

Edelman Property Pty Ltd atf Edelman Property Trust

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**MINUTES OF MEETING OF DIRECTORS OF EDELMAN INVESTMENTS PTY LTD -
ACN 619 806 718 AS TRUSTEE FOR EDELMAN SUPER FUND (FUND)**

HELD AT: Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124

ON:

25/8/17

PRESENT: Julian Edelman and Nicky Edelman

CHAIRPERSON: Julian Edelman was elected to chair the meeting.

BUSINESS: At a meeting of the Directors convened on this date, with the agenda accepted and notice waived and a quota met, the Directors met and unanimously resolved the following.

RESOLUTION 1: It is **RESOLVED UNANIMOUSLY** by the Directors to approve the updating of the Investment Strategy to accommodate a Limited Recourse Borrowing Arrangement and Holding Trust Arrangement.

DISCUSSION: The Chairperson recommended updating the Investment Strategy, as marked and shown at **Annexure 1**, which considers the appointment of a holding trustee, establishment of a Holding Trust, entering into of a Limited Recourse Borrowing Arrangement ("**LRBA**") and acquisition of a Single Acquirable Asset, being: Unit 1 and Carpark 32, 399 Alma Road, Caulfield North, VIC 3161 ("**Asset**"), as permitted by section 67A of the *Superannuation Industry (Supervision) Act 1993 (SISA)*.

RESOLUTION 2: It was **RESOLVED UNANIMOUSLY** by the Directors to appoint a holding trustee, settle a holding trust, enter into a limited recourse borrowing arrangement and acquire an asset.

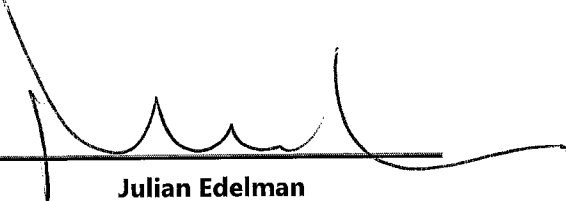
DISCUSSION: The Chairperson recommended the appointment of Edelman Property Pty Ltd - ACN 619 801 160 ("**Holding Trustee**"), to act as custodian for the Fund on Bare Trust, for the acquisition of the Asset on terms tabled and marked to this document as **Annexure 1**.

The Chairperson recommended the undertaking of a Limited Borrowing Arrangement, in accordance with section 67A of the SISA on terms compliant with PCG 2016/5 and TD 2016/16 and the Superannuation Laws generally, being terms which are arm's length and commercial in arrangement.

CLOSURE: There being no further business the meeting is closed.

Executed as a record of the matters above confirmed by the Chairperson:

The Chairperson



A handwritten signature in black ink, appearing to read 'Julian Edelman', written over a horizontal line.

Julian Edelman

Dated: 25/8/17

ANNEXURE 1 – UPDATE TO INVESTMENT STRATEGY OF THE FUND

EDELMAN INVESTMENTS PTY LTD - ACN 619 806 718 (“Trustee”) for the **EDELMAN SUPER FUND** (“Fund”) updates the Investment Strategy of the Fund as follows:

The Trustee has considered and consulted with the Members, and updates the Investment Strategy to detail the terms of settlement of a Holding Trust and appointment of Holding Trustee, document the consideration of a Limited Recourse Borrowing Arrangement (“LRBA”) and provide additional terms in respect to the acquisition of Unit 1 and Carpark 32, 399 Alma Road, Caulfield North, VIC 3161 (“Asset”) for such purpose, including, but not limited to an allowance for the acquisition from a Member or Related Party of a Member of the Fund, having regard to the subsequent considerations:

- (a) The Fund must remain a regulated superannuation fund within the meaning of the Superannuation Laws;
- (b) The Asset acquired must satisfy the definition of a Single Acquirable Asset;
- (c) If the Asset acquired under a LRBA is Real Property and acquired from a Part 8 Associate (in summary, Member or related party of a Member), then:
 - (i) the Members or Trustee may receive written advice from a SMSF Advisor that the transaction is compliant with the Superannuation Laws;
 - (ii) the Real Property must be Business Real Property;
 - (iii) the acquisition of the Real Property must not be a Prohibited Related Party Transaction;
 - (iv) the acquisition is not an In-House Asset, or in the event the acquisition is an In-House Asset, that the In-House Asset Test is not failed as a consequence of the acquisition of the Asset;
 - (v) the acquisition of the Real Property will not result in the Fund breaching the Superannuation Laws;
 - (vi) if the Real Property is to be leased to a Part 8 Associate, that such lease will be on arm’s length and commercial terms (including but not limited to rent, rent reviews, outlays, and conditions of use and access), with any default by the Part 8 Associate enforced in accordance with market standard enforcement processes;
 - (vii) the Fund would acquire the Real Property even if it was not going to be leased to a Part 8 Associate; and
 - (viii) the Fund would acquire the Real Property even if it was not acquired from a Part 8 Associate (if applicable);
- (d) If the Asset acquired under the LRBA is shares and/or units, then the Trustee will not enter into a dividend reinvestment plan, if such plan would violate the Superannuation Laws (which at this time it does);
- (e) The acquisition must not be a Prohibited Borrowing or Prohibited Related Party Acquisition;
- (f) The Asset will be insured properly by the Trustee, including but not limited to, where appropriate, Replacement and Reinstatement Value;

- (g) The Sole Purpose for acquiring the Asset is to further the development and funding required to pay retirement and death benefits for the Members of the Fund;
- (h) The Trustee will assist the risks of borrowing in respect to each Asset and proposed arrangement, and proceed on the basis that:
 - (i) the risks of borrowing are limited to the Asset acquired,
 - (ii) the borrowing is appropriate to the funding of the SMSF's financial obligations and investments, despite the risks involved in the borrowing;
 - (iii) the investment and borrowing is reasonable, given the liquidity requirements and cash flow consequences of the borrowing and Asset acquisition;
 - (iv) the investment and borrowing is appropriate, notwithstanding the potential timing of retirement of Members, as well as the possibility of early access to Member Interests as a consequence of the disability, death or payment splitting requirements of a Member; and
 - (v) the investment and borrowing are appropriate having regard to the diversification of the SMSF resources and returns necessary to achieve the Sole Purpose of the Fund;
- (i) If the Trustee acquires an Asset from a Part 8 Associate, the Trustee will be satisfied that the SMSF would have acquired the Asset even if the Asset was not acquired from a Part 8 Associate;
- (j) The Trustee will use the borrowed monies from the LRBA solely for the acquisition and/or maintenance of the Asset, which costs can include borrowing (financing or refinancing), acquisition costs (such as conveyancing fees, stamp duty, brokerage or loan establishment fees) and/or maintenance of the Asset (which costs may be by way of a draw down or redraw facility, provided the Superannuation Laws permit);
- (k) The Trustee will not enter into a LRBA with any party whereby the Loan to Value Ratio (LVR) in respect to the Asset and monies lent exceed the LVR allowed by the Superannuation Laws;
- (l) The Lender's rights against the SMSF will always be limited to the Asset;
- (m) The Asset may not be subject to any charge, excepting the Security allowed taken under the LRBA;
- (n) The Trustee will not improve or replace the Asset, except as permitted by the Superannuation Laws, having regard to Section 67B of the SISA and the Regulator's directions; and
- (o) The Trustee will not permit Part 8 Associates to have use or control over the Asset, except as expressly limited by the Superannuation Laws.

The following definitions apply to the Investment Strategy, as updated herein:

"Asset" includes one or more assets and any Replacement Asset allowed under Part 7 of the SISA and the Superannuation Laws generally, for purposes of sections 67, 67A and 67B of the SISA to be held by the Holding Trustee on Bare Trust for the absolute entitlement of the Borrower.

"Acquisition Costs" includes all monies required by the Borrower and Holding Trustee to acquire the Asset, including stamp duties, conveyancing costs and alike.

"arm's length" includes terms which, for purposes of sections 62 and 109 of the SISA are of nature and type which unrelated parties would agree to in commercial arrangements, and includes, but is not limited to the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, and the terms on offer by commercial unrelated lenders to borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse Borrowing Arrangement.

"Bare Trust" is the arrangement whereby one party holds an asset for the absolute entitlement and benefit of another party.

"Business Real Property" has the meaning given at section 66 of the SISA and includes any freehold or leasehold interest in Real Property, or any interest that is capable of assignment or transfer, or any other class of interest in relation to Real Property prescribed by the SISR for purposes of the Superannuation Laws as belonging to that class, where the Real Property is used wholly and exclusively in one or more businesses, but does not include any interest in the capacity of beneficiary of a trust estate.

"Commercial terms" includes terms and arrangements which unrelated commercial parties would be expected to agree to in respect to a thing or matter, and includes but is not limited to the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, adopted in TD 2016/16, and the terms on offer by commercial unrelated Lenders to Borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse arrangement.

"Complying Superannuation Fund Status" includes, but is not limited to, a notice in respect to a SMSF of complying fund status in accordance with Part 5, Division 2 of the SISA.

"Holding Trust" is a Bare Trust created for the purpose of acquiring an asset for the exclusive and absolute entitlement of another, and for purposes of the Superannuation Laws is the Fund.

