the self managed superannuation fund.

accumulation account means the account established for a member by the SMSF Trustee.

age-based limit means the dollar limit on the tax deductibility to an employer of contributions made to the fund based on the age of the member.

account-based pension means a pension that is provided in accordance with the rules of a fund that:

- (a) are described in regulation 1.06(9A)(a) of the SIS Regulations; and
- (b) meet the standards of regulation 1.06(9A) of the SIS Regulations.

assets means the cash, investments and other property of the fund held by the SMSF Trustee.

beneficial interest means the beneficial interest of the SMSF or the SMSF Trustee in the Underlying Property in respect of which the PCT Trustee has legal title, consistently with the requirements of section 67A & 67B of the SIS Act.

beneficial owner means the SMSF Trustee who owns assets of the superannuation fund for the members of the fund.

borrowing or loan means the amount of the principal sum borrowed by the SMSF Trustee under section 67A & 67B of the SIS Act.

business day means Monday to Friday excluding public holidays in the state of New South Wales.

business hours means between 9:00 am and 5:00 pm on a business day.

complying superannuation fund means a complying superannuation fund under superannuation law.

concessional contributions has the meaning given by section 995-1(1) of the ITAA 1997.

contributions means gross contributions made to the self managed superannuation fund before tax in accordance with superannuation law.

corporation means a constitutional corporation under superannuation law.

Corporations Act means the *Corporations Act 2001* (Cth) and the regulations and determinations made under the Act.

disqualified person, in the context of an individual or a company has the same meaning as in the SIS Act.

eligible spouse contribution means a contribution made by an individual to a superannuation fund:

- (a) to provide superannuation benefits for the individual's spouse, whether or not the benefits would be payable to the dependants of the individual's spouse if the spouse dies before or after becoming entitled to receive the benefits; and
- (b) in circumstances in which the individual:
 - (i) could not have deducted the contribution under section 82AAC of the ITAA 1936 in the 2006/07 income year or a previous year; and
 - (ii) cannot deduct the contribution under Subdivision 290-B of the ITAA 1997 in the 2007/08 income year or a later year.

employer means the same as it means under superannuation law and includes the *employer-sponsor and a participating employer.

employer contributions has the same meaning as in regulation 1.03(1) of the SIS Regulations.

fund-capped contributions means the member contributions described in the definition of that expression in regulation 5.01(1), other than the following:

- (a) a contribution to which a valid and acknowledged notice under section 290-170 of the ITAA 1997 relates;
- (b) a contribution that meets the requirements of section 292-95(1)(d) of the ITAA 1997;
- (c) a contribution that meets the requirements of section 292-100(9) of the ITAA 1997;
- (d) a payment made by the Commissioner of Taxation under section 65 of the *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (e) a payment made by the Commissioner of Taxation under section 61 or 61A of the *Small Superannuation Accounts Act 1995* (Cth);
- (f) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth);
- (g) a contribution that is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997* (Cth).

GST means the goods and services tax which is levied or may be levied as a consequence of an application of *A New Tax System (Goods & Services Tax Act) 1999 (Cth)*.

GST Act means the *A New Tax System (Goods & Services Tax Act) 1999 (Cth)*.

Initial deposit means the amount of the first payment to be paid at the time the Underlying Property is purchased by the trustee of the SMSF under this limited recourse borrowing arrangement.

insurance policy means an insurance policy effected on the life of the member or a beneficiary of the member or for the member's or beneficiary's illness, accident or disablement.

ITAA 1936 means the *Income Tax Assessment Act 1936 (Cth)*.

ITAA 1997 means the *Income Tax Assessment Act 1997 (Cth)*.

legislation generally refers to superannuation law or such other legislation as governs superannuation funds.

legal personal representative has the same meaning as in the SIS Act.

member contributions has the same meaning as in regulation 5.01(1) of the SIS Regulations.

mortgage means the Lender's interest in the Underlying Property, which is secured over the Underlying Property. The mortgage may include the granting of security over the Underlying Property, or entering into an agreement and incurring all or any other type of obligations and liabilities with respect to the Underlying Property. Such other obligations and liabilities may include, but are not limited to:

- giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporation (including the PCT Trustee in its capacity as trustee for the SMSF Trustee under the bare trust arrangement) and
- securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Underlying Property.

non-concessional contributions cap means the amount mentioned in section 292-85(2) of the ITAA 1997.

pension means a pension, annuity or income stream permitted to be paid under this trust deed and superannuation law and which is taken to be a benefit under the SIS Act. It includes any account-based pension, allocated pension, market linked pension, transition to retirement income pension or stream and any other type of pension or income stream permitted by superannuation law.

pension account means a pension account established under the deed of the SMSF

Principal Sum means a borrowing made by the SMSF Trustee to acquire the Underlying Property which together with the initial deposit is the cost of the Underlying Property to be acquired by the SMSF Trustee with the legal title to be held by the PCT Trustee.

regulator means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the regulator of taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

related party has the same meaning as in the SIS Act.

related trust has the same meaning as in the SIS Act.

relevant legislation means the superannuation law.

reversionary beneficiary means a dependant nominated by a pensioner at the commencement of the pension as his or her residuary beneficiary.

self managed superannuation fund means what it means in the SIS Act.

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

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994*, as amended from time to time.

spouse means a person legally married to the member at any time, and a person who is not legally married to the member, but who, in the trustee's opinion, lives or lived with the member on a bona fide domestic basis as the partner of that member of any sex.

superannuation benefit has the meaning given by section 995-1(1) of the ITAA 1997.

superannuation interest has the meaning given by section 995-1(1) of the ITAA 1997.

superannuation law means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

tax includes any form of taxation, surcharge, levy, duty or other government charge that the trustee is required to pay out of the fund, or a member, former member or beneficiary is required to pay.

Tax Act means the ITAA 1936 or the ITAA 1997, as appropriate, and the regulations and determinations made under the relevant Act.

taxation includes any tax, charge, duty or levy of any type paid or payable by the trustee, or by a member, former member or beneficiary, in relation to any part of the fund.

transaction costs means, without limitation, costs of any of the following type:

- a brokerage or solicitor's fees paid because of an investment transaction;
- b a cost arising from the maintenance of a real property investment;
- c stamp duty on an investment transaction.

trustee means the persons or company who are the trustees or is the trustee from time to time, and trustees and corporate trustee shall have a corresponding meaning.

III. Trustee of property custodian trust

Appointment

20. The SMSF Trustee is capable of acquiring assets for investment as beneficial owner or if it has intention to hold a beneficial interest in any asset, the SMSF Trustee may request the PCT Trustee to purchase on its behalf that asset which it is capable of acquiring directly in its own name (acquirable asset).
21. The SMSF Trustee hereby appoints the PCT Trustee “as trustee” to hold the legal title of the Underlying Property on the terms and conditions set out in this deed. The PCT Trustee accepts its appointment and agrees to abide by the terms and conditions of this deed.
22. The PCT Trustee agrees and declares that it will hold the legal title to the Underlying Property upon trust for the SMSF Trustee and it has or will have no beneficial interest in the Underlying Property other than as provided for in this deed.
23. The PCT Trustee agrees that it will deal with the Underlying Property as the SMSF Trustee directs from time to time. Despite any direction provided by the SMSF Trustee, the PCT Trustee agrees to hold legal title of the Underlying Property, until such time the Underlying Property is transferred from the PCT Trustee to the SMSF Trustee.

Powers & duties of PCT Trustee

24. The PCT Trustee will provide to the Lender (or such other party as the Lender directs), at the direction of the SMSF Trustee, a mortgage and related documents as required by the Lender to assist the SMSF Trustee to obtain a borrowing to fund the purchase of the Underlying Property.
25. The PCT Trustee may appoint one or more attorneys from time to time to act jointly or severally and for a specific transaction or a class of transactions, or generally in respect of the trust assets including the Underlying Property or any other asset for the time being comprised in the trust fund.

The attorney so appointed may be authorized to exercise all powers, authorities, duties or functions conferred upon the PCT Trustee by this deed or by any other provisions of superannuation law whether or not PCT Trustee has disclosed that it is acting as a trustee. Any power of attorney granted by the PCT Trustee under this clause;

 - does not require the consent of any person; and
 - will remain valid and effectual for the period nominated by the PCT Trustee or until the power of attorney is revoked by the PCT Trustee in its absolute discretion.
26. The PCT Trustee will have no other duties to perform except as set out in this deed in respect of the Underlying Property.

