

**Return of stamped Instalment warrant/Borrowing agreement  
for:**

**"Levey Superannuation Fund"**

**Attention Sonia Fuller**

**Date 31 August 2011**

# Levey Superannuation Fund SMSF Instalment warrant / Borrowing agreement

Antidote Holdings Pty Ltd

Levey Super Pty Limited



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**THIS DEED** dated 22 JULY 2011

**BETWEEN** Antidote Holdings Pty Ltd A.C.N. 146 550 656 (**Custodian**)

**AND** Levey Super Pty Limited A.C.N. 146 550 594 as trustee for  
Levey Superannuation Fund (**SMSF**)

## **BACKGROUND**

- A. The SMSF has requested the Custodian to acquire the Asset on the terms and conditions of this agreement.
- B. The Custodian has agreed to acquire the Asset on the terms and conditions of this agreement.
- C. The SMSF will borrow the Loan Amount from an unrelated third party (**Lender**) for the purpose of the purchase of the Asset.

NEW SOUTH WALES DUTY  
17 JUL 2011  
SECTION 55(1)(A)  
DUTY  
0006389033-001  
\$ \*\*\*\*\*50.00

## **AGREEMENT**

### **1. Definitions and Interpretations**

1.1 In this agreement:

- (a) **Act** means the Superannuation Industry (Supervision) Act 1993 as amended and any statutory replacement;
- (b) **Asset** means the property known as 12 Annie Street Wickham NSW 2293 and identified as folio identifier 1/731186;
- (c) **Governing Jurisdiction** means New South Wales;
- (d) **Loan Amount** means that part of the Purchase Price that the SMSF does not contribute to from its own funds and which it borrows from the Lender;
- (e) **Money Payable** means all money payable by the SMSF to the Lender;
- (f) **Purchase Price** means the purchase price of the Asset as agreed between the Custodian and the SMSF;
- (g) **Regulations** means the regulations under the Act or any statutory replacement and unless the context otherwise requires, includes any requirements lawfully imposed by any competent authority on the SMSF;
- (h) a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws varying, consolidating or replacing them.

**2. Acquisition of Asset**

- 2.1 The SMSF and the Custodian agree that the Custodian will purchase the Asset for the Purchase Price on the terms and conditions of this agreement.
- 2.2 The Custodian will purchase the Asset as bare trustee for the SMSF on the terms and conditions of this agreement.

**3. Asset held on Trust**

- 3.1 The Custodian will hold the Asset as bare trustee for the SMSF on the terms and conditions of this agreement.
- 3.2 On the purchase of the Asset by the Custodian, the SMSF has a beneficial interest in the Asset that is vested and indefeasible as against the Custodian.

**4. SMSF's rights in the Asset**

- 4.1 In addition to any other right under this agreement but subject to the terms and conditions of it, the SMSF:
- (a) is also presently entitled to all income arising from the Asset; and/or
  - (b) is entitled to any accretion in the value of the Asset.

**5. Purchase Price**

- 5.1 The Custodian and the SMSF will agree on the Purchase Price prior to the purchase of the Asset.
- 5.2 The SMSF will borrow the Loan Amount from the Lender for the purpose of the purchase of the Asset.
- 5.3 The SMSF will contribute from its own funds that part of the Purchase Price in addition to the Loan Amount that is required to complete the purchase of the Asset.
- 5.4 As the Custodian will not provide any of the Purchase Price, the real purchaser is the SMSF.

**6. Repayment of the Loan Amount**

- 6.1 Subject to clause 8, the SMSF will pay instalments of the Loan Amount to the Lender as and when required by the Lender.

**7. Interest**

- 7.1 The SMSF will pay the Lender interest on the Loan Amount as and when it is due.

**8. Non-recourse nature of the SMSF's obligations and charge of Asset**

8.1 The Custodian's only right against the SMSF in respect of:

- (a) the recovery by the Lender of the Money Payable; and
- (b) default of the SMSF's obligations under this agreement,

is limited to the SMSF's interest in the Asset and is not otherwise personal to the SMSF.

8.2 The Custodian may charge the Asset, including by way of mortgage, for the purpose of securing the Loan Amount but only on terms and conditions:

- (a) approved by the SMSF; and
- (b) which are in compliance with the requirements of sections 67A, 67B and 71(8) of the Act, including so that the liability of the SMSF:
  - (i) to pay the Money Payable; and/or
  - (ii) in respect of default of its obligations under this agreement,

must be limited to the SMSF's interest in the Asset and is not otherwise personal to the SMSF.

8.3 The Custodian may provide a Guarantee and Indemnity in favour of the Lender limited in recourse to any Mortgage it provides over the Asset.

**9. Custodian's direction and obligations**

9.1 The SMSF may direct the Custodian to transfer legal ownership of the Asset to the SMSF on the SMSF making one or more payments of the Loan Amount in accordance with or as otherwise required by section 67A(1)(c) of SIS without further consideration and only when directed to do so by the SMSF.