"Holding Trustee" is the Person appointed to hold the Asset on Bare Trust for the Fund.

"In-House Asset" is an asset as defined at section 71 of the SISA, and otherwise at the Superannuation Laws.

"Investment Strategy" includes any instrument in writing or agreement of the Trustee and Members of the Fund which satisfies the meaning given at regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994*, and as otherwise provided in the Superannuation Laws.

"Line of Credit" is the facility for the provision of Monies by a Lender to a Borrower and may, if permitted by the Superannuation Laws, allow for a redraw facility.

"Limited Recourse" means the enforcement and rights allowed by a Lender in regard to a financing arrangement to a complying superannuation fund in relation to a borrowing arrangement as allowed by sections 67, 67A and/or 67B of the SISA, or as otherwise allowed by the Superannuation Laws.

"Loan to Value Ratio" is the ratio between the value of the Monies and the value of the Asset at a given time.

"Monies" includes cash, assets and any other form of property which may be used as a medium of exchange.

"Part 8 Associate" means a Person as shall be included as such for purposes of Part 8, subdivision B of the SISA, including sections 70B, 70C, 70D and 70E of the SISA, and as otherwise defined by the Superannuation Laws.

"Person" means an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

"Prohibited Borrowing" means a borrowing arrangement which is in contravention to section 67(1) of the SISA and the Superannuation Laws.

"Prohibited Related Party Transaction" means a transaction by Part 8 Associates and the Fund which is prohibited by section 66 of the SISA and the Superannuation Laws, but does not include the acquisition of Listed Securities acquired at market value (see section 66(2)(a)), the acquisition of Business Real Property at market value (see section 66(2)(b)), the acquisition of an asset under a merger between regulated superannuation funds (see section 66(2)(c)) or any other asset allowed by the Regulator (see section 66(2)(d)).

"Regulator" means the government body having responsibility for the administration of self-managed superannuation funds, or having responsibility for a matter considered.

"Regulator's Terms" means the requirements published by the Regulator, by rulings, guidance statements, variations in legislation or regulation or otherwise, in respect to the undertaking of Limited Recourse arrangements, Related Party Transactions, borrowing and/or any and all other matters relevant to the maintenance of a Complying Superannuation Fund Status, and the arrangements by the Fund.

"Real Property" means freehold, leasehold or Crown land, buildings on freehold, leasehold or Crown land and such other property which is not personal property.

"Replacement Asset" means the acquisition of an Asset, in substitution for an original Asset, for purposes of section 67B of the SISA and the Superannuation Laws generally.

"Replacement and Reinstatement Value" means the amount required to excavate, remove, decommission, relocate, rebuild, restore and otherwise reinstate a thing which is partially or totally damaged or destroyed, to a substantially similar condition as the thing was prior to the damage and/or destruction.

"SISA" means *Superannuation Industry (Supervision) Act 1993*.

"Security" means the offering of a registered interest, which includes the offering of a mortgage, personal property security interest as defined at section 12 of the *Personal Property Securities Act 2009*, and such other thing or condition over an Asset capable of sale, disposal or dealing for the purpose of making a Person whole in respect to a loan, credit arrangement or other financial accommodation.

"Security Interest" means a Security that secures the payment of monies or servicing of obligations, giving priority to a Lender in rank to other lenders or creditors in relation to any real or personal property.

"Single Acquirable Asset" is an Asset or collection of Assets allowed to be acquired under a Limited Recourse Lending Arrangement as provided under section 67A of the SISA, and the Superannuation Laws.

"Sole Purpose" has the meaning given at section 62 of SISA, and the Superannuation Laws.

"SMSF" is a superannuation fund that meets all of the terms and conditions of a Complying Superannuation Fund as that term is defined under the Superannuation Laws.

"SMSF Advisor" is an accountant, financial planner or lawyer having knowledge and experience with the Superannuation Laws.

"Superannuation Laws" includes the *Superannuation Industry (Supervision) Act 1993 (SISA)*, the *Superannuation Industry (Supervision) Regulations 1994 (SISR)*, 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*, the *Social Security Regulations*, the *Veterans Entitlement Act 1986*, 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, as required by the Regulator's Terms and adopted by the Trustee of the Fund.

MINUTES OF MEETING OF THE DIRECTORS
Edelman Property Pty Ltd - ACN 619 801 160

HELD AT: Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC
3124

ON:

PRESENT: Julian Edelman and Nicky Edelman

CHAIRPERSON: Julian Edelman was elected to chair the meeting.

BUSINESS At a meeting of the Directors convened on this date, with the agenda accepted and notice waived and a quota met, the Directors met and resolved the following.

RESOLUTION 1: It is **RESOLVED** that the company accepts to act as the custodian for **EDELMAN INVESTMENTS PTY LTD - ACN 619 806 718 OF SUITE 1, LEVEL 1 ,277 CAMBERWELL RD, CAMBERWELL, VIC 3124 AS TRUSTEE FOR EDELMAN SUPER FUND (Fund)**, and to enter into a Holding Trust Deed settling the Bare Trust arrangement.

DISCUSSION: The Directors discussed the request by the Fund to act as custodian on Bare Trust for the Fund, in the acquisition and holding of an Asset to be acquired by the Fund under a Limited Recourse Borrowing Arrangement (**LRBA**) in accordance with Section 67A of the *Superannuation Industry (Supervision) Act 1994 (SISA)*.

The Directors considered the appointment and obligations, as shown in the proposed Holding Trust Deed, shown at **Annexure 1**, and resolved unanimously to accept the appointment and to execute the proposed Holding Trust Deed.

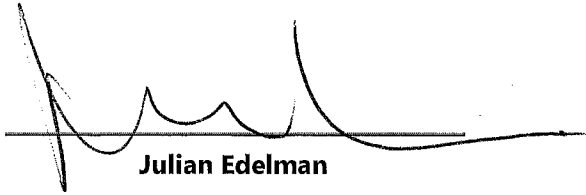
RESOLUTION 2: It is **RESOLVED** that the company execute and do all things necessary to assist the Fund in the implementation of a LRBA, including but not limited to executing legal instruments which have the effect the acquisition of the Asset as Holding Trustee for the Fund, and the registration of a Security over the Asset, in favour of the Fund's lender(s).

DISCUSSION: The Directors considered the discussion above noted, and resolved unanimously to execute and do all things necessary to assist in the implementation of the LRBA arrangements.

CLOSURE: There being no further business the meeting is closed.

Executed as a record of the matters above confirmed by the Chairperson:

The Chairperson



Handwritten signature of Julian Edelman, consisting of a stylized 'J' followed by 'E', 'D', 'E', 'L', 'M', 'A', 'N' in a cursive script.

Julian Edelman

Dated: 25/8/17



Family • Investment • Legacy

SMSF LIMITED RECOURSE LOAN

EDELMAN SUPER FUND

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SMSF LIMITED RECOURSE LOAN AGREEMENT

THIS DEED IS DATED:

25/8/17

PARTIES:

LENDER:

Julian Edelman and Nicky Edelman of 32 Lucas Street,
CAULFIELD SOUTH, VIC 3162

BORROWER:

Edelman Investments Pty Ltd - ACN 619 806 718 of
Suite 1, Level 1, 277 Camberwell Rd, Camberwell, VIC 3124 as Trustee
of Edelman Super Fund

HOLDING TRUSTEE:

Edelman Property Pty Ltd - ACN 619 801 160 of
Suite 1, Level 1, 277 Camberwell Rd, Camberwell, VIC 3124

MEMBERS

Julian Edelman and Nicky Edelman of 32 Lucas Street,
CAULFIELD SOUTH, VIC 3162

RECITALS:

- A. The Borrower wishes to borrow the Monies shown at **Item 2 of Schedule One** (the "**Monies**").
- B. The Borrower intends to apply the Monies for the purpose of acquiring the Single Acquirable Asset the asset shown at **Item 1 of Schedule One** ("the **Asset**") and any further Approved Purpose (collectively, the "**Purpose**") of the Borrower's Lender.
- C. In order to comply with sections 67A and 67B of the *Superannuation Industry (Supervision) Act 1993* (SISA), the Borrower sought the consent of the Holding Trustee to hold the Asset on Bare Trust for the Borrower.
- D. The Holding Trustee has consented to hold the Asset on Bare Trust for the Borrower.
- E. The Borrower has requested the Lender to lend the Monies to the Borrower for the Purpose, with the Borrower having recourse rights against the Borrower and Holding Trustee limited to the Asset ("**Limited Recourse**").
- F. The Borrower has consented to lend the Monies to the Borrower for the Purpose, subject to the Limited Recourse available against the Asset, and excluding any other rights of indemnity against the balance of assets held by the Borrower as required for a complying borrowing arrangement under sections 67A and 67B of the SISA.
- G. The terms shown in the Recitals collectively are to be known as the "**Borrowing Arrangement**", to which the parties resolve to be bound to on and following the Commencement Date shown at **Item 5 of Schedule One** (the "**Commencement Date**").

OPERATIVE PARTS:

1. The Loan Agreement

- 1.1 The Lender agrees to the Borrowing Arrangement on the terms shown in the Lender's Agreement, in exchange for the "Borrower's Promises", the "Holding Trustee's Promises" and the Member Declarations.

