



# **Security Trust Deed**

## **Pragati Bare Trust**

**Goutam Agashe**

and

**Shweta Ganesh Herlekar**

(Bare Trustee)

and

**Agashe Pty Ltd**

(ACN 657 304 160)

(SMSF Trustee)

## Table of Contents

THE PRAGATI BARE TRUST DEED .....	3
Parties .....	3
Recitals .....	3
Definitions.....	3
Interpretation.....	5
Law of Deed.....	6
Superannuation Law .....	6
Declaration of Trust .....	7
Nameik .....	7
SMSF Trustee Warranties .....	7
SMSF Trustee .....	7
Bare Trustee .....	8
Removal and Appointment of Bare Trustee .....	8
Vesting .....	9
Miscellaneous.....	9
Notices .....	9
Execution and Date .....	11



- 1.6. **Lender** means the entity specified at Item 2 of the Schedule;
- 1.7. **Loan Agreement** means the agreement between the Lender and the SMSF Trustee in respect of the borrowing of the Loan Amount by the SMSF Trustee to provide to the Bare Trustee for acquisition of the Investment;
- 1.8. **Loan Amount** means the amount provided to the SMSF Trustee by the Lender under the Loan Agreement being the sum referred to in Item 3 of the Schedule;
- 1.9. **Loan Term** means the period from the date on which the Loan Agreement commences until the earlier of:
  - 1.9.1. the date stated at Item 4 of the schedule; or
  - 1.9.2. the date on which the SMSF Trustee repays the Loan Amount to the Lender in full;
- 1.10. **Regulated Superannuation Fund** has the meaning that expression has in Section 19 of the SIS Act;
- 1.11. **Regulator** has the meaning that expression bears in Section 10 of the SIS Act;
- 1.12. **Replacement Asset** means a replacement asset in accordance with Section 67B(2) of the SIS Act;
- 1.13. **Schedule** means the schedule to this Deed;
- 1.14. **Self Managed Superannuation Fund** has the meaning that expression has in Section 17A of the SIS Act;
- 1.15. **SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) as amended from time to time;
- 1.16. **SIS Regulations** means:
  - 1.16.1. the Superannuation Industry (Supervision) Regulations 1994 as amended from time to time; and
  - 1.16.2. (where the context requires or admits) any other Statutory Rules made under and pursuant to the SIS Act as amended from time to time;
- 1.17. **State** means South Australia;
- 1.18. **Statutory Rule** includes regulations, by-laws and rules made under the authority of a statutory enactment;
- 1.19. **Superannuation Law** means:
  - 1.19.1. the SIS Act;
  - 1.19.2. the SIS Regulations;
  - 1.19.3. the applicable provisions of the *Income Tax Assessment Act 1997* (Cth);

- 1.19.4. the applicable provisions of the *Income Tax Assessment Act 1936* (Cth);
- 1.19.5. any other law or regulation regulating the conduct or affairs of superannuation funds of a type of which the SMSF is one; or
- 1.19.6. any direction ruling prescribed standard or condition:
  - 1.19.6.1. made or prescribed by the Regulator;
  - 1.19.6.2. applicable to superannuation funds of a type of which the SMSF is one;
- 1.20. **SMSF** means Agashe Pty Ltd (ACN 657 304 160) of Unit 8, 435-439 Fullarton Road, Highgate in the state of South Australia in its capacity as trustee for the Nidhi Super Fund a self managed superannuation fund and the expression extends to and includes its successors and assigns in respect of the Nidhi Super Fund;
- 1.21. **SMSF Trustee** means the individual or company, or individuals or companies described as the Trustee in the Deed of the SMSF and any individual or company appointed as an additional SMSF Trustee or replacement SMSF Trustee from time to time and the expression extends to and includes its successors and permitted assigns in respect of the SMSF; and
- 1.22. **Vesting Day** means:
  - 1.22.1. subject to sub-clauses 1.22.2 and 1.22.3 – the day nominated by the SMSF Trustee to be the Vesting Day;
  - 1.22.2. if the Trustee acquires property in a jurisdiction in which the rule against perpetuities applies then with respect to that property subject to sub-clause 1.22.3 – the first to occur of:
    - 1.22.2.1. the latest day for which such property can be held in that jurisdiction without a breach of the rule against perpetuities in that jurisdiction; or
    - 1.22.2.2. the day nominated by the SMSF Trustee to be the Vesting Day;
  - 1.22.3. the day on which the full Loan Amount is repaid to the Lender.

