



## **Limited Recourse Borrowing Arrangement**

### **Product Disclosure Statement**

## PRODUCT DISCLOSURE STATEMENT

### 1. Introduction

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The Superannuation Laws allow the Trustee of a superannuation fund to borrow monies to acquire a single acquirable asset – provided the asset is one that the Trustee of the fund can legally acquire under the *Superannuation Industry (Supervision) Act 1993 (SISA)*. This means that a Trustee of a fund can borrow from a bank or other lender to acquire a commercial, rural and residential property, and in some limited cases shares or managed funds (provided the shares or funds have the same characteristics), pursuant to section 67A of the SISA. Additional requirements are that the Asset be held on trust by a Holding Trustee, it is for the absolute beneficial entitlement of the SMSF borrower, the Asset cannot be improved and more importantly – the Lender only has recourse to the Asset in the case of default of the Loan. This is why the SMSF Loan is known as a Limited Recourse Borrowing Arrangement(LRBA).

This Product Disclosure Statement(**PDS**) is designed to provide the Trustee of a SMSF with an understanding of the laws in relation to superannuation fund borrowing and practical examples.

The following abbreviations will be used in this PDS:

- **LRBA** means a limited recourse borrowing arrangement, which is a borrowing by the SMSF to acquire an asset in compliance with the Superannuation Laws;
- **Member** means any member of a SMSF;
- **Related Party** means a Person as shall be included as such for purposes of Part 8, subdivision B of the SISA, including sections 70B, 70C, 70D and 70E of the SISA, and as otherwise defined by the Superannuation Laws. A Person is defined for this purpose to include an individual, firm, body corporate, partnership, joint venture and/or unincorporated body or association;
- **Regulator** means the relevant government department looking after SMSFs, and can include the ATO Commissioner, who has the power to make decisions about a matter (for example, the ATO has the power to monitor and deal with the activities of SMSFs, whereas ASIC has the power to deal with financial planners and commercial superannuation funds);
- **SAA** means a single acquirable asset, and this is the term used in the Superannuation Laws to describe a thing or things (for example a collection of shares) which can be acquired under a LRBA;
- **SMSF** means self-managed superannuation fund;
- **Trustee** means the trustee of a self-managed superannuation fund, and this can be two or more persons, or a corporate entity; and
- **Superannuation Laws** means the *Superannuation Industry (Supervision) Act 1993 (SISA)*, *Superannuation Industry (Supervision) Regulations 1994 ("SISR")*, *Income Tax Assessment Act 1936 (ITAA36)* and the *Income Tax Assessment Act 1997 (ITAA97)*. There are other laws which also relate to superannuation funds, but we will focus our attention on these rules in our advice generally.

### 2. The History of Borrowing by the Trustee of a SMSF

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Prior to 1 July 2007, the Superannuation Laws provided that the Trustee of a SMSF must not borrow or maintain an existing borrowing of money, except in limited circumstances.

Notwithstanding the SMSF borrowing restrictions in section 67 of the SISA, the government introduced exemptions to the general rules in 2007, which have since been amended to include the Limited Recourse Borrowing Arrangement (LRBA) exemptions in sections 67A and 67B of the SISA, which took effect from 7 July 2010.

### **3. Current SMSF Borrowing Laws**

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The use of LRBAs is a widely recognised strategy available to SMSFs for the acquisition of commercial, rural and residential property, and in some limited cases shares or managed funds (provided the shares or funds have the same characteristics). The other types of borrowing allowed within a SMSF are borrowings for a maximum of 90 days to meet benefit payments due to members or a surcharge liability provided the borrowing does not exceed 10% of the SMSF's total assets, and borrowings of a maximum of 7 days to settle security transactions provided the borrowing does not exceed 10% of the SMSF's total assets and it was unlikely the borrowing would have been required at the time the security transaction was entered into. A SMSF must not maintain open lines of credit or overdraft facilities (except a LRBA may have a drawdown facility for an approved purpose).

An LRBA is a contractual arrangement that meets the following conditions:

- the SMSF Trustee requests the Holding Trustee to purchase the Asset, for the SMSF (in other words for the benefit of its SMSF Members);
- there are limitations on acquiring Assets from Related Parties. In the case of a Related Party acquisition, the SMSF may only acquire business real property, listed securities from a Related Party or another asset type allowed by the Regulator (see section 66 of the SISA). If the Asset is more than one thing, such as a collection of securities, then the collection must be purchased together and have the same characteristics (and be disposed of at the same time);
- the Holding Trustee agrees to hold the Asset for the SMSF Trustee on the terms a bare trust recorded in the LRBA "Holding Trust Deed";
- the Lender lends the money to the SMSF Trustee (or so much as is agreed) to acquire the Asset, and the money can be used to purchase the Asset, fund the maintenance (but not improvements) and borrowing costs and/or costs associated with a refinance;
- the Lender allows the Holding Trustee to hold the legal title of the Asset for the absolute benefit of the SMSF Trustee;
- the Lender agrees that its only recourse for payment of the money lent, as against the SMSF Trustee and Holding Trustee, is the Asset; and
- the Guarantor (if any) indemnifies the Lender against any other costs, penalties or liability which may arise which the SMSF Trustee is unable to pay or satisfy (the Guarantor is usually the Member/s or Trustees of the SMSF in circumstances in which the Member/s are not the Lender).

The ATO's publication, *SMSF 2012/1 Self Managed Superannuation Funds: limited recourse borrowing arrangements – application of key concepts*, provides an excellent breakdown of allowable forms of LRBAs.

Importantly, the Asset must not be subject to any other charge or security interest (excepting as permitted in respect to the LRBA), and the Trustee cannot "improve" the Asset during the term of the LRBA (except in limited circumstances, such as where an

Asset must be replaced after being destroyed, and the Asset is marginally improved due to modern equivalents of the original fittings be used).

#### **4. Advantages of LRBAs**

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There are a number of important advantages to a SMSF entering into a LRBA:

- A LRBA potentially maximises the wealth effect in times when capital values of SMSF assets are rising;
- With strict limits on making concessional and non-concessional contributions into a SMSF, the use of an LRBA provides the Fund with access to capital;
- The Members can act as Lenders to the SMSF on arm's length commercial terms, providing an alternative to investing in unfamiliar companies and/or entities; and
- The Members can forgive the LRBA repayments as contributions during the course of the Loan (subject to caps).

As discussed above, the LRBA monies can be applied not only to acquire the Asset, but also to refinance an existing LRBA. Accordingly, a SMSF may initially have a commercial Lender, and if circumstances change – the Members could become the Lenders. Importantly, in any refinance, the legal ownership of the Asset must not pass back to the SMSF between lending arrangements (see also *SMSF 2009/2 Self Managed Superannuation Funds: the meaning of 'borrow money' or 'maintain an existing borrowing of money' for the purposes of section 67 of the Superannuation Industry (Supervision) Act 1993* and ATO ID 2010/169).

The LRBA monies may also be used to maintain and repair the Asset, and may be taken from a draw down facility, provided the LRBA accommodates a draw down in the LRBA contract. Improvements, such as converting a bungalow to a block of apartments are prohibited by section 67A(1) of the SISA.

There is no prohibition against Lenders requiring guarantees from Members and the related parties of the Members, provided always that the recourse against the SMSF is limited to the Asset.

Whilst the Asset may not be improved during the LRBA, if the form of the Asset is changed and/or the Asset is destroyed, the Asset may be replaced, for example:

- A share in a company can be replaced by a share in the same company, if at the time of the replacement, the original asset and replacement have the same market value; and
- A structure destroyed by fire can be replaced with a substantially similar structure.

#### **5. LRBA Restrictions**

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The government has been closely monitoring the marketplace and decided to tighten up the prudential side of LRBAs.

This can be seen from the following Regulator publications in respect to Related Party transactions:

- *SMSFR 2008/1 Self-Managed Superannuation Funds: giving financial assistance using the resources of a self-managed superannuation fund to a member or relative of a member that is prohibited for the purposes of paragraph 6(1)(b) of the Superannuation Industry (Supervision) Act 1993* – which prohibits the use of the



SMSF resources for the benefit of a Member or a relative of a Member, and can include the acquisition of assets from Members for an improper purpose. Examples of prohibited conduct contained in the publication include:

- purchasing an asset for greater than market value from a Member or a related party of the Member;
- paying an inflated price for services acquired from a Member or related party of the Member;
- forgiving a debt owed to the SMSF;
- giving a guarantee or indemnity for the benefit of a Member or related party of the Member; and
- giving security or a charge over SMSF assets for the benefit of a Member or a related party of the Member;
- *ATO ID 2015/27 Superannuation: Income tax: non-arm's length income – related party non-commercial limited recourse borrowing arrangement to acquire listed shares* – which prohibits nil interest rate and/or non-commercial interest rates between SMSFs and Members (and related parties of the Members) in LRBAs used to acquire shares;
- *ATO ID 2015/28 Superannuation: Income tax: non arm's length income – related party non-commercial limited recourse borrowing arrangement to acquire real property* – which prohibits nil interest rate and/or non-commercial interest rates between SMSFs and Members (and related parties of the Members) in LRBAs used to acquire real property; and
- *PCG 2016/5 Income Tax – arm's length terms for Limited Recourse Borrowing Arrangements established by self managed superannuation funds* – which provides SMSFs with "Safe Harbour Provisions" for LRBAs used to acquire shares and real property, but does not prohibit Trustees from engaging in other arrangements, provided the alternatives are based on commercial and arm's length terms.
- *TD 2016/16 Income tax: will the ordinary or statutory income of a self-managed superannuation fund be non-arm's length income under subsection 295-550(1) of the Income Tax Assessment Act 1997 (ITAA 1997) when the parties to a scheme have entered into a limited recourse borrowing arrangement on terms which are not at arm's length?* – which extends the discussion at PCG 2016/5.

Accordingly, SMSFs may utilise unrelated third party Lenders, such as banks, but can borrow from Members and/or related parties of the Members – provided that the terms are on commercial and arm's length terms.

The most important of restrictions, irrespective of the relationship of the Lender to the SMSF, is that the Lender must have "Limited Recourse" against the SMSF's assets. The SMSF and Lender are not at liberty to enforce directly against the SMSF – the Lender's recourse as against the SMSF must always be limited to the Asset acquired. A contract or arrangement between the SMSF and the Lender giving greater rights is unlawful and prohibited. This is not to say the Lender cannot take security over the assets of the Members of the SMSF, or other persons and legal entities – however, as against the SMSF, the Lender's rights cannot be extended under any circumstances.

A further restriction discussed above, is the prohibition from applying the monies lent to improve the Asset and the prohibition to improve the Asset to be a different thing. By illustration, let us assume the SMSF acquires a residential property under a LRBA. The doors in the residential property are dated and make letting difficult – albeit the doors

are nonetheless functional. The Trustee a SMSF may use SMSF resources (other than the LRBA) to install higher quality doors, which is an improvement. Now, let us say the Trustee decides that the structure is not ideal, and instead the Trustee resolves to demolish the structure and build two units in the structures place. This would be a prohibited "improvement", because it changed the nature of the Asset – from a dwelling unit, to a multiple dwelling unit.

## **6. The NowInfinity Limited Recourse Borrowing Product**

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The following is a discussion of the NowInfinity Limited Recourse Borrowing Product.

