

Section 67A
Property Custodian Trust Deed

SIAYA PTY LTD
A.C.N. 620 236 277
("Bare Trustee")

AND

KABABA PTY LTD
A.C.N. 615 863 995
ATF
SUPER DUPER SUPER FUND
("SMSF")

"Bermill Street Property Trust"

Prepared By:

KB Legals Pty Ltd - Solicitors
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152 Bunnerong Road Eastgardens NSW 2036

Tel: 02 9344 5151
Fax: 02 8347 1171

Item No:-	SCHEDULE	
1	DATE OF DEED:	The 26 th day of JULY, 2017.
2	APPARENT PURCHASER OF THE PROPERTY: (hereinafter referred to as the "Bare Trustee"):	<div style="text-align: right; font-size: small;"> NEW SOUTH WALES DUTY 08-17-2017 0009189183-001 SECTION 629 (3)-DUPLICATE DUTY \$ *****10.00 NEW SOUTH WALES DUTY PAYABLE </div>
	(a) NAME OF BARE TRUSTEE:	SIAYA PTY LTD
	(b) A.C.N. OF BARE TRUSTEE:	A.C.N. 620 236 277
	(c) ADDRESS OF BARE TRUSTEE:	Unit 708, 6 Brodie Spark Drive Wolli Creek NSW 2205
3	TRUSTEES OF THE SELF MANAGED SUPERANNUATION FUND:	The following persons are the trustees of the regulated self-managed superannuation fund referred to in Item 4 below and in such capacity such persons are hereinafter referred to as the "SMSF".
	(a) NAME OF SMSF TRUSTEE:	KABABA PTY LTD
	(b) A.C.N. OF SMSF TRUSTEE:	A.C.N 615 863 995
	(c) ADDRESS OF SMSF TRUSTEES :	Unit 708, 6 Brodie Spark Drive Wolli Creek NSW 2205
4	NAME OF THE SELF MANAGED SUPERANNUATION FUND PROVIDING THE PURCHASE MONIES:-	SUPER DUPER SUPER FUND
5	GOVERNING LAW	New South Wales
6	DESCRIPTION OF THE PROPERTY INTENDED TO BE PURCHASED: (hereinafter referred to as the "Property")	Unit 7, 5 – 7 Bermill Street Rockdale NSW 2216 and being the whole of the land comprised in Certificate of Title Folio Identifier 7/SP74453 and known as Lot 7 in Strata Plan 74453.

PROPERTY TRUST ARRANGEMENT TERMS FOR THE PURPOSES OF S67A SIS ACT

THIS DEED made the date referred to in **Item 1** of the Schedule

BETWEEN

The Bare Trustee referred to in **Item 2** of the Schedule of the first part;

AND

The Trustee(s) referred to in **Item 3** of the Schedule as trustee(s) for the self managed superannuation fund referred to in **Item 4** of the Schedule (such trustee(s) in such capacity hereinafter referred to as "SMSF") of the second and final part.

WHEREAS:-

- (A) The SMSF is a regulated superannuation fund as defined in the SIS Act.
- (B) The SMSF requested the Bare Trustee to purchase the Property with the intent that all Acquisition Monies for the purchase of the Property would be provided by the SMSF.
- (C) The Bare Trustee has entered into the Purchase Contract as the apparent purchaser of the Property and it is intended that the Bare Trustee will hold the legal estate or interest in the Property.
- (D) By providing all the Acquisition Monies, the SMSF will hold the beneficial and equitable interest in the Property.
- (E) It is intended that this Deed and the purchase of the Property by the Bare Trustee for the benefit of the SMSF will be in conformity with the requirements of the Stamp Duty Concession.
- (F) It is intended that the SMSF if undertaking any borrowing associated with the acquisition of the Property will comply with Section 67A SIS Act.

NOW THIS DEED WITNESSETH:-

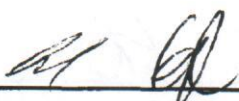
1. INTERPRETATION

Unless repugnant to the context where used the following words for the purposes of this Deed shall be defined as follows:-

"Acquisition Monies" means costs to purchase and acquire the Property including adjustments and costs payable under the Purchase Contract and Ancillary Acquisition Costs.

