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# Superannuation Acquisition Financing Deed

(incorporating a security trust)

National Australia Bank Limited  
(ABN 12 004 044 937) (AFSL 230686)

and

The parties referred to in Schedule 1.

## Table of Contents

<b>1</b>	<b>Definitions and Interpretations</b>	<b>4</b>
1.1	Definitions	4
1.2	Interpretation	7
1.3	Capacities of Borrower and Security Trustee	8
1.4	Capacities of trustee of Fund and trustee of Security Trust	8
<b>2</b>	<b>Appointment and Direction of Security Trustee</b>	<b>8</b>
2.1	Appointment and Directions	8
2.2	Acceptance	9
2.3	Other arrangements	9
<b>3</b>	<b>Right to Legal Title</b>	<b>9</b>
3.1	Borrower's Right when no Amount Owing	9
3.2	Release of Mortgage	9
<b>4</b>	<b>Instructions when Amounts Owing</b>	<b>9</b>
<b>5</b>	<b>Present Entitlement to Income</b>	<b>9</b>
<b>6</b>	<b>Security Trustee Undertaking and Promisor Undertakings</b>	<b>9</b>
<b>7</b>	<b>Limitation on Recourse</b>	<b>10</b>
7.1	Limitation on Bank's Recourse	10
7.2	Limitation on Security Trustee's Lien and Indemnity	11
7.3	Limitation on Recourse of Security Trustee and Promisors	11
7.4	No Cross Collateralisation and no additional recourse	11
7.5	Transaction Documents Superseded	11
7.6	Inconsistency	12
<b>8</b>	<b>Representations and Warranties and Acknowledgements</b>	<b>12</b>
8.1	Borrower, Security Trustee and Promisors - general	12
8.2	Borrower, Security Trustee and Promisors - company representations and warranties	13
8.3	Borrower and Promisors - trustee representations and warranties	13
8.4	Borrower - compliance with laws and regulations	14
8.5	Security Trustee and Promisor	15
8.6	No Advice	16
8.7	Other Representation	16
8.8	Repetition of Representations and Warranties	16
8.9	Reliance	16
<b>9</b>	<b>General</b>	<b>17</b>
9.1	Governing law and jurisdiction	17
9.2	Prohibition and enforceability	17
9.3	Waivers	17

9.4	Variation	17
9.5	Assignment	17
9.6	Confidentiality	17
9.7	Further assurances	18
9.8	Entire agreement	18
9.9	Counterparts	18
9.10	Attorneys	18
9.11	Saving Provision	18
9.12	Certificates	18
<b>10</b>	<b>Personal Property Securities Act</b>	<b>19</b>
10.1	PPSA further steps	19
10.2	Exclusion of PPSA provisions	19
10.3	Costs of further steps	19
<b>11</b>	<b>Code of Banking Practice</b>	<b>19</b>
11.1	General	19
11.2	Code of Banking Practice	19
<b>Schedule 1 : Parties and Governing Law</b>		<b>21</b>
<b>Schedule 2 : Acknowledgement</b>		<b>22</b>
<b>Schedule 3 : Accession Deed</b>		<b>23</b>

THIS DEED is made between:

**PARTIES:**

- (1) The person named in part 1 of Schedule 1 in its capacity as trustee of the Fund (**Borrower**)
- (2) The person named in part 2 of Schedule 1 (**Security Trustee**)
- (3) The persons named in part 3 of Schedule 1 or who accedes to this deed as a Promisor (each a **Promisor** and collectively **Promisors**)
- (4) NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 of Level 1, 800 Bourke Street, Docklands, Victoria, 3008 (the **Bank**)

**BACKGROUND:**

- (A) The Borrower is the trustee of the Fund.
- (B) The Borrower may wish to acquire one or more Assets from time to time.
- (C) The Borrower may decide to pay for the purchase price of any Asset it acquires (wholly or partly) with the proceeds of a borrowing in accordance with section 67A of SIS and the Security Trustee has agreed that the Security Trustee will acquire and hold legal title to any Asset so acquired (and any Replacement Asset) on trust for the Borrower in accordance with the terms of this deed.
- (D) The Borrower may request that the Bank lend to the Borrower to assist the Borrower to pay the purchase price of any Asset it decides to acquire or to refinance a loan provided to assist the Borrower to pay the purchase price of any Asset. If in its discretion the Bank accepts a request, the terms and conditions of the Loan will be contained in the Letter of Offer.
- (E) The parties acknowledge that this deed has been entered into in connection with the Letter of Offer and, where the term 'transaction document' is used in the Letter of Offer, this deed is a 'transaction document' as defined in the Letter of Offer.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the operative part of this deed.

**IT IS AGREED** as follows:

**1 Definitions and Interpretations**

**1.1 Definitions**

The meanings of the terms used in this deed are set out below.

**Accession Deed** means a deed in the form set out in Schedule 3.

**Acknowledgement** means a deed poll in the form set out in Schedule 2.

**Additional Promisor** means each person that accedes to this deed in accordance with clause 6.

**Amounts Owing** means in respect of the Loan, all amounts which are, or may become owing (actually or contingently) in respect of the Loan, including principal, interest, costs, charges and expenses and any other amounts.

**Asset** means the asset described in the Letter of Offer being the asset to be acquired with the proceeds of the Loan (or, in the case of a refinancing, the asset which was acquired with the proceeds of the loan which is to be refinanced by the Loan), being an "acquirable asset" within the meaning of section 67A of SIS.

