

**PROPERTY TRUST DEED**

**[FOR USE IN ALL STATES AND  
TERRITORIES EXCEPT QLD AND NT]**



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### 1. Details

**Property Trustee:** See Schedule 1

**Fund Trustee:** See Schedule 1

**Date of Deed:** See signing page

**Recitals:** The Property Trustee has agreed to act as trustee of the trust established by this deed to facilitate an arrangement consistent with section 67A of the SIS Act for the Fund Trustee.

Subject to the terms of this deed, the Property Trustee wishes to acquire and hold certain property on a bare trust for the Fund Trustee and to charge or mortgage such trust property to the Lender to secure the Loan Agreement.

### 2. Interpretation

#### 2.1 Definitions

The following definitions apply in this document:

**Commencement Date** means the date on which the Transaction Documents are signed by the parties.

**Encumbrance** means in relation to the Property:

- a mortgage, charge, encumbrance, pledge, lien or other security over the Property;
- a profit à prendre, easement or restrictive covenant affecting the Property;
- a caveat, garnishee order, writ of execution, right of set off, assignment of

income or monetary claim affecting the Property;

(d) a lease or licence in respect of the Property;

(e) a preferential interest, title retention, or other estate, interest, claim or arrangement affecting the Property;

(f) a contract of sale or option to purchase or acquire the Property; or

(g) an agreement to grant, create, allow or register any of these;

and whether the Encumbrance is registered or unregistered, statutory, legal or equitable.

**Event of Default** has the meaning given to it in the SuperCredit Loan Agreement and Guarantee.

**Facility Amount** means the amount offered by the Lender to the Fund Trustee on the terms and conditions set out in the SuperCredit Loan Agreement and Guarantee.

**Fund** means the regulated superannuation fund listed in Schedule 1.

**GST** means goods and services tax being the "GST" as defined in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

**Lender** means Secure Funding Pty Ltd ABN 25 081 982 872.

**Order of Payment** means payment in the following order:

(a) first - the Outstanding loan amounts, to the Lender;

(b) second - all costs, charges, liabilities and expenses of the Property Trustee which have been incurred in or are incidental to the exercise or performance of a power or duty under this deed or the Transaction Documents in relation to the Property, including Taxes and any other amount payable to the Property Trustee from the Property Trust in accordance with this deed and the Transaction Documents; and

(c) third - any balance, to the Fund Trustee.

**Outstanding loan amounts** means all amounts payable to the Lender under the SuperCredit Loan Agreement and Guarantee.

**Property** means the property identified in Schedule 2 to be acquired by the Property Trustee on behalf of, and at the direction of, the Fund Trustee using the Facility Amount.

**Property Trust** means the trust established under this deed to be known by the name in the Schedule.

**Security Interest** means a mortgage or charge held by the Lender in respect of the Property to secure repayment of the Outstanding loan amounts payable by the Fund Trustee.



**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth), as amended from time to time.

**SuperCredit Loan Agreement and Guarantee** means the Commercial SuperCredit Loan Agreement and Guarantee Standard Terms and Conditions and the Commercial SuperCredit Loan Agreement and Guarantee Schedule between the Fund Trustee, the Property Trustee and the Lender on or about the date of this deed.

**Tax** means any income tax, GST, duty and other taxes, levies, imposts, deductions, withholdings, charges and duties, including stamp and transaction duties, charged by or payable to any national, state or municipal government or semi government entity, including any penalty or interest.

**Transaction Documents** means the SuperCredit Loan Agreement and Guarantee and any security in favour of the Lender in connection with the SuperCredit Loan Agreement and Guarantee.

## **2.2 References to certain general terms**

Unless the contrary intention appears, in this charge:

- (a) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (d) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (e) a reference to a document (including this charge) includes any variation or replacement of it;
- (f) the word "law" includes 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);
- (g) words importing the singular number include the plural and vice versa;
- (h) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (i) a reference to a particular person includes a reference to the person's executors, administrators, successors,

substitutes (including persons taking by novation) and assigns; and

(j) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

## **2.3 Headings**

Headings are for convenience only and do not affect the interpretation of this deed.

## **3. Effect of this deed**

The rights, powers, obligations and liabilities of the Property Trustee and the Lender, and of the Property Trustee and the Fund Trustee in relation to the Property and Property Trust, are set out in this deed and the Transaction Documents:

- (a) this deed binds the Property Trustee (including its successors and assigns) in respect of its obligations to the Lender and the Fund Trustee;
- (b) the Fund Trustee is not responsible for the obligations of the Property Trustee; and
- (c) nothing in the Transaction Documents will be taken to affect the nature of the Property Trust, or the beneficial interest or present entitlement of the Fund Trustee to the income and capital of the Property Trust.

