

SMSF BORROWING DOCUMENTATION

--- WARNING ---

PLEASE NOTE THAT THESE DOCUMENTS ARE EXTREMELY IMPORTANT DOCUMENTS AND MUST BE KEPT FOR AS LONG AS YOU OWN THE PROPERTY - FAILURE TO PRODUCE THEM IN THE FUTURE CAN HAVE SIGNIFICANT FINANCIAL CONSEQUENCES

PLEASE ALSO NOTE THAT THESE DOCUMENTS HAVE BEEN PRODUCED FOR ONE SPECIFIC LENDER. IF YOU CHANGE LENDERS DO NOT USE THESE DOCUMENTS

Thank you for your instructions regarding your borrowing documentation to purchase a property at Lot 1/1 Mary Avenue Normanville SA 5204 "The Property" within your Self Managed Superannuation Fund (SMSF).

We have arranged for your documents to be prepared by Access Law Group and enclose them for your execution. You can find out more about Access Law Group at www.accesslawgroup.com.au

Please note the following:

1. These documents have been prepared to only be used to purchase a property in South Australia.
2. If you are required by your respective state laws (NSW, ACT, Qld, Tas, NT and WA) to have the deed stamped then you will need to provide evidence that the SMSF has actually paid for the property and not the Security Trustee. This is usually proven by providing the bank statements of the SMSF showing the payment of the deposit and other expenses and also a copy of the loan agreement showing the SMSF trustee as borrower. You may also be required to provide a copy of the Statutory Declaration and your SMSF trust deed.

We enclose the following documents:

1. Security Trust (or Nominee) Deed.

The Security Trust Deed (known as the Nominee Deed for Qld properties) is an agreement made as between the Trustee of the SMSF and the Security Trustee (Security Nominee in Qld). The aim of this agreement is to:

- a. prove that the Security Trustee (or Security Nominee) is holding the property under a Bare Trust arrangement. and,
- b. be used for the purposes of proving (for the purposes of the relevant state stamp duty provisions) that the 'real purchaser' of the Property is the trustee of the SMSF, and the Security Trustee is the 'apparent purchaser' of the Property.

Executing the Security Trust Deed will cause the stamp duty concession contained in the relevant state *Duties Acts* to apply, such that minimal stamp duty should arise when the registered proprietor of the Property is changed from the Security Trustee to the trustee of the SMSF. Specifically, the Security Trust Deed should be submitted to the relevant State Revenue Office when the loan is repaid, and the registered proprietor of the Property is changed from the Security Trustee to the trustee of the SMSF.

2. Statutory Declaration (Most States).

The Statutory Declaration is used to provide more evidence of the Bare Trust relationship between the SMSF Trustee and ('the Security Trustee'). It is used as evidence that the 'real purchaser' of the property is the SMSF, such that when the loan is repaid, and the registered proprietor of the Property changes from ('the Security Trustee') to the trustee of the SMSF, then no stamp duty is payable under the apparent purchaser provisions of the relevant state *Duties Acts* (see **above**).

3. Minute of Meeting

We have provided a pro forma minute for the trustees of the SMSF to use to document the decision to purchase the property and borrow the money.

The minute needs to be retained for 10 years.

You will note that we have prepared a paragraph where the trustees have decided not to issue a PDS. If your SMSF is not claiming the exemption from issuing a PDS under Section 1012D(2A) of SIS Act, then it would be prudent to prepare a new PDS and issue that to the members.

Other Matters

The fund will need to prepare a new investment strategy as required by section 52(2)(f) of SIS. For assistance in preparing an investment strategy go to www.theSMSFexpert.com.au where you can download a complete strategy for \$49.95.

All financial dealings for the Property are run directly through the SMSF as if the SMSF had legal ownership of the Property. For example, rent should be paid directly into the bank account of the SMSF. Loan repayments and property expenses should be paid out of the bank account of the SMSF.

Any lease agreements with tenants should be executed by the trustee of the SMSF. Alternatively, the lease agreements could be entered into by ('the Security Trustee') as agent (and bare trustee) for the trustee of the SMSF. It will be unlikely, however, that a lease will be able to be registered where the Lessor is the SMSF Trustee so if you are wanting to register the lease you will need to enter ('the Security Trustee') as the Lessor.