**Authorised Representative** means a person authorised by the Borrower, the Security Trustee or a Promisor and notified to the Bank in writing as its representative for the purposes of the Transaction Documents, including any financial planner or financial adviser.

**Bankrupt** has the meaning given to "insolvent under administration" in the Corporations Act.

**Code of Banking Practice** means the Australian Bankers' Association Code of Banking Practice (May 2004 version) as amended by any subsequent amendment the Bank adopts.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Default Event** means an event of default (however described) or other failure to comply with an obligation in respect of the Loan.

**Dispose** means to sell, transfer, declare trust over or otherwise alienate and **Disposes** or **Disposed** have corresponding meanings.

**Financed Asset** means, in respect of a Loan, the Asset acquired with the proceeds of the Loan (or, in the case of a refinancing, the Asset acquired with the proceeds of the loan which is to be refinanced by the Loan) and any Replacement Asset in respect of that Asset.

**Fund** means the self managed superannuation fund described in part 4 of Schedule 1 of which the Borrower is the trustee.

**Further Security** means each other mortgage, charge or other security interest or right of set-off, withholding or lien given by the Borrower, the Security Trustee or a Promisor over any asset (not being an asset of the Fund) to secure the obligations of the Borrower, the Security Trustee or the Promisor in respect of a Loan, a Security Trustee Undertaking or a Promisor Undertaking.

**Income** means all rent, interest, dividends or other income received or derived in respect of Trust Assets which would be assessable income for the purposes of the Tax Act of the relevant income.

**Insolvent** means bankrupt, unable to pay debts as and when they fall due, in receivership, in receivership and management, in liquidation, in provisional liquidation, under any form of administration, wound up, dissolved, subject to any arrangement, assignment, composition or deed of company arrangement, protected from creditors under any statute or in receipt of protection under statute.

**Instruction** means an instruction from the Borrower, or from the Bank in accordance with this deed and **Instruct** has a corresponding meaning.

**Letter of Offer** means each letter of offer from the Bank to the Borrower for the provision of a Loan.

**Loan** means the loan to be advanced by the Bank to the Borrower under the Letter of Offer:

- (a) for the acquisition of an Asset as contemplated by this deed, including expenses incurred in connection with the borrowing or acquisition to the extent permitted by SIS; or
- (b) for refinancing (on one or more occasion) a borrowing (including any accrued interest on such borrowing) for the acquisition of an Asset on terms which at all times has complied with SIS.

**Mortgage** means each mortgage, charge or other security interest granted by the Security Trustee in its capacity as such to the Bank over a Financed Asset to secure the Security Trustee's obligations under a Security Trustee Undertaking.

**Officer** means any of the Bank's officers and any person whose title or acting title includes the word "Associate", "Director", "Executive", "Manager", "Vice President", "Chief", "Counsel", "Head", "Legal" or any cognate expression or who is authorised to act under any general power of attorney of the Bank and any solicitor acting on the Bank's behalf.

**PPSA** means the Personal Properties Securities Act 2009 (Cth) and any regulations made pursuant to it.

**Promisor Undertaking** means any guarantee, indemnity or guarantee and indemnity or any other form of undertaking given by the Promisors (or any of them) in favour of the Bank, in a form satisfactory to the Bank (which, for the avoidance of doubt, can include the Letter of Offer).

**Purchase Contract** means the agreement under which the Borrower agrees to purchase an Asset on the terms that legal title to the Asset be registered in the name of the Security Trustee on trust for the Borrower.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Trust** means:

- (a) in the case of the Borrower, the Fund;
- (b) in the case of the Security Trustee, each Security Trust;
- (c) in the case of any Promisor, the trust of which it is the trustee, as included in the description of the Promisor in part 3 of Schedule 1 or in the Accession Deed (as the case may be).

**Relevant Trust Deed** means:

- (a) in the case of the Borrower, the trust deed in relation to the Fund described in part 4 of Schedule 1;
- (b) in the case of the Security Trustee and any Security Trust, this deed;
- (c) in the case of any Promisor and any Relevant Trust, as included in the description of the Promisor and the Relevant Trust in part 3 of Schedule 1 or in the Accession Deed (as the case may be).

**Replacement Asset** means an asset that is not an asset the Borrower as trustee of the Fund is prohibited from acquiring under SIS or under any other law that:

- (a) replaces the Financed Asset; or
- (b) replaces that replacement asset or any subsequent such replacement asset,

in each case in circumstances permitted by SIS.

**Security Interest** means:

- (a) in relation to any personal property (as defined in the PPSA) has the same meaning as in the PPSA;
- (b) in relation to any other property means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement.

**Security Trust** means, in respect of an Asset, the trust in respect of that Asset of which the Security Trustee is the trustee the terms of which are governed by this deed.

**Security Trustee Undertaking** means any guarantee, indemnity or guarantee and indemnity or any other form of undertaking given by the Security Trustee in favour of the Bank, in a form satisfactory to the Bank (which, for the avoidance of doubt, can include the Letter of Offer).

**SIS** means the Superannuation Industry (Supervision) Act 1993 (Cth).

**Tax Act** means the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) or both, as appropriate.

**Transaction Document** means:

- (a) the Letter of Offer;
- (b) each "transaction document" as defined in a Letter of Offer;
- (c) all other agreements relating to the Loan;
- (d) this deed;
- (e) any Mortgage;
- (f) any Security Trustee Undertaking or Promisor Undertaking not contained in this deed;
- (g) any Further Security; and
- (h) any other document referred to or connected with any of them.

