
WESTBOROUGH PROPERTY TRUST

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Ref:180101

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This Bare Trust Deed is made on the date noted in Item 1 of the Schedule between:-

The person described in Item 3 of the Schedule as the Custodian

(“Custodian”)

and

The person described in the Schedule as the Fund Trustee

(“Fund Trustee”)

BACKGROUND

- A. The Fund Trustee is the Trustee of the Fund and executes this Bare Trust Deed in that capacity.
- B. The Fund Trustee wishes to acquire the Property using a limited recourse borrowing arrangement as permitted by the Legislation.
- C. To comply with the requirements of the Legislation, the Custodian has agreed to hold the property on trust for the Fund Trustee subject to the terms and conditions contained in this Bare Trust Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Fund means the self managed superannuation fund described in Item 5 of the Schedule;

Financier means any financial institution which has an interest in the Property;

GST means the tax imposed pursuant to *A New Tax System (Goods and Services Tax) Act 1999*;

Income means all revenue, profits, earnings, rentals and other income derived from or payable with respect to the Property or the use of the Property;

Legislation means the *Superannuation Industry (Supervision) Act 1993* as amended from time to time and all applicable subsidiary regulations made with respect thereto;

Parties means the Custodian and Fund Trustee jointly and **Party** means any one of them as the context requires;

Property means the property described in Item 6 of the Schedule;

Schedule means the schedule to this Bare Trust Deed;

State means the State noted in Item 7 of the Schedule;

This Trust means the bare trust relationship created pursuant to this Bare Trust Deed;

Transfer Duty means all stamp and other transfer duty payable with respect to the creation and administration of the trusts comprised herein, including but not limited to, duty payable with respect to this Bare Trust Deed;

1.2 Interpretation

In this Bare Trust Deed unless the contrary intention appears:

- (a) any gender includes each other gender;
- (b) headings are for convenience only and do not affect the interpretation hereof;
- (c) the singular includes the plural, the plural includes the singular;
- (d) the word "person" includes an individual, a firm, a corporate entity, an unincorporated entity, a partnership, or government authority;
- (e) the term "including" shall be construed as meaning "including but not limited to";
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty to be performed or given by two or more persons binds them jointly and severally;
- (h) currency is a reference to Australian currency.

2. DECLARATION OF TRUST

- 2.1 Subject to the terms of this Bare Trust Deed, the Custodian declares that as on and from the date of this Bare Trust Deed, the Trustee shall hold the Property and Income on trust for the Fund Trustee absolutely.
- 2.2 The name of this Trust shall be as stated in Item 2 of the Schedule.
- 2.3 At no time will the Custodian have beneficial ownership in the Property. The Fund Trustee shall be the sole person beneficially entitled to the Property and the Income.

3. OBLIGATIONS OF CUSTODIAN

- 3.1 Subject to this Bare Trust Deed and the Legislation, the Custodian:-
 - (a) must at all times deal with the Property and the Income in the manner directed by the Fund Trustee;
 - (b) without limiting clause 3.1(a), if and as directed by the Fund Trustee, must:-
 - (i) delegate the exercise of all powers conferred upon the Custodian to such other person as the Fund Trustee requires;
 - (ii) execute such power of attorney as required by the Fund Trustee;

- (iii) insure and keep insured the Property (including Landlord's insurance where applicable);
 - (iv) execute leases and licenses with respect to the Property;
 - (v) establish and maintain a bank account or accounts to receive any Income derived from the Property and account to the Fund Trustee with respect to same;
 - (vi) mortgage, charge or otherwise offer the Property as security of repayment of any financial accommodation provided to the Fund Trustee by a Financier;
 - (vii) join with any person in executing any mortgage, charge or other security for the purpose of securing the financial accommodation referred to in clause 3.1(b)(vi);
 - (viii) provide any guarantee and/or indemnity for the repayment of the financial accommodation referred to in clause 3.1(b)(vi) and secure each guarantee and/or indemnity by executing either alone or jointly such securities as required by the Financier;
 - (ix) execute agreements for sale or transfer of the Property; and
 - (x) vote in any strata or body corporate meetings as required by the Fund Trustee, or otherwise appoint the Fund Trustee as the Custodian's proxy to do so,
- (c) without limiting clause 3.1(a), permit the Fund Trustee to peacefully possess and enjoy the Property without interruption by the Custodian.

3.2 Except as provided in this Bare Trust Deed, the Custodian shall have no further obligations to perform with respect to the Property and the Income.