SECURITY TRUST DEED

relating to the property known as

Lot 1/1 Mary Avenue Normanville SA 5204
(‘the Underlying Property’)

made as between

Amily Holdings Pty Ltd ACN 163 929 619
as trustees of the
A & E Superannuation Fund
(‘the RSF Trustee’)

and

Strathcorp Pty Ltd ACN 164 204 031
(‘the Security Trustee’)



Sydney Wollongong

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SECURITY TRUST DEED

Date

This Deed is made

BETWEEN Amily Holdings Pty Ltd ACN 163 929 619 of
31 Hauteville Terrace
Eastwood SA 5063

('the RSF Trustee')

AND Strathcorp Pty Ltd ACN 164 204 031 of
31 Hauteville Terrace
Eastwood SA 5063

('the Security Trustee')

Background

- A. The RSF Trustee is the trustee of A & E Superannuation Fund which is a complying self-managed superannuation fund as defined in section 17A of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**'the SIS Act'**).
- B. The RSF Trustee wishes to purchase a property, known as Lot 1/1 Mary Avenue Normanville SA 5204 (**'the Underlying Property'**).
- C. The RSF Trustee is to provide the whole of the purchase price and any other costs referable to the acquisition (including the stamp duty) of the Underlying Property.
- D. The Security Trustee will obtain the legal title in, and become the registered proprietor of, the Underlying Property and will hold the Underlying Property under the terms of this Deed.
- E. The Underlying Property is to be held under a bare trust relationship by the Security Trustee.
- F. The RSF Trustee will hold a beneficial interest in the Underlying Property at all times.

The parties agree

1. Definitions

In this Deed unless the contrary intention appears:

- 1.1 **'Beneficial Interest'** means the beneficial interest of the RSF Trustee in the Underlying Property as contemplated by section 67A of the SIS Act.
- 1.2 **'Deed'** means this deed.
- 1.3 **'GST'** means goods and services tax which is levied or may be levied as a consequence of an application of *A New Tax System (Goods and Services Tax Act) 1999* (Cth).
- 1.4 **'Party'** means a party to this Deed.
- 1.5 **'Underlying Property'** has the meaning given to it in **clause B** of the Background.

2. Interpretation

In this Deed unless the contrary intention appears:

- 2.1 the **singular** includes the plural and vice versa;
- 2.2 a **gender** includes all other genders;
- 2.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 2.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 2.5 a reference to a **clause** or **annexure** is to a clause of or annexure to this Agreement;

- 2.6 a reference to a **request** or **notice** means a request or notice in writing;
- 2.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 2.8 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;
- 2.9 a reference to any **legislation** or legislative provision includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- 2.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 2.11 mentioning anything after **include, includes** or **including** does not limit what else might be included;
- 2.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 2.13 the **headings** are for convenience only and do not affect the interpretation of this Deed;
- 2.14 a reference to a **month** means a calendar month;
- 2.15 a reference to **dollars** means Australian dollars;
- 2.16 a reference to **time** means Sydney time;
- 2.17 the **Background** is correct and forms part of this Deed.

3. **Background**

The Parties hereby declare that the matters described in the Background are true and correct in every material particular and form part of this Deed.

4. **Bare Trust**

- 4.1 The Parties declare and acknowledge that:
- 4.1.1 The RSF Trustee is to provide the whole of the purchase price and any other costs referable to the acquisition (including the stamp duty) of the Underlying Property.
- 4.1.2 The Security Trustee will obtain the legal title and become the registered proprietor of the Underlying Property.
- 4.1.3 The Underlying Property is to be held under a bare trust relationship by the Security Trustee for the benefit of the RSF Trustee.
- 4.1.4 The RSF Trustee will at all time have the Beneficial Interest in the Underlying Property.

- 4.1.5 The RSF Trustee may request that the Security Trustee transfer legal title to the RSF Trustee (or an entity nominated by the RSF Trustee) after the RSF Trustee makes one or more payments relating to the Underlying Property, provided that the transfer of legal title does not breach any provision of the SIS Act or the *Superannuation Industry (Supervision) Regulations 1993* (Cth).

5. Beneficial Interest in the Underlying Property to subsist in the RSF Trustee

- 5.1 The RSF Trustee is absolutely entitled to the Beneficial Interest in the Underlying Property held by the Security Trustee on behalf of the RSF Trustee.
- 5.2 The Underlying Property is held by the Security Trustee for the benefit of the RSF Trustee subject to a bare trust relationship.
- 5.3 To the maximum extent permitted by the law, the Security Trustee has no right to indemnification with respect to the Underlying Property.
- 5.4 For the avoidance of doubt, and to the maximum extent permitted by the law, subsection 35(2) of the *Trustee Act 1936* (SA) has no application to the bare trust relationship as between the Security Trustee and the RSF Trustee with respect to the Underlying Property.