**Trust Assets** means, in respect of a Loan, the Financed Asset in respect of that Loan together with, the Income and any other property or right received or derived by the Security Trustee in respect of that Financed Asset.

## 1.2 Interpretation

In this deed, headings, and words appearing in bold typeface, are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation;
- (e) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to a law, a statute, regulation, proclamation, ordinance or by law includes all laws, statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to a document (including the Letter of Offer, a Promisor Undertaking, a Security Trustee Undertaking, or the Mortgage) includes it as amended, supplemented, novated or replaced from time to time, except to the extent prohibited by this deed;
- (h) a reference to a party to a document includes that party's successors and permitted substitutes or assigns;

- (i) no provision of this deed will be constructed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (j) a covenant or agreement on the part of two or more persons binds them severally;
- (k) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (m) mentioning anything after include, includes or including does not limit what else might be included; and
- (n) where a party comprises two or more persons, a reference to such party shall be read as a reference to such persons jointly and severally.

### **1.3 Capacities of Borrower and Security Trustee**

The Borrower must not appoint persons as Security Trustee such that the Security Trustee and Borrower comprise identical persons.

### **1.4 Capacities of trustee of Fund and trustee of Security Trust**

Where a Promisor is a person who is also a Borrower or a Security Trustee:

- (a) a reference to the Promisor is a reference to the person in its personal capacity and not in its capacity as Borrower or Security Trustee; and
- (b) its obligations in respect of the Promisor Undertaking should be read as obligations in its personal capacity (discrete from the obligations of the Borrower or Security Trustee), conferring recourse against the personal assets of the Promisor (but not any asset of the Fund other than the relevant Financed Asset).

## **2 Appointment and Direction of Security Trustee**

### **2.1 Appointment and Directions**

The Borrower unconditionally and irrevocably appoints the Security Trustee as its trustee in respect of the Trust Assets on the terms of this deed and directs the Security Trustee to:

- (a) execute and deliver to the Bank:
  - (i) this deed;
  - (ii) the Security Trustee Undertaking; and
  - (iii) any Mortgage;
- (b) acquire and hold on trust the Assets in respect of each Loan as Trust Assets each on a separate trust, as bare trustee for the Borrower so that the Borrower acquires a beneficial interest in the Trust Assets subject to the terms of this deed;
- (c) keep the Trust Assets of each trust separate from its other assets and separate from the assets of each other trust and to record them in its books as held for the benefit of the Borrower;
- (d) dispose of or deal with the Trust Assets on Instructions in accordance with this deed and not to Dispose or deal with the Trust Assets otherwise; and



- (e) deliver to the Bank the documents evidencing, or relating to, title (if any) for the Financed Asset.

## **2.2 Acceptance**

The Security Trustee in consideration of the Borrower entering into the Purchase Contract and the Borrower and the Bank entering into the Transaction Documents to which each is party accepts its appointment and agrees to carry out the directions and Instructions and otherwise to comply with the terms of this deed.

## **2.3 Other arrangements**

The Borrower and Security Trustee acknowledge and agree that the terms of this deed:

- (a) constitute the entire agreement between them in relation to the Trust Assets;
- (b) apply to the Trust Assets and prevail over to the complete exclusion of any other trust deed arrangement or other instrument relating to the Trust Assets; and
- (c) shall not be varied or supplemented without the prior written consent of the Bank and any variation or supplement purported to be made without that consent shall be of no force and effect.

## **3 Right to Legal Title**

### **3.1 Borrower's Right when no Amount Owing**

Despite any other terms of this deed, any Mortgage or any other Transaction Document, once all Amounts Owing in respect of the Loan in respect of a Financed Asset have been fully and finally paid, the Borrower may give an Instruction to the Security Trustee requiring it to transfer legal title to the Financed Asset and any other related Trust Assets to the Borrower, free from any claim of the Bank.

### **3.2 Release of Mortgage**

The Bank agrees to execute and deliver any release of any Mortgage required to allow the Security Trustee to comply with such an Instruction.

## **4 Instructions when Amounts Owing**

So long as there are any Amounts Owing in respect of a Loan:

- (a) the Borrower may instruct the Security Trustee to pay or transfer to it or as it directs any Trust Assets other than the Financed Asset, free from any claim of the Bank;
- (b) the Borrower may not instruct the Security Trustee to Dispose of the Financed Asset;
- (c) if a Default Event has occurred and is subsisting, the Bank may give any Instructions to the Security Trustee with respect to the Financed Asset as are permitted by the Mortgage, including without limitation that the Financed Asset be Disposed of in accordance with the Mortgage.

## **5 Present Entitlement to Income**

The Borrower is presently entitled to the Income of all Trust Assets.

## **6 Security Trustee Undertaking and Promisor Undertakings**

- (a) If in accordance with a Letter of Offer, one or more of the following is to occur:
  - (i) the Security Trustee is to give a Security Trustee Undertaking;

(ii) a Promisor is to give a Promisor Undertaking; or

(iii) a person not a party to this deed (Additional Promisor) is to become a Promisor and is to give a Promisor Undertaking,

then on or before the giving of such Security Trustee Undertaking or Promisor Undertaking:

(iv) the Security Trustee or Promisor (as the case may be) will complete and execute the Acknowledgement; and

(v) any Additional Promisor will complete and execute the Accession Deed.