Liability of PCT Trustee

27. The PCT Trustee will incur no liability to any person including any agent of or the SMSF Trustee for the non-performance of any duty which might otherwise be implied or imposed upon it or any indirect, special or consequential damages.

28. The PCT Trustee does not warrant good title, validity, quality, genuineness, zoning, or special purpose of use of the Underlying Property or freedom from mortgage, charge or lien on the title of the Underlying Property acquired under this agreement to the SMSF trustee.
29. Any expense or liability of owning the Underlying Property will be paid by the SMSF Trustee. The PCT Trustee may direct all authorities to pay all entitlements arising out of ownership of the Underlying Property to the SMSF Trustee. These entitlements may include dividends, interest, rent, license fees, hire fees or similar entitlements in respect of the Underlying Property.
30. The PCT Trustee must give account of all income collected, in a financial year, within a reasonable time, to the SMSF Trustee.

IV. Duties and liabilities of SMSF Trustee

Duties of SMSF Trustee

31. The SMSF Trustee must ensure that there are sufficient amounts available to the PCT Trustee in order for the PCT Trustee to pay:
 - to the vendor the initial amount to purchase the Underlying Property (initial deposit);
 - to the vendor the balance of the amount payable to meet the acquisition price of the Underlying Property;
 - to other respective authorities any land tax or any other state or federal tax, interest, council rates, agents commission, brokerage, acquisition cost, legal fees, stamp duty, penalties, fines, compensation, claims, any risks or expenses of holding or disposing of the Underlying Property or any other costs or incidental costs which has to be paid under this agreement.
32. The SMSF Trustee must offer an insurance policy* to be put in place for the member(s) of the SMSF to cover any risk of death for any future payments to the Lender.
33. The SMSF Trustee must comply with *superannuation law and this deed and do all such things as are necessary to ensure that the fund complies with superannuation law, and must not do those things that would make the fund *non-complying with superannuation law. At all times the SMSF Trustee shall ensure that the fund remains a *complying superannuation fund.

Member(s)

34. All member(s) of the superannuation fund must be directors of the SMSF Trustee unless the superannuation fund is a one member fund. In a one member fund, the member must be the sole director of the trustee constitutional corporation or one of only 2 directors where the other director is a relative of the member and the directors are not disqualified persons.

35. The SMSF Trustee must provide each new prospective member of the superannuation fund with a copy of this deed before joining the superannuation fund. In addition, each new member who joins the superannuation fund and becomes a director of the SMSF Trustee must sign a declaration in the approved form stating that they understand their duties and responsibilities as trustee of the superannuation fund and its rights and obligation under this deed. This declaration must be signed no later than 21 days after the individual becomes a director of the SMSF Trustee.
36. If a member of the superannuation fund ceases to be a member of the fund due to an occurrence of the following:
- when the SMSF Trustee determines that there is no further benefit payable to the member from the fund;
 - when the SMSF Trustee notifies the member that the member is no longer a member of the fund;
 - when the member otherwise becomes ineligible to be a member under superannuation law;

the member then ceases to be a member of the fund, this person may continue to act as director of the SMSF Trustee provided the remaining member(s) appoint this person as trustee of the fund and this appointment is permitted by superannuation law (currently permitted in a one member fund). Otherwise when a member ceases to be a member, this person will no longer be a director of the SMSF Trustee.

37. If the member(s) of the superannuation fund decide to reside overseas, the SMSF Trustee may appoint an additional corporate trustee in Australia to ensure that the fund is a resident fund and hand over the control and management of the fund to the Australian corporate trustee, to ensure that the fund remains a complying superannuation fund and obtains tax concessions offered by the regulator.

This appointment of an additional trustee as enduring power of attorney should be consistent with superannuation law. Rights and obligations of the original trustee may be transferred to the additional corporate trustee, provided the PCT Trustee and the Lender agree to this transfer in writing.

38. When any member becomes ineligible to act as director of the SMSF Trustee or becomes a disqualified person as defined in superannuation law, then that member must resign from being a director of the SMSF Trustee.

