

**FLINNS SUPERANNUATION PROPERTY HOLDINGS PTY LTD**

ACN 162 223 823

Acting Trustee for

**FLINNS SUPERANNUATION PROPERTY TRUST- LOT 24  
SECTION 2 PLAN DP 2002**

NEW SOUTH WALES DUTY  
07-04-2014 0007533264-001  
SECTION 55(1)(A)  
DUTY \$ \*\*\*\*\*50.00

**THIS DEED** is dated 14-12-2013

**PARTIES:**

Flinns Superannuation Property Holdings Pty Ltd ACN 162 223 823 of 102 Warialda Street  
KOGARAH NSW 2217  
(Trustee)

Flinns Superfund Pty Ltd ACN 162 221 703 of 102 Warialda Street KOGARAH NSW 2217.  
in its capacity as Trustee of the Flinns Superannuation Fund.  
(Beneficiary)

**BACKGROUND**

- A. By Deed dated 05-02-2013 ("Governing Rules") the Flinns Superannuation Fund was established.
- B. Clause 14.4 (c) of the Governing Rules provides as follows:  
**"SIS Act Section 67(A) borrowing"**  
(b) The Beneficiary may do anything that is permitted under Section 67(A) of the SIS Act and subject to that section and the SIS Act may:
- i. borrow money;
  - ii. maintain an existing borrowing money;
  - iii. assign, pledge, mortgage or charge assets of the Fund as security for a borrowing or financial accommodation;
  - iv. enter into and execute all documents including documents in connection with acquiring a beneficial interest of an original asset or replacement asset as defined in trust section; and
  - v. do all such things as may be ancillary or necessary thereto including, without limitation, the variation and transposing of any asset acquired under that section."
- C. The *Beneficiary* intends to acquire the beneficial interest in the property at Lot 24 Section 2 Plan DP 2002, 76 Brooklyn Road, Brooklyn NSW 2083, (the "Asset") with the legal title to that Asset being held by the *Trustee* as Trustee for *Beneficiary*.
- D. The Asset is an investment of the *Beneficiary* that is not a prohibited acquisition in that it is not being acquired from a related party of the *Superannuation Fund* within the meaning of the section 66(1) Superannuation Industry (Supervision) Act 1993 ("Act")(or otherwise prohibited by any other section of that Act or its regulations or an other law from being acquired by the *Beneficiary* in the manner described in this Deed).

- E. The *Beneficiary* will provide to the *Trustee* or to the Vendor of the *Asset* as the *Trustee* directs in writing the consideration for acquisition of the *Asset* and the *Trustee* has agreed to enter into a contract to purchase and to hold the *Asset* as bare trustee only of *Beneficiary*.
- F. The purchase price of the *Asset* is \$450,000 plus stamp duty and costs and this will be paid from the *Beneficiary's* funds and borrowing by the *Beneficiary*.
- G. The *Beneficiary* has or will have on acquisition of the *Asset* by the *Trustee* the right to acquire legal ownership of the *Asset* by making one or more payments after acquiring the beneficial interest.
- H. The investment is one that is consistent with and forms part of the *Beneficiary's* investment strategy formulated and given effect to by the *Beneficiary*.
- I. The *Beneficiary* has authorised the *Trustee* in writing to acquire the *Asset* on the date of this Deed.

## **OPERATIVE PROVISIONS**

### **1. TRUST**

- 1.1.1 The *Trustee* acknowledges that the *Beneficiary* has or will provide the deposit and all monies necessary to enter into complete the purchase of the *Asset* and the *Trustee* acknowledges that the *Trustee* acquires the *Asset* and holds the *Asset* upon trust for the *Beneficiary* absolutely, the *Beneficiary* having provided those funds.
- 1.2 This Trust shall be known as the Flinns Superannuation Property Trust- Lot 24 Section 2 Plan DP 2002.
- 1.3 The *Trustee* must deal with the *Asset* as the *Beneficiary* in writing directs and the *Trustee* must not deal with the *Asset* in any manner that is inconsistent with these directions.
- 1.4 Nothing in this Deed entitles the *Trustee* to a beneficial interest in the *Asset*.
- 1.5 The *Beneficiary* is or shall become on and from the acquisition of the legal title by the *Trustee* presently entitled to the income of the *Asset*.