(b) The Bank will accept and execute the Accession Deed as soon as reasonably practicable if:

(i) the Bank has received all documents and evidence that the Bank may require in relation to the Additional Promisor, each in form and substance satisfactory to the Bank; and

(ii) the Additional Promisor has complied with any identification procedures that the Bank may require.

(c) If the Bank accepts and executes the Accession Deed, the Additional Promisor becomes a party to this deed as a "Promisor" with effect on and from the date specified in the Accession Deed and is bound by the terms of this deed.

## **7 Limitation on Recourse**

### **7.1 Limitation on Bank's Recourse**

The Bank's recourse against the Borrower or the Fund in respect of the Borrower's liability to pay any Amount Owing in respect of a Loan is limited to its rights relating to the Financed Asset relating to that Loan in accordance with this deed.

The Bank may not seek to recover any shortfall in the Amount Owing in respect of a Loan by bringing proceedings against the Borrower (including without limitation a proceeding to be subrogated to any right of the Borrower to be indemnified from, or have recourse to any asset of the Fund other than its beneficial interest in the Financed Asset that relates to that Loan) or to have the Borrower wound up or (if the Borrower is or comprises an individual) to have the Borrower declared Bankrupt.

However:

(a) the Bank may do any thing necessary to enforce its rights in connection with the Security Trustee Undertaking, any Mortgage or any Promisor Undertaking except to the extent that such enforcement would give recourse to an asset of the Fund which is not a Financed Asset; and

(b) the Bank may take proceedings to obtain:

(i) an injunction or other order to restrain any breach of the Transaction Documents by any party;

(ii) declaratory relief or similar judgement or order as to the obligations of any party; or

(iii) any judgement against the Borrower which it is required by the Code of Banking Practice to obtain before enforcing a judgment against the Security Trustee under a Security Trustee Undertaking or any Promisor under a Promisor Undertaking; and

- (c) nothing in this clause 7.1 prevents the Bank from taking proceedings against a Promisor in its personal capacity in respect of its Promisor Undertaking (even if that person has also entered into another Transaction Document in another capacity) or have recourse to any assets of that Promisor held in its personal capacity.

## **7.2 Limitation on Security Trustee's Lien and Indemnity**

Each of the Borrower and Security Trustee acknowledges and agrees that the rights which, but for this clause, by operation of law, the Security Trustee would have:

- (a) to be indemnified out of the Trust Assets against liability arising in respect of the Security Trustee Undertaking; and
- (b) of lien over the Trust Assets,

are limited to the Financed Asset and until all Amounts Owing in respect of the Loan in respect of that Financed Asset have been fully and finally repaid and any such rights may only be exercised with the prior written consent of the Bank and as the Bank may Instruct.

## **7.3 Limitation on Recourse of Security Trustee and Promisors**

Each of the Security Trustee and each Promisor acknowledges and agrees that:

- (a) it has no right of indemnity, recourse, contribution or subrogation against the Borrower arising in respect of any Security Trustee Undertaking, Promisor Undertaking, any Mortgage or any Further Security except to the extent of the Financed Asset;
- (b) it has no right to have the Borrower wound up (or if the Borrower is or comprises an individual) to have the Borrower declared Bankrupt; and
- (c) until all Amounts Owing in respect of the Loan have been fully and finally repaid any such rights described in this clause 7.3 may only be exercised with the prior written consent of the Bank and as the Bank may Instruct.

## **7.4 No Cross Collateralisation and no additional recourse**

The Bank acknowledges and agrees that:

- (a) a Mortgage in respect of a Financed Asset secures the obligations of the Security Trustee under its Security Trustee Undertaking in respect of the Loan relating to that Financed Asset, and not under its Security Trustee Undertaking in respect of any other Loan; and
- (b) the limitation of the Bank's recourse to the rights relating to the Financed Asset in accordance with this deed applies notwithstanding any provisions to the contrary in the Mortgage and the Mortgage shall be read down to the extent necessary to ensure consistency with SIS.

## **7.5 Transaction Documents Superseded**

All Transaction Documents are to be read subject to, and are limited by, this clause 7.

If there is any inconsistency between any of the provisions of this clause and the provision of any Transaction Document, the provisions of this clause 7 will prevail and govern to the extent of the inconsistency, including (without limitation), the provisions of this clause 7 will prevail over and supersede the terms of any other provision in a Transaction Document which incorporates any limitation on the recourse of any person against the Borrower or any of its assets.

## **7.6 Inconsistency**

Subject to clause 7.5, if there is any other conflict or inconsistency between provisions in any Transaction Document and this deed then, unless otherwise agreed in writing by the Bank and the Borrower and to the extent of the conflict or inconsistency, they rank in order of precedence as follows:

- (a) first, this deed;
- (b) second, the Letter of Offer;
- (c) third, any Security Trustee Undertaking or Promisor Undertaking not contained in this deed;
- (d) fourth, the Mortgage;
- (e) fifth, any Further Security; and
- (f) sixth, any other Transaction Document.

