

DECLARATION OF CUSTODY TRUST
Known as Spencer Property Custodian Trust
for the
Spencer Superannuation Fund



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THIS DECLARATION OF CUSTODY TRUST is executed at the location and on the date set out in the Schedule of this Deed ("the Schedule").

BETWEEN:

- 1** The SMSF described in the Schedule; and
- 2** The Custodian described in the Schedule.

RECITALS:

- A.** The SMSF is a regulated superannuation fund within the meaning of section 19 of the Act and a 'complying superannuation fund' within the meaning of Part 5 of the Act.
- B.** The SMSF wishes to borrow in a form that complies with the provisions set out in section 67A of the Act for the dominant purpose of enhancing the provision of retirement benefits to its members and certain ancillary purposes permitted under the Superannuation Law.
- C.** In particular the SMSF wishes to borrow:
 - on a limited recourse basis whereby the lender's recourse is limited to a Single Acquirable Asset bought by the SMSF using the loan provided by the lender;
 - to buy a Single Acquirable Asset which is not an in-house asset and which is not otherwise prohibited under the Superannuation Law; and
 - to buy a Single Acquirable Asset which will be held on trust by the Trustee whereby the SMSF has the beneficial entitlement to the asset and a right to legally acquire the asset from the Trustee on the payment of a final instalment.
- D.** The Custodian agrees to act as the third party to hold legal title to the Investment Asset on behalf of the SMSF.
- E.** By executing this Deed the Custodian and the SMSF record their agreement and their consent to this Deed's terms and conditions, and the Custodian declares that it will hold the benefit of the Custody Fund on trust for the SMSF under this Deed

NOW BY THIS DEED IT IS DECLARED AND WITNESSED as follows:

1. INTERPRETATION

In this Deed unless the context otherwise requires:

- (i) a reference to a law, statute or rule, or to any provision of a law, statute or rule shall include a reference to that law, statute, rule or provision as amended, replaced or substituted from time to time;
- (ii) a reference to a party shall include the successors and assigns of that party;
- (iii) a reference to the singular number shall include the plural number and vice versa;
- (iv) a reference to one gender shall include the other gender;

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- (v) each clause in this Deed is severable. If a Court determines a particular clause is unenforceable, illegal or invalid that clause shall be deemed to be severed from the Deed. Such severance shall not affect the other provisions of this Deed.

2. DEFINITIONS

The following words have the following meanings:

- (i) "the Act" means *Superannuation Industry (Supervision) Act 1993* (Cth) or its successor, as amended from time to time;
- (ii) "Custody Fund" means the Investment Asset together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Investment Asset:
 - (a) all right, title and interest of the Custodian from time to time in the Investment Asset;
 - (b) all income and other proceeds generated from the holding of the Investment Asset; and
 - (c) all other income, accumulations, capital, accretions, proceeds or accruals attributable to the Trust;
- (iii) "Deed" means this Deed as added to, altered or deleted from time to time;
- (iv) "net income" "Income" or "income" of the Custody Fund or the Trust means, unless otherwise determined by the Custodian, the net income of the Trust as determined according to ordinary accounting principles.
- (v) "Investment Asset" means the asset (described in the Schedule to this deed) held on trust for the SMSF by the Custodian under this Deed provided that such asset is permitted to be so held without breach of the Superannuation Law and without the SMSF ceasing to be a complying SMSF under the Superannuation Law;
- (vi) "Single Acquirable Asset" has the meaning given to that term under the Superannuation Law;
- (vii) "SMSF" means the self-managed superannuation fund specified in the Schedule;
- (viii) "Superannuation Law" means the *Superannuation Industry (Supervision) Act 1993* (Cth) and all regulations made under that Act and all other legislation and regulations relating to self-managed superannuation funds in Australia that must be complied with if the SMSF is to be a complying SMSF, as amended from time to time;
- (ix) "Tax" includes any income tax or similar charge and includes additional taxes and penalty taxes;
- (x) "Tax Law" means the *Income Tax Assessment Act 1936* (Cth) as amended the *Income Tax Assessment Act 1997* (Cth) as amended from time to time, and any other legislation which succeeds either or both those Acts.
- (xi) "Custodian" means the person described as Custodian in the Schedule and includes any additional or replacement Custodian appointed under clause 9; and
- (xii) "Trust" means the custody trust created by operation of this Deed

3. SUPERANNUATION LAW

- 3.1 The SMSF and the Custodian declare that this Deed is intended to be interpreted in a manner that is consistent with the SMSF complying with the conditions that must be met for a superannuation fund to be a complying superannuation fund under the Superannuation Law.

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- 3.2 Any provision of this Deed which may cause the SMSF to breach the Superannuation Law is deleted from this Deed to the extent necessary to remedy the breach and to ensure the SMSF complies with the Superannuation Law.

4. NAME OF THE CUSTODY TRUST

For ease of reference, the name of the Custody Trust will be as stated in the Schedule.

5. CUSTODY TRUST

- 5.1 The Custodian declares that it will hold the benefit of the Custody Fund on trust for the SMSF under this Deed, with effect from the date:

- (a) that the Custodian purchases the Investment Asset as described in the Schedule; or
- (b) on which the Custodian receives any property to be applied or held in accordance with the Trust.

- 5.2 The SMSF must provide all funds necessary to enable the Custodian to purchase the Investment Asset identified in the Schedule. When these funds are provided by the SMSF, the SMSF will be taken to have requested the Custodian to purchase and take legal title to the Investment Asset under this Deed, and the Custodian will be taken to have agreed to this.
- 5.3 The Custodian must hold the Investment Asset on trust for the SMSF and must not deal with the Investment Asset in any way that is inconsistent with holding the Investment Asset on trust for the sole benefit of the SMSF in accordance with Superannuation Law.
- 5.4 All parties agree that the Trust is established and is to be maintained so that it complies with the limited recourse arrangement as described in section 67A of the Act. This sub-clause is a paramount clause, and in interpretation of this Deed, if there is a conflict with this sub-clause with other provisions of this Deed, this sub-clause shall prevail.

6. NET INCOME OF THE TRUST

- 6.1 The SMSF will be presently entitled to the net income of the Trust including any net capital gain as calculated under the provisions of the Tax Law.
- 6.2 No other person will be presently entitled to the net income of the Trust including any net capital gain as calculated under the provisions of the Tax Law.

7. CAPITAL OF THE TRUST

- 7.1 The SMSF will be presently and solely entitled to the capital of the Trust.
- 7.2 No other person will be presently entitled to the capital of the Trust.

8. CUSTODIAN'S POWERS

The Custodian must only act in accordance with the directions of the SMSF and, subject to that requirement:

- 8.1 The Custodian will have the powers, authorities and discretions conferred on trustees by law to undertake any business, transaction and dealing in relation to this Trust.
- 8.2 The Custodian may account for any Taxes by withholding and setting aside such amounts from any income or capital, including any unrealised gains, which the Trustee determines appropriate.

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8.3 The Custodian may determine the character, nature and source of any particular item or amount of income, capital, loss, deduction, tax credit or rebate.

8.4 The Custodian may determine whether:

- (i) any money or property received or paid out is received or paid out as income or capital of the Custody Fund; and
- (ii) any item or amount of income, expense, credit or rebate relates to any particular class of income or capital.

8.5 The Custodian may account for different items or classes of income, expense, credit or rebate separately. The Custodian may make such allocations and apportionments of same which the Custodian considers appropriate in determining the amount of any item or class of income, expense, credit or rebate generally or in respect of any item or class of income or capital.

8.6 In the event of any ambiguity, the provisions of this Deed concerning the powers, authorities and discretions of the Custodian will be construed broadly so as not to restrict the powers, authorities and discretions of the Custodian and to ensure the SMSF retains its status as a complying superannuation fund under the Superannuation Law.

9. POWER TO AMEND THE DEED

9.1 Subject to the succeeding provisions of this clause the Custodian may, with the prior written consent of the SMSF:

- (i) add to, delete, vary, settle or absolutely revoke all or any of the trusts created by this Deed; and
- (ii) add to, delete, vary, settle or absolutely revoke all or any of the powers, authorities and discretions conferred on the Custodian by this Deed;

provided that such amendment would not cause the Custody Fund or any income of the Custody Fund to vest or for the SMSF to lose its status as a complying superannuation fund under the Superannuation Law.