We remind Trustees and Members to refer to the Product Disclosure Statement for the NowInfinity SMSF Trust Deed, which provides a discussion of the use, benefits and restrictions generally in respect to the conduct of a SMSF.

This PDS only addresses the Limited Recourse Borrowing Product.

In establishing a LRBA, the following requirements must be met:

- (a) The SMSF Trust Deed must give the Trustee the power to acquire the Asset, and to enter into LRBAs, as well as to manage and attend to the costs and maintenance of the acquired Asset (the NowInfinity SMSF Trust Deed does);
- (b) The Trustee's Investment Strategy must consider and allow for the acquisition of the Asset, and the undertaking of a LRBA. Additionally, the Investment Strategy should consider and address liquidity risks and demands on cash, in circumstances in which a Member becomes disabled or dies, and a call on the Member Interest is made and/or the Member is expected to retire and call upon the Member Interest and other similar situations. Further, the Investment Strategy should consider unplanned cash requirements in respect to the Asset, such as maintenance costs on a rental property. The Trustee should also regard diversification, and limit funnelling all of the SMSF resources into a single asset, especially an asset which is not easily liquidated (such as real property) (the NowInfinity Limited Recourse Borrowing Product provides a model amendment for the Trustee to the Investment Strategy);
- (c) A Holding Trust must be settled to hold the Asset, with the SMSF having exclusive beneficial ownership of the Asset (the NowInfinity Limited Recourse Borrowing Product includes a Holding Trust);
- (d) A person or legal entity must be identified as the Holding Trustee, and such person or legal entity will settle the Holding Trust with the SMSF Trustee. The SMSF Trustee cannot serve as Holding Trustee, although the directors of the corporate trustee of the SMSF may be directors of a corporate entity of a Holding Trustee and/or may be the Holding Trustee(s) in their individual right (the NowInfinity Limited Recourse Borrowing Product includes a Holding Trust, which accommodates for either arrangement of Holding Trustee);
- (e) The Holding Trustee must enter into a agreement to acquire the Asset (the NowInfinity Limited Recourse Borrowing Product includes a Minute/Resolution appointing the Holding Trustee for such purpose, and allowing the execution of contracts for the SMSF);
- (f) The Holding Trustee may be required to sign a mortgage or security over the Asset which will either be available from a Commercial Lender, or produced by the SMSF Trustee's lawyers;

- (g) The Holding Trustee must use the proceeds of the LRBA to acquire the Asset, and cannot pay any costs of the Asset except as directed by the SMSF Trustee. The SMSF Trustee must indemnify the Holding Trustee for all costs of administration and conduct in respect to the Asset. The settlement of the acquisition should be conducted by the SMSF Trustee's lawyers. The SMSF Trustee's lawyers will stamp the contract and transfers in accordance with the relevant state legislation (we do not address the stamping requirements in this PDS, and direct the Trustee to seek advice from the SMSF Trustee's lawyers as to the stamping requirements);
- (h) The Holding Trustee holds the Asset on "bare trust" for the SMSF until the Holding Trustee is directed to dispose of the Asset or transfer the Asset to the SMSF. A bare trust is akin to asking a friend to hold a painting for you – your friend may hold the painting, but they do not own the painting and when you demand its return, your friend must return the painting to you. It would be illegal for your friend to refuse your demand. So too is the relationship by the SMSF Trustee and the Holding Trustee – the Holding Trustee is a puppet for the SMSF;
- (i) The SMSF and Lender must maintain arm's length terms set at market value rates. We recommend you consider reading ATO ID 2015/27, ATO ID 2015/28, PCG 2016/5 and TD 2016/16, which are available on the ATO's website, at [www.ato.gov.au](http://www.ato.gov.au). If the LRBA is other than on arm's length and market value terms, the arrangement may cause the SMSF to become non-complying, meaning the loss of valuable tax concessions and possibly significant financial losses (the NowInfinity Limited Recourse Borrowing Agreement allows amendments to the terms, but on terms compliant with the Regulator's requirements);
- (j) The SMSF must pay the principal and interest payments in accordance with the LRBA. If the SMSF fails to do so, the Lender's recourse must be limited to the Asset, in other words, the Lender cannot recover an amount in excess of the liquidated value of the Asset from the SMSF. To do so is a violation of the Superannuation Laws (the NowInfinity Limited Recourse Borrowing Agreement limits the lender's recourse, but accommodates the requirement of guarantors where the lender is not the Member(s));
- (k) Related party lenders and the SMSF must be careful to have regard to the Regulator's opinion that 70% Loan to Value Ratios are a Safe Harbour. Generally, banks and commercial Lenders will provide an 80% Loan to Value Ratio when they have complimentary security (such as personal guarantees against the SMSF Members, and charges against Members' personal assets). Therefore, if you propose to exceed 70% LVR, you need to seriously consider whether the increase is accommodated in alternate third party LRBA commercial Lender arrangements. You are not strictly prohibited from increasing beyond a 70% LVR, but in doing so you put the SMSF in a dangerous position if you do not have a commercial comparative to demonstrate to an Auditor (and the ATO) (the NowInfinity Limited Recourse Borrowing Agreement allows parties to set their own terms);
- (l) The Holding Trustee does not have a tax identity of its own. The expenses and income associated with the Asset are those of the SMSF Trustee. In other words, the SMSF Trustee receives rents, pays bills, and otherwise treats the Asset on its books as an Asset, albeit the Holding Trustee is the custodian during the LRBA arrangement (the NowInfinity Limited Recourse Borrowing Agreement allows for this arrangement);

- (m) The SMSF Trustee may draw down on the LRBA to acquire the Asset, pay borrowing costs, stamp duty and for current and future repairs (if any), as well as refinancing charges, provided the LRBA allows such a right (the NowInfinity Limited Recourse Borrowing Agreement does);
- (n) Members and the related parties of Members should be strictly limited, if not prohibited, from the use of the Asset (except in the limited circumstances allowed by the Superannuation Laws) (the NowInfinity Limited Recourse Borrowing Agreement affirms the Member's understandings in this regard);
- (o) As discussed above, the SMSF Trustee cannot change the nature of the Asset and/or replace the Asset (except in limited circumstances) during the LRBA. For example, if the SMSF is borrowing to acquire vacant land, the SMSF cannot then build a structure on the land until the LRBA is settled. If, however, the SMSF acquired a land with a hotel, and the hotel was damaged in a storm, the SMSF could undertake to repair the hotel – even if the repair resulted in a marginal improvement as a consequence of updating the hotel's fixtures to modern standards of the destroyed versions (the NowInfinity Limited Recourse Borrowing Agreement affirms the Member's understandings in this regard); and
- (p) The Holding Trustee must transfer the Asset to the SMSF upon demand after one or more payments are made in accordance with the LRBA (in application, this will not happen until the LRBA is settled and the mortgage or security interest over the Asset is discharged).

## **7. Borrowing Risks Generally**

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Notwithstanding the benefits of maximising returns from increased investment power, the risks of a LRBA/Borrowing by the SMSF must always be considered and mitigated.

This may include taking out insurances on Member's life or disability to create liquidity, or it may be refusing the LRBA outright due to the decision of the Trustee that the compounding effect of a fall in the market.

To an extent, a loss in market value is cushioned by the Limited Recourse – accordingly, this is the Lender's Risk in a LRBA; however, a borrowing by the SMSF should be considered only where the risks are thoroughly considered.

Whilst we cannot predict every risk in a LRBA, we highlight the most obvious risks which must be considered in the Investment Strategy:

- (a) Risks of having to pay disability pension or death benefit without warning;
- (b) Risks of having a loss in returns in other SMSF assets, such that the servicing of income streams are compromised;
- (c) Risks of having inadequate funding to service borrowing repayments;
- (d) Risks of market value loss of not only the Asset, but the other resources of the SMSF;
- (e) Risks of loss of membership and roll over of Members to other SMSFs;
- (f) Risks of retirement and/or inability of Members to make contributions, which may be servicing the borrowing repayments;
- (g) Risks of relationship breakdown, and payment splitting orders or agreements by Members; and

- (h) Risks of private use or abuse of In-House restrictions by Members or Related Parties of SMSF.

## 8. PCG 2016/5 and TD 2016/16 and the Safe Harbour Provisions

We provide a summary of the Safe Harbour Provisions offered by the Regulator as allowable terms of LRBAs.

### Safe Harbour 1: The LRBA and real property (commercial or residential)

Element of LRBA	ATO's Safe Harbour
<b>Interest Rate</b>	Reserve Bank of Australia ( <b>RBA</b> ) Indicator Lending Rates for banks providing standard variable home loans:  2015-16: 5.75%  2016-17 and later: RBA rate published in May
<b>Fixed/Variable</b>	<b>Variable:</b> Use RBA rate  <b>New Fixed:</b> Trustee may opt to fix up to 5 years  <b>Existing Fixed:</b> 5.75% for not greater than term of 5 years
<b>Term of Loan</b>	<b>Variable (Original Loan):</b> 15 year maximum  <b>Variable (Re-Finance):</b> Maximum term is 15 years, less the term of the loan re-financed  <b>Fixed (Original):</b> Fixed for maximum 5 years, converting to Variable to a maximum total term of 15 years.
<b>Loan to Value Ratio (LVR)</b>	Maximum 70% (and if more than one loan taken to acquire, the total LVR cannot exceed 70%)  Existing Loans: Market value of asset as at 1 July 2015  New Loans: Market value of asset at acquisition
<b>Security</b>	Mandatory registered mortgage over property
<b>Personal Guarantee</b>	Not required
<b>Repayments</b>	Monthly, principal and interest
<b>Documentation</b>	Written and executed loan agreement

## Safe Harbour 2: The LRBA and a collection of stock exchange listed shares or units

Element of LRBA	ATO's Safe Harbour
<b>Interest Rate</b>	<p>RBA Indicator Lending Rates for banks providing standard variable home loans, plus 2%.</p> <p>2015-16: 7.75%</p> <p>2016-17 and later: RBA rate published in May, plus 2% (the rate for the May in the previous financial year, plus 2%)</p>
<b>Fixed/Variable</b>	<p><b>Variable:</b> Use RBA rate, plus 2%</p> <p><b>New Fixed:</b> Trustee may opt to fix up to 3 years</p> <p><b>Existing Fixed:</b> 7.75% for not greater than term of 3 years</p>
<b>Term of Loan</b>	<p><b>Variable (Original Loan):</b> 7 year maximum</p> <p><b>Variable (Re-Finance):</b> Maximum term is 7 years, less the term of the loan re-financed</p> <p><b>Fixed (Original):</b> Fixed for maximum 3 years, converting to Variable to a maximum total term of 7 years</p>
<b>LVR</b>	<p>Maximum 50% (and if more than one loan taken to acquire, the total LVR cannot exceed 50%)</p> <p>Existing Loans: Market value of asset as at 1 July 2015</p> <p>New Loans: Market value of collection at acquisition</p>
<b>Security</b>	Mandatory registered charge/mortgage or similar security
<b>Personal Guarantee</b>	Not required
<b>Repayments</b>	Monthly, principal and interest
<b>Documentation</b>	Written and executed loan agreement

Whilst a LRBA may be structured on other than such terms, the Trustee must have a comparative arrangement upon which to refer to ensure the terms are "arm's length" and based on commercial terms. The most likely acceptable form of a "comparative arrangement" is a LRBA offered by a bank or other lender engaging in the business of lending.