## Interpretation

- 2. In the interpretation, construction and application of this Deed:
  - 2.1. the above Recitals are true and correct and are to apply in the interpretation and application of the provisions of this Deed;
  - 2.2. a word or term which is defined in the SIS Act or the SIS Regulations and used in this Deed shall except where excluded by context have that same definition in this Deed;

- 2.3. any provision that is treated or held by the Regulator or a court or tribunal of competent jurisdiction to be void or voidable or unenforceable shall not affect the validity or enforceability of any other provision;
- 2.4. a reference to a statutory enactment (including the ITAA 1997 and the SIS Act) or a Statutory Rule (including the SIS Regulations):
  - 2.4.1. is to that enactment or Statutory Rule as amended from time to time; and
  - 2.4.2. extends to any replacement or successor legislation or Statutory Rule;
- 2.5. a reference to a person includes a natural person, corporate entity, partnership or any of these acting in the capacity as the trustee of a trust and includes the successors and assigns of the person;
- 2.6. headings and sub-headings are for convenience and reference part of this Deed, but in the event of any inconsistency do not limit or affect the interpretation of any other provision of this Deed;
- 2.7. unless the context otherwise requires, the words denoting one gender include other genders and words in the singular number include the plural number and words in the plural number include the singular;
- 2.8. provisions of any clause or sub-clause that contains any subordinate sub-clause shall be read distributively to that subordinate sub-clause and that subordinate sub-clause shall be construed accordingly; and
- 2.9. a reference to an act matter or thing being:
  - 2.9.1. subject to or subject to compliance with; or
  - 2.9.2. in accordance witha section of the SIS Act or a Regulation or Division of that Act shall be read as if that section Regulation or Division imposed an obligation in relation to that Act matter or thing on the person to whom the reference relates.

### **Law of Deed**

3. This Deed shall be construed and shall take effect according to the laws of the State and of the Commonwealth of Australia and all rights liabilities and obligations hereunder shall be subject by the Trustee to the jurisdiction of the courts of the State and of the Commonwealth of Australia.

### **Superannuation Law**

4. This Deed including all clauses conditions and arrangements pertaining thereto is in accordance with the Superannuation Law and shall be varied to take into account changes in that law from time to time for the purpose of ensuring that no provision herein or condition or arrangement pertaining hereto shall affect the ability of the SMSF to remain:
  - 4.1. a Complying Superannuation Fund for the purposes of the ITAA 1997; and



- 4.2. a Regulated Superannuation Fund for the purposes of the SIS Act.
5. Any provision of this Deed (whether express or implied) that is found to be inconsistent with the requirements of Clause 4 shall be read down to the extent required for compliance with Clause 4 or where that is not possible shall be held to be void. However, reading down a clause or finding a clause to be void shall not affect the validity or enforceability of any other term or provision of this Deed.

### **Declaration of Trust**

6. The Bare Trustee hereby declares that on and from the date of acquisition the Investment is held for the SMSF Trustee on and subject to this Deed.

### **Name**

7. This security trust shall be known as the **Pragati Bare Trust**.

### **SMSF Trustee Warranties**

8. The SMSF Trustee hereby warrants that:
  - 8.1. the SMSF is an indefinitely continuing Complying Superannuation Fund which is
    - 8.1.1. a self-managed superannuation fund for the purposes of the SIS Act;
    - 8.1.2. a Complying Superannuation Fund for the purposes of the ITAA 1997;
    - 8.1.3. a Regulated Superannuation Fund for the purposes of the SIS Act; and
    - 8.1.4. an accumulation fund within the meaning of the SIS Regulations; and
  - 8.2. the Investment is an Acquirable Asset;
  - 8.3. the acquisition of the Investment is in accordance with the Investment Strategy of the SMSF;
  - 8.4. at the date hereof the SMSF Trustee has all powers and authorities to enter into this Deed under the terms of the deed of the SMSF subject to the Relevant Law; and
  - 8.5. it is bound by this Deed and this Deed shall be enforceable against it.

### **SMSF Trustee**

9. The SMSF Trustee will:
  - 9.1. enter into the Loan Agreement;
  - 9.2. provide the Loan Amount and any other monies required for the acquisition of the Investment;
  - 9.3. retain a vested and indefeasible interest in and be absolutely entitled to the Investment as against the Bare Trustee;
  - 9.4. direct the Bare Trustee to acquire the Investment;



- 9.5. direct the deposit of all income and accretions of any kind generated by the Investment to a nominated bank account or to nominated bank accounts;
- 9.6. direct the Bare Trustee to do all things necessary or properly adapted to ensure all information concerning the Investment is promptly provided to the SMSF Trustee; and
- 9.7. direct the Bare Trustee to transfer the Investment to the SMSF Trustee after payments are made such that no Loan Amount remains outstanding.