- 1.2 The Borrower and Holding Trustee acknowledge the Promises of each is consideration for the Lender's Agreement.
- 1.3 The Members of the Fund acknowledge the "Member Declarations" are consideration for the Lender's Agreement.
- 1.4 The Borrowing Arrangement shall be taken to take effect from the Commencement Date, and shall continue for the Loan Term.

2. The Lender's Agreement

- 2.1 The Lender agrees, in exchange for the Borrower's Promises, and Holding Trustee's Promises and relying on the Member Declarations, that:
 - (a) **Monies:** The Lender will lend to the Borrower the Monies, and pay or deliver such Monies as a lump sum, or as a Line of Credit (including an agreement by the Lender and Borrower to allow a redraw facility if allowed by the Superannuation Laws), at the request of the Borrower (subject to the Borrower not being in Default);
 - (b) **Interest:** The Lender will charge the Interest at the rate shown at **Item 3 of Schedule One** on the Monies, or such of the Monies as shall be unpaid, on each Interest Period, until repaid in full. If the Borrower fails to pay Interest on or before a Due Date, then the Lender may at any time during the Loan Term, without prejudice to its other rights and remedies, add to the Monies any part of the Interest which is not paid on the Due Date, subject to any restrictions under the Superannuation Laws to do so;
 - (c) **Other Amounts:** The Lender will, to the extent possible, only incur Costs as are necessary for the undertaking of reasonable Enforcement Action in respect to a Default by the Borrower. Interest shall accrue on Other Amounts from the date of demand by the Lender, at the rate shown at **Item 3 of Schedule One**;
 - (d) **Payment Terms:** The Lender agrees that the Borrower may repay the Monies and Interest on the terms and dates shown at **Item 4 of Schedule One**, and may also repay such amounts prior to a Due Date without penalty;
 - (e) **Approved Purposes:** The Lender approves the use of the Monies for acquiring the Asset, maintenance of the Asset and/or financing costs associated with the Borrowing Arrangement (collectively "the **Approved Purposes**");
 - (f) **Limited Recourse and Security:**
 - (i) The Lender shall hold Security over the Asset ("Security"), and exercise enforcement over such Security only in the event of a Default of the Borrower and/or Holding Trustee for not greater than the shorter of the Loan Term or the date upon which all amounts due under the Borrowing Arrangement are paid to the Lender;
 - (ii) The Lender acknowledges that its recourse against the Borrower and Holding Trustee is limited to the Asset, and the proceeds available from the realisation of the Asset, after settlement of Enforcement Costs;
 - (iii) The Lender agrees not to obtain a judgment for payment of Monies or damages against the Borrower and/or the Holding Trustee in the event of a Default, except as necessary for enforcement against the Asset and limited in an amount not exceeding the likely proceeds to be realised on the disposal of the Asset. To the extent such a judgment exceeds the net proceeds realised in the disposal of the Asset, after settlement of Enforcement Costs, the Lender will refuse further enforcement against the Borrower and/or Holding Trustee of such judgment, including, but not limited to, obtaining warrants against the Other Assets of the Borrower and/or Holding Trustee;

- (iv) The Lender agrees not to issue a demand under section 459E(1) of the *Corporations Act 2001* (Cth), seek to wind up or institute bankruptcy proceedings against the Borrower and/or Holding Trustee and/or apply for the appointment of a receiver of the Borrower and/or Holding Trustee, in the event of a Default;
- (g) **Arm's Length and Commercial Terms:** The Lender acknowledges and agrees to undertake and maintain the Borrowing Arrangement on terms consistent with the requirements of sections 62 and 109 of the *Superannuation Industry (Supervision) Act 1993* (SISA), PCG 2016/5, TD 2016/16, the Regulator's Terms and the Superannuation Laws generally, including any penalty provisions, which terms and penalties (if any) must be on Arm's Length and Commercial Terms. To the extent of any breach thereof, the Lender agrees to do all things necessary to remediate the Borrowing Arrangement;
- (h) **Compliance with the Superannuation Laws:** The Lender acknowledges that the parties are subject to the Superannuation Laws, and that there are restrictions under the Superannuation Laws which may impact on the Lender's remedies on a Default of a party and/or the Lender's enforcement powers, should the Lender be a Part 8 Associate of the Borrower. The Lender agrees that the Agreement, and the enforcement of any term on Default, to the extent the Lender is a Part 8 Associate of the Borrower, shall be conditional upon such enforcement being allowed by the Superannuation Laws (including, but not limited to the restrictions in respect to contributions, In-House Assets, Related Party transactions, financial assistance restrictions, and alike).

3. The Borrower's Promises

- 3.1 The Borrower promises to the Lender, in exchange for the Lender's Agreement, that:
- (a) **Monies:** The Borrower will repay the Monies;
 - (b) **Interest:** The Borrower will pay Interest, at the rate shown at **Item 3 of Schedule One** on the Monies, or such of the Monies as shall be unpaid, on each Interest Period, until repaid in full;
 - (c) **Other Amounts:** The Borrower will pay, on demand by the Lender, to or as directed by the Lender and indemnify the Lender for the Lender's Costs reasonably incurred as a consequence of a Default by the Borrower under the Borrowing Arrangement. The Borrower will pay Interest on the Lender's Costs, with Interest accruing from the date of demand until the Other Amounts are repaid in full, at the rate shown at **Item 3 of Schedule One**;
 - (d) **Payment Terms:** The Borrower will repay the Monies and Interest in accordance with the terms shown at **Item 4 of Schedule One**;
 - (e) **Approved Purposes:** The Borrower warrants the use of the Monies is for acquiring the Asset the Approved Purposes, made for investment purposes only and is not a Prohibited Borrowing;
 - (f) **Security:** The Borrower grants Security over the Asset to the Lender, which Security shall continue until the Monies, Interest and Other Amounts are paid in full to the Lender. The Borrower promises to exercise authority over the Holding Trustee in a manner which does not defeat the Lender's Security over the Asset and to do all things necessary to ensure the preservation of the Asset;
 - (g) **Insurance:**
 - (i) If requested by the Lender or required by the Superannuation Laws, the Borrower will insure the Asset for the greater of the Replacement and

Reinstatement Value or the Monies unpaid for the Loan Term, including public liability, which insurance shall be known as the "**Insurance Contract**";

- (ii) The Insurance Contract, in respect to the insurance, must note the Lender's interest in the Asset;
 - (iii) Should the Asset be partially or totally destroyed, the Borrower assigns the proceeds of the Insurance Contract to the Lender, in an amount not less than the Monies, Interest and Other Amounts unpaid at such date;
 - (iv) The Borrower shall make a copy of the Insurance Contract available to the Lender at the demand of the Lender; and
 - (v) A failure of the Borrower to maintain the Insurance Contract on such terms as required by the Lender, or to provide a copy of the Insurance Contract on demand by the Lender, shall constitute a Borrower's Default;
- (h) **Retirement:** The Borrower will not Retire or cease to act in such capacity, except by notice in writing to the Lender, which notice shall evidence the nomination and acceptance of nomination by an alternate trustee of the Fund, which alternate trustee shall by written instrument ratify and agree to be bound by the terms of this Agreement as a condition of appointment;
- (i) **Arm's Length and Commercial Terms:** The Borrower acknowledges and agrees that the terms of the Borrowing Arrangement must be consistent with the requirements of sections 62 and 109 of the SISA, PCG 2016/5, TD 2016/16, the Regulator's Terms and the Superannuation Laws generally, including any penalty provisions, which terms and penalties (if any) must be on Arm's Length and Commercial Terms. To the extent of any breach thereof, the Borrower agrees to do all things necessary to remediate the Borrowing Arrangement; and
- (j) **Compliance with the Superannuation Laws:** The Borrower acknowledges that the Lender's Agreement is conditional upon the Borrower retaining a Complying Superannuation Fund Status, and the Borrower promises to do all things necessary to maintain such status for the Loan Term.

4. The Holding Trustee's Promises

4.1 The Holding Trustee promises to the Lender, in exchange for the Lender's Agreement, that:

- (a) **Security:** The Holding Trustee will do all things necessary to effect the registration of the Security over the Asset, which Security shall continue until the Monies, Interest and Other Amounts are paid in full to the Lender;
- (b) **Bare Trust:** The Holding Trustee will hold the Asset on Bare Trust for the Borrower, and will abide by the directions of the Borrower, subject to the requirements of the Lender, in respect to the Asset until the Monies, Interest and Other Amounts are paid in full to the Lender;
- (c) **Retirement:** The Holding Trustee shall not Retire or cease to act in such capacity, except by notice in writing to the Lender, which notice shall evidence the nomination and acceptance of nomination by an alternate trustee of the Bare Trust, which alternate trustee shall by written instrument ratify and agree to be bound by the terms of this Agreement as a condition of appointment; and
- (d) **Compliance with the Superannuation Laws:** The Holding Trustee will do all things necessary to comply with the Superannuation Laws in respect to the Borrowing Arrangement.