### **2. LIABILITY OF TRUSTEE**

#### ***Indemnity***

- 2.1 Subject to s67(A) of the Superannuation Industry (Supervision) Act 1993, the *Beneficiary* indemnify the *Trustee* against any loss suffered as a result of any actions or claims arising out of the *Trustee* acting as *Trustee* under this Deed except for liabilities arising from the gross negligence or dishonesty of the *Trustee* or its officers or a wilful act or omission that is known to the *Trustee* to be a breach of trust.

#### ***Liability***

- 2.2. The *Trustee* is not liable for any act or omission under this Deed unless they arise from the *Trustee's* or its officers gross negligence or dishonesty or arising from a wilful act or omission that is known to the *Trustee* or its officers to be a breach of trust.

***Subject to limited recourse***

2.2 Despite any other provision of this Deed, the Beneficiary is not liable nor liable to indemnify the *Trustee* in relation to any liability that would amount to a breach or a failure to comply by the *Beneficiary* with Section 67(A) Superannuation Industry (Supervision) Act 1993.

**3. TRUSTEE TO OBEY DIRECTIONS OF BENEFICIARY**

The *Trustee* agrees to deal with the *Asset* and execute such notices, proxies other instruments in respect of it as the *Beneficiary* may from time to time direct.

**4. RIGHT TO ACQUIRE LEGAL OWNERSHIP**

The *Beneficiary* has the right to acquire legal ownership of the *Asset* by making one or more payments after acquiring a beneficial interest in the *Asset* and subject to this and section 67(A) of the Act, the *Trustee* must, if directed by the *Beneficiary* transfer the *Asset* to the *Beneficiary* or any other party as directed in writing by the *Beneficiary*.

**5. APOINTMENT OF NEW TRUSTEES**

Provided it is not inconsistent with section 67(A) of the Act, the *Beneficiary* may at any time by written notice delivered to the *Trustee* remove the *Trustee* as *trustee* and appoint a new trustee instead of the *Trustee* or in addition to the *Trustee*.

**6. SECTION 67(A) SUPERANNUATION INDUSTRY (SUPERVISION) ACT, 1993**

The provisions of this Deed are subjects to Section 67(A) Superannuation Industry (Supervision) Act, 1993 and each party shall co-operate and to the extent necessary on each party's part, do all such things or refrain from doing such things as may be necessary to ensure or permit compliance by the *Beneficiary* with that Section.

**7. HEADINGS**

Headings to clauses are included for the sake of convenience only and will not affect the meaning of the clauses to which they relate.

**8. NOTICES**

A notice or other communication required or permitted to be given by one party to another must be in writing and:

- a) Delivered personally;
- b) Sent by pre-paid mail to the address of the addressee in this Deed; or
- c) Sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

8.2 A notice or other communication is taken to have been given (unless otherwise provided):

- a) if mailed, on the second Business Day after posting; or
- b) if sent by facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

8.3 A party may change its address for service by giving notice of that change in writing to the other parties.

## **9. WAIVER OR VARIATION**

9.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

9.2 The exercise of a power or right does not preclude:

- a) its future exercise; or
- b) the exercise of any other power or right.

9.3 The variation or waiver of a provision of this Deed or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

## **10. GOVERNING LAW AND JURISDICTION**

10.1 This Deed is governed by the law of the State or Territory of the residence or registered office, in the case of a body corporate, of the *Beneficiary*.

10.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of State or Territory of the residence or registered office of the *Beneficiary*.

## **11. FURTHER ASSURANCE**

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

## **12. COUNTERPARTS**

This Deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Deed will be the date on which it is executed by the last party.

## **13. WHOLE AGREEMENT**

In relation to the subject matter of this Deed:

13.1 this Deed is the whole agreement between the parties; and

13.2 this Deed superseded all oral and written communications by or on behalf of any of the parties.

#### 14. SEVERANCE

If any part of this Deed is invalid or unenforceable or is inconsistent with the paragraph headed "SECTION 67 (A) Superannuation Industry (Supervision) Act, 1993", this Deed does not include it. The remainder of this Deed continues in full force.

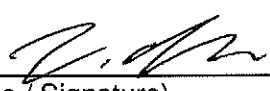
#### EXECUTED AS A DEED.