"Ancillary Acquisition Costs" includes costs ancillary to the purchase and acquisition of the Property including but not limited to pre-purchase and post-settlement consultant reports and advices, stamp duty, taxes, enquiry certificates, registration fees, valuation fees, property insurances, loan application fees and legal costs and disbursements for both the acquisition and matters relating to disputes associated with the acquisition.

"Beneficial Owner" means the SMSF.



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"Conveyance" means as the case may be, a Real Property Act transfer form, a deed of conveyance or such relevant document which would enable the transfer of the interests in the Property.

"Deposit" means the deposit payable under the terms of the Purchase Contract by the purchaser when the contract is entered into.

"Exit Costs" includes agent's sale commissions, legal costs for sale and transfer of the Property and monies owing to the Bare Trustee for which it is entitled to be reimbursed by reason of acting as a trustee for the benefit of the SMSF.

"Property" means the property described in **Item 6** of the Schedule.

"Property Bank Account" shall be a bank account, credit union account, building society bank account or a similar account the account holder of which is the SMSF used or intended to be used as an operational account for the management and administration of the Property.

"Purchase Contract" means the written contract entered into by the Bare Trustee for the purchase and acquisition of the Property.

"Relevant Duties Act" means whichever of the following statutory provisions are applicable as amended from time to time or any corresponding replacement legislation or otherwise any other provision which grants concessions for the stamping of this deed: Section 55 Duties Act 1997 NSW; Section 62B Duties Act 1997 NSW; Section 71(7a) Stamp Duties Act 1923 SA; Section 56 Duties Act 1999 ACT; Section 34 Duties Act 2000 VIC; Section 39 Duties Act 2001 TAS; Section 44 Duties Act 2001 TAS.

"Replacement Asset" has the same meaning as the "replacement" as defined in Section 67B of the SIS Act.

"Security" means any form of security which would not breach or contravene the requirements set out in clause 7 which has been consented to in writing by the SMSF to the Bare Trustee for the benefit of a lender or its custodian nominee.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993 and the regulations and modification orders made thereunder as amended from time to time together with any corresponding replacement legislation.

"SIS Loan Conditions" refers to the requirements specified in Section 67A SIS Act where a regulated superannuation fund, as defined by such Act, is not prohibited from borrowing money.

"Stamp Duty Concession" shall mean the concessional stamp duty benefits available for a declaration of trust or a transfer of dutiable property if the requirements of the Relevant Duties Act are satisfied.

2. ACKNOWLEDGEMENT & DECLARATION OF TRUST

- 2.1 The Bare Trustee has entered into the Purchase Contract to purchase the Property as an apparent purchaser and shall hold the Property UPON TRUST upon the terms contained in this Deed for the sole benefit of the SMSF being the party providing all Acquisition Monies for the purchase and acquisition of the Property.



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- 2.2 The Bare Trustee acknowledges and agrees that any and all Acquisition Monies paid by the SMSF to facilitate or effect the acquisition of the Property is not a loan or advance by the SMSF to the Bare Trustee.
- 2.2 For the sake of convenience the Trust established pursuant to this Deed and by reason of the payment of the Acquisition Monies by the SMSF may be referred to as the "Bermill Street Property Trust".

3. ACQUISITION COSTS

- 3.1 The SMSF has provided the Deposit to enable the Bare Trustee to enter into the Purchase Contract.
- 3.2 The SMSF has provided or shall provide to the Bare Trustee in a reasonable and timely manner the remaining Acquisition Monies to enable the Bare Trustee to settle and complete the Purchase Contract in accordance with the terms of the Purchase Contract.
- 3.3 In addition to the provision of the Acquisition Monies in accordance with the preceding clause 3.2, the SMSF has or will pay the Ancillary Acquisition Costs.

4. ENCUMBERING THE PROPERTY

The Bare Trustee shall not charge or encumber the Property except with the written unfettered consent of the SMSF.