## **8 Representations and Warranties and Acknowledgements**

### **8.1 Borrower, Security Trustee and Promisors - general**

Each of the Borrower, the Security Trustee and the Promisors represents and warrants to the Bank that (except in relation to matters the Borrower has disclosed to the Bank and the Bank has accepted in writing):

- (a) it has read in its entirety and understood the Transaction Documents to which it is party, including, in the case of the Security Trustee and any Promisor, any Security Trustee Undertaking and any Promisor Undertaking and sought appropriate advice if it has any queries;
- (b) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- (c) its obligations under this deed are valid and binding and are enforceable against it in accordance with their terms;
- (d) to the best of its knowledge, having made due enquiries, this deed and the transactions under it do not contravene any corporate governance or other policy or guidelines (whether internal or external) applied by any person for whom it is a director, officer or employee;
- (e) there are no reasonable grounds to suspect that it is Insolvent;
- (f) to the best of its knowledge, having made due enquiries, there are no pending or threatened proceedings affecting it or any of its assets before a court, authority, commission or arbitrator except those in which a decision against it (either alone or together with other decisions) would be insignificant;
- (g) no Default Event or event with which the lapse of time, giving of notice or fulfilment of any condition might become a Default Event continues unremedied;
- (h) to the best of its knowledge, having made due enquiries, it is not in breach of a law or obligation (including, without limitation, any contractual obligation) affecting it or its assets in a way which is, or is likely to have, a material adverse effect on it, its business or its ability to comply with its obligations in respect of the Transaction Documents;

- (i) to the best of its knowledge, having made due enquiries, it has disclosed in writing to the Bank all facts relating to it, this deed and all things in connection with it which are material to the assessment of the nature and amount of the risk undertaken by the Bank in entering into the Transaction Documents and doing anything in connection with them; and
- (j) it does not have immunity from the jurisdiction of a court or from legal process.

## **8.2 Borrower, Security Trustee and Promisors - company representations and warranties**

Each of the Borrower, Security Trustee and (if a Promisor is a company) the Promisor represents and warrants to the Bank that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its operations as they are being conducted;
- (b) The Borrower:
  - (i) is not a trading company;
  - (ii) does not have any Security Interests registered against it; and
  - (iii) does not operate a business of any nature;
- (c) it has power to enter into each Transaction Document to which it is party and comply with its obligations under it;
- (d) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into the Transaction Documents participating in any transaction in connection with them;
- (e) the Transaction Documents and any transaction under them do not contravene its constituent documents (if any) or cause a limitation on its powers or the powers of its directors to be exceeded;
- (f) it benefits by entering into each Transaction Document to which it is party and each transaction under it.

## **8.3 Borrower and Promisors - trustee representations and warranties**

The Borrower, each Promisor which is trustee of a Relevant Trust and the Security Trustee (in respect of each Security Trust) represents and warrants to the Bank that:

- (a) it is the only trustee of the Relevant Trust;
- (b) no action has been taken or, to the best of its knowledge, having made due enquiries, proposed to remove it as trustee of the Relevant Trust;
- (c) true and complete copies of the Relevant Trust Deed and other documents relating to the Relevant Trust have been provided to the Bank and disclose all the terms of the Relevant Trust;
- (d) it has power under the Relevant Trust Deed to enter into and comply with its obligations under this deed;
- (e) to the best of its knowledge, having made due enquiries, it has in full force and effect the authorisations necessary to enter into each Transaction Document to which it is party, perform its obligations under it and allow it to be enforced (including under the Relevant Trust Deed and its constitution (if any));

- (f) subject to clause 7, it has a right to be fully indemnified out of the Relevant Trust in respect of obligations incurred by it under each Transaction Document to which it is party;
- (g) the relevant assets of the Relevant Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which it has a right to be indemnified out of those assets;
- (h) it is not, and has never been, in default under the Relevant Trust Deed;
- (i) no action has been taken or to the best of its knowledge, having made due enquiries, proposed to terminate the Relevant Trust Deed;
- (j) it and its directors and other officers have complied with their obligations in connection with the Relevant Trust;
- (k) the Bank's claims against it under the Transaction Documents rank in priority to the interests of the beneficiaries of the Relevant Trust;
- (l) it has carefully considered the purpose of this deed and considers that entry into it and each transaction under it is for the benefit of the beneficiaries and the terms of this deed and each transaction under it are fair and reasonable;
- (m) there is no restriction or limitation on or derogation from its right of subrogation or indemnity, other than on the grounds of fraud or gross negligence (whether or not arising under the Transaction Documents to which it is a party);
- (n) its lien over the assets of the Relevant Trust at all times for liabilities incurred has priority over the rights of the beneficiaries of the Relevant Trust;
- (o) that, except with the Bank's prior written consent, none of the following will occur:
  - (i) re-settlement or distribution of capital of the Relevant Trust;
  - (ii) retirement or replacement of the trustee, or the appointment of a new trustee;
  - (iii) amendment, or revocation of any terms, of the Relevant Trust Deed;
  - (iv) a security interest arises over any asset of the Relevant Trust;
- (p) in the case of the Security Trustee only:
  - (i) the Borrower is the only beneficiary of the Security Trust; and
  - (ii) it holds, or will hold, legal ownership of the Financed Asset as bare trustee for the Borrower.