6. Rent and other distributions from the Underlying Property

- 6.1 Any rent or other distributions referable to, and paid with respect to the Underlying Property will be derived by the RSF Trustee.
- 6.2 The RSF Trustee may direct the Security Trustee to pay any amount due to the RSF Trustee under clause 6.1 to a third party, on behalf of the RSF Trustee.

7. The RSF Trustee is the purchaser of the Underlying Property

Both the Security Trustee and the RSF Trustee declare and acknowledge that the Security Trustee holds the Underlying Property in the capacity of bare trustee for the RSF Trustee and that the real purchaser of the Underlying Property is the RSF Trustee

8. Government taxes, charges and stamp duty

- 8.1 The Security Trustee will not be responsible for the payment of any stamp duty, GST or any other tax or impost imposed by any authority as the result of the transfer of the Underlying Property.
- 8.2 The Security Trustee shall be reimbursed by the RSF Trustee requesting or causing a transfer of the Underlying Property of any stamp duty, GST or other tax paid by the Security Trustee as a consequence of the transfer of the Underlying Property.

9. Change of Security Trustee and amendment of Deed

- 9.1 The power of removing and appointing the Security Trustee and amending this deed is vested in the RSF Trustee.
- 9.2 The Security Trustee may resign as bare trustee on giving not less than two (2) weeks notice addressed to the RSF Trustee

10. **Mortgage**

The Security Trustee must, at the direction of the RSF Trustee, grant a mortgage and execute such documentation as may be required to secure moneys borrowed by the RSF Trustee under arrangements pursuant to, and in accordance with, section 67A of the SIS Act.

11. **Governing Law**

This Deed shall be governed by and construed in accordance with the laws of South Australia.

Executed as a Deed

EXECUTED AS THE RSF TRUSTEE

Signed for and on behalf of)
Amily Holdings Pty Ltd)
ACN 163 929 619)
in accordance with section 127 of the)
Corporations Act 2001)
)
)
)
)
)
)
_____)
Alexander Lewis Stabolidis - director/sole)
director)

_____) Emily Kate Stabolidis - director

EXECUTED AS THE SECURITY TRUSTEE

Signed for and on behalf of)
Strathcorp Pty Ltd)
ACN 164 204 031)
in accordance with section 127 of the)
Corporations Act 2001)
)
)
)
)
)
_____)
Alexander Lewis Stabolidis - director/sole)
director)

_____) Emily Kate Stabolidis - director

MINUTES

MINUTES OF A MEETING OF THE DIRECTORS OF AMILY HOLDINGS PTY LTD AS TRUSTEE OF A & E SUPERANNUATION FUND HELD AT 16 MITCHELL HEIGHTS NORMANVILLE SA 5204

ON AT AM/PM
Date of Meeting Time of Meeting

- PRESENT:** in the chair - Alexander Lewis Stabolidis
Emily Kate Stabolidis
- INVESTMENT STRATEGY:** The Chairman tabled a revised investment strategy for the fund. The revised strategy provides for the trustees to invest in direct assets using a limited recourse borrowing arrangement under Section 67A of SIS.

IT WAS RESOLVED to adopt the revised Investment Strategy for the fund
- PURCHASE OF PROPERTY:** IT WAS RESOLVED that the fund purchase a property at Lot 1/1 Mary Avenue Normanville SA 5204 and that the property be held on trust for the fund by Strathcorp Pty Ltd ACN 164 204 031 under an arrangement that satisfies Section 67A of SIS.

IT WAS FURTHER RESOLVED that the trustees execute the necessary documentation to purchase the property.
- BORROWINGS:** IT WAS RESOLVED that the trustees enter into a borrowing arrangement with Investec Bank (Australia) Limited that satisfies Section 67A of SIS. Should this lender not proceed for some reason then the trustees may seek other lenders at their discretion.
- LEGAL DOCUMENTATION** The Chairman tabled a number of legal documents that are required to be signed to establish the bare trust and instalment arrangement to satisfy Section 67A.

IT WAS RESOLVED that the trustees sign the documents as tabled.
- PRODUCT DISCLOSURE STATEMENT:** All of the members of the fund are also trustees of the fund and all of them have access to all of the documentation of the fund. Accordingly, the fund is exempt from the requirement to issue a PDS under section 1012D(2A) of the Corporations Act.

IT WAS RESOLVED that the fund not issue Product Disclosure Statements as a result of this transaction.
- CLOSURE:** There being no further business the meeting was declared closed.

Signed as a true and correct record of the proceedings of the meeting

.....
Chairman

Date: