



**McInnesWilson**  
LAWYERS

# **N & K MULLER SUPER PROPERTY TRUST**

**Neil Alexander Muller and Karen Ann Muller as trustees for the N & K Muller Superannuation Fund**

**Neil Alexander Muller as trustee for the N & K Muller Super Property Trust**

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**Our ref:** NJD:djg:93626

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## N & K MULLER SUPER PROPERTY TRUST

DATE *28-11-2013*

### DETAILS OF PARTIES

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<b>Name</b>	Neil Alexander Muller and Karen Ann Muller as trustees for the N & K Muller Superannuation Fund
Label	<b>Trustees</b>
Street Address	35 Redgum Drive, Morayfield QLD 4506

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<b>Name</b>	Neil Alexander Muller
Label	<b>Custodian</b>
Street Address	35 Redgum Drive, Morayfield QLD 4506

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### BACKGROUND

- A. The Fund is a Regulated Fund and the Trustees are the trustees for the Fund.
- B. The SIS Act provides that, in limited circumstances, trustees of a Regulated Fund may borrow funds to acquire an asset provided that:
- (a) the money is applied for the acquisition of a single acquirable asset;
  - (b) legal title to the investment is held by a third party on behalf of the trustees of the Regulated Fund; and
  - (c) the lender's rights against the trustees of the Regulated Fund for any default under the borrowing agreement relates are limited to the rights attached to the acquirable asset.
- C. The Trustees intend to borrow funds from one or more lenders to acquire the Authorised Investment under the arrangement described in Background B.
- D. The Custodian agrees to act as the third party described in Background B and to hold title to the Authorised Investment in accordance with the terms of this document.

### OPERATIVE PROVISIONS:

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#### 1. INTERPRETATION

##### 1.1 Definitions

In this document, unless expressed or implied to the contrary:

**Authorised Investment** means 15-17 Kabi Circuit, Deception Bay, Queensland 4508 being Lot 47 on SP 193956, County of Stanley and Parish of Redcliffe.

**Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Queensland, Australia.

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**Custody Arrangement** means the arrangement between the Trustees and the Custodian.

**Custody Fund** means the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Custody Arrangement:

- (a) all right, title and interest of the Custodian from time to time in the Authorised Investment; and
- (b) all income and other proceeds generated from the holding of the Authorised Investment.

**Fund** means the N & K Muller Superannuation Fund.

**Initial Sum** means the \$10 the Trustees pays to the Custodian on the date of this document as set out in clause 2.1.

**Lender** includes \_\_\_\_\_, or such other entity as advised by the Trustees.

**N & K Muller Super Property Trust** means the trust created by operation of this document.

**Regulated Fund** means a "regulated superannuation fund" within the meaning of section 19 of the SIS Act and a "complying superannuation fund" within the mean of Part 5 of SIS Act.

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

**Vesting Date** means the date upon which the legal title to the last of the assets comprising the Custody Fund have been transferred to the Trustees.

## 1.2 Rules for Interpreting this Document

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The contents page (if any), the Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
  - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

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- (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
  - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
  - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
  - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
  - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
    - (A) excluding the day, or the day of the act or event; and
    - (B) including the day on which the purpose is to be fulfilled.
  - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
    - (A) the day, or the day of the act or event; until
    - (B) the corresponding day in the next appropriate week, calendar month or year.

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- (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
  - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
  - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

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## **2. CUSTODIAN'S DECLARATION OF TRUST**

### **2.1 Declaration of Trust**

The Custodian:

- (a) acknowledges it has received the Initial Sum from the Trustees;
- (b) declares that it will hold the benefit of the Custody Fund on trust for the Trustees in accordance with the terms of this document; and
- (c) acknowledges that it will use the Initial Sum as part of the purchase price for the Authorised Investment.

### **2.2 Information required for each Custody Arrangement**

The Custodian and the Trustees agree that under the Custody Arrangement the Trustees will:

- (a) provide to the Custodian all funds necessary to enable the Custodian to purchase the Authorised Investment; and
- (b) tell the Custodian when and where the purchase of the Authorised Investment is to occur.

### **2.3 Request to purchase and hold legal title**

When the Trustees notify the Custodian of the information detailed in clause 2.2, they will be taken to have requested the Custodian to purchase and take legal title to the Authorised Investment on its behalf.

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## **3. CUSTODIAN TO HOLD TITLE**

The Custodian agrees that it will maintain legal title to the Authorised Investment until the Trustees direct it under clause 4.1.

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## **4. TRUSTEE TO DIRECT CUSTODIAN**

### **4.1 Trustees' interest in the Authorised Investment**

At all times:

- (a) the Trustees have a vested and indefeasible interest in the Authorised Investment and any other assets of the N & K Muller Super Property Trust; and

- 
- (b) are absolutely entitled to the Authorised Investment and other assets as against the Custodian.

#### **4.2 Transferral of Authorised Investment**

The Trustees may in writing direct the Custodian to transfer, or otherwise deal with, the Authorised Investment and other assets comprising the Custody Fund. The Custodian must do as directed. Before the Custodian transfers, or otherwise deals with, the Authorised Investment and other assets comprising the Custody Fund as directed by the Trustees, the Custodian must first seek consent from the Trustees in writing.

#### **4.3 Information to be maintained by Custodian**

The Custodian will use its best endeavours to obtain information concerning the Authorised Investment and the Custodian will communicate all that information to the Trustees as soon as practicable.