3.3 Subject to the terms imposed on each obligation, each obligation shall be deemed a separate power of the Custodian.

3.4 The Custodian and Fund Trustee must at all times ensure that any security provided with respect to financial accommodation is absolutely limited in recourse to the Property only.

4. TRANSFER TO FUND TRUSTEE

4.1 Provided that:-

- (a) the Fund Trustee has made one or more payments to the Custodian in compliance with the Legislation; and
- (b) the transfer would not otherwise contravene the Legislation,

the Custodian, must on the request of the Fund Trustee, transfer legal title of the Property to the Fund Trustee.

5. CHANGE OF CUSTODIAN

5.1 Subject always to the Legislation and any requirements of a Financier, the Fund Trustee may at any time and from time to time;

- (a) remove the Custodian;
- (b) appoint an additional custodian to act together with the Custodian;
- (c) appoint a replacement custodian to act in place of the Custodian.

5.2 Any additional or replacement custodian appointed pursuant to clause 5.1 shall have the same powers, and hold the Property on the same terms, as the Custodian.

6. VARIATION OF THIS TRUST

6.1 Subject to the Legislation and the requirements of any Financier, this Trust Deed may be amended at any time and from time to time by written agreement between the Fund Trustee and the Custodian.

6.2 Any amendments shall be considered a variation of This Trust and shall not be deemed to create a new or sub-trust with respect to the Property.

7. GENERAL PROVISIONS

7.1 If any provision of this Bare Trust Deed contravenes a provision of the Legislation, the offending provision shall be read down to the extent necessary to remedy the contravention, if possible.

7.2 If any provision of this Bare Trust Deed is held to be invalid or unenforceable, then those provisions shall be severed from this Bare Trust Deed and the remaining provisions of this Bare Trust Deed shall continue in full force and effect to the fullest extent permitted by law provided that such severance would not change the basic underlying nature of this Bare Trust Deed.

7.3 Any third party dealing with the Custodian may rely on the content of This Deed and shall not be required to enquire further regarding the matters contained herein or the application of any Income received by the Custodian.

7.4 This Bare Trust Deed is governed by and construed in accordance with the laws of the State and the parties submit to the exclusive jurisdiction of the Courts of the State and any Commonwealth Court with appellate jurisdiction.

7.5 The Fund Trustee shall be liable to account for any GST received or paid, whether by the Custodian or the Fund Trustee, with respect to the Property and Income.

7.6 The Fund Trustee shall be liable for the costs of preparation of this Bare Trust Deed and all Transfer Duty payable with respect thereto. The Fund Trustee shall further be liable for any costs incurred by the Custodian in the execution of the Custodian's obligations pursuant to this Bare Trust Deed.

7.7 Any failure or delay on the part of any Party to exercise a power or right conferred upon that Party by operation of this Bare Trust Deed shall not be deemed a waiver of that power or right.

7.8 Each Party must do all such things and sign all such documents as reasonably required to give effect to this Bare Trust Deed.

7.9 This Bare Trust Deed may be executed by counterparts. All executed counterparts shall form one agreement.

7.10 Nothing in this Bare Trust Deed shall be construed as creating a relationship of partners or joint ventures between the Parties. The relationship of the Parties is one of trustee and beneficiary only.

Executed as a Deed

SCHEDULE

Item 1

Date of Document: _____ day of _____ 2018

Item 2

Name of Bare Trust: Westborough Property Trust

Item 3

Custodian: FLURRY FAMILY INVESTMENTS PTY LTD (ACN 624 623 721) of 23B Westborough Street, Scarborough, Western Australia

Item 4

Fund Trustee: FLURRY FAMILY SUPERANNUATION PTY LTD (ACN 624 623 427) of 23B Westborough Street, Scarborough, Western Australia

Item 5

Fund: Indiana Self Managed Super Fund

Item 6

Property Details: _____,
being Lot _____ on Plan/Diagram/Strata
_____ and the whole of the land in
Certificate of Title Volume _____ Folio

Item 7

State: Western Australia

EXECUTED for and on behalf of **FLURRY FAMILY INVESTMENTS PTY LTD** (ACN 624 623 721) by authority of the Directors in accordance with the requirements of s.127 of the Corporations Act:

Signature of Director – James Daniel Flurry

Signature of Director – Amy Jean Flurry

EXECUTED for and on behalf of
FLURRY FAMILY SUPERANNUATION PTY LTD (ACN 624 623 427)
As trustee of the **INDIANA SELF MANAGED SUPER FUND** by authority of the Directors in accordance with the requirements of s.127 of the Corporations Act:

Signature of Director – James Daniel Flurry

Signature of Director – Amy Jean Flurry