A person can no longer be a director of the PCT trustee company, if he / she resign, or are removed, or die or become a disqualified person as defined in superannuation law or are no longer a member of the SMSF.

A company is not permitted to act as trustee of the fund, if the company is removed as trustee, becomes a disqualified trustee under superannuation law or any other event as prescribed in superannuation law happens.

39. If a corporate trustee of the SMSF leaves the superannuation fund, the members of the superannuation fund will appoint another corporate trustee of the superannuation fund within the time frame permitted by superannuation law to take the place of the exiting corporate trustee.

If no corporate trustee is appointed within the time frame permitted by superannuation law, this deed will be terminated and the Lender will exercise its rights against the Underlying Property consistently with the loan agreement with the SMSF Trustee as attached in Annexure A to this deed.

Liability of SMSF Trustee

40. The SMSF Trustee is liable to the PCT Trustee for any breach of this agreement and any breach of warranty, covenant or obligation under this agreement to any third party in respect of the Underlying Property.
41. Any expenses incurred by the PCT Trustee to enforce any breach of this agreement will be paid for by the SMSF Trustee.
42. The SMSF Trustee will be liable to the Lender for any borrowing (including principal sum and interest) of funds to purchase the Underlying Property. It is agreed that in performing its obligations to the Lender (who will have such rights against the Underlying Property as are specified in the loan agreement attached as Annexure A), the PCT Trustee will not be entitled to exercise any rights against the Underlying Property, although it holds the legal title to the Underlying Property.

V. Underlying Property

Charge or mortgage over Underlying Property - Limited recourse

43. The PCT Trustee will allow a mortgage over the underlying property or offer a charge over the Underlying Property to the Lender who intends to secure repayment of its loan or other financial accommodation provided to the SMSF Trustee to purchase the Underlying Property.
44. The rights of the Lender are specified in the loan agreement attached as Annexure A. Despite any other rights, the Lender has no recourse against the SMSF Trustee in respect of any payment the SMSF Trustee has to make in respect of the loan or other financial accommodation, except recourse against the Underlying Property.
45. The principal sum borrowed by the SMSF Trustee from the Lender is \$1400000.
46. The mortgage on the Underlying Property will be in such form and manner as may be agreed between the Lender and the SMSF Trustee. The form and manner of the mortgage shall comply with superannuation law including number of drawdowns.

Transfer of legal title

47. The PCT Trustee will offer to transfer the legal title to the Underlying Property to the SMSF Trustee upon request from SMSF Trustee at any time. The PCT Trustee acknowledges that it holds the Underlying Property as an "apparent purchaser" whilst the SMSF Trustee is the "real purchaser", and the property is held under a bare trust relationship.
48. The SMSF Trustee has a right to, but is not obliged to have transferred to it the legal title to the property from the PCT Trustee.
49. The parties to this deed understand, that at the time of the transfer of the legal title of the underlying property from the PCT Trustee to the SMSF Trustee;
 - the property custodian trust will not be treated as a *related trust under section 71(8) of the SIS Act and no stamp duty will be payable to any Office of State Revenue;
 - the SMSF Trustee is the original beneficial owner of the Underlying Property and any such transfer will not trigger any capital gain event under the Tax Act.

50. Subject to the rule against perpetuities, arrangements under this agreement will be for a maximum period of 25 years from the date of acquisition of the Underlying Property. At any time before the maturity date, the SMSF Trustee has the right (but not an obligation) to repay the Lender the principal amount owed and have the legal title to the property transferred to the SMSF Trustee.
51. Once the legal title to the Underlying Property has been transferred to the SMSF Trustee, all rights and liabilities created under this agreement will cease.