5. The Member Declarations

- 5.1 The Members of Edelman Super Fund ("**Fund**") declare to the Lender, in exchange for the Lender's Agreement, that:
- (a) The Fund is a regulated superannuation fund within the meaning of the Superannuation Laws, and has continued as such since establishment on 16 June 2017;
 - (b) The Borrower (as constituted) is the trustee of the Fund, and the Members have taken no action to remove or vary the nature of the appointment and/or duties of the Borrower in respect to the Fund which have not otherwise been disclosed in writing to the Lender;
 - (c) The Borrower has the consent of the Members in entering into this Agreement and acquiring the Asset;
 - (d) The Borrower has the right to be indemnified out of the Fund for all obligations it incurs in relation the administrative undertakings of the Fund, and the Deed of Trust and Governing Rules of the Fund adopted by the Members are sufficient to satisfy this right of indemnity;
 - (e) The Fund has been properly constituted and the Deed of Trust and/or Instrument having the effect of a Deed of Trust for the purposes of section 10(1) of the SISA (including any document containing the Governing Rules of the Fund), are enforceable and validly executed;
 - (f) The Fund complies with and will continue to comply with the obligations required by the Superannuation Laws;
 - (g) The Holding Trustee (as constituted) is the trustee of the Holding Trust, and the sole beneficiary of the Holding Trust is the Fund;
 - (h) The Holding Trustee is indemnified by the Fund for Costs incurred in relation to the Borrowing Arrangement and the Bare Trust generally, and the Deed of Trust or Instrument having the effect of a Deed of Trust settling the Bare Trust is sufficient to satisfy such right of indemnity;
 - (i) The Members are aware of no action taken, or considered, to remove the Holding Trustee or otherwise vary the Bare Trust, except as expressly communicated in writing to the Lender;
 - (j) Each of the Fund's Members, or their duly authorised attorney, have executed this Agreement, and there are less than 5 (five) Members of the Fund;
 - (k) If the Asset acquired is Real Property acquired from a Part 8 Associate (as defined), then:
 - (i) the Members or Trustee have received advice from a SMSF Advisor that the transaction is compliant with the Superannuation Laws;
 - (ii) the Real Property is Business Real Property;
 - (iii) the acquisition of the Real Property is not a Prohibited Related Party Transaction;
 - (iv) the acquisition is not an In-House Asset, or in the event the acquisition is an In-House Asset, that the In-House Asset Test is not failed as a consequence of the acquisition;
 - (v) the acquisition of the Real Property will not result in the Fund breaching the Superannuation Laws;

- (vi) if the Real Property is to be leased to a Part 8 Associate, that such lease will be on Arm's Length and Commercial Terms (including but not limited to rent, rent reviews, outlays, and conditions of use and access), with any default by the Part 8 Associate enforced in accordance with market standard enforcement processes;
- (vii) the Fund would acquire the Real Property even if it was not going to be leased to a Part 8 Associate; and
- (viii) the Fund would acquire the Real Property even if it was not acquired from a Part 8 Associate (if applicable);
- (l) If the Asset is a collection of shares or units, the dividends and/or distributions therefrom will not be reinvested unless allowed by the Superannuation Laws;
- (m) The Asset is acquired to fund, to the extent reasonable, the payment of retirement and death benefits for the Members of the Fund;
- (n) The acquisition of the Asset and the entering into of this Borrowing Arrangement is within the written Investment Strategy of the Fund;
- (o) The Fund would acquire the Asset even if the Asset was not acquired from a Part 8 Associate (if applicable);
- (p) The Asset is not an asset of the Fund, except to the extent an existing borrowing arrangement is refinanced by this Agreement, in which case the Asset is held by the Holding Trustee on Bare Trust;
- (q) The Asset may not be subject to any charge, excepting the Security allowed by this Borrowing Arrangement;
- (r) The Asset may only be replaced as permitted by the Superannuation Laws; and
- (s) The Members acknowledge and consent that each shall have no right, use or control over the Asset, except as permitted by the Superannuation Laws.

6. Amendments and Variations

- 6.1 The parties may, from time to time, consent to the amendment or variation of the Agreement, including an amendment or variation of any term, repayment structure and/or constituent parts of the Agreement, provided such amendment or variation does not amount to a refinancing.
- 6.2 Any amendment or variation of the Agreement must be documented in writing and compliant with the Superannuation Laws.

7. Default

- 7.1 A Default under this Agreement is as otherwise detailed in the Agreement and includes:
 - (a) A failure of the Borrower to pay an instalment of such of the Monies, Interest and/or Other Amounts on a Due Date;
 - (b) A failure of the Borrower and/or Holding Trustee to perform or observe a promise or provision of this Borrowing Arrangement;
 - (c) A Borrower and/or Holding Trustee entering into an arrangement, reconstruction or composition with its creditors or any of them;
 - (d) A receiver being appointed in respect to the affairs of a Borrower and/or Holding Trustee;

- (e) A term or condition of the Borrowing Arrangement being, in the opinion of the Lender, unlawful or in contravention to any law, including but not limited to a Superannuation Law;
- (f) If there is a material adverse change to the Security offered under the Borrowing Arrangement, including but not limited to the destruction in part or in whole thereof; and
- (g) If the Lender is unable to register an interest in respect to a Security offered under this Agreement.

8. Termination of the Agreement

- 8.1 The Agreement is subject to termination upon the happening of a Default and/or any one or more of the following, unless the Lender waives the right to termination:
- (a) the Borrower suffering an Insolvency Event;
 - (b) the Borrower breaching any of the Borrower's Promises;
 - (c) the Holding Trustee breaching one of the Holding Trustee's Promises.
- 8.2 If the Agreement is terminated, the Lender has no recourse against the Borrower's assets or the Holding Trustee's assets, except to seek the transfer of legal and equitable title by the Holding Trustee of the Asset to the Lender within a reasonable time and sale, which proceeds shall be applied first in satisfaction of the Monies, secondly to Interest and thirdly to Other Amounts unpaid at such time.

9. Notices

- 9.1 Any notice of communication to or by a party to this Agreement:
- (a) may be given by personal service, post, facsimile or email;
 - (b) must be in writing, legible and in English addressed to the parties;
 - (c) in the case of a corporation, must be signed by an officer or under the common seal of the corporation;
 - (d) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the address;
 - (ii) if posted, 2 Business Days (or 6, if addressed outside Australia) after date of posting to the addressee whether delivered or not;
 - (iii) if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
 - (iv) if sent by email, on receipt of a reply email from the addressee confirming that the email has been delivered.
- 9.2 The parties consent to the use of electronic communications method, as prescribed by the *Electronic Transactions Act 1999 (Cth)*, including but not limited to the use of digital signatures. The parties, for clarity, consent to the use of electronic transactions and digital signatures for purpose of executing this Agreement.

10. General Matters

- 10.1 The Borrower shall pay the costs of drawing the Agreement.

- 10.2 With the exception of the costs of drawing the Agreement, each party shall bear its own costs in the review and execution of the Agreement, and ancillary documents, excepting the Borrower shall pay the Holding Trustee's costs.
- 10.3 The Agreement is governed and construed by the laws of the State where the Asset is situated. The parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute arising under the Agreement or its implementation or enforcement.
- 10.4 This Agreement binds and benefits the parties and their respective successors and assigns.
- 10.5 A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.
- 10.6 The parties acknowledge this Agreement is not subject to the *National Consumer Credit Protection Act 2009* as the Lender is not engaged in the business of providing credit.
- 10.7 If any provision of this Agreement offends any law, including any Superannuation Laws applicable to it, and is as a consequence illegal, invalid or unenforceable then:
- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
 - (b) in any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.
- 10.8 This Agreement, including **Schedule One** and any registered Security Interests (in respect to the Asset) constitutes the entire agreement between the parties with respect to the subject matter of the Borrowing Arrangement and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties.
- 10.9 A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to the Agreement.
- 10.10 If there is any defect in the execution of this Agreement by any party, that party may re-execute or ratify the execution, which re-execution and/or ratification shall relate back to the original date of defective execution.

11. DEFINITIONS AND INTERPRETATION

11.1 **DEFINITIONS:** In this Agreement unless the context otherwise requires:

"Acquisition Costs" includes all Monies required by the Borrower and Holding Trustee to acquire the Asset, including stamp duties, conveyancing costs and alike.

"Agreement" is this agreement, and is registered with the Holding Trust for the loan of Monies to the Borrower by the Lender for an Approved Purpose, in accordance with the Superannuation Laws and includes any on-going or replacement loan facility of the original or any replacement loan facility.

"Approved Purpose" means a purpose allowed in respect to a Limited Recourse Borrowing Arrangement, and includes, but is not limited to, the Acquisition Costs, Maintenance Costs, Refinance and Refinance Costs of the Asset.

"Arm's Length" includes terms which, for purposes of sections 62 and 109 of the SISA are of the nature and type which unrelated parties would agree to in commercial arrangements, and includes, but is not limited to, the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, and adopted in TD 2016/16, and the terms on offer by commercial unrelated lenders to borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse Borrowing Arrangement.

"Asset" includes one or more assets and any Replacement Asset allowed under Part 7 of the SISA and the Superannuation Laws generally, for the purposes of sections 67, 67A and 67B of the SISA, and for purposes of this Agreement means the Asset shown at **Item 1 of Schedule One**, be held by the Holding Trustee under Bare Trust for the absolute entitlement of the Fund and a Replacement Asset. A reference to the Asset includes the proceeds of the sale of the Asset.