#### **4.4 Custodian execution of documents**

The Custodian must execute all documents the Trustees ask it to execute that are necessary to charge the Authorised Investment to secure the Trustees' payment to the Lender of all money owed in respect of the Authorised Investment.

#### **4.5 Trustee to make payment to Lender**

For the avoidance of doubt only, the Trustees, in accordance with section 67A of the SIS Act, has the right to acquire the legal ownership of the Authorised Investment by making one or more payments to the Lender after acquiring a beneficial interest in the Authorised Investment.

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### **5. RESTRICTION ON CUSTODIAN'S DISCRETION**

Despite any other provision to the contrary set out in this document, the exercise of any discretion (if any) by the Custodian under this document requires the consent of the Trustees in all instances.

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### **6. TRUSTEE'S WARRANTIES**

The Trustees warrant that:

- (a) the Fund is a Regulated Fund;
- (b) the Fund has a written investment strategy which accords in all respects with the SIS Act;
- (c) the Trustee's investment in the Authorised Investment accords with the Fund's written investment strategy;
- (d) the Trustees are the sole trustees of the Fund;
- (e) the Trustees have the power and authority to enter into this document;
- (f) the Trustees have the power and authority to purchase the Authorised Investment; and

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- (g) this document constitutes its legally binding obligations, enforceable against it in accordance with its terms.
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## **7. DURATION OF TRUST**

The Trust commences on the date of this document and terminates on the Vesting Date.

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## **8. REPLACEMENT OR RESIGNATION OF CUSTODIAN**

### **8.1 Additional, removal or replacement of Custodian**

At any time, the Trustees may by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.

### **8.2 Outgoing Custodian**

The outgoing Custodian must as soon as practicable after being removed or replaced:

- (a) sign all documents and do all things necessary to transfer legal title to the Authorised Investment to the new or continuing custodian; and
- (b) sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investment to the new or continuing custodian.

### **8.3 Continuing Custodian**

If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title to the Authorised Investment, to the new custodian jointly with the continuing custodian.

### **8.4 Resignation of Custodian**

The Custodian may resign by providing at least 60 days written notice to the Trustees. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 8.1 to 8.3.

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## **9. TRUSTEE INDEMNIFIES CUSTODIAN**

The Trustees agree to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:

- (a) in relation to the purchase of the Authorised Investment;
- (b) by virtue of the Custodian holding legal title to the Authorised Investment; and
- (c) as a consequence of the Custodian complying with any direction of the Trustees under this document.

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## 10. TRUSTEE TO PAY CUSTODIAN'S COSTS

The Trustees indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this document;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this document; and
- (c) any amendment to, or consent, waiver or release of or under, this document.

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## 11. NOTICES

### 11.1 Service of Notice

A notice, demand, certificate, consent, approval, waiver or communication given under this document (**Notice**) must be:

- (a) in writing, in English and signed by the party giving it, or by a person duly authorised by the party giving it; and
- (b) delivered or sent by prepaid post or fax to the party's address specified in the Details of Parties on page 1, or any other address notified by a party to the other party or parties.

### 11.2 Effective Service

A Notice given in accordance with clause 11.1 takes effect when received, or at a later time specified in it.

A Notice is taken to be received:

- (a) on delivery, if hand delivered;
- (b) on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia), if sent by prepaid post; or
- (c) when the sender's fax system generates a message confirming successful transmission of the entire document, if sent by fax,

but if the delivery, receipt or transmission is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### 11.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender;
- (b) in the case of service by fax, the Notice is not received in full and legible form.

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## **12. MISCELLANEOUS**

### **12.1 No Merger**

None of the rights and obligations of a party under this document merge:

- (a) on completion of any transaction contemplated by this document;
- (b) with any security interest, guarantee, judgement or other right or remedy that a party may hold at any time; or
- (c) as a consequence of anything done under this document,

and those rights and obligations at all times remain in full force and effect.

### **12.2 Amendment**

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

### **12.3 Severability**

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

### **12.4 Governing Law**

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

### **12.5 Counterparts and Facsimile Copies**

This document may be executed in counterparts. A counterpart may be a facsimile copy of this document. All counterparts together are taken to constitute one instrument. A facsimile copy of this document which has been executed by a party (**Signatory**) may be relied upon by a party to the same extent as if it was an original of this document executed by the Signatory.

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## EXECUTION

**EXECUTED** as a deed.

**SIGNED SEALED AND DELIVERED** by  
**Neil Alexander Muller as trustee for the  
N & K Muller Superannuation Fund**, in  
the presence of:

  
\_\_\_\_\_  
Signature of witness

Simon Kearley  
\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

  
\_\_\_\_\_  
Signature of party

28-11-2013  
\_\_\_\_\_  
Date signed

**SIGNED SEALED AND DELIVERED** by  
**Karen Ann Muller as trustee for the N &  
K Muller Superannuation Fund**, in the  
presence of:

  
\_\_\_\_\_  
Signature of witness

Simon Kearley  
\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

  
\_\_\_\_\_  
Signature of party

28.11.13  
\_\_\_\_\_  
Date signed

**SIGNED SEALED AND DELIVERED** by  
**Neil Alexander Muller as trustee for the  
N & K Muller Super Property Trust**, in  
the presence of:

  
\_\_\_\_\_  
Signature of witness

Simon Kearley  
\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

  
\_\_\_\_\_  
Signature of party

28-11-13  
\_\_\_\_\_  
Date signed