**Disclaimer:** *This PDS is offered for general educational purposes, based on the laws at 26 October 2016. As the Superannuation Laws are continuously evolving, this PDS may not be appropriate after this date. You are required to seek independent financial, accounting and legal advice to ascertain whether the matters referred to in this PDS are relevant and/or appropriate for your circumstances. Copyright of the content of this PDS is owned by NowInfinity, and reproduction of the content may only be permitted where expressly authorised by NowInfinity.*

4 September 2017

LNS - Liberty Lending Pty Ltd (QLD - Renee Poppett)  
Attention: Renee Poppett  
Shop 1a  
2-4 Bolwarra Street  
Shailer Park QLD 4128



**Re: Conditional Approval for Account Number - 2624468**

Dear Renee,

We are pleased to advise you that the following loan has been conditionally approved by Secure Funding Pty Ltd based on the information that we have received to date. The details of the loan, along with the conditions that must be met prior to a Formal Loan Agreement can be issued are listed below:

Borrower(s)	Helen Ogle Pty Ltd ACN 129 348 438 As Trustee For Ogle Family Superannuation Fund.
Guarantor(s)	Helen Margaret Ogle, Fiducia Helen Pty Ltd ACN 619 161 563 As Trustee For Fiducia Helen Holding Trust.
Loan amount	\$560,000.00 or 70.00% of valuation <b>(inclusive of cost)</b> , whichever is the lower
Less total estimated costs	Mortgage Stamp Duty NSW \$2,181.00 Discharge of Existing Mortgage \$277.60 Registration Fee for MAYFIELD - NSW Registration Fee on Transfer of Land for MAYFIELD - NSW \$138.80 Settlement Fee \$5,320.00 Document, Legal and Search Fees \$1,500.00
Estimated available funds at settlement	\$550,582.60
Loan term	30 years
Interest rate	6.80%, Super Credit Variable IO 5yr, P&I After
Repayments	\$3,203.33 Monthly (Includes monthly Service Fee of \$30.00)
Security	1st registered Mortgage over 8/5 Channel Road, MAYFIELD NSW 2304



This loan has been approved subject to the following conditions:

- \* Copy of a fully executed Property Trust Deed.
- \* Copy of a fully executed SMSF Trust Deed.
- \* Copy of Draft Transfer of Land for 8/5 Channel Road MAYFIELD NSW 2304.
- \* Copy of signed contract of sale and special conditions/annexures for 8/5 Channel Road MAYFIELD NSW 2304.
- \* Valuation report for 8/5 Channel Road MAYFIELD NSW 2304 showing market rental.
- \* Require an SMSF statement showing an amount of \$450,060 held along with evidence of the deposit paid.
- \* Require signed and dated Property Trust Documentation and an SMSF Financial Acknowledgement Advice Certificate ( supplied by Liberty ) prior to settlement.
- \* Require a copy of an amended Lease between the Lessee and the lessor.
- \* Require tax returns for Who Presentation Services Pty Ltd and Helen Ogle Pty Ltd.
- \* Require a Statement of Legal and Financial Advice from a Financial Planner.
- \* Require payment of the valuation fee \$ 1,870, Set Up Fee \$495 and the Application Fee of 545.

To ensure that the loan documentation is accurate, we will require a draft copy of the transfer of land on the property being purchased. Loan documentation cannot be prepared without us receiving this draft copy.

This is not a formal Letter of Offer but merely an advice on the status of the loan application. Once outstanding conditions have been satisfied and supporting documents have been received, a formal Letter of Offer will be issued.

**This offer will expire on the 4 October 2017.**

Please contact me if you have any questions or if we can assist you further. In the meantime, I look forward to hearing from you.

Yours sincerely,

Niall McLynskey  
Underwriter  
Liberty Financial Pty Ltd

# Certificate of Registration of a Company

This is to certify that

**FIDUCIA HELEN PTY LTD**

**Australian Company Number 619 161 563**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in New South Wales.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the seventeenth day of May 2017.**



**ASIC**

Australian Securities & Investments Commission

Issued by the  
Australian Securities and Investments Commission  
on this seventeenth day of May, 2017.

A handwritten signature in black ink, appearing to read 'G. Medcraft'.

Greg Medcraft  
Chairman

CERTIFICATE



## **CONSTITUTION**

**FIDUCIA HELEN PTY LTD**

**ACN: 619 161 563**

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## **CHAPTER 1- PRELIMINARY**

### **Definitions**

1. In this Constitution Fiducia Helen Pty Ltd is referred to as the "Company".
2. Unless the context otherwise requires any words or expressions appearing and defined in the *Corporations Act* 2001 shall have the same meaning wheresoever appearing in this Constitution.
3. In this Constitution unless the contrary intention appears:
  - a) Words in the singular include the plural;
  - b) Words in the plural include the singular; and
  - c) Words importing a gender include every other gender.

### **Replaceable Rules**

4. The "replaceable rules" referred to in Sections 135 and 141 of the *Corporations Act* 2001, shall not apply to the Company.

## **CHAPTER 2 - SHARE CAPITAL AND VARIATION OF RIGHTS**

### **Share Capital**

5. The Company has pursuant to Section 124 and Section 254A of the *Corporations Act* 2001 the power to issue and cancel shares in the Company including the power to issue:
  - a) Any shares as described in Schedule A;
  - b) bonus shares (shares for whose issue no consideration is payable to the issuing company); and
  - c) preference shares (including redeemable preference shares); and
  - d) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).
6. The Company can issue preference shares only if the rights attached to those preference shares with respect to:
  - a) repayment of capital;
  - b) participation in surplus assets and profits;
  - c) cumulative and non-cumulative dividends;
  - d) voting; and
  - e) priority of payment of capital and dividends in relation to other shares or classes of preference shares,are approved by special resolution of the Company.
7. The Company may in accordance with the provisions of Section 254B of the *Corporations Act* 2001 determine:
  - a) the terms on which its shares are issued; and
  - b) the rights and restrictions attaching to the shares.
8. Before issuing shares of a particular class, the directors of the Company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.



9. To make the offer, referred to in Rule 8, the directors must give the shareholders a statement setting out the terms of the offer, including:
  - a) the number of shares offered; and
  - b) the period for which it will remain open.
10. The directors may issue any shares not taken up under the offer, referred to in Rule 8, as they see fit.
11. The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with Rule 8.
12. The Company may in accordance with the provisions of Section 254G of the *Corporations Act 2001*:
  - a) convert an ordinary share into a preference share; and
  - b) convert a preference share into an ordinary share.
13. The Company can convert ordinary shares into preference shares only if the holder's rights with respect to:
  - a) repayment of capital;
  - b) participation in surplus assets and profits;
  - c) cumulative and non-cumulative dividends;
  - d) voting; and
  - e) priority of payment of capital and dividends in relation to other shares or classes of preference shares,are approved by special resolution of the Company.
14. The Company may in accordance with the provisions of Section 254H of the *Corporations Act 2001* convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

#### **Capitalisation of Profits**

15. The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

#### **Reduction of Share Capital**

16. The Company may in accordance with the provisions of Sections 256A to 256E, 258E and 258F of the *Corporations Act 2001* reduce its share capital.

#### **Shares Held Upon Trust**

17. Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
18. The Company is not be bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.
19. A person who holds shares in the Company as trustee for, or on behalf of, or on account of, a corporation shall within one month after his or her acquisition of the shares give the Company a notice in writing setting out full particulars of the beneficial ownership, including particulars of the name and Australian Company Number of the corporation.



## **Share Certificates**

- 20.** Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate ("Share Certificate"), in accordance with the provisions of Section 1070C of the *Corporations Act* 2001, specifying the shares held by that member. In the case of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one Share Certificate, and delivery of a Share Certificate to one of several joint shareholders shall be sufficient delivery to all such shareholders. If a Share Certificate is defaced, lost or destroyed then that Share Certificate shall be replaced in accordance with the provisions of Section 1070D of the *Corporations Act* 2001.

## **Lien on Shares**

- 21.** The Company shall have a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or her or his or her estate to the Company.
- 22.** The Directors may at any time declare any share to be wholly or in part exempt from the provisions of Rule 21.
- 23.** The Company's lien, if any, on a share shall extend to all dividends payable thereon.
- 24.** The Company may sell, in such manner as the directors think fit, any shares on which the Company has a lien, but no sale shall be made unless:
- a) a sum in respect of which the lien exists is presently payable; and
  - b) the Company has, not less than fourteen days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
- 25.** To give effect to a sale, referred to in Rule 24, the directors of the Company may authorise a person to transfer the shares sold to the purchaser of the shares ("the Purchaser").
- 26.** Company shall register the Purchaser as the holder of the shares ("the Shareholder") comprised in any such transfer.
- 27.** The Shareholder is not bound to see to the application of the purchase money, nor shall the Shareholder's title to the shares be affected by any irregularity or invalidity in connection with the sale.
- 28.** The proceeds of a sale referred to in Rule 24, shall be applied by the Company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

## **Calls on Shares**

- 29.** The Directors may if shares in the Company are partly paid, make calls upon the members in respect of any money unpaid on those shares, either in accordance with the terms on which the shares are on issue or in accordance with the Rules set out hereunder.
- 30.** Each member shall, upon receiving 14 days' notice specifying the time or times and place of payment, pay to the Company the amount called on that member's shares.



31. The directors may revoke or postpone a call.
32. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
33. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
34. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the directors may determine, but the directors may waive payment of that interest wholly or in part.
35. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, shall for the purpose of these Rules be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these Rules or where applicable, the *Corporations Act 2001*, as to payment of interest and expenses, forfeiture, or otherwise apply as if the sum has become payable by virtue of a call duly made and notified.
36. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
37. The directors may accept from a member the whole or part of the amount unpaid on a share although no part of that amount has been called up.
38. The directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted pursuant to Rule 37, until the amount becomes payable, at such rate, not exceeding the prescribed rate as is agreed upon between the directors and the member paying the sum in advance.
39. For the purposes of Rule 38, the prescribed rate of interest is:
  - a) if the Company has, by resolution, fixed a rate – the rate so fixed; and
  - b) in any other case – 8% per annum.

#### **Transfer of Shares**

40. Subject to these Rules any member may transfer all or any of his, her or its shares by instrument in writing ("instrument of transfer") in any usual or common form or in any other form that the directors approve. The instrument of transfer shall be executed by or on behalf of both the transferor and the transferee.
41. A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
42. The instrument of transfer must be left for registration at the registered office of the Company together with such fee (if any) not exceeding \$1.00 as the directors require, accompanied by the certificate of shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the Company shall subject to the powers vested in the directors by these Rules, register the transferee as a shareholder.
43. The directors may refuse to register a transfer of shares in the Company if the shares are not fully-paid; or the Company has a lien on the shares.