**EXECUTED** for and on a behalf of  
Flinns Superannuation Property Holdings Pty Ltd ACN 162 223 823

in accordance with Section 127(1) of the  
*Corporation Act 2001* by authority of the  
Directors:

Johnathon Flinn   
Director (Name / Signature)

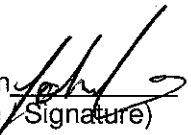
18 / 2 / 2014  
Date

Violeta Flinn   
Director (Name / Signature)

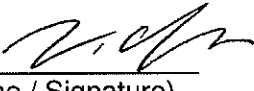
18 / 2 / 2014  
Date

**EXECUTED** for and on a behalf of  
Flinns Superfund Pty Ltd ACN 162 221 703

in accordance with Section 127(1) of the  
*Corporation Act 2001* by authority of the  
Directors:

Johnathon Flinn   
Director (Name / Signature)

18 / 2 / 2014  
Date

Violeta Flinn   
Director (Name / Signature)

18 / 2 / 2014  
Date

In the presence of:

  
Signature of Witness

  
Name of Witness

18 / 2 / 2014  
Date

**Document Class:** ADJUDED  
**Document Name:** Declaration of Trust  
**Document Description:** Land – Duty Already Paid  
**Document Code:** ADJ

### Introduction

A Declaration of Trust is subject to *ad valorem* voluntary conveyance stamp duty pursuant to Section 71(3)(a)(ii) of the SD Act. Section 71(13) SD Act provides that where:

- a document transferring property to a trustee has been stamped with *ad valorem* stamp duty; and
- there is a further document that evidences or records the fact that the person took the property or interest in the property as a trustee (ie. The "Declaration of Trust"), then that further document will be "Adjudged Duly Stamped".

This guide note applies to a Declaration of Trust where the *ad valorem* stamp duty has been paid on the document evidencing the conveyance of land.

**The following similar transactions cannot be stamped under this document heading:**

If the trust property held is **not** land – refer to the appropriate document heading:

- Adjudged – Declaration of Trust – Property – Duty already paid;
- Adjudged – Declaration of Trust – Units – Duty already paid; or
- Adjudged – Declaration of Trust – Marketable Securities – Duty already paid;

If *ad valorem* stamp duty has **not** been paid on the conveying document, the Declaration of Trust must be submitted for the Opinion of the Commissioner of State Taxation advising the consideration paid and the market value of the property held in trust.

If land is being transferred pursuant to the Declaration of Trust from the trustee to the beneficiary, the transfer must be submitted for opinion together with the stamped Declaration of Trust.

### **Example 1 – Declaration of Trust (Land)**

Bill and Megan Cooke as trustees of the Cooke Family Trust purchase an investment property for \$185,000.

The parties execute a Memorandum of Transfer of Land and on the same day execute a Declaration of Trust, which states that they are holding the property as trustees of Cooke Family Trust.

All funding for the purchase has been obtained from a bank loan in the name of Bill and Megan Cooke as Trustees of the Cooke Family Trust.

The Declaration of Trust is " Adjudged Duly Stamped".

The Memorandum of Transfer of Land must be stamped under the document heading:

- Conveyance of Land – For Consideration – Conveyance of Land (CL).

### **Example 2 – Joint Venture Agreement (Land)**

Jim, John and Jane have jointly purchased land and intend to sub-divide this land into three equivalent size allotments.

Jim, John and Jane have entered into a Joint Venture Agreement acknowledging that after the sub-division the parties will transfer:

- Lot 1 to Jim;
- Lot 2 to John; and
- Lot 3 to Jane.

The Joint Venture Agreement also evidences a trust arrangement between Jim, John and Jane.

The Memorandum of Transfer and Joint Venture Agreement, have been executed on the same day. Jim, John and Jane have contributed equally to the purchase funds for the land.

The Joint Venture agreement is " Adjudged Duly Stamped".

The Memorandum of Transfer of Land must be stamped under the document heading:

- Conveyance of Land – For Consideration – Conveyance of Land (CL).

