



**St.George Bank - A Division of Westpac Banking Corporation**  
**ABN 33 007 457 141 AFSL and Australian credit licence 233714 SMSF**  
**Deed of trust declarations and undertakings**

## SMSF Deed of trust declarations and undertakings

<b>Details</b>	
<b>Financier:</b> ("we")	St George Bank – A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL and Australian credit licence 233714 Address: 4-16 Montgomery Street Kogarah NSW 2217
<b>SMSF Trustee:</b>	Dube Investments Super Fund Pty Ltd ACN 160 134 734
<b>SMSF Trust Name</b>	The Dube Investments Superannuation Fund
<b>SMSF Trust deed</b>	The deed of trust dated: 31 August 2012 between: Dube Investments Super Fund Pty Ltd ACN 160 134 734 and: The Dube Investments Superannuation Fund establishing the trust
<b>SMSF Trustee's documents:</b>	This deed RESIDENTIAL LOAN AGREEMENT THIS DEED OF TRUST DECLARATION & UNDERTAKINGS  and any document signed or to be signed by the <i>SMSF trustee</i> connected with any of them.
<b>Directors of SMSF trustee (if the trustee is a company):</b>	Edna Dube
<b>SMSF Beneficiaries who are intended to sign this document:</b>	Edna Dube

**Security Custodian:**

Edna Dube

(including its successors and assigns)

**Security Custodian trust name:**

Lot 7~~8~~ Majestic Palms Estate Trust

**Custodian Document:**

The deed of trust

dated: 13 August 2012

between: Edna Dube

and: Lot 7~~8~~ Majestic Palms Estate Trust  
establishing the trust

**Security Custodian's documents:**

This deed

THIS DEED OF TRUST DECLARATION & UNDERTAKINGS  
MEMORANDUM OF MORTGAGE BETWEEN THE SECURITY  
CUSTODIAN AND THE FINANCIER DATED ON OR ABOUT THE  
DATE OF THIS DOCUMENT

and any document signed or to be signed by the *security custodian*  
connected with any of them.

**Directors of Security Custodian (if the Security Custodian is a company):**

Not Applicable

**Borrower's details**

Name(s): Dube Investments Super Fund Pty Ltd as trustee for

The Dube Investments Superannuation Fund

ACN: 160 134 734

Address: 17/28 Burford Street, Merrylands NSW 2160

**Date of SMSF deed of trust declarations and undertakings:**

23/8/17

## PROVISIONS

### Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this deed.

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## Declarations

### 1.1 You declare that:

- (a) the *SMSF trustee* is the only trustee of the *SMSF trust*, and
- (b) the *SMSF trustee* has the power to sign the *SMSF trustee's documents* and perform its obligations under them; and
- (c) the *SMSF trustee* has signed or will sign the *SMSF trustee's documents* as trustee of the *SMSF trust*, and
- (d) the *SMSF trustee* has signed or will sign the *SMSF trustee's documents* with the consent of the *beneficiaries* who sign this deed and for the benefit of all beneficiaries of the *SMSF trust*, and
- (e) the *SMSF trustee* has the right to be indemnified out of the *SMSF trust fund* for all obligations it incurs in relation to the *SMSF trustee's documents* and the *SMSF trust fund* is sufficient to satisfy that right of indemnity; and
- (f) no action has been taken or proposed to remove the *SMSF trustee* as trustee of the *SMSF trust* or to appoint an additional or alternate trustee of the *SMSF trust*; and
- (g) you have given us true (ie complete and up to date) copies of the *SMSF trust deed* and other documents relating to the *SMSF trust* containing all the terms of the *SMSF trust*, and
- (h) the *SMSF trust* has been properly constituted and the *SMSF trust deed* is valid and enforceable; and
- (i) in entering into this deed, the *SMSF trustee* has complied with the *SMSF trust deed* and its obligations as *SMSF trustee*, and
- (j) no action has been taken or proposed to terminate the *SMSF trust* or revoke a power of the *SMSF trustee* and (as far as you are aware) no-one intends to take any such action; and

(k) unless you tell us otherwise in writing, the *beneficiaries* who sign this deed are the only beneficiaries of the *SMSF trust*; and

(l) our rights under the *SMSF trustee's documents* have priority over the interests of the *beneficiaries*; and

(m) the *Security Custodian* is the only trustee of the *Security Custodian trust*; and