#### **8.4 Borrower - compliance with laws and regulations**

The Borrower represents and warrants to the Bank that:

- (a) the Borrower's decision to:
  - (i) enter into a Purchase Contract and acquire any Asset;
  - (ii) borrow on the terms and conditions contained in a Letter of Offer for the purpose of the acquisition, or to refinance a loan used for the acquisition, of a Financed Asset in accordance with section 67A(1) of SIS;
  - (iii) direct the Security Trustee in accordance with this deed;

- (iv) to exercise its right under this deed to acquire legal title to any Financed Asset; and
- (v) otherwise to enter into and perform its obligations in respect of the Transaction Documents,

is in accordance with all applicable laws and regulations, and does not contravene any laws, regulations or obligations (including, without limitation, any contractual obligation), including without limitation:

- (A) the borrowing restrictions under section 67 of SIS;
  - (B) the sole purpose test under section 62 of SIS;
  - (C) the restrictions on acquisition of assets from related parties under section 66 of SIS;
  - (D) the in-house asset rules under Part 8 of SIS;
  - (E) the prohibition on charging or otherwise encumbering an asset of a superannuation fund under regulation 13.14 of the regulations made under SIS;
  - (F) the requirement, under section 109 of SIS, that investments of superannuation entities be made and maintained on arm's length basis;
  - (G) the investment strategy requirements under sections 52(2)(f) of SIS and other applicable law;
  - (H) the restrictions on lending to or providing financial assistance to members of a superannuation fund under section 65 of SIS; and
- (b) the Fund was constituted and at all times has been and will be conducted and administered in accordance with all applicable laws, including SIS.

## 8.5 Security Trustee and Promisor

The Security Trustee and each of the Promisors acknowledges and agrees that:

- (a) the Borrower has borrowed on the terms and conditions contained in the Letter of Offer in accordance with section 67A(1) of SIS;
- (b) in accordance with section 67A(1) of SIS, the rights of the Bank against the Borrower on default are limited to rights relating to the Financed Asset;
- (c) the Mortgage, the Security Trustee Undertaking, each Promisor Undertaking and any Further Security as they relate to a Loan secure all Amounts Owed by the Borrower to the Bank in respect of the Loan;
- (d) its liability under the Mortgage, the Security Trustee Undertaking, each Promisor Undertaking and any Further Security as they relate to a Loan is not affected by the limitation on the Bank's rights against the Borrower;
- (e) the Bank can exercise its powers under the Mortgage, the Security Trustee Undertaking, each Promisor Undertaking and any Further Security as provided in their terms, including without limitation following any Default Event;

- (f) notwithstanding anything to the contrary in any Transaction Document or in any industry code or practice, the Bank is not obliged to exercise any right against the Borrower or any other party prior to exercising any right under the Mortgage, Security Trustee Undertaking, a Promisor Undertaking or any Further Security or against the Security Trustee or a Promisor following any Default Event; and
- (g) it has made its own appraisal of the Borrower and the Financed Assets, accepts the limitations on its recourse to the Borrower as provided by this deed and SIS and accepts the risks to which it is exposed as a result.

## **8.6 No Advice**

The Borrower, the Security Trustee and each Promisor acknowledge and agree that:

- (a) the Bank has not made any representation or given any advice as to:
  - (i) whether or not a Loan and the entry into and performance of a Purchase Contract and the Transaction Documents is in accordance with all applicable laws and regulations including those described in clause 8.4 and section 67A(1) of SIS;
  - (ii) the taxation (including without limitation stamp duty) consequences of the purchase of the Asset, the Loan or the entry into and performance of a Purchase Contract and the Transaction Documents; or
  - (iii) whether or not investment in a Financed Asset will achieve any particular investment, accounting, tax or legal outcome;
- (b) they have each been given the opportunity to, and the Bank has recommended that they each, obtain their own independent specialist financial, legal and tax advice (from advisers holding appropriate licences and authorisations to provide that advice) and have either done so or independently decided not to obtain that advice;
- (c) they understand the terms and conditions and risks of this deed and the Transaction Documents; and
- (d) the Bank is not acting as a fiduciary for any of them.

## **8.7 Other Representation**

The representations, warranties and acknowledgements in this deed are in addition to and do not limit the terms of any other Transaction Documents or any other agreement to which the Bank is party.

## **8.8 Repetition of Representations and Warranties**

The representations and warranties in this clause 8 are taken to be also made (by reference to the then current circumstances) on each day during the term of this deed.

Each party agrees to notify the Bank immediately if any representation or warranty made or taken to be made by it in connection with this deed is found to be incorrect or misleading when made or taken to be made.

## **8.9 Reliance**

Each party acknowledges that the Bank has entered into this deed in reliance on the representations, warranties and acknowledgments in this clause 8.



## **9 General**

### **9.1 Governing law and jurisdiction**

- (a) This deed is governed by the laws in force in the place stated in part 5 of Schedule 1.
- (b) Each party irrevocably submits to the non exclusive jurisdiction of the courts of the place stated in part 5 of Schedule 1.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including, but not limited to, the service of notice, attachment prior to judgment, attachment in aid of execution or execution.

### **9.2 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### **9.3 Waivers**

- (a) Waiver of any right arising from a breach of this deed arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this deed does not result in a waiver of that right.
- (c) A party is not entitled to rely on a delay in the exercise or non exercise of a right arising from a breach of this deed or on a default under this deed as constituting a waiver of that right.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right by that other party.
- (e) This clause may not itself be waived except by writing.

### **9.4 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

### **9.5 Assignment**

The Bank may assign its rights under this deed without the consent of, or notice to, any of the other parties.

