

Declaration of Custody Trust for the CHRISTIE SUPERANNUATION FUND

E & A CHRISTIE Pty. Ltd. ACN 167897350

and

E & H CHRISTIE PTY LTD Pty. Ltd. ACN 167959104

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BETWEEN

E & A CHRISTIE Pty. Ltd. ACN 167897350
Of Floor 1
268 KEILOR ROAD
ESSENDON NORTH, VIC, 3041
Australia

(Custodian)

AND

E & H CHRISTIE PTY LTD Pty. Ltd. ACN 167959104
in its capacity as trustee for the Fund
of Floor 1
268 KEILOR ROAD
ESSENDON NORTH, VIC, 3041
Australia

(Trustee)

Background

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

Operative provisions

A Custodian's Declaration of trust

What does the Custodian hold on trust?

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

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

What information and money must the Trustee provide?

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

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

B Custodian to hold title

What title must the Custodian hold?

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

What bank accounts are to be used?

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

Income, accruals, accretions

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

May the Custodian have listed securities held by a CHESSE sponsor?

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

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

C Trustee to direct Custodian

What interest does the Trustee have in the Authorised Investment?

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

How may the Trustee have the Authorised Investment transferred?

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

What information must the Custodian collect, provide etc?

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

May the Trustee require the Custodian to execute charge documents?

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

D Restriction on Custodian's Discretion

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

E Trustee's warranties

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

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

F Duration of Trust

When does the Trust start and end?

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

What must the Trustee do before the Vesting Date?

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

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

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

G Replacement or resignation of Custodian

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

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

What must an outgoing Custodian do?

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

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

What must a continuing Custodian do?

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

How may the Custodian resign?

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

H Trustee indemnifies Custodian

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

I Trustee to pay Custodian's costs

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

J Notices to the parties

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

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

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

K Jointly and Severally Liable

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

L Limitation

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

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

M Compliance with Superannuation Law

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

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

28 For this purpose:

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

N General and interpretation

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

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

41 A reference in this Deed to:

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

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

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

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

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

41.6 the singular includes the plural and vice versa; and

41.7 a gender includes the other genders.

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

O Definitions

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

Authorised Investment means the investment specified in the Schedule.

Cash Account means the account established under clause 5.

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

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

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

Deed means this trust deed, including all schedules.

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

Fund means the CHRISTIE SUPERANNUATION FUND.

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

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

Schedule means the schedule to this Deed.

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

Superannuation Law means:

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the Superannuation Industry (Supervision) Regulations 1994 (Cwth); and
- any lawful requirement in relation to the Fund by any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to superannuation.
- It includes:
 - changes to any such laws or requirements after the date of this Deed; and
 - any proposed law or lawful requirement that the trustee believes may have retrospective effect.
- **Trustee** means the trustee for the time being of the Fund, who as at the date of this Deed is the person identified on page 1.

Vesting Date means either:

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

Execution

Executed by the parties.

Dated: 18 March 2014

Executed by
E & A CHRISTIE Pty. Ltd. ACN 167897350,
in accordance with section 127(1) of the
Corporations Act 2001 (Cwth):



Evangelos Christie, director



Helen Christie, director

Executed by
E & H CHRISTIE PTY LTD Pty. Ltd. ACN
167959104, in its capacity as trustee for the
Fund, in accordance with section 127(1) of
the *Corporations Act 2001 (Cwth)*:



Evangelos Christie, director



Helen Christie, director

Schedule

Lender:	bank of Melbourne Limited
Lender ABN/ACN (if applicable):	007457141
Lender Address for Notices:	Floor 8 530 Collins Street, Melbourne, VIC, 3000 Australia
Lender Fax:	03 9274 4920
Loan Amount:	\$227,500
Loan Term:	15 years
Authorised Investment:	Unit 1 25 Onslow Avenue Campbellfield, VIC, 3061 Australia Certificate of Title Volume 09764 Folio 818
Jurisdiction:	Victoria
Settlement Date (if applicable):	11 April 2014

Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.



Read this declaration in conjunction with *Self-managed super funds – key messages for trustees* (NAT 71128).



WHO SHOULD COMPLETE THIS DECLARATION?

You must complete this declaration if you become a **new** trustee (or director of a corporate trustee) of:

- a **new** self-managed super fund (SMSF)
- an **existing** SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A separate declaration is required to be completed and signed by each and every new trustee (or director of a corporate trustee).

You must also complete the declaration if you are a legal personal representative who has been appointed as trustee (or director of a corporate trustee) on behalf of a:

- member who is under a legal disability (usually a member under 18 years old)
- member for whom you hold an enduring power of attorney
- deceased member.

INFORMATION YOU NEED TO READ

Make sure you read *Self-managed super funds – key messages for trustees* (NAT 71128). It highlights some of the key points from the declaration and some important messages for you.

BEFORE COMPLETING THIS DECLARATION

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

➤ If you have any difficulties completing this declaration or you do not fully understand the information it contains:

- speak to a professional adviser
- visit www.ato.gov.au/smsf
- phone us on **13 10 20**.

If you are not familiar with some of the terms used in this declaration or you need more information, refer to *Running a self-managed super fund* (NAT 11032).

WHEN COMPLETING THIS DECLARATION

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

WHAT SHOULD YOU DO WITH THE DECLARATION?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

We recommend that you keep a copy of your completed declaration and refer to it and *Self-managed super funds – key messages for trustees* (NAT 71128), which is available on the ATO website, when making important decisions, such as those relating to choosing investments, accepting contributions and paying benefits.

❗ Do not send your completed declaration to us.



Self-managed super fund trustee declaration

I understand that as an individual trustee or director of the corporate trustee of

Fund name

I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

SOLE PURPOSE

I understand it is my responsibility to ensure the fund is only maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

TRUSTEE DUTIES

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- ensure that members only access their super benefits if they have met a legitimate condition of release
- refrain from entering into transactions that circumvent restrictions on the payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
 - the financial situation of the fund
 - the investments of the fund
 - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)

- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments on behalf of the fund that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

Administration

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
 - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
 - records of all changes of trustees, including directors of the corporate trustee
 - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
 - all trustee declarations
 - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
 - an annual statement of the financial position of the fund
 - an annual operating statement
 - copies of all annual returns lodged
 - accounts and statements that accurately record and explain the transactions and financial position of the fund
- ensure that an approved auditor is appointed within the prescribed period (currently this is no later than 31 days before the due date for lodgment of the fund's annual return but this may change to 45 days) to audit the fund for each income year, and provide that auditor with documents as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
 - membership of the fund, or trustees or directors of the corporate trustee
 - name of the fund
 - contact person and their contact details
 - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days of the fund being wound up or after becoming aware that the fund has ceased to be an SMSF.

DECLARATION

By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.
- I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.
- I do not have access to the government's financial assistance program that is available to trustees of Australian Prudential Regulation Authority (APRA) regulated funds in the case of financial loss due to fraudulent conduct or theft.

Trustee's or director's name

EVANGELIS CHRISTIF

Trustee's or director's signature




Date

Day: 11 / Month: 02 / Year: 2014

Witness' name (witness must be 18 years old or over)

Katerina Tsilfidis

Witness' signature



Date

Day: 11 / Month: 02 / Year: 2014

Annexure A

Product Disclosure Statement

CHRISTIE SUPERANNUATION FUND

HELEN CHRISTIE

21 RIVERFRONT WAY

MARIBYRNONG, VIC, 3032

Here you need to attach a copy of the Product Disclosure Statement in Schedule 6 to the Deed.