44. The directors may suspend registration of transfers of shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any one calendar year.
45. The directors of the Company may refuse to register a transfer of shares in the Company for any reason.
46. Before any member or any person entitled to an interest in shares of the Company, such as a trustee in bankruptcy or personal representative, sells or transfers any shares in the Company, that member or trustee or personal representative, must give notice in writing to the directors that he, she or it desires to make such a sale or transfer. Such notice shall appoint the directors of the Company as the agents of the member or trustee or personal representative for the purposes of the sale or transfer. The price at which the shares are to be sold or transferred, shall be agreed upon by the directors and the member or trustee or personal representative or where no agreement as to price can be reached, at a price determined by the Auditor of the Company or if there is no Auditor by an independent expert valuer whose appointment is mutually agreed upon by the directors and the member or trustee or personal representative.
47. The purchaser or transferee of the shares must be approved of by all the directors. Where approval of the purchaser or transferee is not unanimous the Managing Director shall offer on behalf of the member or trustee or personal representative the shares for sale at the agreed or determined price, to the other members of the Company. In the event of all or any of the shares not being sold pursuant to this Rule the member or trustee or personal representative may sell or transfer those shares to any person as he, she or it sees fit.
48. Any shareholder, being a natural person, may transfer any share, which he or she holds, to his or her wife, husband, son or daughter. The provisions of Rules 46 and 47 do not apply to a transfer under this Rule.

## **Transmission of Shares**

### **On Death**

49. If a shareholder who does not own shares jointly dies, the Company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
50. If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
  - a) the personal representative may by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
51. On receiving an election under Rule 50(a), the Company must register the personal representative as the holder of the shares.
52. If a shareholder who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

### **On Bankruptcy**

53. If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may by giving a written and signed notice to the Company, elect to be registered as the holder of the shares.



54. On receiving an election under Rule 53, the Company must register the person as the holder of the shares.
55. Rules 53 and 54 have effect subject to the *Bankruptcy Act* 1966.

### **On Mental Incapacity**

56. If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares;
- a) the person may by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
57. On receiving an election under Rule 56(a), the Company must register the person as the holder of the shares.

### **Forfeiture of Shares**

58. If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors of the Company may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
59. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
60. If the requirements of a notice served pursuant to Rules 58 and 59 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors of the Company to that effect. Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
61. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors of the Company think fit, and, at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
62. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him or her to the Company in respect of the shares (including interest at the rate of 8 % per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his or her liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.
63. A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is *prima facie* evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
64. The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.



65. Upon the execution of the transfer, the transferee shall be registered as the holder of the share, and is not bound to see the application of any money paid as consideration.
66. The title of the transferee to the share is not affected by an irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
67. The provisions of these Rules as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **CHAPTER 3 - MEETINGS OF MEMBERS**

#### **Calling a Meeting of Members**

68. A director may call a meeting of the Company's members.
69. Meetings of the Company's members may also be called in accordance with the provisions of Sections 249D to 249F of the *Corporations Act* 2001.
70. At least 21 days' notice must be given of a meeting of the Company's members and such notice must be given in accordance with the provisions of Sections 249H to 249L of the *Corporations Act* 2001.
71. When a meeting of the Company's members is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

#### **Quorum at a Meeting of Members**

72. The quorum for a meeting of the Company's members where the Company has two or more members is two members and the quorum must be present at all times during the meeting. Where the Company has one member, one member in person shall be quorum. For the purposes of this regulation "Member" includes a person attending as a proxy or attorney or as representing a corporation which is a member or other duly authorised representative.
73. In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted. However, if a member has appointed more than one proxy or representative, then only one of them is to be counted. If an individual is attending both as a member and as a proxy or body corporate representative, that individual is only to be counted once.
74. A meeting of the Company's members, that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, is adjourned to the date, time and place the directors specify. If the directors do not specify one or more of those things, the meeting is adjourned to:
  - a) if the date is not specified-the same day in the next week; and
  - b) if the time is not specified-the same time; and
  - c) if the place is not specified-the same place.
75. If no quorum is present at the resumed meeting of the Company's members within 30 minutes after the time for the meeting, the meeting is dissolved.

#### **Chairing a Meeting of Members**

76. The directors may elect an individual to chair meetings of the Company's members.
77. The directors at a meeting of the Company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).



- 78.** The members at a meeting of the Company's members must elect a member present to chair the meeting (or part of it) if:
- a) a chairman has not previously been elected by the directors to chair the meeting; or
  - b) a previously elected chairman is not available, or declines to act, for the meeting (or part of the meeting).
- 79.** The chairman must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chairman must do so.

#### **Proxies**

- 80.** A member of the Company who is entitled to attend and cast a vote at a meeting of the Company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- 81.** The appointment of a proxy may specify the proportion or number of votes that the proxy may exercise.
- 82.** Each member may appoint a proxy. If the member is entitled to cast two or more votes at the meeting, they may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- 83.** Any fractions of votes resulting from the application of Rules 81 and 82 are to be disregarded.
- 84.** A proxy appointed to attend and vote for a member has the same rights as that member, except where those rights are qualified by the appointment.

#### **Notice of a Meeting of Members**

- 85.** The Company must, when a meeting of the members is called, send to each member, along with the notice of the meeting, a proxy appointment form and a notice as to the appointment of proxies which:
- a) Advises that for the appointment of a proxy to be effective the proxy appointment form and if the appointment is signed by the appointer's attorney – the authority under which the appointment was signed or a certified copy of the authority, must be received at least 48 hours before the meeting; and
  - b) refers to the relevant Sections of the *Corporations Act* 2001 that deal with the appointment of proxies, the rights of proxies, proxy documents and the validity of proxy votes, namely Sections 249X to 250C of the *Corporations Act* 2001.
- 86.** Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- a) the appointing member dies; or
  - b) the member is mentally incapacitated; or
  - c) the member revokes the proxy's appointment; or
  - d) the member revokes the authority under which the proxy was appointed by a third party; or
  - e) the member transfers the share in respect of which the proxy was given.

### **Voting at a Meeting of Members**

- 87.** At a meeting of the members of the Company, but subject to any rights or restrictions attached to any class of shares:
- a) each member has, on a show of hands, one vote;
  - b) each member has, on a poll, one vote for each share held; and
  - c) each body corporate representative has, unless otherwise specified in his or her appointment, all the powers that a body corporate has as a member (including the power to vote on a show of hands).
- 88.** The chairman of a meeting of the Company's members has, subject to any conflict of interest, a casting vote, and also, if the chairman is a member, any vote the chairman has in his or her capacity as a member.
- 89.** If a share is held jointly and more than one member votes in respect of that share at a meeting of the Company's members, only the vote of the member whose name appears first in the register of members counts.
- 90.** A challenge to a right to vote at a meeting of the Company's members:
- a) may only be made at the meeting; and
  - b) must be determined by the chairman, whose decision is final.
- 91.** A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- 92.** On a show of hands at a meeting of the Company's members, a declaration by the chairman is conclusive evidence of the result. Neither the chairman nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 93.** At any meeting of the Company's members, a poll may be demanded, in accordance with the provisions of Section 250L of the *Corporations Act* 2001, on any resolution, other than a resolution concerning the election of the chairman of the meeting or a resolution concerning the adjournment of the meeting.
- 94.** A poll demanded must be taken when and in the manner the chairman directs.

### **Minutes of Meeting of Members**

- 95.** Minutes of all meetings of the Company must be taken and recorded in accordance with the provisions of Section 251A of the *Corporations Act* 2001.

## **CHAPTER 4 - DIRECTORS**

### **Appointment, Termination and Resignation of Directors and Alternate Directors**

- 96.** Until otherwise determined by the Company in a General Meeting, the Company may have ONE Director or up to but no more than eight Directors.
- 97.** The Company may appoint a person as a director by resolution passed in general meeting.
- 98.** The directors of the Company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the Company is not enough to make up that quorum.
- 99.** If a person is appointed under Rule 97 as a director of the Company, the Company must confirm the appointment by resolution within 2 months after the appointment is



made. If the appointment is not confirmed, the person ceases to be a director of the Company at the end of those 2 months.

- 100.** A director may, with the approval of the other directors of the Company, appoint an alternate director to exercise some or all of the director's powers for a specified period.
- 101.** If the appointing director requests the Company to give the alternate director notice of directors' meetings, the Company must do so.
- 102.** When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.
- 103.** The appointing director may terminate the alternate director's appointment at any time.
- 104.** The Company:
  - a) may by resolution remove a director from office; and
  - b) may by resolution appoint another person as a director instead.
- 105.** An appointment of, or termination of the appointment of, or resignation of, a director or an alternate director must be in writing. A copy of the written appointment, or termination, or resignation, must be given to the Company at its registered office.
- 106.** The Company must give the Australian Securities and Investments Commission notice of the appointment, or termination of the appointment, or resignation of a director or an alternate director, in accordance with the provisions of Section 205B of the *Corporations Act 2001*.
- 107.** Section 201F of the *Corporations Act 2001* applies in the event of the death or bankruptcy of a director who is the only director and is also the only member of the Company.

#### **Powers and Duties of Directors**

- 108.** The business of the Company is to be managed by or under the direction of the directors.
- 109.** The directors may exercise all the powers of the Company except any powers that the *Corporations Act 2001* or this Constitution require the Company to exercise in general meeting.
- 110.** Any two directors of the Company may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 111.** Notwithstanding Rule 110, the directors of the Company may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

#### **Appointment of Attorney**

- 112.** The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

#### **Provision of Power of Attorney**

- 113.** Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorneys as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

## **Managing Director**

- 114.** The directors of the Company may appoint one or more of themselves to the office of managing director of the Company for the period, and on the terms (including as to remuneration), as the directors see fit.
- 115.** A person ceases to be the managing director of the Company, if they cease to be a director of the Company.
- 116.** The directors of the Company may confer on the managing director any of the powers that the directors can exercise.
- 117.** The directors of the Company may revoke or vary:
- a) the appointment of the managing director; or
  - b) any of the powers conferred on the managing director.

## **Committee of Directors**

- 118.** The directors of the Company may delegate any of their powers to a committee of directors.
- 119.** A committee of directors must exercise the powers delegated to it in accordance with any directions of the directors of the Company. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 120.** The delegation, by the directors of the Company, of powers to a committee of directors must, in accordance with the provisions of Section 251A of the *Corporations Act 2001*, be recorded in the Company's minute book.

## **Director's Interest in Contract with the Company**

- 121.** If a director of the Company has an interest in a contract or proposed contract with the Company (other than as a member) and the director discloses the nature and extent of the interest at a meeting of the directors:
- a) the director may vote on whether the Company enters into the contract; and
  - b) the contract may be entered into; and
  - c) the director may vote on matters involving the contract; and
  - d) if the disclosure is made before the contract is entered into:
    - i. the director may retain benefits under the contract even though the director has an interest in the contract; and
    - ii. the Company cannot avoid the contract merely because of the existence of the interest.

## **Directors' Remuneration and Expenses**

- 122.** The directors of the Company are to be paid the remuneration that the Company determines by resolution.
- 123.** The Company may also pay the directors' travelling and other expenses that they properly incur:
- a) in attending directors' meetings or any meetings of a committee of directors; and
  - b) in attending any general meetings of the Company; and
  - c) in connection with the Company's business.

## **CHAPTER 5 - DIRECTORS' MEETINGS**

### **Resolutions Without A Directors' Meeting**

- 124.** The directors of the Company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document



containing a statement that they are in favour of the resolution set out in the document.