(n) the *SMSF trustee* is the only beneficiary of the *Security Custodian trust*; and

(o) the *Security Custodian* has the power to sign the *Security Custodian's documents* and perform its obligations under them; and

(p) the *Security Custodian* has signed or will sign the *Security Custodian's documents as trustee of the Security Custodian trust*; and

(q) the *Security Custodian* has signed or will sign the *Security Custodian's documents* with the consent of the *beneficiaries* who sign this deed; and

(r) the *Security Custodian* has the right to be indemnified out of the *Security Custodian trust fund* for all obligations it incurs in relation to the *Security Custodian's documents* and the *Security Custodian trust fund* is sufficient to satisfy that right of indemnity; and

(s) no action has been taken or proposed to remove the *Security Custodian* as trustee of the *Security Custodian trust* or to appoint an additional or alternate trustee of the *Security Custodian trust*; and

(t) you have given us true (ie complete and up to date) copies of the *Custodian Document* and other documents relating to the *Security Custodian trust* containing all the terms of the *Security Custodian trust*; and

(u) the *Security Custodian trust* has been properly constituted and the *Custodian Document* is valid and enforceable; and

(v) the *Security Custodian* has complied with the *Custodian Document* and its obligations as *Security Custodian*; and

(w) no action has been taken or proposed to terminate the *Security Custodian trust* or revoke a power of the *Security Custodian* and (as far as you are aware) no-one intends to take any such action; and

(x) our rights under the *Security Custodian's documents* have priority over the interests of the *beneficiaries* or the *SMSF trust*; and

(y) the *SMSF trust* was constituted and will be conducted and administered in accordance with, and the entering into of the *SMSF trustee's documents* will comply with, all applicable laws, including the *SIS Laws*.

1.2 You must tell us whenever anything happens preventing you from repeating all the declarations in clause 1.1.

## Undertakings and consent

### 2.1 The *SMSF trustee* agrees:

(a) to do everything necessary to bind itself and its successors under the *SMSF trustee's documents*; and

(b) to comply with its obligations as *SMSF trustee*; and

(c) to ensure that it is the sole beneficiary of the *Security Custodian trust*.

### 2.2 The *Security Custodian* agrees:

(a) to do everything necessary to bind itself and its successors under the *Security Custodian's documents*; and

(b) to comply with its obligations as *Security Custodian*; and

(c) to transfer the *property* to the *SMSF trustee* once all amounts secured by the mortgage over the *property* has been repaid in full and the mortgage discharged; and

(d) to ensure that the *SMSF trustee* is the sole beneficiary of the *Security Custodian trust*.

2.3 You agree to ensure that, without our consent:

- (a) the *SMSF trustee* does not retire or cease to act and is not removed or replaced as trustee of the *SMSF trust*; and
- (b) another person is not appointed as joint or alternate trustee of the *SMSF trust*; and
- (c) the *SMSF trust* is not terminated and a vesting date is not declared; and
- (d) the *SMSF trust deed* is not changed and the terms of the *SMSF trust* are not otherwise varied; and
- (e) the *SMSF trust fund* is not mixed with other property, resettled or sought to be brought under court control; and
- (f) the *SMSF trustee's* right to be indemnified out of the *SMSF trust fund* for obligations it incurs in relation to the *SMSF trustee's documents* is not restricted; and
- (g) nothing is done to restrict the ability of the *SMSF trustee* to comply with its obligations in relation to the *SMSF trustee's documents*; and
- (i) the *Security Custodian* does not retire or cease to act and is not removed or replaced as trustee of the *Security Custodian trust*; and
- (j) another person is not appointed as joint or alternate trustee of the *Security Custodian trust*; and
- (k) the *Security Custodian trust* is not terminated and a vesting date is not declared; and
- (l) the *Custodian Document* is not changed and the terms of the *Security Custodian trust* are not otherwise varied; and
- (m) the *Security Custodian trust fund* is not mixed with other property, resettled or sought to be brought under court control; and

(n) the *Security Custodian's* right to be indemnified out of the *Security Custodian trust fund* for obligations it incurs in relation to the *Security Custodian's documents* is not restricted; and

(o) nothing is done to restrict the ability of the *Security Custodian* to comply with its obligations in relation to the *Security Custodian's documents*.

2.4 You (other than the *SMSF trustee*) consent to the *SMSF trustee* signing the *SMSF trustee's documents* and exercising rights and performing obligations in relation to the *SMSF trustee's documents*.