"Bare Trust" is the arrangement whereby one party holds an asset for the absolute entitlement and benefit of another party, and includes, for purposes of this Agreement, the arrangement whereby the Holding Trustee holds the Asset shown at **Item 1 of Schedule One**, on trust for the Fund.

"Borrower" means Edelman Investments Pty Ltd - ACN 619 806 718 as Trustee of Edelman Super Fund.

"Borrowing Arrangement" means the Limited Recourse Borrowing Arrangement which is the subject of this Agreement.

"Borrower's Default" means a Default as read in Clause 9 of the Agreement.

"Business" includes any profession, trade, employment, vocation or calling carried on for the purpose of profit, including the carrying on of primary production and the provision of professional services, and as further mentioned at section 66 of the SISA and Superannuation Laws generally.

"Business Real Property" has the meaning given at section 66 of the SISA and includes any freehold or leasehold interest in Real Property, or any interest that is capable of assignment or transfer, or any other class of interest in relation to Real Property prescribed by the SISR for purposes of the Superannuation Laws as belonging to that class, where the Real Property is used wholly and exclusively in one or more businesses, but does not include any interest held in the capacity of beneficiary of a trust estate.

"Call" means a demand made by the Lender upon the Guarantor, in accordance with the rights vested in the Lender as a consequence of the Guarantor's Promises, which demand is satisfied by the Guarantor in whole or in part.

"Capitalised Interest" is an amount of Interest which has been added to the Monies.

"Commencement Date" is the date shown at **Item 5 of Schedule One**.

"Commercial Terms" includes terms and arrangements which unrelated commercial parties would be expected to agree to in respect to a thing or matter, and includes but is not limited to the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, and adopted in TD 2016/16, and the terms on offer by commercial unrelated lenders to borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse Borrowing Arrangement.

"Complying Superannuation Fund Status" includes, but is not limited to, a notice in respect to a SMSF of complying fund status in accordance with Part 5, Division 2 of the SISA.

"Costs" has its ordinary meaning, except as otherwise provided in this Agreement.

"Default" means a circumstance read at Clause 9 of the Agreement.

"Due Date" means each and every date on which an instalment of Monies, Interest and/or Other Amounts are required to be paid by the Borrower to the Lender.

"Enforcement Action" includes the issuing of letters of demands, legal proceedings, prosecution and defence of legal proceedings, entry of judgment, enforcement of judgment, issuance of warrants and writs, sale proceedings, bankruptcy and liquidation proceedings and any other commercially accepted mechanism of recovering Monies and/or property as a consequence of a Default of a party to settle a liquidated or non-liquidated debt. Enforcement Action shall be limited, in respect to action taken against the Borrower or Holding Trustee, to the Limited Recourse terms prescribed under this Agreement, and as further limited or extended by the Superannuation Laws for purposes of sections 67, 67A and 67B of the SISA.

"Enforcement Costs" includes all reasonable legal, mercantile and advisory costs, including court lodgement fees, bailiff fees, auctioneer fees, publication fees and other government fees, incurred in respect to Enforcement Action taken by the Lender, or an agent of the Lender, in respect to a Default of this Agreement. Enforcement Costs also includes such amounts incurred by the Guarantor, consequential to enforcing a right of indemnity against the Borrower in respect to a Call by the Lender.

"Fund" is Edelman Investments Pty Ltd - ACN 619 806 718 as Trustee of Edelman Super Fund.

"Holding Trustee" is Edelman Property Pty Ltd - ACN 619 801 160, which is the trustee of the Holding Trust, being a Bare Trust settled for the purpose of acquiring the Asset in accordance with the permissible borrowing arrangements of section 67, 67A and 67B of the SISA, and Superannuation Laws.

"Holding Trust" is the Bare Trust created for the purpose of acquiring the Asset, settled by Deed dated 10 July 2017, for the exclusive and absolute entitlement of Edelman Investments Pty Ltd - ACN 619 806 718 as Trustee of Edelman Super Fund. Where the Bare Trust is given a name, such name is for reference purposes only and does not vary the Bare Trust relationship between the Holding Trustee and Borrower.

"Holding Trust Asset" is the Asset held by Edelman Property Pty Ltd - ACN 619 801 160 on Bare Trust for the Fund, shown as **Item 1 of Schedule One**.

"In-House Asset" is an asset as defined at section 71 of the SISA, and otherwise at the Superannuation Laws.

"Insolvency Event" includes the date upon which a Person enters into an arrangement with his/her/its creditors, the date of lodgement of proceedings to declare a Person bankrupt or to seek the wind up of such Person, the date upon which a Person is unable to pay his/her/its debts as and when they fall due and/or the date upon which a receiver is appointed in respect to a Person's affairs.

"Insurance Contract" means a contract or agreement between an insurer and an insured which determines the claims which the insurer is legally required to pay on the happening of an event, and includes risk to property or person.

"Interest" means the rate per annum shown in **Item 3 of Schedule One** charged in respect to Unpaid Monies up to (but excluding) the actual date of payment and is calculated on the actual days elapsed and a year of 365 days (in a leap year, a year consisting of 366 days).

"Interest Period" means each calendar month of the Loan Term, or a portion thereof.

"Investment Strategy" includes any instrument in writing or agreement of the Members of the Fund which satisfies the meaning given at regulation 4.09 of the Superannuation *Industry (Supervision) Regulations 1994* (SISR), and as otherwise provided in the Superannuation Laws.

"Lender" is Julian Edelman and Nicky Edelman of 32 Lucas Street, CAULFIELD SOUTH, VIC 3162.

"Lender's Costs" means Enforcement Costs and other reasonable amounts incurred by the Borrower in dealing with the Default of a party.

"Line of Credit" is the facility for the provision of Monies by the Lender to the Borrower for an Approved Purpose, and if permitted by the Superannuation Laws, allows for a redraw facility.

"Limited Recourse" means the enforcement and rights allowed by a Lender in respect to a financing arrangement to a complying SMSF in relation to a Borrowing Arrangement as allowed by sections 67, 67A and/or 67B of the SISA, or as otherwise allowed by the Superannuation Laws. The term also extends to the limited rights of a Guarantor to enforce a common law, equity or other legal right against the Borrower and/or Holding Trustee in the event of a call being made upon the Guarantor by the Lender consequential to the Guarantor's Promises. In both circumstances, the enforcing party's rights against the Borrower and/or Holding Trustee are limited to the Asset.

"Limited Recourse Borrowing Arrangement" means an arrangement between a Lender and Borrower for the provision of a Loan of Monies by a Complying Superannuation Fund, made in accordance with the Superannuation Laws, including but not limited to sections 67, 67A and 67B of the SISA.

"Line of Credit" is the facility for the provision of Monies by the Lender to the Borrower to acquire one or more Assets under the Bare Trust and may, if permitted by the Superannuation Laws, allow for a redraw facility.

"Loan" means an arrangement between a Lender and Borrower, and may include a Guarantor and/or Holding Trustee, in respect to the advancement of Monies by the Lender, in exchange for the promise by the Borrower (and may include a Guarantor and/or Holding Trustee) to repay such Monies on mutually agreed terms.

"Loan Amount" includes Monies advanced by way of a Loan to the Borrower or the Holding Trustee acting as agent for the Borrower, for one or more Approved Purposes.

"Loan Term" means the period of time between the Commencement Date and the date upon which the Monies, Interest and Other Monies are paid in full to the Lender, notwithstanding the Due Date may be a date prior to the expiry of the Loan Term.

"Loan to Value Ratio" is the ratio between the value of the Monies and the value of the Asset at a given time.

"Manage" includes, if the Asset or a Replacement Asset is Real Property, the leasing of the Real Property, the maintenance of the Real Property and the attendance to the payment of all costs associated with the holding and leasing of the Real Property.

"Maintenance Costs" includes an expense in respect to holding the Asset which is not of capital nature.

"Monies" includes cash, assets and any other form of property which may be used as a medium of exchange.

"Net Proceeds" in relation to the disposal of a Holding Trust Asset includes any proceeds the Holding Trustee declares are the Net Proceeds after having received all consideration in respect of the disposal of a Holding Trust Asset and paid out all expenses and taxes in relation to the disposal by the Trustee of a Holding Trust Asset.

"Other Amounts" means Enforcement Costs and other reasonable costs incurred by the Borrower in dealing with a Default of a party.

"Operative Parts" means the terms of this Agreement shown as such.

"Part 8 Associate" means a Person as shall be included as such for purposes of Part 8, subdivision B of the SISA, including sections 70B, 70C, 70D and 70E of the SISA, and as otherwise defined by the Superannuation Laws.

"Person" means an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

"Prohibited Borrowing" means a borrowing arrangement which is in contravention to the Superannuation Laws.

"Prohibited Related Party Transaction" means a transaction by Part 8 Associates and the Fund which is prohibited by section 66 of the SISA and the Superannuation Laws, but does not include the acquisition of listed securities acquired at market value (see section 66(2)(a)), the acquisition of Business Real Property at market value (see section 66(2)(b)), the acquisition of an asset under a merger between regulated superannuation funds (see section 66(2)(c)) or any other asset allowed by the Regulator (see section 66(2)(d)).