**125.** Separate copies of a document may be used for signing by the directors of the Company, if the wording of the resolution and statement is identical in each copy.

**126.** The resolution is passed when the last director signs.

### **Use of Technology**

**127.** The directors of the Company may hold a meeting at two (2) or more venues using technology that gives the directors as a whole a reasonable opportunity to participate in the meeting and allows the parties present to hear and be heard by each other person present and adjourn and otherwise regulate the meeting as they determine.

### **Calling Directors' Meetings**

**128.** A directors' meeting may be called by a director giving reasonable notice individually to every other director.

### **Chairing Directors' Meetings**

**129.** The directors may elect a director to chair their meetings.

**130.** The directors may determine the period for which the director is to be the chairman.

**131.** The directors must elect a director present to chair a meeting, or part of it, if:

- a) a director has not already been elected to chair the meeting; or
- b) a previously elected chairman is not available or declines to act, for the meeting or the part of the meeting.

### **Quorum At Directors' Meetings**

**132.** Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting. In the event that the Company has only one DIRECTOR and that Director records his decision or declaration to particular effect, the recording of the decision or declaration in writing shall be deemed to be a resolution passed at a meeting of the Company's Directors.

### **Passing Of Directors' Resolutions**

**133.** A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

**134.** The chairman has a casting vote if necessary in addition to any vote he or she has in his or her capacity as a director.

**135.** Minutes of all meetings of directors must be taken and recorded in accordance with the provisions of Section 251A of the *Corporations Act 2001*.

## **CHAPTER 6- MISCELLANEOUS**

### **Secretary**

**136.** The directors of the Company may or may not in accordance with the provisions of the *Corporations Act 2001*, appoint a secretary and may appoint one or more assistant or deputy secretaries.

**137.** A secretary or an assistant or deputy secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

### **Company Seal**

**138.** The Company may, in accordance with the provisions of Section 123 of the *Corporations Act 2001*, have a common seal and a duplicate seal.

- 139.** If the Company has a common seal it may use the common seal to execute documents in accordance with the provisions of Section 127 of the *Corporations Act* 2001.

#### **Inspection of Books**

- 140.** The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.

#### **Payment of Dividends**

- 141.** In accordance with the provisions of Section 254T of the *Corporations Act* 2001 a dividend may only be paid out of profits of the Company.

- 142.** The directors of the Company may determine that a dividend is payable and fix:

- a) the amount; and
- b) the time for payment; and
- c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

- 143.** Interest is not payable on a dividend.

- 144.** The directors of the Company may pay dividends as they see fit, subject to Rules 141 to 143 and subject to the terms on which shares in the Company are on issue.

- 145.** The directors of the Company may deduct from any dividend payable to a member all sums of money, if any, presently payable by that member to the Company on account of calls or otherwise in relation to shares in the Company.

- 146.** Any dividend may be paid by cheque sent through the post directed to:

- a) the address of the holder as shown in the register of members, or in the case of joint holders to the address shown in the register of members as the address of the joint holder just first named in that register; or
- b) to such other address as the holder or joint holders in writing directs or direct.

#### **Loans – COMPANY/MEMBER**

##### **Approval of Loan to a Member by the Company**

- 147.** The directors may at any time and from time to time lend any sum or sums out of the capital of the Company and any other monies held by the Company to any member/s on the terms as the directors see fit as long as no such loan shall be made without a resolution of the directors.

##### **Approval of Loan to the Company by a Member**

- 148.** A member may at any time and from time to time lend any sum or sums to the Company on the terms agreed to between the Company and the member provided that no such loan shall be made without the resolution of the members in a general meeting.

##### **Terms of Loan**

- 149.** Any loan approved by the directors or the members as the case may be pursuant to this clause shall be on the following terms:
- a) this instrument together with the resolutions of the loan agreement plus any formal loan agreement shall form the written loan agreement;
  - b) the rate of interest payable on the loan shall be equal to or exceed the Interest Rate;
  - c) the maximum term shall be:



- (i) 25 years for a loan if:
  - A. 100% of the value of the loan is secured by a mortgage over real property that has been registered in accordance with the law of the State or Territory;
  - B. when the loan is first made, the market value of that real property (less the amount of any other liability secured over that property in priority to the loan) is at least 110% of the amount of the loan; and
- (ii) 7 years for any other loan; and
- (iii) the borrower may repay the loan in full at any time before the end of the term ;
- d) loan repayments shall be made which are equal to or greater than the minimum yearly repayment requirements in accordance with Division 7A of Part III of the ***Income Tax Assessment Act 1936*** or any applicable substituted or re-enacted provisions in any act.

### **Indemnity**

- 150.** Every officer, auditor or agent of the Company shall be indemnified out of the property of the Company against any liability incurred by him or her in his or her capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his or her favour or in which he or she is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the *Corporations Act 2001*, granted to him or her by a court.

## **SCHEDULE A**

### **Class of shares**

- 1.1** Notwithstanding any rights or restrictions conferred on holders as described in this Schedule, all rights and restrictions attaching to any shares in respect of dividends are subject to the provisions of the constitution.
- 1.2** Subject to Clause 2 and the power therein to issue shares of classes determined by the directors, the Company may also issue Subscriber shares and the shares of the classes referred to below in this clause. The Subscriber shares (if any) will be redeemable preference shares and the rights, privileges and conditions attaching to Subscriber shares are as follows:
- a) They will only be issued upon registration of the Company and will only be issued to persons specified in the application for the Company's registration under the Law as persons who consent to become Members of the Company;
  - b) Subject to the provisions of Section 254J of the Law, the next issue of shares of any class or classes after the issue of the Subscriber shares and payment up in full thereof will be deemed to have been issued for the purposes of redeeming the Subscriber shares provided that the proceeds of shares so issued is at least equal to the consideration paid for the Subscriber shares on issue. Upon the issue of such shares, each of the Subscriber shares will ipso facto be redeemed for the consideration paid for it, and the issued capital of the Company will then stand at an amount equal to the shares which comprised the next issue of shares;
  - c) They will carry no right to participate in any distribution of surplus assets or profits;
  - d) They will rank as to repayment of capital on winding-up of the Company before any other class of shares then on issue;
  - e) They will carry no right to dividends;
  - f) They will carry the right at meetings of the Company's Members to exercise one vote for each Subscriber share held; and
  - g) Upon the redemption of the Subscriber shares in the manner provided in this Constitution, the Company will cease to be authorised to issue shares of this class.

### **1.3 Ordinary, "A" & "B" class shares**

The rights, privileges and conditions attaching to Ordinary, "A" and "B" shares are as follows:

- a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company.

### **1.4 "C" class shares**

The rights, privileges and conditions attaching to "C" shares are as follows:

- a) They will not confer on the holders thereof any right to dividends or any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.



- b) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

### **1.5 "D" class shares**

The rights, privileges and conditions attaching to "D" shares are as follows:

- a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- b) They will not confer on the holders thereof any right to dividends.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.

### **1.6 "E" & "F" class shares**

The rights, privileges and conditions attaching to "E" and "F" shares are as follows:

- a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.

### **1.7 "G" class shares**

The rights, privileges and conditions attaching to "G" shares are as follows:

- a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

### **1.8 "H" redeemable preference class shares**

The rights, privileges and conditions attaching to the "H" redeemable preference shares are as follows:

- a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
  - 1) on a proposal to reduce the share capital of the Company;
  - 2) on a proposal that affects rights attached to the "H" redeemable preference shares;
  - 3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or



- 4) during the winding up of the Company.
- b) They will confer to the holders thereof the right to receive from the profits of the Company a non-cumulative preferential dividend at the rate of 5% per annum on the capital for the time being paid up thereon in priority to the payment of any dividend on any other share in the Company.
- c) Upon a reduction of capital or winding up of the Company they will as regards return of paid up capital rank in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "H" redeemable preference share on or before 30 June 2050, by giving written notice to the holders at their respective registered addresses and each such notice will be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "H" redeemable preference shares not so redeemed on 30 June 2050 will not thereafter be capable of being redeemed.

### **1.9 "I" redeemable preference class shares**

The rights, privileges and conditions attaching to the "I" redeemable preference shares are as follows:

- a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
  - 1) on a proposal to reduce the share capital of the Company;
  - 2) on a proposal that affects rights attached to the "I" redeemable preference shares;
  - 3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or
  - 4) during the winding up of the Company.
- b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- c) Upon a reduction of capital or a winding up of the Company they will as rank regards return of paid up capital after any issued "I" redeemable preference shares but in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "I" redeemable preference share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "I" redeemable preference shares not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

### **1.10 "J" class shares**

The rights, privileges and conditions attaching to "J" shares are as follows:



- a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- d) In the event of the death, bankruptcy, mental incapacity or serious or prolonged ill health of a sole Director who is also the only Member entitled to vote at a meeting of the Company's Members which results in that person being unable to carry out the duties of a Director, the holders of "J" shares will have the right to appoint a new Director by the passing of an ordinary resolution of the holders of "J" shares.

#### **1.11 "K" class dividend access share**

The rights, privileges and conditions attached to the "K" Class dividend access shares are as follows:

- a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "K" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "K" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

#### **1.12 "L" class dividend access share**

The rights, privileges and conditions attaching to the "L" Class dividend access shares are as follows:

- a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "L" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the



Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "L" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

### **1.13 "M" class dividend access share**

The rights, privileges and conditions attaching to the "M" Class dividend access shares are as follows:

- a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "M" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "M" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

### **1.14 "N" class dividend access share**

The rights, privileges and conditions attaching to the "N" Class dividend access shares are as follows:

- a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "N" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "N" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.



## Members' Agreement

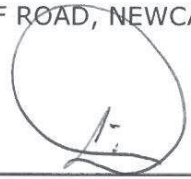
The Members at registration of the Company agree to this Constitution.