## **4. Establishment and terms of the Property Trust**

### **4.1 Establishment of the Property Trust**

- (a) The Property Trustee declares that it will hold the Property on the terms set out in this deed as bare trustee for the benefit of the Fund Trustee; and
- (b) The Fund Trustee agrees and warrants that the Property will be a 'single acquirable asset' (as defined in the SIS Act), and will not include any asset which the Fund Trustee would not be permitted to purchase in its capacity as trustee of a self-managed superannuation fund.

## **5. Beneficial interest of Fund Trustee**

### **5.1 Absolute entitlement**

The Fund Trustee is absolutely entitled to the beneficial interest in the Property at all times.

## **6. Dealing with the Property**

### **6.1 Dealing with the Property**

- (a) Subject to the terms of this deed, the Property Trustee must deal with the Property in accordance with the directions of the Fund Trustee;
- (b) The Property Trustee will, on demand by the Fund Trustee, transfer or arrange the transfer of the legal ownership of the Property in the manner directed by the

Fund Trustee but undertakes that it will not transfer the legal interest in the Property prior to payment of the Outstanding loan amounts in accordance with the SuperCredit Loan Agreement and Guarantee; and

(c) The Property Trustee will transfer the unencumbered legal title to the Property to the Fund Trustee if the Property Trustee is satisfied that the Fund Trustee has paid the Outstanding loan amounts in full in accordance with the SuperCredit Loan Agreement and Guarantee, unless the Fund Trustee directs otherwise.

## **6.2 Lender's rights**

If the Lender directs the Property Trustee to sell the Property in accordance with the Transaction Documents the Property Trustee must sell the Property and apply the sale proceeds in accordance with the Order Of Payment. The Fund Trustee directs the Property Trustee to comply with such directions by the Lender.

## **7. Security Interest**

### **7.1 General**

(a) The Property Trustee, as trustee for the Property Trust, must separately mortgage or offer to mortgage the Property in favour of the Lender to secure the due and punctual repayment to the Lender of the Outstanding loan amounts; and

(b) The Property Trustee, as trustee for the Property Trust, will offer in writing to mortgage to the Lender the Property held under the Property Trust to secure the due and punctual repayment of the Outstanding loan amounts.

## **8. Present entitlement to income**

### **8.1 Present entitlement**

The Fund Trustee will be presently entitled to any income derived by the Property Trustee in respect of the Property held by the Property Trustee on its behalf under this deed, irrespective of the Property Trustee's application of any money or property in accordance with this deed.

## **9. Obligations of the Property Trustee**

### **9.1 Property Trustee not obliged to do certain things**

Despite any other provision of this deed the Property Trustee:

(a) is not required to do or omit to do anything or incur any liability unless the Property Trustee's liability is limited in a manner satisfactory to the Property Trustee;

(b) will not be under any obligation to advance or use its own funds for the payment of any costs, expenses or liabilities;

(c) will have no liability for the acts or omissions of any agents or contractors whose acts or omissions are not reasonably capable of supervision by the Property Trustee; and

(d) will have no obligation to prepare accounts or tax returns in respect of the Property Trust.

### **9.2 Property Trustee agrees to not do certain things**

The Property Trustee must not grant a charge over the Property (including a mortgage, lien or other encumbrance) other than the Security Interest.

## **10. Retirement and appointment**

### **10.1 Property Trustee may retire**

(a) The Property Trustee may retire as Property Trustee under this document by giving 30 days notice in writing to the Fund Trustee. The Fund Trustee or the Property Trustee, subject to any approval required by law and the approval of the Lender (such approval must not unreasonably be withheld), may appoint in writing any other person to replace the Property Trustee;

(b) On its appointment the successor Property Trustee will have all the rights, powers and obligations of the retiring Property Trustee (except liabilities arising from defaults of the retiring Property Trustee);

(c) The retiring Property Trustee must execute and deliver all documents or agreements which are necessary or desirable in its opinion to:

i) transfer the rights and obligations of this deed to the successor Property Trustee;

ii) effect the appointment of the successor Property Trustee; and

iii) transfer its interest in the Property to the successor Property Trustee subject to any Encumbrance in favour of the Lender over the Property;

subject to satisfaction of all liabilities owed to the retiring Property Trustee on its own account under this deed or for which the retiring Property Trustee may be personally liable;

(d) The retiring Property Trustee must ensure that the successor Property Trustee has done all things necessary to ensure the rights and obligations of this deed are transferred to the successor Property Trustee before the retirement of the retiring Property Trustee is effective; and

(e) Once the retiring Property Trustee has complied with sub-clause 10.1(c)(iii), it will be discharged from all its rights, powers and obligations under this deed

except for liabilities arising from its fraud, wilful misconduct or negligence.