"Promise" means the disclosure and undertakings, which constitutes the consideration of the relevant party.

"Real Property" means freehold, leasehold or Crown land, buildings on freehold, leasehold or Crown land and such other property which is not personal property.

"Regulator" means the government body having responsibility for the administration of self-managed superannuation funds, or having responsibility for a matter considered under this Agreement.

"Regulator's Terms" means the requirements published by the Regulator, by rulings, guidance statements, variations in legislation or regulation or otherwise, in respect to the undertaking of Limited Recourse Borrowing Arrangements, Related Party Transactions, borrowing and/or any and all other matters relevant to the maintenance of a Complying Superannuation Fund Status, and the arrangements by the Fund under this Agreement (including, but not limited to TD 2016/16).

"Related Party" is a Person who meets the definition of a Part 8 Associate.

"Replacement and Reinstatement Value" means the amount required to excavate, remove, decommission, relocate, rebuild, restore and otherwise reinstate a thing which is partially or totally damaged or destroyed, to a substantially similar condition as the thing was prior to the damage and/or destruction.

"Replacement Asset" means the acquisition of an Asset, in substitution for an original Asset, for purposes of section 67B of the SISA and the Superannuation Laws generally.

"Retire" means to step down from a fiduciary position.

"Security" means the offering of a registered interest, which includes the offering of a mortgage, personal property security interest as defined at section 12 of the *Personal Property Securities Act 2009*, and such other thing or condition over an Asset capable of sale, disposal or dealing for the purpose of making a Person whole in respect to a loan, credit arrangement or other financial accommodation.

"Security Interest" means a Security that secures the payment of Monies or servicing of obligations, giving priority to a Lender in rank to other lenders or creditors in relation to any real or personal property.

"Single Acquirable Asset" is an Asset or collection of Assets allowed to be acquired under a Limited Recourse Borrowing Arrangement as provided under section 67A of the SISA, and the Superannuation Laws. For purposes of this Agreement, the Single Acquirable Asset is shown at **Item 1 of Schedule One**.

"SMSF" is a superannuation fund that meets all of the terms and conditions of a Complying Superannuation Fund as that term is defined under the Superannuation Laws.

"SMSF Advisor" is an accountant, financial planner or lawyer having knowledge and experience with the Superannuation Laws.

"Sole Purpose" has the meaning given at section 62 of SISA, and the Superannuation Laws.

"Superannuation Laws" includes the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Social Security Act 1991*, the *Social Security Regulations*, the *Veterans Entitlement Act 1986*, 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, and include also the Regulator's determination on any Superannuation Law where the Trustee decides.

"Unpaid Monies" means an amount outstanding under the Borrowing Arrangement.

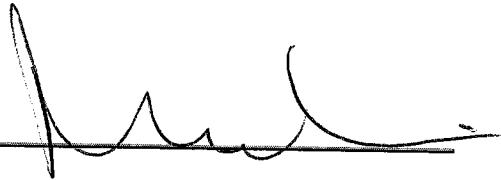
11.2 **INTERPRETATIONS:** In this Agreement, unless the context otherwise requires;

- (a) a clause, annexure or schedule is a reference to a clause in or annexure of or schedule to this Agreement;
- (b) a document (including this Agreement) includes any variation or replacement of it;
- (c) a reference to 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;
- (d) the singular includes the plural and vice versa;
- (e) the word "including" when introducing a list of items does not exclude a reference to other items;
- (f) the word "includes" when introducing a term or definition does not exclude a reference to other items;
- (g) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- (j) agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- (k) headings are inserted for convenience and do not affect the interpretation of this Agreement; and
- (l) where words are capitalised their meaning is to be found in the Definitions.

Executed as an Agreement.

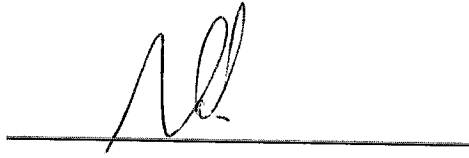
The Lenders

Julian Edelman and Nicky Edelman of 32 Lucas Street, CAULFIELD SOUTH, VIC 3162:



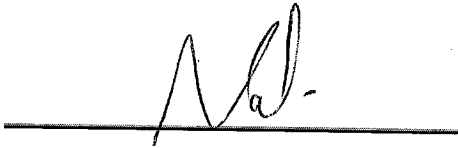
Julian Edelman
Lender

Dated: 25/8/17



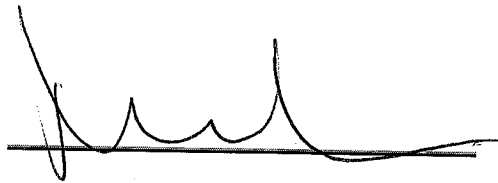
Witness Name / Signature

Dated: 25/8/17



Nicky Edelman
Lender

Dated: 25/8/17

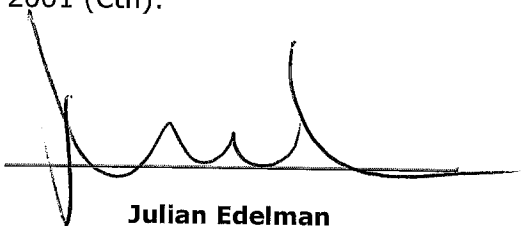


Witness Name / Signature

Dated: 25/8/17

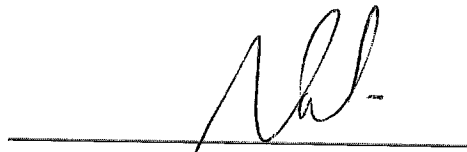
The Borrowers

Edelman Investments Pty Ltd - ACN 619 806 718 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124 as Trustee of Edelman 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 (Cth):



Julian Edelman
Director

Dated: 25/8/17

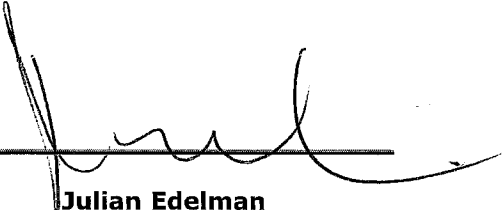


Nicky Edelman
Director


Dated: 25/8/17

The Holding Trustees

Edelman Property Pty Ltd - ACN 619 801 160 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124 as Trustee of Edelman Property Trust by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):



Julian Edelman
Director



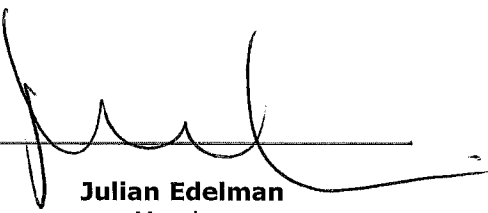
Nicky Edelman
Director

Dated: 25/8/17

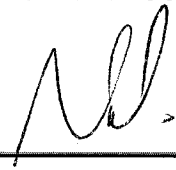
Dated: 25/8/17

The Members

Julian Edelman and Nicky Edelman of 32 Lucas Street, CAULFIELD SOUTH, VIC 3162:




Julian Edelman
Member



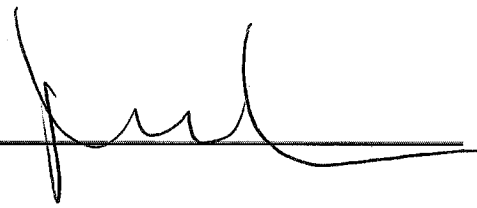
Witness Name / Signature

Dated: 25/8/17

Dated: 25/8/17



Nicky Edelman
Member



Witness Name / Signature

Dated: 25/8/17

Dated: 25/8/17

SCHEDULE ONE

TERMS OF LOAN AGREEMENT

Item	Description	Terms
1	Asset	Unit 1 and Carpark 32, 399 Alma Road, Caulfield North, VIC 3161
2	Monies (Loan Amount)	\$345,000
3	Interest Rate	<p>FIXED TERM: The "Fixed Interest Rate" shall be determined by taking the interest rate published by the Reserve Bank of Australia as the Indicator Lending Rate for banks providing standard variable housing loans for investments in May in the year immediately preceding the Commencement Date.</p> <p>The Fixed Interest Rate shall apply for 5 (five) years from the Commencement Date (the "Fixed Term"), after which the Interest Rate shall be determined in accordance with the Variable Term.</p> <p>VARIABLE TERM: The "Variable Interest Rate" shall be determined in the first year of the Variable Term, by taking the Indicator Lending Rate for banks providing standard variable housing loans for investments in May in the year immediately preceding the first day of the "Variable Term" (being the balance of the Loan Term immediately following expiry of the Fixed Term).</p> <p>The Variable Interest Rate shall be varied annually on the anniversary of the Commencement Date in each year of the Variable Term ("Review Date"), by taking the RBA Rate published as in May in the year immediately preceding the Review Date.</p>
4	Repayment Terms	The Borrower shall pay to the Lender the Interest in arrears, the Other Monies as shall be demanded by the Lender at such time and a portion of the Monies unpaid, on a monthly basis, provided the Loan Term does not exceed 15 years in total.
5	Commencement Date	6/9/17



