



HOLDING TRUST DEED OF ESTABLISHMENT

FUDUCIA HELEN HOLDING TRUST

Copyright Warning © 2017

NowInfinity Pty Ltd

This document contains material ("**the Material**") protected by copyright, which copyright is owned by NowInfinity Pty Ltd ("**NowInfinity**").

The Material may not be reproduced in part or full in Australia or any other country by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any other form without the prior written permission of NowInfinity, except as permitted by the *Copyright Act 1968*.

You agree to the following terms:

- Not to reproduce the Material in any part without the prior written consent of NowInfinity;
- You acknowledge that the Material is provided by NowInfinity for general purposes and no specific legal, financial planning or accounting advice has been offered or provided in the making available of this template;
- You agree not to charge for providing the Material in whole or part to another person or company, or in any way make commercial use of the Material without the prior written consent of NowInfinity and payment of the appropriate copyright fee; and
- Not to modify or distribute the Material or any part of the Material without the expressed prior written permission of NowInfinity.

Disclaimer

This template is based on the relevant Australian Corporations, Superannuation and Taxation Laws as of 1 March 2017. NowInfinity, its employees and advisors offer no liability for any loss or damages of any kind whatsoever arising as a result of use of this template. This document is not personal or general advice for the purposes of the *Corporations Act 2001*, and no legal advice or accounting advice has been offered or given by NowInfinity, its employees and advisors in the production of this template on the NowInfinity website portal.

DEED SETTLING BARE TRUST ARRANGEMENT FUDUCIA HELEN HOLDING TRUST

This Deed is dated:

24th May 2017

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

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):



HELEN MARGARET OGLE
Sole Director / Secretary

Dated: 24th May 2017

The Borrower

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):



HELEN MARGARET OGLE
Sole Director / Secretary

Dated: 24th May 2017

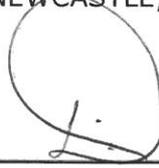
The Member

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



HELEN MARGARET OGLE
Member

Dated: 24th May 2017



DENE JASAD KILPATRICK

Witness Name / Signature

Dated: 24th May 2017

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)**

HELD AT:

Level 4 16A Bolton St Newcastle NSW

ON:

24th May 2017

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:



HELEN MARGARET OGLE

Dated: 24th May 2017

ANNEXURE 1 – UPDATE TO INVESTMENT STRATEGY OF THE FUND

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.