### The Member

HELEN MARGARET OGLE of Unit 26 304 WHARF ROAD, NEWCASTLE, NSW 2300(1 ORD Share):

  
\_\_\_\_\_  
**HELEN MARGARET OGLE**  
Member

Dated: 7<sup>th</sup> May 2017

  
\_\_\_\_\_  
David James McPherson  
Witness Name / Signature

Dated: 7<sup>th</sup> May 2017



## **HOLDING TRUST DEED OF ESTABLISHMENT**

### **FUDUCIA HELEN HOLDING TRUST**

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## DEED SETTLING BARE TRUST ARRANGEMENT FUDUCIA HELEN HOLDING TRUST

This Deed is dated:

### PARTIES

**HOLDING TRUSTEE:** FIDUCIA HELEN PTY LTD - ACN 619 161 563 of  
LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300

**BENEFICIARY:** HELEN OGLE PTY LIMITED - ACN 129 348 438 of  
LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 as  
Trustee of THE OGLE FAMILY SUPERANNUATION FUND

**MEMBERS:** HELEN MARGARET OGLE of 26/304 WHARF ROAD,  
NEWCASTLE, NSW 2300

### RECITALS

- A. The Holding Trustee and Members of the self-managed superannuation fund known as, **HELEN OGLE PTY LIMITED - ACN 129 348 438 OF LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 AS TRUSTEE FOR THE OGLE FAMILY SUPERANNUATION FUND (Beneficiary)**, have met and considered the undertaking of a Limited Recourse Borrowing Arrangement (**LRBA**) in accordance with sections 67A and 67B of the *Superannuation Industry (Supervision) Act 1993 (SISA) (Borrowing Arrangement)*.
- B. The Beneficiary has requested the Holding Trustee to act as custodian for the acquisition of the asset referred at **Schedule One** (and as more fully particularised up to the time of settlement on such acquisition by further Deed of Amendment) (**Asset**), to enable, in part, the Beneficiary to limit the recourse of a Lender(s) as against the Beneficiary, to recover any amounts borrowed or otherwise due as a consequence of a Borrowing Arrangement, excepting the Asset.
- C. The Holding Trustee accepts to act as custodian of the Asset, for the sole and exclusive benefit of the Beneficiary, and subject to the directions and benefits of the Beneficiary, and consents to become a party or otherwise participate in a Borrowing Arrangement between the Beneficiary and its Lender(s), for purposes of entering into an arrangement under section 67A of the SISA.
- D. The Holding Trustee and Beneficiary, by this Deed, settle the Bare Trust, which shall be referred to between the parties as "**FUDUCIA HELEN HOLDING TRUST (Holding Trust)**", for the purpose of acquiring the Asset in conjunction with a Borrowing Arrangement between the Beneficiary and its Lender(s).
- E. The relationship of Holding Trustee and Beneficiary are, for purposes of the Stamp Duties Acts, to be of an agent and principal, with the Holding Trustee acting in a fiduciary capacity, as trustee over the Asset, for the sole benefit of the Beneficiary, which Beneficiary is liable, and indemnifies the Holding Trustee, for any and all costs associated with the acquisition, maintenance and dealing with the Asset.
- F. The parties agree to be bound by the terms of the Operative Parts.

### OPERATIVE PARTS

1. **Terms of settlement and administration of the Bare Trust arrangement known by the name of FUDUCIA HELEN HOLDING TRUST**

The Beneficiary requests, and the Holding Trustee consents, to the settlement of the Holding Trust, to be administered as follows:

- (a) The Holding Trustee shall execute, at the Beneficiary's direction, the legal instruments as are necessary to acquire the Asset, on Bare Trust, for the Beneficiary;
- (b) The Holding Trustee shall execute, at the Beneficiary's direction, the legal instruments as are necessary to allow the registration of such security interests, charges and/or mortgages as may be required by the Beneficiary's Lender(s);
- (c) The Holding Trustee shall receive and pay to the Beneficiary all income associated with the Asset, and the Beneficiary shall pay and indemnify the Holding Trustee in respect to all costs of administration of the Holding Trust, including but not limited to the costs associated with holding, maintaining, repairing, letting, dealing with, disposing and otherwise arising from the holding of the Asset;
- (d) The Holding Trustee shall, at the request of the Beneficiary, transfer all right, title and interest in the Asset, from and following the payment of one or more amounts, as required by section 67A(1)(c) of the SISA;
- (e) The Holding Trustee may only retire with the consent of the Beneficiary, and the Holding Trustee may be removed by the Beneficiary, provided always that during the term of the Holding Trust there is a replacement trustee appointed to act in substitution, and such replacement trustee is approved by the Beneficiary;
- (f) The Holding Trustee shall at no stage of the Holding Trust fund a cost of the Asset, which term the Beneficiary agrees to and promises to fund each and every cost at the notice of demand by the Holding Trustee or a creditor to the Holding Trustee;
- (g) The Holding Trustee shall have regard to the demands of the Beneficiary's Lender(s), but shall be subject to the demands solely of the Beneficiary in respect to all matters in respect to holding and/or disposal, except in respect to an explicit contractual term between the Beneficiary and its Lender(s) in respect to security rights;
- (h) The Holding Trustee shall have regard to the obligations of the Beneficiary, and its Members and Related Parties to comply with the Superannuation Laws, including but not limited to the following undertakings:
  - (i) the Holding Trustee will be the sole trustee of the Holding Trust, and the Beneficiary will be the sole beneficiary of the Holding Trust for the term of the Holding Trust;
  - (ii) the Holding Trustee is not subject to any action, nor aware of any action, which may prevent the Holding Trustee from acting as a fiduciary to the Beneficiary, and undertakes to promptly advise the Beneficiary should the circumstances change;
  - (iii) the Holding Trustee is aware of the limitations in respect to the use and enjoyment of the Asset by Part 8 Associates (as defined in the SISA and SISR), and shall do all its power to prevent the use of the Asset in breach of the Superannuation Laws;

- (iv) the Holding Trustee shall deal with the Asset on reasonable arm's length terms, having regard to the Beneficiary's obligation to satisfy the Sole Purpose Test of section 62 of the SISA;
- (v) if the Asset is other than Business Real Property, then the Holding Trustee shall allow the Asset to be let to a Member or Part 8 Associate only if the Beneficiary has consented to and verified the In-House Asset Test at section 71 of the SISA is not breached;
- (vi) if the Asset is Business Real Property, then the Holding Trustee shall allow the Asset to be let to a Member or Part 8 Associate and/or if the Beneficiary has consented to and verified the letting arrangement is on arm's length and commercial terms in accordance with section 109 of the SISA;
- (vii) the Beneficiary and Holding Trustee acknowledge the Asset is not currently owned by the Beneficiary and/or Holding Trust;
- (viii) the Beneficiary and Holding Trustee agree to do all things necessary to ensure that the terms of the Holding Trust are compliant with the Investment Strategy of the SMSF, and as amended from time to time;
- (ix) the Beneficiary and Holding Trustee agree that the Asset may only be replaced in accordance with section 67B of the SISA, and as authorised by the Beneficiary's Lender(s) (if required by a term of agreement or contract between the Beneficiary and its Lender(s));
- (x) the Beneficiary and Holding Trustee acknowledge and covenant to prevent the registration of any other charge, security interest or claim, except as shall be registered in accordance with the Borrowing Arrangement between the Beneficiary and its Lender(s); and
- (xi) the Holding Trustee and Beneficiary covenant to the other to do all things necessary, and to execute all instruments to give effect, to the terms of Clause 1 of this Deed.

## 2. **Retirement and Appointment of Holding Trustee**

- (a) The Holding Trustee may retire at any time, provided the Holding Trustee does not retire prior to the appointment of a replacement Holding Trustee by the Beneficiary, subject to subclause 2(b).
- (b) Notwithstanding subclause 2(a), if the Asset is encumbered by a Security Interest held by the Lender(s) of the Beneficiary, then the Holding Trustee must seek the consent of the Lender(s) and undertake such requirements as may be stipulated of the Lender(s) prior to retiring.
- (c) A replacement Holding Trustee may be any Person(s) appointed by the Beneficiary, provided the Person(s) is/are not Disqualified Persons.

## 3. **Trust Assets**

Without limiting Clause 1:

- (a) The Asset will at all times be held by the Holding Trustee upon Trust for the Beneficiary, which Beneficiary has provided all of the purchase monies;
- (b) The Holding Trustee has not and will not provide any of the purchase monies and the real purchaser is the Beneficiary;

- (c) The Holding Trustee may only acquire Assets that the Beneficiary is allowed to acquire under the Superannuation Laws; and
- (d) The Holding Trustee undertakes to deal with the Asset and exercise and perform all the rights, duties and powers relating to the Asset only as directed by the Beneficiary, which may include the execution or endorsement of matters and/or legal documents (including Security Instruments) required by the Beneficiary's Lender(s).

4. **Amendment**

The Holding Trustee may, with the consent of the Beneficiary, amend the terms of the Holding Trust by further deed of variation.

5. **Stamping Requirements**

The Holding Trustee and Beneficiary covenant to do all things necessary to effect the stamping of this Deed in accordance with the requirements of the Stamp Duties Act relevant to the matter.

6. **Jurisdiction**

This Deed is to be interpreted according to the laws of the State or Territory of the Commonwealth of Australia in which the Trustee resides or in such other State or Territory as the Beneficiary at any time nominates by way of written notice delivered to the Trustee.

7. **Entire Agreement**

This Deed is the entire agreement of the parties, and supersedes any prior understanding, agreement, arrangement or representation in respect to the subject of this Deed.

8. **Costs**

The Beneficiary shall bear the costs of the Deed.

9. **Counter-Parts**

This Deed may be executed in counter-parts, with the separately executed instruments taken together to constitute the Deed.

10. **Severability**

If any clause or term of the Deed is deemed to be unlawful or void, such clause or term shall be severed from the Deed and the balance of the Deed shall remain.

11. **Notice and Communication**

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system; and

- (e) The parties consent to the use of electronic communication and digital signatures for all matters and adopt the terms as applied under the *Electronic Transactions Act 1999 (Cth)*.

## 12. Definitions

The meanings in this Deed shall be, unless contrary intention appears:

- (a) **Asset** means the Single Acquirable Asset shown at **Schedule One**, and acquired by the Holding Trustee and Beneficiary, and subject to the LRBA between the Beneficiary and its Lender(s). The description at **Schedule One** may be amended as further specifics of the legal description of the asset becomes known to the parties, by instrument in writing.
- (b) **Bare Trust** is an arrangement whereby one party holds an asset for the absolute entitlement and benefit of another party, and includes, for purposes of this Deed, the arrangement whereby the Holding Trustee holds the Asset on trust for the Beneficiary.
- (c) **Beneficiary** is **HELEN OGLE PTY LIMITED - ACN 129 348 438 OF LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 AS TRUSTEE FOR THE OGLE FAMILY SUPERANNUATION FUND**, and includes such further and/or replacement parties as shall act as trustee of the **THE OGLE FAMILY SUPERANNUATION FUND**.
- (d) **Complying Superannuation Fund Status** includes, but is not limited to, a notice in respect to a SMSF of complying fund status in accordance with Part 5, Division 2 of the SISA.
- (e) **Disqualified Person** means a person who qualifies as a disqualified person for the purposes of section 120 of the SISA.
- (f) **Holding Trust** is the Bare Trust, known between the parties as **FUDUCIA HELEN HOLDING TRUST**, settled under this Deed. The name is for convenience, and does not vary the custodial relationship between the Holding Trustee and Beneficiary.
- (g) **Holding Trustee** means **FIDUCIA HELEN PTY LTD - ACN 619 161 563**, which party holds the Asset on Bare Trust and absolute entitlement for the Beneficiary, subject to any security interests of the Beneficiary's Lender(s) in accordance with the Borrowing Arrangements. The term also includes such replacement trustees appointed by the Beneficiary for such purpose, in accordance with Clause 2.
- (h) **Limited Recourse** means the enforcement and rights allowed by a Lender in respect to a financing arrangement to a complying SMSF in relation to a Borrowing Arrangement as allowed by sections 67, 67A and/or 67B of the SISA, or as otherwise allowed by the Superannuation Laws.
- (i) **Limited Recourse Borrowing Arrangement** and **LRBA** means an arrangement between a Lender and Borrower for the provision of a Loan of Monies by a Complying Superannuation Fund, made in accordance with the Superannuation Laws, including but not limited to sections 67, 67A and 67B of the SISA.
- (j) **Lender** means a person, body corporate or legal entity, and may be a combination thereof, which provides Monies to the Beneficiary, on limited recourse terms, as permitted under the Superannuation Laws, and such party may or may not have a registered security, charge or other claim against the Asset from time to time as allowed by sections 67A and 67B of the SISA. The



term shall refer to an original Lender(s) and such Lender(s) engaging in a refinance of the LRBA as allowed by the Superannuation Laws.