## **11. Termination of the Property Trust**

### **11.1 Termination**

The Property Trust terminates on the earlier of:

- (a) the transfer of legal title to the Property to the Fund Trustee pursuant to this deed or the Transaction Documents;
- (b) the transfer of the Property to a third party pursuant to the Transaction Documents; or
- (c) the completion of the exercise of any power of sale by the Lender or the Property Trustee pursuant to the Transaction Documents.

### **11.2 Consequences of termination**

If the Property Trust is terminated in accordance with clause 11.1, all monies (if any) held by the Property Trustee for the Fund Trustee on termination will be applied in accordance with the Order Of Payment.

## **12. No duty to investigate**

### **12.1 Property Trustee has no duty to investigate**

The Property Trustee is not bound to take any steps to ascertain whether any Event of Default has occurred or whether the provisions of any Transaction Documents have been complied with.

## **13. No other duties**

### **13.1 Property Trustee has no other duties**

The Property Trustee will not have any obligations, responsibilities or duties which are not expressly set out in this deed.

## **14. Notices**

### **14.1 How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - ii) sent by email to the email address of the addressee.

### **14.2 When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by email:
  - i) by 5:00pm (local time in the place of receipt) on a Business Day - on that day; or

- ii) after 5:00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;

- (b) if it is sent by mail - on actual receipt.

### **14.3 Address for notices**

The Property Trustee's address for service is set out in Schedule 1, or as the Property Trustee notifies the sender.

### **14.4 Copies of notices to the Fund Trustee**

The Property Trustee will promptly provide the Fund Trustee with a copy of any notices received in connection with this deed.

## **15. General**

### **15.1 Governing law**

(a) This deed is governed by the law in force in the place in which the Property is located; and

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

### **15.2 Operation of this document**

(a) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have; and

(b) If any provision in this document is unenforceable, illegal or void or makes this document or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this document remains in force.

### **15.3 Counterparts**

This document may be executed in counterparts.

## **16. Amendment to Property Trust Deed**

### **16.1 Amendment by supplemental deed**

The Property Trustee may by supplemental deed add to, vary or revoke any part of this deed as directed by the Fund Trustee provided the Lender consents to the amendment.

**Schedule 1 – Parties**

**PROPERTY TRUSTEE**

Property Trustee Name:  
Valmadre Property Pty Ltd ACN 649 555 564

Address:  
346 Sheoak Drive, YALLINGUP WA 6282

**FUND TRUSTEE**

Fund Trustee Name:  
Valmadre Retirement Pty Ltd ACN 647 951 915

Address:  
346 Sheoak Drive, YALLINGUP WA 6282

As Trustee for:  
Valmadre Family Super Fund

**Schedule 2 – Property**

Address of the Security Property:  
3/16 Griffin Drive, DUNSBOROUGH WA 6281

**Schedule 3 – Name of Property Trust**

Bare Trust



**Signing page**


**EXECUTED as a deed and delivered on:** 18/10/21

**FUND TRUSTEE:**

Signed, sealed and delivered by Valmadre Retirement Pty Ltd in its capacity as Fund Trustee:

  
Signature of Secretary/Director      Date

MICHAEL JOHN VALMADRE  
Name of Secretary/Director (please print)

 18/10/21  
Signature of Director      Date

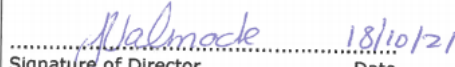
GEORGINA VALMADRE  
Name of Director (please print)

**PROPERTY TRUSTEE:**

Signed, sealed and delivered by Valmadre Property Pty Ltd in its capacity as Property Trustee:

 18/10/21  
Signature of Secretary/Director      Date

MICHAEL JOHN VALMADRE  
Name of Secretary/Director (please print)

 18/10/21  
Signature of Director      Date

GEORGINA VALMADRE  
Name of Director (please print)