9.2 The Custodian may only exercise the powers conferred by the above clause by deed or otherwise in writing recorded in the books of the Custodian.

10. RETIREMENT REMOVAL AND APPOINTMENT OF CUSTODIANS

10.1 The Custodian may retire as custodian and trustee of the Trust at any time by giving written notice of its intention to do so to the SMSF. This is provided the Custodian may not retire without having first notified the SMSF in writing giving sufficient notice to enable the SMSF to ensure this Trust has at least one custodian and trustee at all times.

10.2 A corporation may act as Custodian notwithstanding that corporation or any director or shareholder or other related person may benefit under this Deed.

10.3 The Custodian may exercise all powers and discretions under this Deed and by law notwithstanding that it or any related person may have an interest in the result of exercising such power or discretion or may benefit therefrom.

10.4 The SMSF may by deed or written notice remove a Custodian as custodian and trustee of the Trust and may appoint another person to act as a custodian and trustee of the Trust.

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- 10.5 A person may only accept an appointment as a custodian and trustee or remain a custodian and trustee if that person agrees in writing to be bound by the provisions of this Deed as if that person were a party to it.

11. CUSTODIAN NOT TO BENEFIT FROM TRUST

- 11.1 The Custodian may not benefit as a beneficiary under this Deed.
- 11.2 The Custodian may not receive professional fees for work done for the Custodian or the SMSF.

12. CORPORATE CUSTODIAN

- 12.1 A corporate custodian may exercise any power conferred on the Custodian by a resolution of its Board of Directors.
- 12.2 A corporate custodian's discretion will be deemed to be exercised when a resolution of the Custodian exercising its discretion on behalf of the directors has been recorded in the Custodian's minute book relating to the Trust.

13. ACCOUNTS, AUDITS AND REIMBURSEMENT OF COSTS

- 13.1 The Custodian must cause proper accounting and other records to be kept for the Custody Fund to comply with the Tax Law and any other relevant law.
- 13.2 The Custodian must promptly after June 30 each year arrange a written accounting report, including an income statement, balance sheet and such other financial statements or reports as required. These reports must be prepared in accordance with normally accepted accounting principles for each year ending June 30.
- 13.3 The Custodian may appoint a duly qualified accountant to audit the books and records of the Custodian relating to the Custody Fund. The cost of such an audit will be borne by the SMSF.
- 13.4 The Custodian may at its election be reimbursed by the SMSF for all of its costs and it may direct in writing that the SMSF pay all its costs directly to third parties.

14. GOVERNING LAW

The governing law of this Deed will be the law of the State described in the Schedule.

15. EXECUTION AS A DEED

This document has been executed as a Deed on the date set out in the Schedule.

EXECUTED BY THE CUSTODIAN

Spencer Property SA Pty Ltd
(ACN: 601 161 700) pursuant to s127(1)
of the Corporations Act, 2001 (Cth) by being
signed by a sole director who is also a secretary,
two directors or a director and secretary:

), MICHAEL SPENCER
Director / Secretary

), [Signature]
Director

EXECUTED BY THE SMSF

Signed by:
Michael Spencer
(as trustee for Spencer Superannuation Fund)
In the presence of:

), [Signature]
Trustee

), [Signature]
Witness

Signed by:
Leslie Spencer
(as trustee for Spencer Superannuation Fund)
In the presence of:

), [Signature]
Trustee

), [Signature]
Witness

SCHEDULE

Item	Specific Details
Location of execution of deed	11 Bronzewing Place, Tea Tree Gully, SA, 5091
Date of execution of deed	3.12.14
Details of the SMSF	Michael Spencer and Leslie Spencer as trustees for Spencer Superannuation Fund
Name of the Custody Trust	Spencer Property Custodian Trust
Name of the Custodian	Spencer Property SA Pty Ltd (ACN: 601 161 700)
Investment Asset	39 Muller Road Hampstead Gardens
Governing Law	SA