Disposal of Underlying Property

52. Before the maturity date, the SMSF Trustee can instruct the PCT Trustee to dispose of the Underlying Property with the sale proceeds being applied as follows:
 - repayment of any outstanding borrowing to the Lender (including any unpaid interest);
 - any balance amount to be paid to the SMSF Trustee.
53. If on the maturity date the SMSF Trustee has not repaid the loan to the Lender, then the Lender will direct the PCT Trustee to dispose of the Underlying Property at the best available price. The Lender under its mortgage agreement and consistently with the loan agreement has rights on how the Underlying Property is to be sold to recover the loan including any interest thereon.
54. When the Underlying Property is sold under the direction of the Lender, the sale proceeds must be applied as follows:
 - repayment of any outstanding borrowing to the Lender (including any unpaid interest);
 - any balance amount to be paid to the SMSF Trustee.
55. The rights of the Lender are contained in the loan agreement attached to this agreement as Annexure A which forms part of this deed. The rights of the Lender against the SMSF Trustee for default under the loan are limited to the Underlying Property. For the avoidance of doubt, the Lender has no right to seek repayment of principal or any outstanding amount owed by the SMSF Trustee other than by exercise of the mortgage over the Underlying Property.

VI. Income and Distribution

Direct Income to SMSF Trustee

56. The SMSF Trustee may collect and retain all entitlements arising out of the ownership of the Underlying Property. These entitlements may include dividends, interest, rent, license fees, hire fees or similar entitlements in respect of the Underlying Property. The SMSF Trustee may direct the PCT Trustee to pay any amount due to a third party for expenses relating to the ownership of the Underlying Property.
57. The PCT Trustee must give account of all the income it has collected in a financial year, within a reasonable time, to the SMSF Trustee.
58. The PCT Trustee must take directions from the SMSF Trustee in respect of giving directions to all authorities as are necessary to cause all income of the Underlying Property to be paid directly to the SMSF Trustee.

Distribution of Income

59. If the PCT Trustee receives any income from the Underlying Property, it must account to the SMSF Trustee for all the income on an accurate and timely basis. The SMSF Trustee may direct the PCT Trustee to apply any income of the Underlying Property for any other payment or purpose.
60. The PCT Trustee must insure the Underlying Property for such amounts and risks as the SMSF Trustee requires. Payment of such necessary insurance premiums may be made either from income collected by PCT Trustee or paid directly by SMSF Trustee from its own funds.

VII. Taxes and GST

Payment of taxes

61. The SMSF Trustee is responsible for all the expenses pertaining to the Underlying Property, including the payment of any *taxes in relation to acquiring, holding or disposing of the Underlying Property.
62. When a payment is made or required to be made by the PCT Trustee under this agreement, which constitutes a payment for a taxable supply for the purposes of GST or any similar tax, the amount of the payment shall be increased so that the payment includes the amount of GST payable. The SMSF Trustee may claim back the GST paid by and on behalf of the PCT Trustee in the form and manner specified in the *GST Act.

VIII. Indemnity

Indemnities of parties

63. The PCT Trustee indemnifies the SMSF Trustee for any claim for any loss or liability or breach arising in any way from this agreement including any misrepresentation, fraud, misconduct, willful default or negligence.
64. The SMSF Trustee indemnifies and must keep indemnified the PCT Trustee against all claims, proceedings demands or actions of any losses, penalties, fines, compensation, any risks unforeseen or expected and liabilities of actual or contingent nature suffered or incurred by or sustained or threatened against the PCT Trustee arising out of or in connection with being a party to this agreement and any transaction in relation to the Underlying Property or legal title to the Underlying Property.
65. The SMSF Trustee and the PCT Trustee must not transfer any right or liability under this agreement without the prior written consent of the other party.
66. Any indemnity agreed by all parties under this agreement constitutes a liability of that party separate and independent from any other liability of that party under this agreement or any other agreement.

IX. Miscellaneous

Audit of records

67. The SMSF Trustee after giving reasonable notice to the PCT Trustee can inspect and audit the records of the property custodian trust. The PCT Trustee must make all records available, give reasonable access and offer assistance to any auditor engaged by the SMSF Trustee to conduct an audit in relation to the purchase, holding and disposal of the Underlying Property.

Confidentiality

68. The PCT Trustee and the SMSF Trustee must not disclose the terms of this agreement to any person. No person dealing with or contracting with either the PCT Trustee or SMSF Trustee will be required to ascertain the terms of this agreement, deal with the Underlying Property, or see to the application of any monies paid to any person that it has been authorized.