Family • Investment • Legacy

HOLDING TRUST DEED OF ESTABLISHMENT

EDELMAN PROPERTY TRUST

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DEED SETTLING BARE TRUST ARRANGEMENT EDELMAN PROPERTY TRUST

This Deed is dated:

PARTIES

- HOLDING TRUSTEE:** Edelman Property Pty Ltd - ACN 619 801 160 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124
- BENEFICIARY:** Edelman Investments Pty Ltd - ACN 619 806 718 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124 as Trustee of Edelman Super Fund
- MEMBERS:** Julian Edelman and Nicky Edelman of 32 Lucas Street, CAULFIELD SOUTH, VIC 3162

RECITALS

- A. The Holding Trustee and Members of the self-managed superannuation fund known as, EDELMAN INVESTMENTS PTY LTD - ACN 619 806 718 OF SUITE 1, LEVEL 1 ,277 CAMBERWELL RD, CAMBERWELL, VIC 3124 AS TRUSTEE FOR EDELMAN SUPER FUND (**Beneficiary**), have met and considered the undertaking of a Limited Recourse Borrowing Arrangement (LRBA) in accordance with sections 67A and 67B of the *Superannuation Industry (Supervision) Act 1993* (SISA) (**Borrowing Arrangement**).
- B. The Beneficiary has requested the Holding Trustee to act as custodian for the acquisition of the asset referred at **Schedule One** (and as more fully particularised up to the time of settlement on such acquisition by further Deed of Amendment) (**Asset**), to enable, in part, the Beneficiary to limit the recourse of a Lender(s) as against the Beneficiary, to recover any amounts borrowed or otherwise due as a consequence of a Borrowing Arrangement, excepting the Asset.
- C. The Holding Trustee accepts to act as custodian of the Asset, for the sole and exclusive benefit of the Beneficiary, and subject to the directions and benefits of the Beneficiary, and consents to become a party or otherwise participate in a Borrowing Arrangement between the Beneficiary and its Lender(s), for purposes of entering into an arrangement under section 67A of the SISA.
- D. The Holding Trustee and Beneficiary, by this Deed, settle the Bare Trust, which shall be referred to between the parties as **EDELMAN PROPERTY TRUST (Holding Trust)**, for the purpose of acquiring the Asset in conjunction with a Borrowing Arrangement between the Beneficiary and its Lender(s).
- E. The relationship of Holding Trustee and Beneficiary are, for purposes of the Stamp Duties Acts, to be of an agent and principal, with the Holding Trustee acting in a fiduciary capacity, as trustee over the Asset, for the sole benefit of the Beneficiary, which Beneficiary is liable, and indemnifies the Holding Trustee, for any and all costs associated with the acquisition, maintenance and dealing with the Asset.
- F. The parties agree to be bound by the terms of the Operative Parts.

OPERATIVE PARTS

1. **Terms of settlement and administration of the Bare Trust arrangement known by the name of EDELMAN PROPERTY TRUST**

The Beneficiary requests, and the Holding Trustee consents, to the settlement of the Holding Trust, to be administered as follows:

- (a) The Holding Trustee shall execute, at the Beneficiary's direction, the legal instruments as are necessary to acquire the Asset, on Bare Trust, for the Beneficiary;
- (b) The Holding Trustee shall execute, at the Beneficiary's direction, the legal instruments as are necessary to allow the registration of such security interests, charges and/or mortgages as may be required by the Beneficiary's Lender(s);
- (c) The Holding Trustee shall receive and pay to the Beneficiary all income associated with the Asset, and the Beneficiary shall pay and indemnify the Holding Trustee in respect to all costs of administration of the Holding Trust, including but not limited to the costs associated with holding, maintaining, repairing, letting, dealing with, disposing and otherwise arising from the holding of the Asset;
- (d) The Holding Trustee shall, at the request of the Beneficiary, transfer all right, title and interest in the Asset, from and following the payment of one or more amounts, as required by section 67A(1)(c) of the SISA;
- (e) The Holding Trustee may only retire with the consent of the Beneficiary, and the Holding Trustee may be removed by the Beneficiary, provided always that during the term of the Holding Trust there is a replacement trustee appointed to act in substitution, and such replacement trustee is approved by the Beneficiary;
- (f) The Holding Trustee shall at no stage of the Holding Trust fund a cost of the Asset, which term the Beneficiary agrees to and promises to fund each and every cost at the notice of demand by the Holding Trustee or a creditor to the Holding Trustee;
- (g) The Holding Trustee shall have regard to the demands of the Beneficiary's Lender(s), but shall be subject to the demands solely of the Beneficiary in respect to all matters in respect to holding and/or disposal, except in respect to an explicit contractual term between the Beneficiary and its Lender(s) in respect to security rights;
- (h) The Holding Trustee shall have regard to the obligations of the Beneficiary, and its Members and Related Parties to comply with the Superannuation Laws, including but not limited to the following undertakings:
 - (i) the Holding Trustee will be the sole trustee of the Holding Trust, and the Beneficiary will be the sole beneficiary of the Holding Trust for the term of the Holding Trust;
 - (ii) the Holding Trustee is not subject to any action, nor aware of any action, which may prevent the Holding Trustee from acting as a fiduciary to the Beneficiary, and undertakes to promptly advise the Beneficiary should the circumstances change;
 - (iii) the Holding Trustee is aware of the limitations in respect to the use and enjoyment of the Asset by Part 8 Associates (as defined in the SISA and SISR), and shall do all its power to prevent the use of the Asset in breach of the Superannuation Laws;

- (iv) the Holding Trustee shall deal with the Asset on reasonable arm's length terms, having regard to the Beneficiary's obligation to satisfy the Sole Purpose Test of section 62 of the SISA;
- (v) if the Asset is other than Business Real Property, then the Holding Trustee shall allow the Asset to be let to a Member or Part 8 Associate only if the Beneficiary has consented to and verified the In-House Asset Test at section 71 of the SISA is not breached;
- (vi) if the Asset is Business Real Property, then the Holding Trustee shall allow the Asset to be let to a Member or Part 8 Associate and/or if the Beneficiary has consented to and verified the letting arrangement is on arm's length and commercial terms in accordance with section 109 of the SISA;
- (vii) the Beneficiary and Holding Trustee acknowledge the Asset is not currently owned by the Beneficiary and/or Holding Trust;
- (viii) the Beneficiary and Holding Trustee agree to do all things necessary to ensure that the terms of the Holding Trust are compliant with the Investment Strategy of the SMSF, and as amended from time to time;
- (ix) the Beneficiary and Holding Trustee agree that the Asset may only be replaced in accordance with section 67B of the SISA, and as authorised by the Beneficiary's Lender(s) (if required by a term of agreement or contract between the Beneficiary and its Lender(s));
- (x) the Beneficiary and Holding Trustee acknowledge and covenant to prevent the registration of any other charge, security interest or claim, except as shall be registered in accordance with the Borrowing Arrangement between the Beneficiary and its Lender(s); and
- (xi) the Holding Trustee and Beneficiary covenant to the other to do all things necessary, and to execute all instruments to give effect, to the terms of Clause 1 of this Deed.

2. Retirement and Appointment of Holding Trustee

- (a) The Holding Trustee may retire at any time, provided the Holding Trustee does not retire prior to the appointment of a replacement Holding Trustee by the Beneficiary, subject to subclause 2(b).
- (b) Notwithstanding subclause 2(a), if the Asset is encumbered by a Security Interest held by the Lender(s) of the Beneficiary, then the Holding Trustee must seek the consent of the Lender(s) and undertake such requirements as may be stipulated of the Lender(s) prior to retiring.
- (c) A replacement Holding Trustee may be any Person(s) appointed by the Beneficiary, provided the Person(s) is/are not Disqualified Persons.

3. Trust Assets

Without limiting Clause 1:

- (a) The Asset will at all times be held by the Holding Trustee upon Trust for the Beneficiary, which Beneficiary has provided all of the purchase monies;
- (b) The Holding Trustee has not and will not provide any of the purchase monies and the real purchaser is the Beneficiary;

- (c) The Holding Trustee may only acquire Assets that the Beneficiary is allowed to acquire under the Superannuation Laws; and
- (d) The Holding Trustee undertakes to deal with the Asset and exercise and perform all the rights, duties and powers relating to the Asset only as directed by the Beneficiary, which may include the execution or endorsement of matters and/or legal documents (including Security Instruments) required by the Beneficiary's Lender(s).

4. **Amendment**

The Holding Trustee may, with the consent of the Beneficiary, amend the terms of the Holding Trust by further deed of variation.

5. **Stamping Requirements**

The Holding Trustee and Beneficiary covenant to do all things necessary to effect the stamping of this Deed in accordance with the requirements of the Stamp Duties Act relevant to the matter.

6. **Jurisdiction**

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. **Entire Agreement**

This Deed is the entire agreement of the parties, and supersedes any prior understanding, agreement, arrangement or representation in respect to the subject of this Deed.

8. **Costs**

The Beneficiary shall bear the costs of the Deed.

9. **Counter-Parts**

This Deed may be executed in counter-parts, with the separately executed instruments taken together to constitute the Deed.