2.5 You (other than the *Security Custodian*) consent to the *Security Custodian* signing the *Security Custodian's documents* and exercising rights and performing obligations in relation to the *Security Custodian's documents*.

### Indemnity

3. You indemnify us against and you must therefore pay us for:

(a) loss we suffer in connection with you not observing any of your obligations or agreements under this deed or in connection with any declaration in this deed being inaccurate; and

(b) the reasonable expenses we reasonably incur in enforcing this deed.

### Waiver

4.1 You waive any right you have to claim that the *SMSF trustee* breaches the *SMSF trust* by signing a *SMSF trustee's document* or exercising rights or performing obligations in relation to a *SMSF trustee's document*.

4.2 You waive any right you have to claim that the *Security Custodian* breaches the *Security Custodian trust* by signing a *Security Custodian's document* or exercising rights or performing obligations in relation to a *Security Custodian's document*.

## **Acknowledgement**

5.1 You know that we are relying on you entering this deed before signing or accepting the *SMSF trustee's documents* and *Security Custodian's documents* and that, each time we give or continue to provide the *SMSF trustee* financial accommodation under the *SMSF trustee's documents* or we give or continue to provide to any person financial accommodation of which the *SMSF trustee* or *Security Custodian* guarantees repayment, we will be relying on your not having breached this deed. You acknowledge incurring obligations, and giving us rights, under this deed for valuable consideration from us.

5.2 You acknowledge that we have not given you any advice in relation to this deed, the *SMSF Trust*, the *SMSF Trust deed*, the *SMSF Trustee's documents*, the *Security Custodian Trust*, the *Custodian Trust deed*, the *Custodian Document* and/or the *property*.

## **Limited Recourse**

### **6.1 Limit and release**

Despite any other provision of this deed, we may not have recourse to you or your assets under or in connection with this deed, except we may have recourse to the *property* and its proceeds and the total amount available to us as a result of a realisation of the *property* (after payment of enforcement costs etc).

### **6.2 Unrestricted remedies**

(a) (Charges and guarantees) Subject to sub-paragraph (b), nothing in clause 6.1 (Limit and release) limits us in:

- exercising our rights or powers under any *security interest*;
- obtaining an injunction or other order to restrain any breach of this deed by any party; or
- obtaining declaratory relief.

(b) (Limited agency) In exercising any right, power or remedy under this deed, neither we nor any receiver, receiver and manager, agent or attorney appointed under this deed shall incur, or have the authority to incur, any liability on your behalf or for your account except a liability which is itself subject to the limitation in clause 6.1 (Limit and release).

(c) (Amount owing) For the purpose of determining the liability of any guarantor in relation to the amount outstanding, the limit on your liability under clause 6.1 (Limit and release) will be disregarded.

### **6.3 Restricted remedies**

Except as provided in clause 6.2 (Unrestricted remedies), we will not, in relation to any liability for which you are not liable under clause 6.1 (Limit and release):

(a) (judgment) obtain a judgment for the payment of money or damages by you;

(b) (statutory demand) issue any demand under s459E(1) of the *Corporations Act 2001* (or any analogous provision under any other law) against you;

(c) (winding up) apply for the winding up of you;

(d) (execution) levy or enforce any distress or other execution to, on or against any of your assets other than the *property*;

(e) (court appointed receiver) apply for the appointment by a court of a receiver to any of your assets other than the *property*; and

(f) (set off or counterclaim) exercise or seek to exercise any set-off or counterclaim against you, or take proceedings for any of the above and we waive our rights in respect of those applications and proceedings.

6.4 The *SMSF trustee* agrees that its beneficial interest in the *property* will be subject to any *security interest* which the *Security Custodian* gives to us over the *property*. We are not obliged or required to take notice of, or be bound by, any actual, contingent or future interest the *SMSF trustee* may have in the *property*.

### **National Credit Code**

7. This clause 7 applies to the extent, if any, that a National Credit Code applies to this deed. If:

(a) that Code would otherwise make a provision of this deed illegal, void or unenforceable; or

(b) a provision of this deed would otherwise contravene a requirement of that Code or impose an obligation or liability which is prohibited by that Code,

this deed is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

### **Your obligations are unaffected**

8. You agree that you are bound by this deed even if a person who was intended to sign this deed or a similar document does not do so or does not do so effectively.

