



## **HOLDING TRUST DEED OF ESTABLISHMENT**

### **GLENWYN HOLDING TRUST**

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## DEED SETTLING BARE TRUST ARRANGEMENT GLENWYN HOLDING TRUST

**This Deed is dated:**

### PARTIES

- HOLDING TRUSTEE:** GLENWYN PROPERTY HOLDINGS PTY LTD -  
ACN 650 161 238 of 24 ANDREAS STREET, PETERSHAM,  
NSW 2049
- BENEFICIARY:** GLENWYN SUPER FUND PTY LTD - ACN 637 774 531 of  
24 ANDREAS STREET, PETERSHAM, NSW 2049 as Trustee of  
GLENWYN SUPER FUND
- MEMBERS:** Glen Spencer and Bronwyn Elizabeth Spencer of  
24 ANDREAS STREET, PETERSHAM, NSW 2049

### RECITALS

- A. The Holding Trustee and Members of the self-managed superannuation fund known as, GLENWYN SUPER FUND PTY LTD - ACN 637 774 531 OF 24 ANDREAS STREET, PETERSHAM, NSW 2049 AS TRUSTEE FOR GLENWYN 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 **GLENWYN HOLDING 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 GLENWYN HOLDING 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 GLENWYN SUPER FUND PTY LTD - ACN 637 774 531 OF 24 ANDREAS STREET, PETERSHAM, NSW 2049 AS TRUSTEE FOR GLENWYN SUPER FUND, and includes such further and/or replacement parties as shall act as trustee of the GLENWYN 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 GLENWYN HOLDING 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 GLENWYN PROPERTY HOLDINGS PTY LTD - ACN 650 161 238, 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 GLENWYN 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 Trustee**

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GLENWYN PROPERTY HOLDINGS PTY LTD - ACN 650 161 238 of 24 ANDREAS STREET, PETERSHAM, NSW 2049 by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):

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**Glen Spencer**  
Director

Dated: \_\_\_\_\_

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**Bronwyn Elizabeth Spencer**  
Director

Dated: \_\_\_\_\_

### **The Beneficiary**

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GLENWYN SUPER FUND PTY LTD - ACN 637 774 531 of 24 ANDREAS STREET, PETERSHAM, NSW 2049 as Trustee of GLENWYN 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):

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**Glen Spencer**  
Director

Dated: \_\_\_\_\_

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**Bronwyn Elizabeth Spencer**  
Director

Dated: \_\_\_\_\_

### **The Member**

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Glen Spencer and Bronwyn Elizabeth Spencer of 24 ANDREAS STREET, PETERSHAM, NSW 2049:

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**Glen Spencer**  
Member

Dated: \_\_\_\_\_

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Witness Name / Signature

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**Bronwyn Elizabeth Spencer**  
Member

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Witness Name / Signature

**Dated:** \_\_\_\_\_

## **SCHEDULE ONE**

**ASSET SUBJECT TO THE BARE TRUST ARRANGEMENT:** Property Address:

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