9.2 The Custodian must:

- (a) act in accordance with the SMSF's lawful directions;
- (b) only transfer or deal with the Asset in accordance with the SMSF's direction;
- (c) not give a charge, mortgage, lien or other encumbrance over the Asset other than in accordance with clause 8;
- (d) not mix the Asset with other property;
- (e) hold in a safe place the documents evidencing title in the Asset (if the Custodian is in possession of them);

- (f) account to the SMSF for all income that may be received by the Custodian on the Asset (except if the Lender is otherwise entitled to it under any agreement between the Lender and / or the Custodian and / or the SMSF);
- (g) credit that income to a bank account nominated by the SMSF (except if the Lender is otherwise entitled to it under any agreement between the Lender and / or the Custodian and / or the SMSF);
- (h) act honestly;
- (i) not do anything that would cause the SMSF to fail to comply with its requirements under the Act.

**10. Deeming clause - SIS**

- 10.1 The provisions of the Act and Regulations are deemed to be included in this agreement as far as they are applicable for the purpose of ensuring that the terms and conditions of this agreement comply with sections 67A, 67B and 71(8) of the Act.
- 10.2 If there is any inconsistency between the terms and conditions of this agreement (as varied from time to time) and the Act and/or Regulations:
  - (a) this agreement must be read as subject to the Act and/or Regulations; and
  - (b) the SMSF and the Custodian are required to act in accordance with the Act and/or Regulations.

**11. Entire agreement**

- 11.1 This agreement and any annexures is the entire agreement of the parties on the subject matter.
- 11.2 The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this agreement.
- 11.3 All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

**12. Counterparts**

- 12.1 This agreement may be executed in any number of counterparts. All counterparts make the one agreement.
- 12.2 Facsimiled copies of this agreement may be executed. The facsimiled copies will bind the parties. The parties undertake to post the originals, but the receipt of the originals will not affect the binding nature of the facsimiled copies.

**13. Further assurance**

13.1 Each party will do all things necessary to give full effect to this agreement and the transactions contemplated by it.

**14. Invalidity**

14.1 If a provision of this agreement or a right or remedy of a party under this agreement is invalid or unenforceable in a particular jurisdiction:

- (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

14.2 This clause is not limited by any other provision of this agreement in relation to severability, prohibition or enforceability.

**15. Amendment**

15.1 This agreement may only be amended or supplemented in writing signed by the parties.

**16. Waiver**

16.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right.

16.2 No single exercise of a power or right precludes any other or further exercise of it or the exercise of any other power or right.

16.3 A power or right may only be waived in writing, signed by the party to be bound by the waiver.

**17. Governing law**

17.1 This agreement is governed by the law in force in the Governing Jurisdiction.

**18. Jurisdiction**

18.1 The parties submit to the exclusive jurisdiction of the:

- (a) Courts of the Governing Jurisdiction; and
- (b) Courts exercising federal jurisdiction over matters arising in the Governing Jurisdiction;
- (c) any Court that may hear appeals from those Courts,

in respect of any proceedings in connection with this agreement.

**19. Execution by an attorney**

19.1 Any attorney who executes this agreement on behalf of a party declares that the attorney has no notice of the:

- (a) revocation of the power of attorney under the authority of which the attorney executes this agreement;
- (b) death of the grantor.

**20. Costs**

20.1 The SMSF will pay all costs, fees and expenses in connection with the preparation, negotiation, execution and enforcement of this agreement and any transactions arising under it.

**21. Stamp duty**

21.1 The SMSF will be liable for stamp duty on this agreement and any transactions arising under it.

**22. Notices**

22.1 Any notice or communication authorised or required by this agreement:

- (a) must be in writing; and
- (b) may be given personally, by post, by facsimile transmission or by electronic mail transmission to the last known address, facsimile number or e-mail address of the person to whom it is addressed.

22.2 Any notice posted is deemed served on the 3<sup>rd</sup> day from the date of postage.

22.3 If the 3<sup>rd</sup> day is a public holiday, the notice is deemed served on the next business day.

22.4 Any notice sent by facsimile is deemed served:

- (a) on the day it is sent if that is before 4pm; and
- (b) otherwise on the next business day,

providing the sender receives a correct and complete message report.

22.5 Any notice sent by e-mail is deemed served:

- (a) on the day it is sent if that is before 4pm; and
- (b) otherwise on the next business day,

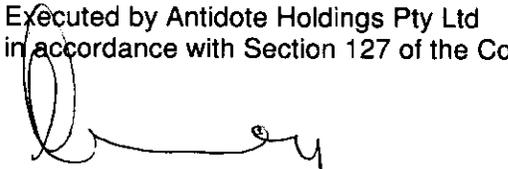
providing the sender does not receive a message stating that the transmission has failed.

**23. Term**

23.1 The parties agree that notwithstanding any provision contained in this agreement to the contrary, the trust established by this agreement will end on the date which is the later of the loan repayment date pursuant to the loan with the Lender and the date which is 15 years from the date of this agreement.

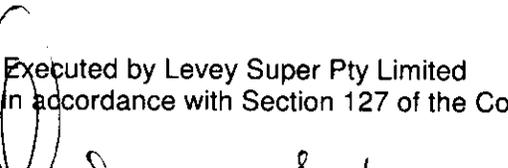
**Executed as a deed**

Executed by Antidote Holdings Pty Ltd  
in accordance with Section 127 of the Corporations Act

  
\_\_\_\_\_  
Andrew Patrick Levey  
Director

  
\_\_\_\_\_  
Tina Levey  
Director

Executed by Levey Super Pty Limited  
in accordance with Section 127 of the Corporations Act

  
\_\_\_\_\_  
Andrew Patrick Levey  
Director

  
\_\_\_\_\_  
Tina Levey  
Director