5. REGISTRATION OF LEGAL INTEREST

The Bare Trustee shall diligently proceed to register or in the case where the Property is mortgaged, request the Mortgagee to register, the Conveyance after completion and settlement of a Purchase Contract to enable the Bare Trustee:-

- (a) in the case of Torrens title or Real Property Act title, to be registered as the registered proprietor of the Property;
- (b) in the case of Leasehold title or Crown Land title, to be registered as the lessee or holder of the legal rights in respect to such Property;
- (c) in relation to ancillary rights attached to the Property including permissive occupancy rights or water rights, to be registered as the holder of such rights;
- (d) in the case of Old System title, to be the holder of the legal interest where there is no mortgage or the holder of the equity of redemption after any mortgage(s) consented to by the SMSF.

6. SECURITY FOR SMSF BORROWINGS

- 6.1 If requested by the SMSF, the Bare Trustee will provide to a lender to the SMSF a guarantee and indemnity for any monies borrowed by the SMSF provided that the SIS Loan Conditions are complied with.
- 6.2 For the purposes of this clause 6 it is acknowledged that the SMSF may borrow funds in accordance with the SIS Loan Conditions.

7. SMSF ACQUISITION OF LEGAL ESTATE OR INTEREST

- 7.1 The SMSF has the right to acquire legal ownership of the Property or the Replacement Asset by making one or more payments after acquiring the beneficial interest in the Property.
- 7.2 The Bare Trustee shall upon written direction and demand by the SMSF transfer or assign the legal interest in the Property to the SMSF itself.
- 7.3 The Bare Trustee shall sign such declarations and requirements specified or demanded by the relevant stamp duty revenue authority to enable the Stamp Duty Concession to apply to the transfer or conveyance referred to in the preceding sub-clause 7.1 and 7.2.
- 7.4 The SMSF will pay the reasonable legal costs of the Bare Trustee to give effect to the SMSF's demand consistent with this clause.

8. DISPOSAL OF PROPERTY BY DIRECTION & DIRECTIONS BY SMSF GENERALLY

- 8.1 The Bare Trustee shall upon a written notice provided by the SMSF demanding that the Property be disposed of shall act in accordance with the instructions of the SMSF and cause the property to be listed or marketed for sale and otherwise sold in accordance with the directions and instructions of the SMSF.
- 8.2 The Bare Trustee shall abide by the directions of the SMSF in respect to the holding, maintenance, development, improvements, partitioning, consolidation, letting, licensing, the creation or devolution of interests in the Property or otherwise the disposal of the Property in whole or part or the winding up of the trust.

9. BARE TRUSTEE INDEMNITY & COMMISSION

- 9.1 The Bare Trustee shall have no right of indemnity against the SMSF except as provided in this clause 9.
- 9.2 In pursuing any recourse in accordance with clause 9.1 or seeking recovery of expenses incurred in or about the execution of the Bare Trustee's obligations under this Agreement, recourse of the Bare Trustee shall be strictly limited to the Property or the Replacement Asset with no further recourse to the SMSF.
- 9.3 The Bare Trustee shall not be entitled to any commission, fees or remuneration for acting as a trustee.

10. RENTS AND PROFITS

- 10.1 All profits, rents and income shall be paid or accounted to the SMSF.
- 10.2 In the case of any deficiency, all losses and deficiencies shall be borne by the SMSF.
- 10.3 The SMSF may direct the Bare Trustee to direct payments to a third party nominated by the SMSF and payment of such monies to the third party in accordance with such directions shall be good and sufficient discharge of the Bare Trustee's obligations in respect to such monies.



PROPERTY TRUST ARRANGEMENT TERMS FOR THE PURPOSES OF S67A SIS ACT

11. BARE TRUSTEE POWERS

Subject to any restrictions contained in this Deed and subject to the SMSF providing consent for the exercise of the following powers, the Bare Trustee shall in addition to the powers otherwise conferred upon trustees by law have the following powers:

- (a) the purchase or acquisition of any real or personal property wheresoever situate or any part or share or interest therein (including a minority part or share of interest) and notwithstanding that the same not be income producing or be of a wasting or speculative nature and to exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto;
- (b) to secure by mortgage bill of sale assignment transfer conveyance lien pawn pledge deposit of deeds charge fixed or floating legal or equitable of over the Property or any right title interest or estate in the Property;
- (c) to guarantee and give any guarantee or indemnity alone, jointly and severally for the payment of money or the performance of any contract obligation or undertaking by the Beneficial Owner and to secure whether by mortgage charge bill of sale or otherwise howsoever any such obligation in respect thereof provided that recourse for such contract, obligation, undertaking is limited to the Bare Trustee and the Property and no recourse is available against the Beneficial Owner and for any or all of the purposes aforesaid the Bare Trustee whether alone or jointly or jointly and severally may sign and execute mortgages bills of sale and other securities over all or any part of the Property;
- (d) to hold use purchase construct demolish maintain repair renovate reconstruct develop improve sell transfer convey surrender let lease exchange take on lease hire or otherwise acquire take and grant options or rights in alienate mortgage charge pledge re-convey release or discharge or otherwise deal with the Property or any right or estate or interest therein;
- (e) to enter into agreements to lease or otherwise lease the Property and do any act or thing ancillary to or incidental to any agreement to lease or lease entered into pursuant to this clause in order to give effect thereto;
- (f) to pay out of the Trust or the income thereof all costs charges and expenses incidental to the management of the Property or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trust which the Bare Trustee may at any time incur including all income tax or other taxes payable in respect of the Property costs in any way connected with the preparation and execution of these presents and all moneys which the Bare Trustee may be required to pay as settlement stamp or revenue duties in respect of the Property;
- (g) upon such terms and conditions as the Bare Trustee thinks fit and as security therefore to sign and execute mortgages, bills of sale and other securities over all or any part of the Property, such mortgages, bills of sale and other securities to be in such form as the Bare Trustee thinks fit PROVIDED THAT no recourse for such facilities or financial accommodation is or could be made against the Beneficial Owner and the SIS Loan Conditions are satisfied;
- (h) to partition or agree to the partition of or to sub-divide or agree to the subdivision of the Property and to pay any monies by way of equality of partition;
- (i) to grant options in respect to the Property to any person firm or company;

PROPERTY TRUST ARRANGEMENT TERMS FOR THE PURPOSES OF S67A SIS ACT

- (j) to deal with, manage, transpose and realise the Property or any property comprised in any security as the Bare Trustee thinks fit in all respects as directed by the Beneficial Owner **AND** the Bare Trustee shall not be accountable in any way whatsoever for any loss arising out of the making of any investment or out of the failure to realise any investment or out of the management of any investment;
- (k) to sell or otherwise dispose of any real or personal property or a share or interest therein of the Property and to join with any co-owner or co-owners or partner or partners in selling or otherwise disposing of the real or personal property by public auction, tender or private treaty at such price or prices and whether for cash or on terms and generally upon such terms and conditions as the Bare Trustee thinks fit;
- (l) to purchase, lease or otherwise acquire or take possession of the Property or any rights or privileges and in particular any land, buildings, easements, machinery, plant or equipment from any person upon such terms and conditions as the Bare Trustee subject to the consent of the Beneficial Owner shall think fit;
- (m) the Bare Trustee may mortgage or charge the Property to secure repayment a loan or other financial accommodation provided to the Beneficial Owner. Despite any implied right to the contrary, the Bare Trustee has no recourse against the Beneficial Owner in respect of any payment the Bare Trustee has to make in respect of the loan or other financial accommodation, except recourse against the Property.
- (n) the Bare Trustee may from time to time cause or permit any person to have possession or control of the Property;
- (o) to open any account or accounts with any bank or banks credit union building society and other financial institutions and to operate by and in all usual ways any such account or accounts and if thought fit to delegate to any person the authority to sign cheques and operate upon the account without the person being liable or responsible for any loss resulting therefrom;
- (p) to give effectual receipts and discharges for any monies received by or on behalf of the Bare Trustee or otherwise relating to any of the acts matters and things provided for in this Deed;
- (q) to take and act upon the written opinion of any solicitor or Counsel practising in any country, state or territory where the Property or any Replacement Asset may be located, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested, in respect of any act done by the Bare Trustee in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Bare Trustee from applying to any Court if it shall think fit or prohibit any of the beneficiaries from so doing;
- (r) to make any election to the Commissioner of Taxation under the Income Tax Legislation;
- (s) to lodge any returns for any income tax or GST in respect to the Property; and
- (t) to undertake any act or transaction incidental to the above powers