### **9.6 Confidentiality**

The Bank will only disclose information that the Bank has about each of the Borrower, the Security Trustee and the Promisor and the Transaction Documents:

- (a) to the extent specifically required by law (except this clause does not require us to disclose any information of the kind referred to in section 275(1) of the PPSA);

- (b) as provided in clause 9.5;
- (c) for the purposes of this deed (including disclosing information in connection with any query or claim);
- (d) to the extent the bank decides, where disclosure to third parties without each of the Borrower, the Security Trustee and the Promisor consent is permitted by laws relating to privacy; or
- (e) with the consent of each of the Borrower, the Security Trustee and the Promisor.

Each of the Borrower, the Security Trustee and the Promisor consents to us giving, from time to time to:

- (i) any of our Related Bodies Corporate; or
- (ii) an Authorised Representative,

any information in our possession about each of the Borrower, the Security Trustee and the Promisor, the Loan and this agreement which they may request from time to time.

#### **9.7 Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to this deed.

#### **9.8 Entire agreement**

This deed supersedes all previous agreement in respect of its subject matter and embodies the entire agreement between the parties.

#### **9.9 Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

#### **9.10 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

#### **9.11 Saving Provision**

If a provision of this deed or any other Transaction Document would otherwise be invalid in whole or in part because of the operation of SIS, then that provision is to be read down to the extent necessary to ensure consistency with SIS.

#### **9.12 Certificates**

The Bank may give a party to this deed a certificate or formal statement, signed by an Officer, setting out any amount due to it under any provision of a Transaction Document and to the fullest extent permitted by law such document is conclusive evidence of the accuracy of its content.

## **10 Personal Property Securities Act**

### **10.1 PPSA further steps**

If the Bank determines that a Transaction Document (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Security Trustee and each Promisor and the Borrower agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Bank asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
- (b) enabling the Bank to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Bank; or
- (c) enabling the Bank to exercise rights in connection with the security interest.

### **10.2 Exclusion of PPSA provisions**

If a Transaction Document (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, each party agrees that to the extent the law permits them to be excluded:

- (a) sections 142 and 143 of the PPSA are excluded and the Bank need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the grantor by the Bank after the date of this deed; and
- (b) the Bank need not give any notice required under any provision of the PPSA (except section 135).

This clause applies despite any other clause in a Transaction Document.

### **10.3 Costs of further steps**

Everything a Borrower, the Security Trustee or a Promisor is required to do under this clause is at its expense.

## **11 Code of Banking Practice**

### **11.1 General**

In this clause 11, "you" and related terms means each party and applies separately in respect of each and every one of them to the extent applicable, and "your" has a corresponding meaning.

### **11.2 Code of Banking Practice**

The Bank has adopted the Code of Banking Practice and relevant provisions of the Code of Banking Practice apply to this deed if you are a Borrower, Security Trustee or a Promisor and an "individual" or "small business" customer (as defined by the Code of Banking Practice).

You can obtain from us upon request:

- (a) information on current interest rates and fees and charges;
- (b) general descriptive information concerning our banking services, including:
  - (i) account opening procedures;
  - (ii) our obligations regarding the confidentiality of your information;

- (iii) complaint handling procedures;
  - (iv) bank cheques;
  - (v) the advisability of you informing us promptly when you are in financial difficulty; and
  - (vi) the advisability of you reading the terms and conditions applying to each banking service we provide to you;
- (c) general descriptive information about:
- (i) identification requirements of the Financial Transactions Reports Act 1988 (Cth);  
and
  - (ii) the options available to you under the tax file legislation; and
- (d) a copy of the Code of Banking Practice.

If a provision of this deed contravenes a requirement of the Code of Banking Practice or imposes an obligation or liability which is prohibited by the Code of Banking Practice, this deed is to be read as if that provision were varied to the extent necessary to comply with the Code of Banking Practice or, if necessary, omitted.

# **Schedule 1: Parties and Governing Law**

## **PART 1 - BORROWER**

Borrower: Q & B Jones Pty Ltd ACN 624 562 769 of 50 Hunter Street, Newcastle NSW 2300

## **PART 2 - SECURITY TRUSTEE**

Security Trustee: Q & B Jones Holding Pty Ltd ACN 626 092 304 of 50 Hunter Street, Newcastle NSW 2300

## **PART 3 - PROMISOR**

Promisor: Q & B Jones Pty Ltd ACN 624 562 769 of 50 Hunter Street, Newcastle NSW 2300 in its personal capacity

Q & B Jones Holding Pty Ltd ACN 626 092 304 of 50 Hunter Street, Newcastle NSW 2300 in its personal capacity

Byron Peter Jones of 2A Thomas Street, Dudley NSW 2290

Quinton Brian Jones of 25 Mathew Avenue, Jewells NSW 2280

## **PART 4 - FUND**

Fund: Q & B Jones Superannuation Fund

Trust Deed dated: 21 February 2018

## **PART 5 - GOVERNING LAW**

Governing Law: New South Wales

## Schedule 2: Acknowledgement

### ACKNOWLEDGEMENT RELATING TO THE SUPERANNUATION ACQUISITION FINANCING DEED

THIS ACKNOWLEDGEMENT is dated the      day of      20      and is made by  
.....(the **Acknowledging Party**) in favour of NATIONAL AUSTRALIA BANK  
LIMITED ABN 12 004 044 937 of Level 1, 800 Bourke Street, Docklands, Victoria, 3008 (the **Bank**), in  
connection with the SAF Deed and the *[NAB: insert title guarantee/indemnity/guarantee and  
indemnity]* dated on or about the date of this Acknowledgment.