### **What section of the SD Act applies?**

Section 71(13)



### **What documents can I stamp under the document heading?**

The document can be in the form of:

- an Agreement that acknowledges, evidences or records the creation of the trust arrangement (commonly known as a Declaration of Trust or Acknowledgment of Trust);
- a Deed that acknowledges, evidences or records the creation of the trust arrangement (commonly known as a Declaration of Trust or Acknowledgement of Trust); or
- any other document that acknowledges, evidences or records the trust arrangement (commonly known as a Declaration of Trust or Acknowledgment of Trust).

### **What types of transactions can I stamp under this document heading?**

A document that acknowledges, evidences or records a trust arrangement is deemed **suitable** for self-stamping under this document heading where:

- a previous document that conveyed the property to a trustee has stamped with *ad valorem* stamp duty; and
- the document that acknowledges, evidence or records the trust arrangement is dated the same date as the conveying document.

### **What stamp duty is payable on this document?**

No stamp duty is payable, the document is "Adjudged Duly Stamped".

### **What evidence do I need to retain for audit purposes?**

For audit purposes, you will need to retain the following documentation:

- a copy of stamped documents (both the conveyance of land document and the document acknowledging, evidencing or recording the trust arrangements); and
- evidence that the purchase funds were provided by the beneficiary of the trust.

**Minutes of Meeting of Directors of**

Flinns Superannuation Property Holdings Pty Ltd ACN 162 223 823

**HELD AT:** 102 Warialda Street  
KOGARAH NSW 2217

**On:** 14-12-2013

**PRESENT:** Johnathon Flinn and Violeta Flinn

**CHAIRPERSON:** It was resolved to elect as Chairperson of the meeting:  
Johnathon Flinn

Flinns Superannuation  
Property Trust- Lot 24 Section  
2 Plan DP 2002

It was resolved that:

- A. The Trusts contained in the Deed table at the meeting in respect of the Flinns Superannuation Fund , to be called the Flinns Superannuation Property Trust- Lot 24 Section 2 Plan DP 2002 be accepted and that the Deed be executed by the Company.
- B. The Company acquire the legal title to the property at Lot 24 Section 2 Plan DP 2002, 76 Brooklyn Road, Brooklyn NSW 2083 with the funds provided by the Flinns Superannuation Fund and hold that property on trust for the trustee of the Fund in that capacity.
- C. The Company execute such documents as may be required by the lender in connection with the borrowing by the Flinns Superannuation Fund for the purposes of the acquisition of the property.

**RESOLVED:** It was resolved unanimously that the deed tabled at the meeting be executed.

Name

Signature

**Chairperson:** Johnathon Flinn .....

**Director:** Johnathon Flinn .....

**Secretary:** Violeta Flinn .....

**Date:** 14-12-2013

**Minutes of Meeting of Directors of**

Flinns Superfund Pty Ltd ACN 162 221 703

ATF Flinns Superannuation Fund

**HELD AT:**

102 Warialda Street  
KOGARAH NSW 2217

**ON:**

14-12-2013

**PRESENT:**

Johnathon Flinn and Violeta Flinn

**CHAIRPERSON:**

It was resolved to elect as Chairperson of the meeting:  
Johnathon Flinn

Flinns Superannuation Fund

It was resolved that:

The Trustee of the Fund wish to acquire the property at :  
Lot 24 Section 2 Plan DP 2002 ("Asset") and that for this  
purpose Flinns Superannuation Property Holdings Pty Ltd  
ACN 162 223 823 is authorised by the Trustee (acting in its  
capacity as Trustee of Flinns Superannuation Fund to  
purchase the *Asset* with the legal title only being held by  
Flinns Superannuation Property Holdings Pty Ltd ACN 162  
223 823 and the beneficial interest being held by the Fund.  
All monies for the acquisition including stamp duty are to be  
provided by the Flinns Superannuation Fund.

The lender will provide a loan to the Trustee for purposes of  
the acquisition.

**RESOLVED:**

It was resolved:

- A. The Trustee of the Fund, having been satisfied as to  
the terms of the Deed and the borrowing from the  
lender, execute the deed tables at the meeting.
- B. The Trustee of the Fund provide all necessary to  
acquire the *Asset* including stamp duty.

Name

Signature

**Chairperson:** Johnathon Flinn

**Director:** Johnathon Flinn

**Secretary:** Violeta Flinn

**Date:** 14-12-2013