Notices

69. Any notice or other communication by a person in connection with this deed:
 - may be given by a duly authorised officer if the person is a body corporate;
 - must be written; and
 - may be delivered personally by one party to the other party, sent by one party to the address of the other party, or any replacement address that the parties notify.
70. Any communication in connection with this deed is received:
 - if delivered personally, at the time it is delivered personally; or
 - if posted, 3 business days* after posting for domestic and 7 days after posting for international post; or
 - if it is faxed, at the time the sender receives from their fax machine an acknowledgement of receipt of the communication or similar; or
 - if any notice or communication is received after normal business hours*, it is instead deemed to be made at 9:00am the following business day; or
 - Unless otherwise specified, the time a communication takes effect is the time it is received.

Assurance and Continued Performance

71. The SMSF Trustee and PCT Trustee assure that they will execute any document to facilitate performance of this deed and perform any action which is necessary to give full effect to this agreement at all times.
72. The SMSF Trustee and PCT Trustee agree that they will not execute any document or perform any act, which will hinder the performance of each party to the provisions of this agreement.

73. The SMSF Trustee and the PCT Trustee covenant that they will perform and follow and together abide by the terms and conditions of this deed and act honestly and in the manner a prudent person would in dealing with the property of another person.

Waivers and Remedies

74. The rights of all parties under this agreement are cumulative and not exclusive of any rights provided by law, including in particular superannuation law. Any failure by any party to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right of that party.

Severability

75. Any provision of this agreement which is invalid in any jurisdiction is invalid in that jurisdiction only to that extent, without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.
76. If any provisions of this deed are inconsistent with superannuation law then those provisions shall be severed to the extent of the inconsistency. The superannuation law shall apply to the extent of any inconsistency and override that inconsistency to the maximum extent possible. Any requirement of superannuation law governing instalment warrant arrangements which is not included in this deed shall be deemed to be included in this deed. Also, the parties to this deed shall be taken to have agreed to the inclusion of any such term in the deed.
77. If any clause or part of any clause in this deed and the schedules attached to this deed are found to be invalid for any reason, such invalidity shall not affect the validity or operation of the remainder of this deed and attached annexures and such invalid clause/s shall be deemed to be deleted from this deed from the time that it could affect its invalidity.

Counterparts

78. This deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

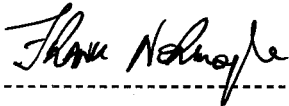
Variation of Deed

79. The SMSF Trustee and the PCT Trustee may from time to time, vary the terms of this deed, by a deed of variation executed by both trustees. The amendment to the deed may be on a retrospective or prospective basis. The deed of variation may add a clause to, or delete a clause or all clauses of, this deed. Any clauses added to this deed will have the same validity and effect as if they had been originally contained in this trust deed.
80. If this deed is varied, the SMSF Trustee must give notice to all members of the fund in accordance with superannuation law and advise members of the nature and purpose of any variation. No provisions of this deed can be varied to contravene the purpose of this deed.
81. The SMSF Trustee must communicate, via a notice, any variation of this deed to all members in the prescribed format and give all members a copy of the updated deed.

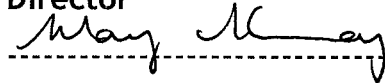
Executed as a Deed.

EXECUTED BY SMSF TRUSTEE
Signed for and on behalf of
GREENDALE SUPER CO PTY LTD
A.C.N. 627082428

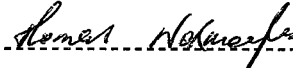
In accordance with the constitution of the company and Section 127 of the
Corporations Act 2001 (Cth)



Frank Normoyle
Director



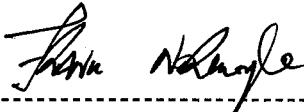
Mary Murray
Director



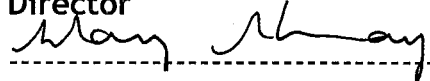
Thomas Normoyle
Director

EXECUTED BY PCT TRUSTEE
Signed for and on behalf of
GREENDALE PROPERTY NOMINEE PTY LTD
A.C.N. 627083514

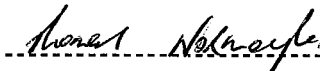
In accordance with the constitution of the company and Section 127 of the
Corporations Act 2001 (Cth)



Frank Normoyle
Director



Mary Murray
Director



Thomas Normoyle
Director