- (k) **Loan** means an arrangement between a Lender and Borrower, and may include a Guarantor and/or Holding Trustee, in respect to the advancement of Monies by the Lender, in exchange for the promise by the Borrower (and may include a Guarantor and/or Holding Trustee) to repay such Monies on mutually agreed terms.
- (l) **Member** means the members of **THE OGLE FAMILY SUPERANNUATION FUND**.
- (m) **Monies** means cash, assets and any other form of property which may be used as a medium of exchange.
- (n) **Person** means an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- (o) **Related Party Transaction** means a transaction by Part 8 Associates and the Borrower, and include transactions described in section 66 of the SISA.
- (p) **Property** includes the Property subject of the Holding Trust described in Schedule One.
- (q) **Regulator** means the government body having responsibility for the administration of self-managed superannuation funds, or having responsibility for a matter considered under this Deed.
- (r) **Regulator's Terms** means the requirements published by the Regulator, by rulings, guidance statements, variations in legislation or regulation or otherwise, in respect to the undertaking of Limited Recourse Borrowing Arrangements, Related Party Transactions, borrowing and/or any and all other matters relevant to the maintenance of a Complying Superannuation Fund Status, and the arrangements by the Fund under this Agreement.
- (s) **Related Party** is a Person who meets the definition of a Part 8 Associate.
- (t) **SMSF** means the Beneficiary, which is absolutely entitled to the Asset held on Holding Trust by the Holding Trustee.
- (u) **Security Instrument** includes mortgages, registered security interests (as the term is interpreted in the reading of the *Personal Property Securities Act 2009*, as amended from time to time) and such other instruments as are capable of registering a priority of interest over an asset, thing or matter by a Person other than the registered owner.
- (v) **Stamp Duties Acts** means the Duties Act relevant to the matters of the custodial relationship between the Holding Trustee and Beneficiary in respect to the Asset, including, but not limited to such of the following as are relevant to the circumstances: *Duties Act 1997 (NSW)*, *Duties Act 2001 (QLD)*, *Duties Act 2000 (VIC)*, *Duties Act 1999 (ACT)*, *Stamp Duty Act (NT)*, *Stamp Duties Act 1923 (SA)*, *Duties Act 2001 (TAS)*, *Duties Act 2008 (WA)*.
- (w) **Superannuation Laws** includes the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Social Security Act 1991*, the *Social Security Regulations*, the *Veterans Entitlement Act 1986*, the *Veterans Entitlement Regulations*, the *Family Law Act 1975*, the *Family Law Regulations*, the *Bankruptcy Act 1966*,

*Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time, and include also the Regulator's determination on any Superannuation Law where the Trustee decides.*

### 13. Interpretation

The meanings in this Deed shall be, unless contrary intention appears:

- (a) A clause, annexure or schedule is a reference to a clause in or annexure of or schedule to this Deed;
- (b) A document (including this Deed) includes any variation or replacement of it;
- (c) A statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the *Corporations Act 2001 (Cth)*, and the definition of Control;
- (d) The singular includes the plural and vice versa;
- (e) The word "including" when introducing a list of items does not exclude a reference to other items;
- (f) The word "includes" when introducing a term or definition does not exclude a reference to other terms or definitions;
- (g) The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency;
- (h) A particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- (j) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- (k) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- (l) Headings are inserted for convenience and do not affect the interpretation of this Deed; and
- (m) Where words are capitalised their meaning is to be found in the Definitions.

**EXECUTED AS A DEED.**

**The Holding Trustee**

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FIDUCIA HELEN PTY LTD - ACN 619 161 563 of LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 as Trustee of FUDUCIA HELEN HOLDING TRUST by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):

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**HELEN MARGARET OGLE**  
Sole Director / Secretary

**Dated:** \_\_\_\_\_

**The Borrower**

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HELEN OGLE PTY LIMITED - ACN 129 348 438 of LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 as Trustee of THE OGLE FAMILY SUPERANNUATION FUND by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):

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**HELEN MARGARET OGLE**  
Sole Director / Secretary

**Dated:** \_\_\_\_\_

**The Member**

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HELEN MARGARET OGLE of 26/304 WHARF ROAD, NEWCASTLE, NSW 2300:

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**HELEN MARGARET OGLE**  
Member

**Dated:** \_\_\_\_\_

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Witness Name / Signature

**Dated:** \_\_\_\_\_

## **SCHEDULE ONE**

**ASSET SUBJECT TO THE BARE TRUST ARRANGEMENT:** UNIT 8 / 5 Channel Road  
Steel River Industrial Estate  
MAYFIELD WEST NSW 2304, and shall include any variation, modification and/or further  
particularisation of the Asset description as defined from time to time by the parties.



**MINUTES OF MEETING OF N/A OF  
HELEN OGLE PTY LIMITED - ACN 129 348 438 AS TRUSTEE FOR  
THE OGLE FAMILY SUPERANNUATION FUND (FUND)**

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**HELD AT:**

**ON:**

**PRESENT:** HELEN MARGARET OGLE

**BUSINESS:** At a meeting of the Directors convened on this date, with the agenda accepted and notice waived and a quota met, the Directors met and unanimously resolved the following.

**RESOLUTION 1:** It is **RESOLVED UNANIMOUSLY** by the Directors to approve the updating of the Investment Strategy to accommodate a Limited Recourse Borrowing Arrangement and Holding Trust Arrangement.

**DISCUSSION:** The Chairperson recommended updating the Investment Strategy, as marked and shown at **Annexure 1**, which considers the appointment of a holding trustee, establishment of a Holding Trust, entering into of a Limited Recourse Borrowing Arrangement ("**LRBA**") and acquisition of a Single Acquirable Asset, being: UNIT 8 / 5 Channel Road Steel River Industrial Estate MAYFIELD WEST NSW 2304 ("**Asset**"), as permitted by section 67A of the *Superannuation Industry (Supervision) Act 1993* (**SISA**).

**RESOLUTION 2:** It was **RESOLVED UNANIMOUSLY** by the Directors to appoint a holding trustee, settle a holding trust, enter into a limited recourse borrowing arrangement and acquire an asset.

**DISCUSSION:** The Chairperson recommended the appointment of FIDUCIA HELEN PTY LTD - ACN 619 161 563 ("**Holding Trustee**"), to act as custodian for the Fund on Bare Trust, for the acquisition of the Asset on terms tabled and marked to this document as **Annexure 1**.

The Chairperson recommended the undertaking of a Limited Borrowing Arrangement, in accordance with section 67A of the SISA on terms compliant with PCG 2016/5 and TD 2016/16 and the Superannuation Laws generally, being terms which are arm's length and commercial in arrangement.

**CLOSURE:** There being no further business the meeting is closed.

This record is made in accordance with section 251A of the *Corporations Act 2001 (Cth)* and held by the company as a record of the approved update to the Investment Strategy by:

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**HELEN MARGARET OGLE**

**Dated:** \_\_\_\_\_

## ANNEXURE 1 – UPDATE TO INVESTMENT STRATEGY OF THE FUND

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**HELEN OGLE PTY LIMITED - ACN 129 348 438** ("**Trustee**") as trustee for the **THE OGLE FAMILY SUPERANNUATION FUND** ("**Fund**") updates the Investment Strategy of the Fund as follows:

The Trustee has considered and consulted with the Member, and updates the Investment Strategy to detail the terms of settlement of a Holding Trust and appointment of Holding Trustee, document the consideration of a Limited Recourse Borrowing Arrangement ("**LRBA**") and provide additional terms in respect to the acquisition of UNIT 8 / 5 Channel Road Steel River Industrial Estate MAYFIELD WEST NSW 2304 ("**Asset**") for such purpose, including, but not limited to an allowance for the acquisition from a Member or Related Party of a Member of the Fund, having regard to the subsequent considerations:

- (a) the Fund must remain a regulated superannuation fund within the meaning of the Superannuation Laws;
- (b) the Asset acquired must satisfy the definition of a Single Acquirable Asset;
- (c) if the Asset acquired under a LRBA is Real Property and acquired from a Part 8 Associate (in summary, Member or related party of a Member), then:
  - (i) the Member or Trustee may receive written advice from a SMSF Advisor that the transaction is compliant with the Superannuation Laws;
  - (ii) the Real Property must be Business Real Property;
  - (iii) the acquisition of the Real Property must not be a Prohibited Related Party Transaction;
  - (iv) the acquisition is not an In-House Asset, or in the event the acquisition is an In-House Asset, that the In-House Asset Test is not failed as a consequence of the acquisition of the Asset;
  - (v) the acquisition of the Real Property will not result in the Fund breaching the Superannuation Laws;
  - (vi) if the Real Property is to be leased to a Part 8 Associate, that such lease will be on arm's length and commercial terms (including but not limited to rent, rent reviews, outlays, and conditions of use and access), with any default by the Part 8 Associate enforced in accordance with market standard enforcement processes;
  - (vii) the Fund would acquire the Real Property even if it was not going to be leased to a Part 8 Associate; and
  - (viii) the Fund would acquire the Real Property even if it was not acquired from a Part 8 Associate (if applicable);
- (d) if the Asset acquired under the LRBA is shares and/or units, then the Trustee will not enter into a dividend reinvestment plan, if such plan would violate the Superannuation Laws (which at this time it does);
- (e) the acquisition must not be a Prohibited Borrowing or Prohibited Related Party Acquisition;
- (f) the Asset will be insured properly by the Trustee, including but not limited to, where appropriate, Replacement and Reinstatement Value;



- (g) the Sole Purpose for acquiring the Asset is to further the development and funding required to pay retirement and death benefits for the Member of the Fund;
- (h) the Trustee will assist the risks of borrowing in respect to each Asset and proposed arrangement, and proceed on the basis that:
  - (i) the risks of borrowing are limited to the Asset acquired,
  - (ii) the borrowing is appropriate to the funding of the SMSF's financial obligations and investments, despite the risks involved in the borrowing;
  - (iii) the investment and borrowing is reasonable, given the liquidity requirements and cash flow consequences of the borrowing and Asset acquisition;
  - (iv) the investment and borrowing is appropriate, notwithstanding the potential timing of retirement of Member, as well as the possibility of early access to Member Interests as a consequence of the disability, death or payment splitting requirements of a Member; and
  - (v) the investment and borrowing are appropriate having regard to the diversification of the SMSF resources and returns necessary to achieve the Sole Purpose of the Fund;
- (i) if the Trustee acquires an Asset from a Part 8 Associate, the Trustee will be satisfied that the SMSF would have acquired the Asset even if the Asset was not acquired from a Part 8 Associate;
- (j) the Trustee will use the borrowed monies from the LRBA solely for the acquisition and/or maintenance of the Asset, which costs can include borrowing (financing or refinancing), acquisition costs (such as conveyancing fees, stamp duty, brokerage or loan establishment fees) and/or maintenance of the Asset (which costs may be by way of a draw down or redraw facility, provided the Superannuation Laws permit);
- (k) the Trustee will not enter into a LRBA with any party whereby the Loan to Value Ratio (LVR) in respect to the Asset and monies lent exceed the LVR allowed by the Superannuation Laws;
- (l) the Lender's rights against the SMSF will always be limited to the Asset;
- (m) the Asset may not be subject to any charge, excepting the Security allowed taken under the LRBA;
- (n) the Trustee will not improve or replace the Asset, except as permitted by the Superannuation Laws, having regard to Section 67B of the SISA and the Regulator's directions; and
- (o) the Trustee will not permit Part 8 Associates to have use or control over the Asset, except as expressly limited by the Superannuation Laws.