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12. PROPER LAW AND CONSENT TO JURISDICTION

This Trust is governed by the law of the State or Territory as referred to in **Item 5** of the Schedule of this Deed and the relevant Act of the Trust Legislation for the State or Territory referred to in **Item 5** of the Schedule shall apply to this Trust. Proceedings concerning it may be taken in the courts of the State or Territory referred to in **Item 5** of the Schedule of this Deed.

13. RULE AGAINST PERPETUITIES

13.1 The provisions of this clause 13 shall apply if the law against perpetuities applies to the arrangements and provisions contemplated by this Deed.

13.2 On or before seventy (70) years from the date of this Deed the SMSF shall either:-

- (a) cause the Property to be unencumbered and shall in accordance with clause 8 demand the Conveyance of the legal interest in the Property to the SMSF; or
- (b) cause the Property to be sold and the debt secured by the Security to be discharged and the net proceeds remaining after the sale including payment of costs and expenses to be paid and accounted to the SMSF.

14. ASSIGNMENT

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

15. NOTICES

15.1 Any notice to or by a part under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

15.2 Any notice may be served by delivery in person or by post or transmission by facsimile or email.

15.3 Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next day following delivery or receipt. A notice sent by e-mail is effective when the electronic communication enters the information system of the addressee.

16. VARIATION OF TRUST DEED

16.1 The SMSF may at any time and from time to time by deed executed by the SMSF vary, add to or rescind all or any of the provisions of this Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner **PROVIDED THAT** no such variation, addition or rescission shall have the effect of:-

- (a) removing, restricting or otherwise affecting the entitlement of the SMSF to receive the income of the trust including rents and profits as referred in clause 10.1 of this Deed; or



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- (b) removing, restricting or otherwise affecting the entitlement of the SMSF to cause the Property to be disposed of and sold and the trust wound up pursuant to clause 8 of this Deed and the entitlement of the SMSF to receive the capital and corpus of the trust upon a winding up.

EXECUTED AS A DEED:


Executed in accordance with
Section 127 of the Corporations Act 2001
SIAYA PTY LTD
A.C.N. 620 236 277
in the presence of:-

) ANDREW CRAWFORD
) Director (Print Name)
)
) 
) Signature


GUADUACHACHENG CRAWFORD
Director (Print Name)


Signature

Executed in accordance with
Section 127 of the Corporations Act 2001
KABABA PTY LTD
A.C.N. 615 863 995
ATF Super Duper Super Fund
in the presence of:-

) ANDREW CRAWFORD
) Director (Print Name)
)
) 
) Signature

GUADUACHACHENG CRAWFORD
Director (Print Name)


Signature

IMPORTANT NOTICE

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Clause 7

7. Clause 7.1 of this Deed has been inserted for the purposes of Section 106-50 Income Tax Assessment Act 1997. You should refer to ATO Taxation Ruling TR 2004/D25. Trustees should obtain professional advice prior to invoking rights under clause 7.1 as borrowings by a self managed superannuation fund are generally prohibited and the Section 67A SIS Act requirements may not be satisfied if the Trustee acquired the Property subject to the encumbrances associated with the Security.

Item No:-	SCHEDULE	
1	DATE OF DEED:	The 26 th day of <u>July</u> , 2017.
2	APPARENT PURCHASER OF THE PROPERTY: (hereinafter referred to as the "Bare Trustee"):	<p style="text-align: right;">NEW SOUTH WALES DUTY 05-12-2017 0009198183-001 SECTION 62B (1) DUTY \$ *****\$500.00 NO SURCHARGE DUTY PAYABLE</p>
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