### **Bare Trustee**

10. The Bare Trustee will:
  - 10.1. acquire the Investment as trustee subject to the terms herein at the direction of the SMSF Trustee using the Loan Amount and other monies as provided by the SMSF Trustee;
  - 10.2. maintain legal title to the Investment until the SMSF Trustee directs it to relinquish that title to the SMSF Trustee;
  - 10.3. do all things necessary or properly adapted to ensure all information concerning the Investment is promptly provided to the SMSF Trustee as directed by the SMSF Trustee;
  - 10.4. comply with all directions of the SMSF Trustee; and
  - 10.5. on or as soon as practicable after the Vesting Date transfer the Investment to the SMSF Trustee as directed by the SMSF Trustee.
11. The Bare Trustee shall have no duties under this Deed other than to comply with the directions of the SMSF Trustee and shall have no discretions under this Deed.
12. Notwithstanding any terms to the contrary herein the Bare Trustee has no beneficial interest in or rights to the Investment but only the legal title.

### **Removal and Appointment of Bare Trustee**

13. The Bare Trustee shall act continuously as trustee of this security trust until the Vesting Day or until the Bare Trustee is disqualified or removed from office in the manner provided herein.
14. At any time before the Vesting Day the SMSF Trustee may:
  - 14.1. issue a written notice to the Bare Trustee directing that it shall cease to act in that capacity; and
  - 14.2. by Deed appoint a new Bare Trustee over the Investment under and subject to the terms herein in place of a Bare Trustee who is to retire or be removed or who has retired, been removed, been disqualified or ceases to exist.
15. A person being the Bare Trustee shall be immediately disqualified from holding office, and shall cease to be Bare Trustee if:

- 15.1. that person receives a written notice from the SMSF Trustee directing that person to cease to act as bare trustee under this Deed; or
  - 15.2. it goes into liquidation or a receiver or receiver and manager or administrator is appointed to it or any of its assets or undertakings.
16. Where there is an appointment of a replacement Bare Trustee:
- 16.1. the retiring Bare Trustee shall take all actions necessary to vest the Investment in the new Bare Trustee and to deliver to the new Bare Trustee all information it holds relating to the Investment and to the Loan Agreement; and
  - 16.2. a new Bare Trustee shall execute an instrument in a form approved by the SMSF Trustee wherein the new Bare Trustee undertakes to assume all of the obligations of a Bare Trustee under this Deed.
17. Unless there is more than one Bare Trustee a Bare Trustee shall not cease to act until the appointment by the SMSF Trustee of a new Bare Trustee in the place of a retiring Bare Trustee and the execution by that new Bare Trustee of an instrument of the kind referred to in clause 16.2;

### **Vesting**

18. Prior to the Vesting Day the SMSF Trustee must:
- 18.1. repay all amounts owed under the Loan Agreement;
  - 18.2. ensure that no charge or other security remains over the Investment; and
  - 18.3. direct the Bare Trustee in writing to transfer the Investment.

### **Miscellaneous**

19. The following shall apply to all parts of this Deed:
- 19.1. time is of the essence in respect of all obligations herein;
  - 19.2. variation of this Deed must be in writing and is subject to the consent of the Lender;
  - 19.3. each indemnity in this deed:
    - 19.3.1. is a continuing obligation, separate and independent from any other obligation of any party;
    - 19.3.2. survives the Vesting of the trust constituted by this Deed; and
    - 19.3.3. is enforceable whether or not payment has been made in respect of the relevant cost or expense; and
  - 19.4. warranties undertakings and obligations in this Deed do not merge on completion.

### **Notices**

20. A notice to be given by a Party to another party under this Deed:

20.1. must be:

20.1.1. in writing;

20.1.2. directed to the recipient at the Address for Service; and

20.1.3. left at or sent by prepaid express or registered post, hand delivery or electronic transmission

20.2. and will be deemed to be duly given:

20.2.1. on the day of hand delivery;

20.2.2. four days after the day of postage by prepaid express or registered post;  
or

20.2.3. when a delivery receipt is received if sent by electronic transmission  
as the case may be;

20.3. (subject to sub-clause 20.4) for the purposes of this Agreement the following addresses are specified by each of the parties as their Address for Service:

20.3.1. **Agashe Pty Ltd:**

Unit 8, 435-439 Fullarton Road, Highgate in the state of South Australia;  
and

20.3.2. **Goutam Agashe and Shweta Ganesh Herlekar:**

11a Elliott Street, Clayfield in the State of Queensland;

20.4. either party may specify a new Address for Service by delivery of a Notice detailing the same by a method allowed in this Clause 20 and that party's address will be changed from the date given in sub-clause 20.2.



## Schedule

Item 1	Investment	The title to the land and property at 55 Willard Road, Capalaba, Qld 4157
Item 2	Lender	
Item 3	Loan Amount	
Item 4	Date of last payment under Loan Agreement	