### **Consents**

9. Consents in connection with this deed must be in writing. We may give or refuse our consent in any way we consider appropriate, including by imposing conditions.

### **Applicable law**

10. This deed is governed by the law of the state or territory where our address specified in the details is situated.

### **Execution**

11. Where any party to this deed is a party in more than one capacity, the proper execution of this deed once will bind that party in each of its capacities.

### **Deed**

12. This document is a deed.

### **Meaning of words**

*beneficiaries* means all the beneficiaries of the *SMSF trust*.

*arrangement with us* means an arrangement (including an agreement or a security interest) under which the *SMSF trustee*, the *Security Custodian* or any other party to a *security interest* specified in the facility offer (as defined in the *SMSF trustee's documents*) has or could in the future have obligations to us or any of our "related entities" (as defined in the Corporations Act).

*Code* means each of the National Credit Code and the Code of Banking Practice.

*Custodian Document* means the Custodian Document described in the details.

*property* means the property mortgaged to us by the *Security Custodian*.

*Security Custodian* means each person named in the details as Security Custodian. If there are more than one, *Security*

*Custodian* means each of them separately and every two or more of them jointly.

*Security Custodian's documents* means the Security Custodian's documents described in the details.

*Security Custodian trust* means the trust established under the *Custodian Document*.

*Security Custodian trust fund* means the property held on trust by the *Security Custodian* under the *Custodian Document*.

*security interest* means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. *Security interest* also includes a guarantee and indemnity.

*SIS Laws* means Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth).

*SMSF trust* means the trust established under the *SMSF trust deed*.

*SMSF trust deed* means the SMSF Trust deed described in the details.

*SMSF trustee* means each person named in the details as SMSF Trustee. If there are more than one, *SMSF trustee* means each of them separately and every two or more of them jointly.

*SMSF trustee's documents* means the SMSF Trustee's documents described in the details.



***SMSF trust fund*** means the property held on trust by the *SMSF trustee* under the *SMSF trust deed*.

***we*** or ***us*** means the St. George Bank - A Division of Westpac Banking Corporation (ABN 33 007 457 141) and its successors and assigns.

***you*** means each of the *SMSF trustee*, each director of the *SMSF trustee* (if it is a corporation), the *Security Custodian*, each director of the *Security Custodian* (if it is a corporation), and each *beneficiary* who signs this deed separately and every two or more of them jointly.

The singular includes the plural and vice versa.

A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it.

**SIGNING PAGE**

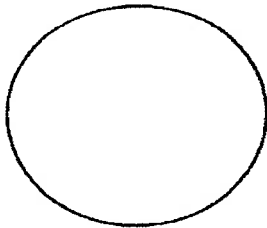
*Warning: If the debtor is under 18 years old, the courts might not let you sue the debtor if you have to pay amounts under any guarantee and indemnity (ie you may not be entitled to an indemnity against the debtor).*

EXECUTED as an agreement

**EXECUTION BY COMPANY**

**Common Seal**

In accordance with Section 127 (2) of the Corporations Law



**Corporation**

~~Dube Investments Super Fund Pty Ltd~~

~~Company Name~~

~~160 134 734~~

~~Company ABN or ACN~~

~~Date~~

**Authorised person**

*An authorised person must be a Director or Secretary*

Sign here

Name

Position

**Authorised person**

*An authorised person must be a Director or Secretary*

Sign here

Name

Position

**WITHOUT COMMON SEAL**

IN ACCORDANCE TO SECTION 127 (1) OF THE Corporations Law by

**Corporation**

Dube Investments Super Fund Pty Ltd

Company Name

160 134 734

Company ABN or ACN

23/08/2017

Date

**Authorised person**

*An authorised person must be a Director or Secretary*

Sign here

Name

Position

*E. Dube.*

*EDNA DUBE*

*DIRECTOR*

**Authorised person**

*An authorised person must be a Director or Secretary*

Sign here

Name

Position

Signature  
Edna Dube *E. Dube.*  
Name (Print) EDNA DUBE  
Date 23/08/2017

Signature  
Edna Dube *E. Dube.*  
Name (Print) EDNA DUBE  
Date 23/08/2017

Signature of Witness *Lorraine Zaher*  
LORRAINE ZAHER  
Name (Print) Justice of the Peace NSW No. 132290

Signature of Witness *Lorraine Zaher*  
LORRAINE ZAHER  
Name (Print) Justice of the Peace NSW No. 132290