10. **Severability**

If any clause or term of the Deed is deemed to be unlawful or void, such clause or term shall be severed from the Deed and the balance of the Deed shall remain.

11. **Notice and Communication**

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system; and

- (e) The parties consent to the use of electronic communication and digital signatures for all matters and adopt the terms as applied under the *Electronic Transactions Act 1999 (Cth)*.

12. Definitions

The meanings in this Deed shall be, unless contrary intention appears:

- (a) **Asset** means the Single Acquirable Asset shown at **Schedule One**, and acquired by the Holding Trustee and Beneficiary, and subject to the LRBA between the Beneficiary and its Lender(s). The description at **Schedule One** may be amended as further specifics of the legal description of the asset becomes known to the parties, by instrument in writing.
- (b) **Bare Trust** is an arrangement whereby one party holds an asset for the absolute entitlement and benefit of another party, and includes, for purposes of this Deed, the arrangement whereby the Holding Trustee holds the Asset on trust for the Beneficiary.
- (c) **Beneficiary** is EDELMAN INVESTMENTS PTY LTD - ACN 619 806 718 OF SUITE 1, LEVEL 1 ,277 CAMBERWELL RD, CAMBERWELL, VIC 3124 AS TRUSTEE FOR EDELMAN SUPER FUND, and includes such further and/or replacement parties as shall act as trustee of the EDELMAN SUPER FUND.
- (d) **Complying Superannuation Fund Status** includes, but is not limited to, a notice in respect to a SMSF of complying fund status in accordance with Part 5, Division 2 of the SISA.
- (e) **Disqualified Person** means a person who qualifies as a disqualified person for the purposes of section 120 of the SISA.
- (f) **Holding Trust** is the Bare Trust, known between the parties as EDELMAN PROPERTY TRUST, settled under this Deed. The name is for convenience, and does not vary the custodial relationship between the Holding Trustee and Beneficiary.
- (g) **Holding Trustee** means Edelman Property Pty Ltd - ACN 619 801 160, which party holds the Asset on Bare Trust and absolute entitlement for the Beneficiary, subject to any security interests of the Beneficiary's Lender(s) in accordance with the Borrowing Arrangements. The term also includes such replacement trustees appointed by the Beneficiary for such purpose, in accordance with Clause 2.
- (h) **Limited Recourse** means the enforcement and rights allowed by a Lender in respect to a financing arrangement to a complying SMSF in relation to a Borrowing Arrangement as allowed by sections 67, 67A and/or 67B of the SISA, or as otherwise allowed by the Superannuation Laws.
- (i) **Limited Recourse Borrowing Arrangement** and **LRBA** means an arrangement between a Lender and Borrower for the provision of a Loan of Monies by a Complying Superannuation Fund, made in accordance with the Superannuation Laws, including but not limited to sections 67, 67A and 67B of the SISA.
- (j) **Lender** means a person, body corporate or legal entity, and may be a combination thereof, which provides Monies to the Beneficiary, on limited recourse terms, as permitted under the Superannuation Laws, and such party may or may not have a registered security, charge or other claim against the Asset from time to time as allowed by sections 67A and 67B of the SISA. The

term shall refer to an original Lender(s) and such Lender(s) engaging in a refinance of the LRBA as allowed by the Superannuation Laws.

- (k) **Loan** means an arrangement between a Lender and Borrower, and may include a Guarantor and/or Holding Trustee, in respect to the advancement of Monies by the Lender, in exchange for the promise by the Borrower (and may include a Guarantor and/or Holding Trustee) to repay such Monies on mutually agreed terms.
- (l) **Member** means the members of Edelman Super Fund.
- (m) **Monies** means cash, assets and any other form of property which may be used as a medium of exchange.
- (n) **Person** means an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- (o) **Related Party Transaction** means a transaction by Part 8 Associates and the Borrower, and include transactions described in section 66 of the SISA.
- (p) **Property** includes the Property subject of the Holding Trust described in Schedule One.
- (q) **Regulator** means the government body having responsibility for the administration of self-managed superannuation funds, or having responsibility for a matter considered under this Deed.
- (r) **Regulator's Terms** means the requirements published by the Regulator, by rulings, guidance statements, variations in legislation or regulation or otherwise, in respect to the undertaking of Limited Recourse Borrowing Arrangements, Related Party Transactions, borrowing and/or any and all other matters relevant to the maintenance of a Complying Superannuation Fund Status, and the arrangements by the Fund under this Agreement.
- (s) **Related Party** is a Person who meets the definition of a Part 8 Associate.
- (t) **SMSF** means the Beneficiary, which is absolutely entitled to the Asset held on Holding Trust by the Holding Trustee.
- (u) **Security Instrument** includes mortgages, registered security interests (as the term is interpreted in the reading of the *Personal Property Securities Act 2009*, as amended from time to time) and such other instruments as are capable of registering a priority of interest over an asset, thing or matter by a Person other than the registered owner.
- (v) **Stamp Duties Acts** means the Duties Act relevant to the matters of the custodial relationship between the Holding Trustee and Beneficiary in respect to the Asset, including, but not limited to such of the following as are relevant to the circumstances: *Duties Act 1997 (NSW)*, *Duties Act 2001 (QLD)*, *Duties Act 2000 (VIC)*, *Duties Act 1999 (ACT)*, *Stamp Duty Act (NT)*, *Stamp Duties Act 1923 (SA)*, *Duties Act 2001 (TAS)*, *Duties Act 2008 (WA)*.
- (w) **Superannuation Laws** includes the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Social Security Act 1991*, the *Social Security Regulations*, the *Veterans Entitlement Act 1986*, 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, and include also the Regulator's determination on any Superannuation Law where the Trustee decides.

13. Interpretation

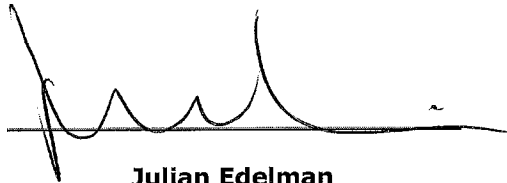
The meanings in this Deed shall be, unless contrary intention appears:

- (a) A clause, annexure or schedule is a reference to a clause in or annexure of or schedule to this Deed;
- (b) A document (including this Deed) includes any variation or replacement of it;
- (c) A statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the *Corporations Act 2001 (Cth)*, and the definition of Control;
- (d) The singular includes the plural and vice versa;
- (e) The word "including" when introducing a list of items does not exclude a reference to other items;
- (f) The word "includes" when introducing a term or definition does not exclude a reference to other terms or definitions;
- (g) The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency;
- (h) A particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- (j) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- (k) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- (l) Headings are inserted for convenience and do not affect the interpretation of this Deed; and
- (m) Where words are capitalised their meaning is to be found in the Definitions.

EXECUTED AS A DEED.

The Holding Trustees

Edelman Property Pty Ltd - ACN 619 801 160 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124 as Trustee of Edelman Property Trust by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):



Julian Edelman
Director

Dated: 25/8/17

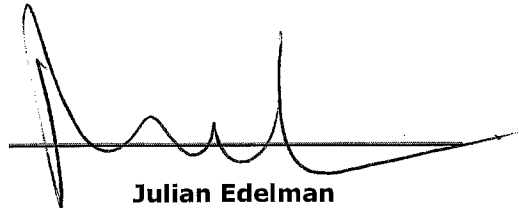


Nicky Edelman
Director

Dated: 25/8/17

The Borrowers

Edelman Investments Pty Ltd - ACN 619 806 718 of Suite 1, Level 1 ,277 Camberwell Rd, Camberwell, VIC 3124 as Trustee of Edelman 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 (Cth):



Julian Edelman
Director

Dated: 25/8/17

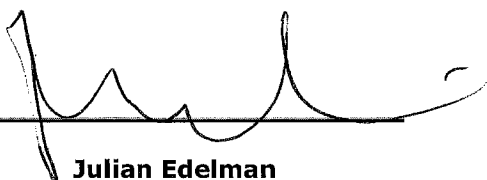


Nicky Edelman
Director

Dated: 25/8/17

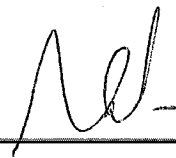
The Members

Julian Edelman and Nicky Edelman of 32 Lucas Street, CAULFIELD SOUTH, VIC 3162:



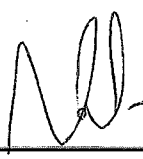
Julian Edelman
Member

Dated: 25/8/17



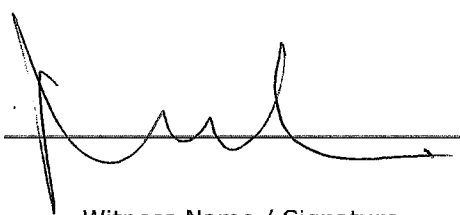
Witness Name / Signature

Dated: 25/8/17



Nicky Edelman
Member

Dated: 25/8/17



Witness Name / Signature

Dated: 25/8/17

SCHEDULE ONE

ASSET SUBJECT TO THE BARE TRUST ARRANGEMENT: Unit 1 and Carpark 32, 399 Alma Road, Caulfield North, VIC 3161, and shall include any variation, modification and/or further particularisation of the Asset description as defined from time to time by the parties.