The following definitions apply to the Investment Strategy, as updated herein:

**"Asset"** includes one or more assets and any Replacement Asset allowed under Part 7 of the SISA and the Superannuation Laws generally, for purposes of sections 67, 67A and 67B of the SISA to be held by the Holding Trustee on Bare Trust for the absolute entitlement of the Borrower.

**"Acquisition Costs"** includes all monies required by the Borrower and Holding Trustee to acquire the Asset, including stamp duties, conveyancing costs and alike.

**"arm's length"** includes terms which, for purposes of sections 62 and 109 of the SISA are of nature and type which unrelated parties would agree to in commercial arrangements, and includes, but is not limited to the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, and the terms on offer by commercial unrelated lenders to borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse Borrowing Arrangement.

**"Bare Trust"** is the arrangement whereby one party holds an asset for the absolute entitlement and benefit of another party.

**"Business Real Property"** has the meaning given at section 66 of the SISA and includes any freehold or leasehold interest in Real Property, or any interest that is capable of assignment or transfer, or any other class of interest in relation to Real Property prescribed by the SISR for purposes of the Superannuation Laws as belonging to that class, where the Real Property is used wholly and exclusively in one or more businesses, but does not include any interest in the capacity of beneficiary of a trust estate.

**"Commercial terms"** includes terms and arrangements which unrelated commercial parties would be expected to agree to in respect to a thing or matter, and includes but is not limited to the terms of Safe Harbour 1 and Safe Harbour 2 as published in PCG 2016/5, adopted in TD 2016/16, and the terms on offer by commercial unrelated Lenders to Borrowers in respect to the acquisition of a substantially similar Asset under a Limited Recourse arrangement.

**"Complying Superannuation Fund Status"** includes, but is not limited to, a notice in respect to a SMSF of complying fund status in accordance with Part 5, Division 2 of the SISA.

**"Holding Trust"** is a Bare Trust created for the purpose of acquiring an asset for the exclusive and absolute entitlement of another, and for purposes of the Superannuation Laws is the Fund.

**"Holding Trustee"** is the Person appointed to hold the Asset on Bare Trust for the Fund.

**"In-House Asset"** is an asset as defined at section 71 of the SISA, and otherwise at the Superannuation Laws.

**"Investment Strategy"** includes any instrument in writing or agreement of the Trustee and Members of the Fund which satisfies the meaning given at regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994*, and as otherwise provided in the Superannuation Laws.

**"Line of Credit"** is the facility for the provision of Monies by a Lender to a Borrower and may, if permitted by the Superannuation Laws, allow for a redraw facility.

**"Limited Recourse"** means the enforcement and rights allowed by a Lender in regard to a financing arrangement to a complying superannuation fund in relation to a borrowing arrangement as allowed by sections 67, 67A and/or 67B of the SISA, or as otherwise allowed by the Superannuation Laws.

**"Loan to Value Ratio"** is the ratio between the value of the Monies and the value of the Asset at a given time.

**"Monies"** includes cash, assets and any other form of property which may be used as a medium of exchange.

**"Part 8 Associate"** means a Person as shall be included as such for purposes of Part 8, subdivision B of the SISA, including sections 70B, 70C, 70D and 70E of the SISA, and as otherwise defined by the Superannuation Laws.

**"Person"** means an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

**"Prohibited Borrowing"** means a borrowing arrangement which is in contravention to section 67(1) of the SISA and the Superannuation Laws.

**"Prohibited Related Party Transaction"** means a transaction by Part 8 Associates and the Fund which is prohibited by section 66 of the SISA and the Superannuation Laws, but does not include the acquisition of Listed Securities acquired at market value (see section 66(2)(a)), the acquisition of Business Real Property at market value (see section 66(2)(b)), the acquisition of an asset under a merger between regulated superannuation funds (see section 66(2)(c)) or any other asset allowed by the Regulator (see section 66(2)(d)).

**"Regulator"** means the government body having responsibility for the administration of self-managed superannuation funds, or having responsibility for a matter considered.

**"Regulator's Terms"** means the requirements published by the Regulator, by rulings, guidance statements, variations in legislation or regulation or otherwise, in respect to the undertaking of Limited Recourse arrangements, Related Party Transactions, borrowing and/or any and all other matters relevant to the maintenance of a Complying Superannuation Fund Status, and the arrangements by the Fund.

**"Real Property"** means freehold, leasehold or Crown land, buildings on freehold, leasehold or Crown land and such other property which is not personal property.

**"Replacement Asset"** means the acquisition of an Asset, in substitution for an original Asset, for purposes of section 67B of the SISA and the Superannuation Laws generally.

**"Replacement and Reinstatement Value"** means the amount required to excavate, remove, decommission, relocate, rebuild, restore and otherwise reinstate a thing which is partially or totally damaged or destroyed, to a substantially similar condition as the thing was prior to the damage and/or destruction.

**"SISA"** means *Superannuation Industry (Supervision) Act 1993*.

**"Security"** means the offering of a registered interest, which includes the offering of a mortgage, personal property security interest as defined at section 12 of the *Personal Property Securities Act 2009*, and such other thing or condition over an Asset capable of sale, disposal or dealing for the purpose of making a Person whole in respect to a loan, credit arrangement or other financial accommodation.

**"Security Interest"** means a Security that secures the payment of monies or servicing of obligations, giving priority to a Lender in rank to other lenders or creditors in relation to any real or personal property.

**"Single Acquirable Asset"** is an Asset or collection of Assets allowed to be acquired under a Limited Recourse Lending Arrangement as provided under section 67A of the SISA, and the Superannuation Laws.

**"Sole Purpose"** has the meaning given at section 62 of SISA, and the Superannuation Laws.

**"SMSF"** is a superannuation fund that meets all of the terms and conditions of a Complying Superannuation Fund as that term is defined under the Superannuation Laws.



**"SMSF Advisor"** is an accountant, financial planner or lawyer having knowledge and experience with the Superannuation Laws.

**"Superannuation Laws"** includes the *Superannuation Industry (Supervision) Act 1993* (SISA), the *Superannuation Industry (Supervision) Regulations 1994* (SISR), the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Social Security Act 1991*, the *Social Security Regulations*, the *Veterans Entitlement Act 1986*, the *Veterans Entitlement Regulations*, the *Family Law Act 1975*, the *Family Law Regulations*, the *Bankruptcy Act 1966*, *Superannuation (Departing Australia Superannuation Payments Tax) Act 2006*, *Superannuation (Excess Concessional Contributions Tax) Act 2006*, *Superannuation (Excess Non-concessional Contributions Tax) Act 2006*, *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006* and any other law dealing with an Australian Superannuation Fund as amended from time to time, as required by the Regulator's Terms and adopted by the Trustee of the Fund.

**MINUTES OF MEETING OF THE DIRECTORS  
FIDUCIA HELEN PTY LTD - ACN 619 161 563**

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**HELD AT:**

**ON:**

**PRESENT:** HELEN MARGARET OGLE

**CHAIRPERSON:** HELEN MARGARET OGLE was elected to chair the meeting.

**BUSINESS** At a meeting of the Directors convened on this date, with the agenda accepted and notice waived and a quota met, the Directors met and resolved the following.

**RESOLUTION 1:** It is **RESOLVED** that the company accepts to act as the custodian for **HELEN OGLE PTY LIMITED - ACN 129 348 438 OF LEVEL 4, 16 A BOLTON STREET, NEWCASTLE, NSW 2300 AS TRUSTEE FOR THE OGLE FAMILY SUPERANNUATION FUND (Fund)**, and to enter into a Holding Trust Deed settling the Bare Trust arrangement.

**DISCUSSION:** The Directors discussed the request by the Fund to act as custodian on Bare Trust for the Fund, in the acquisition and holding of an Asset to be acquired by the Fund under a Limited Recourse Borrowing Arrangement (**LRBA**) in accordance with Section 67A of the *Superannuation Industry (Supervision) Act 1994 (SISA)*.

The Directors considered the appointment and obligations, as shown in the proposed Holding Trust Deed, shown at **Annexure 1**, and resolved unanimously to accept the appointment and to execute the proposed Holding Trust Deed.

**RESOLUTION 2:** It is **RESOLVED** that the company execute and do all things necessary to assist the Fund in the implementation of a LRBA, including but not limited to executing legal instruments which have the effect the acquisition of the Asset as Holding Trustee for the Fund, and the registration of a Security over the Asset, in favour of the Fund's lender(s).

**DISCUSSION:** The Directors considered the discussion above noted, and resolved unanimously to execute and do all things necessary to assist in the implementation of the LRBA arrangements.

**CLOSURE:** There being no further business the meeting is closed.





This record is made in accordance with section 251A of the *Corporations Act (Cth) 2001*:

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**HELEN MARGARET OGLE**

**Dated:** \_\_\_\_\_

9 November 2017



Helen Ogle Pty Ltd as Trustee for Ogle Family Superannuation Fund  
Level 4, 16A Bolton Street  
NEWCASTLE NSW 2300

**Re: Loan number - 2624468**

Dear Sir/Madam,

Congratulations on your recent settlement! We would like to welcome you as a customer and provide you with some important information.

Our records show that your loan settled on 8 November 2017 and repayments will be directly debited from your chosen account weekly. Your first repayment of \$800.84 will occur on 14 November 2017. If you would like to change the frequency of your repayments, please call our Customer Service Team before your repayment is due. Please note that weekly and fortnightly repayments are calculated by dividing your minimum monthly repayment by four or two as appropriate.

This letter, together with your previously provided document pack, are important loan documents. These documents contain information about the fees and charges payable in connection with your loan. We have also attached a Disbursement Advice detailing the amounts paid on your behalf at settlement. Please keep these documents together in a safe place in case you need to refer to them in the future.

If you have any questions about this letter or your new loan, please contact our Customer Service team on 13 11 33 or email [service@liberty.com.au](mailto:service@liberty.com.au). Congratulations again and welcome to Liberty.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michelle Sparsi".

Michelle Sparsi  
Manager - Customer Engagement

Secure Funding Pty Ltd disbursed the loan settlement funds as follows:

<b>Payee/Creditor</b>	<b>Amount</b>
Establishment Fee	\$4,775.00
Global Bank Fee	\$25.00
Document Preparation Fee	\$695.00
Search Fees - Liberty	\$140.00
Property Search Fees	\$14.00
Hunt & Hunt Victoria Law Practice Trust Account	\$554,351.00
<b>Total of funds disbursed</b>	<b>\$560,000.00</b>

Please note that unsecured creditors (if any) will receive payment the next working day following settlement, however, it may take several days for the creditor to process the payment.

**Prefer Email?**

If you would prefer to receive communication regarding your loan account via email, please contact our Customer Service Team to update your details. Email [service@liberty.com.au](mailto:service@liberty.com.au) or call 13 11 33 and make the change today!