#### 1 Definitions and interpretation

SAF Deed means the document annexed to this Acknowledgement.

Terms used in the SAF Deed have the same meaning in this Acknowledgement unless given a different meaning in this Acknowledgement.

#### 2 Acknowledgement

By signing this Acknowledgement, I acknowledge and agree that:

- (a) The *[guarantee/indemnity/guarantee and indemnity]* is a *[Security Trustee Undertaking/Promisor Undertaking]* for the purposes of the SAF Deed; and
- (b) I am bound by the terms and conditions set out in the SAF Deed, including without limitation the limitation on recourse in clause 7, and that they apply in respect of the *[Security Trustee Undertaking / Promisor Undertaking]*.

EXECUTED AS A DEED POLL *[Insert execution block for the Security Trustee / Promisor]*

# Schedule 3: Accession Deed

## ACCESSION DEED TO THE SUPERANNUATION ACQUISITION FINANCING DEED

THIS DEED is dated the    day of    20 and made between:

### PARTIES:

(1) NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 of Level 1, 800 Bourke Street, Docklands, Victoria, 3008 (the Bank)

(1) .....(Additional Promisor)

### 1 Definitions and interpretation

**SAF Deed** means the document annexed to this deed;

Terms used in the SAF Deed have the same meaning in this deed unless given a different meaning in this deed.

### 2 Accession

This is an Accession Deed for the purposes of the SAF Deed.

The Additional Promisor agrees to become a Promisor and to be bound by the terms of the SAF Deed as a Promisor pursuant to clause 6 ("Security Trustee Undertaking and Promisor Undertakings") of the SAF Deed.

### 3 Acknowledgement

By signing this Accession Deed, I acknowledge and agree that:

- (a) the *[guarantee/indemnity/guarantee and indemnity]* is a *[Security Trustee Undertaking/Promisor Undertaking]* for the purposes of the SAF Deed; and
- (b) I am bound by the terms and conditions set out in the SAF Deed, including without limitation the limitation on recourse in clause 7, and that they apply in respect of the *[Security Trustee Undertaking / Promisor Undertaking]*.

### 4 General

This deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.

This deed is governed by the laws in force in *[insert jurisdiction]*.

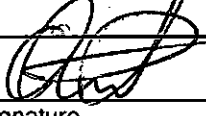
**EXECUTED AS A DEED** *[Insert execution blocks for the Additional Promisor and NAB]*

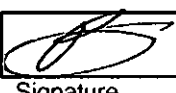
EXECUTED AS A DEED

Dated this 18<sup>th</sup> day of JUNE 2018

SIGNATURES

Executed as a Deed by Q & B Jones Pty Ltd ACN 624 562 769 as trustee for Q & B Jones Superannuation Fund and in its personal capacity as Promisor in accordance with section 127 of the Corporations Act 2001 (Cth).

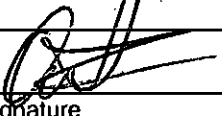

Signature
Quinton Jones
Full Name (BLOCK LETTERS)
<input checked="" type="checkbox"/> Director <input type="checkbox"/> Secretary
Office Held

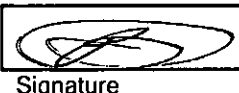

Signature
BYRON JONES
Full Name (BLOCK LETTERS)
<input type="checkbox"/> Director
Office Held

☐ \* Please tick here if you are signing as Sole Director and Sole Company Secretary

and:

Executed by Q & B Jones Holding Pty Ltd ACN 626 092 304 as Security Trustee and in its personal capacity as Promisor in accordance with section 127 of the Corporations Act 2001 (Cth).


Signature
Quinton Jones
Full Name (BLOCK LETTERS)
<input checked="" type="checkbox"/> Director <input type="checkbox"/> Secretary
Office Held


Signature
BYRON JONES.
Full Name (BLOCK LETTERS)
<input type="checkbox"/> Director
Office Held

☐ \* Please tick here if you are signing as Sole Director and Sole Company Secretary



and:

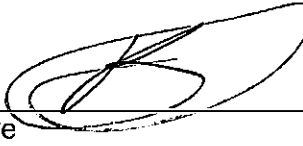
Signed Sealed and Delivered by **Byron Peter Jones** as Promisor in the presence of:



Signature of witness

*Angela Gallard.*

Name of witness (print)

  
Signature

and:

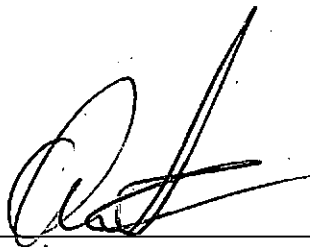
Signed Sealed and Delivered by **Quinton Brian Jones** as Promisor in the presence of:



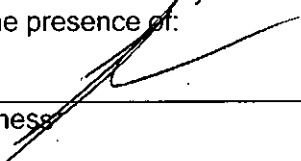
Signature of witness

*Angela Gallard.*

Name of witness (print)

  
Signature

Signed Sealed and Delivered for and on behalf of **National Australia Bank Limited** by its Attorney who holds the position of Level 3 Attorney under Power of Attorney dated 1 March 2007 in the presence of:

  
Signature of Witness

*JARROD GLOVER*

Name of Witness (print)

  
Signature of Attorney

*Angela Gallard.*

Name of Attorney (print)