

25 September 2014

**BY EMAIL**

David Moore  
Senior Accountant  
Virtu Super  
davidm@virtusuper.com.au

**Our ref**  
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thartley@mcw.com.au  
**Principal**  
Neal Dallas

Dear David

**WALKER SUPERANNUATION FUND – LIMITED RECOURSE BORROWING**

Thank you for forwarding instructions to prepare the required documentation to establish a borrowing arrangement for the Walker Superannuation Fund (**Fund**).

**1. GENERAL**

**1.1 Your instructions**

You have advised that:

- (a) Walker Medical Australia Pty Ltd ACN 117 205 188 (**Trustee**) as trustee of the Fund wishes to enter into a borrowing arrangement to acquire an authorised investment (**Investment**); and
- (b) a yet to be confirmed lender (**Lender**) will be providing finance for the purchase of the Investment and will be preparing the required loan documentation; and
- (c) D & B Walker Properties Pty Ltd ACN 133 788 511 (**Custodian**) will be appointed to act as custodian under a security trust.

We have not been asked to advise on duty, CGT, GST or other tax implications of this structure.

We have been asked to prepare a security trust and other required documentation to establish the SMSF borrowing transaction.

**1.2 Enclosures**

**Enclosed** are the following documents:

- (a) Resolution of Trustee;
- (b) Resolution of Custodian; and
- (c) Walker Super Property Trust which provides that the Custodian only holds the Investment on a bare trust.

Paul Tully  
John Hamilton  
Matthew Lyons  
Mylton Burns  
Allison Langford  
Scott Falvey  
Patrick McGrath  
Terry McCormick  
Chris McManus  
Christopher Davis  
David Jesser  
Glenn Caligaris  
Brian Schech  
Fred Smith  
Mark Woolley  
Paul McCowan  
Alicia Hill  
Emma Chapman  
Neal Dallas  
Jacqui Eager  
Carl Moseling  
Trevor Gallienne  
Andrew Mewing  
Michael Batch  
Trenton Schreurs



### 1.3 Next steps

Provided at Schedule 1 is a checklist of the documentation and steps that must be taken to establish a limited recourse borrowing arrangement.

Please review this checklist regularly during the process of establishing the borrowing arrangement to confirm that you have completed the required steps.

## 2. SMSF BORROWING

### 2.1 General

Historically, the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) prevented superannuation funds from borrowing. However, in September 2007 the *SIS Act* was amended to allow trustees of regulated superannuation funds to borrow to acquire an asset, subject to certain conditions.

The *SIS Act* provides that a trustee of a self managed superannuation fund (**SMSF**) is not prohibited from borrowing money provided:

- (a) the borrowed money is applied for the acquisition of a single “acquirable asset” other than one which the trustee is prohibited to acquire under the *SIS Act* or any other law;
- (b) the single “acquirable asset” is held on trust so that the trustee of the SMSF acquires a beneficial interest in the asset;
- (c) the trustee of the SMSF has a right to acquire legal ownership of the asset; and
- (d) the lender’s rights against the trustee of the SMSF for any default under the borrowing agreement must relate only to the investment the trustee will purchase with the money it borrows.

Set out in Schedule 2 is a diagram of the proposed borrowing structure and the documents that need to be prepared to properly establish the structure.

### 2.2 Prohibited assets

The *SIS Act* prohibits a trustee from intentionally acquiring an asset from a member or an associate or member unless that asset is an “excepted asset” (e.g. business real property or listed securities).

We recommend that the Trustee seek advice to confirm that the Investment being acquired is an “excepted asset” as provided in the *SIS Act*.

### 2.3 Trust Deed

In order to proceed with an SMSF borrowing structure, the Fund’s trust deed must contain provisions that allow the Trustee to borrow money to acquire an asset, to create a charge over the asset, and appoint a custodian to hold legal title to the acquired asset, subject to the conditions contained in the *SIS Act*.

We have not reviewed the trust deed and strongly recommend that the Trustee seeks advice to confirm that the Fund's trust deed contains the relevant provisions to allow the Trustee to borrow money to acquire the Investment subject to the conditions contained in the *SIS Act*.

## **2.4 Investment strategy**

In addition to the requirement that the Fund's trust deed contain the relevant clauses allowing the Fund to borrow, the Fund's investment strategy must also contain provisions that give the Trustee the ability to borrow money to acquire an asset.

We recommend that the Trustee reviews its investment strategy to confirm whether it allows the Trustee to enter into a SMSF borrowing arrangement.

## **2.5 Section 109 – arm's length transaction**

Section 109 of the *SIS Act* provides that all transactions of SMSFs must be made and maintained on an arm's length basis. The words "at arm's length" have been defined as "the relationship which exists between parties who are strangers to each other and who bear no special duty, obligation or relation to each other".

Investments must be entered into and maintained on commercial terms, or on terms that are no more favourable to the other party than would reasonably be expected if the dealing was at arm's length in the same circumstances. In addition, the agreed or accepted return from that investment should be not less than a true market rate.

We recommend the Trustee consider the borrowing arrangement and the purchase of the Investment to confirm that it will be an arm's length transaction and will not breach section 109 of the *SIS Act*.

## **3. QUEENSLAND TRANSFER DUTY IMPLICATIONS**

The Investment being purchased under this SMSF borrowing arrangement is real property situated in Queensland and the purchase of the Investment will attract transfer duty.

Also, at some future point when the property is transferred from the Custodian to the SMSF an exemption from duty may apply.

Please contact our office if you required any assistance in relation to duty planning for this transaction.

## **4. LAND TITLES OFFICE/CONVEYANCE**

In order to ensure that the purchase of the Investment is in accordance with the *SIS Act* requirements, the Security Trust must be executed before any of the transfer documents are completed or executed.

It is also important to ensure that the purchaser is correctly identified on the property contract otherwise the arrangement may not be in accordance with the requirements under the *SIS Act* and may attract additional duty consequences.

The purchaser of the Investment in this case will be D & B Walker Properties Pty Ltd ACN 133 788 511.

If the purchase of the Investment is subject to finance, a special condition will need to be inserted in the contract. Importantly, it needs to refer to the Trustee of the SMSF being satisfied with the finance obtained (not the purchasing custodian entity who is listed as the buyer on the contract).

Please contact us if you require advice on the property contract or assistance with the conveyance.

If you have questions please do not hesitate to contact us.

Yours faithfully  
**McInnes Wilson Lawyers**



**Taryn Hartley**  
Senior Associate

**Enclosures:**

1. Resolution of Trustee
2. Resolution of Custodian
3. Walker Super Property Trust

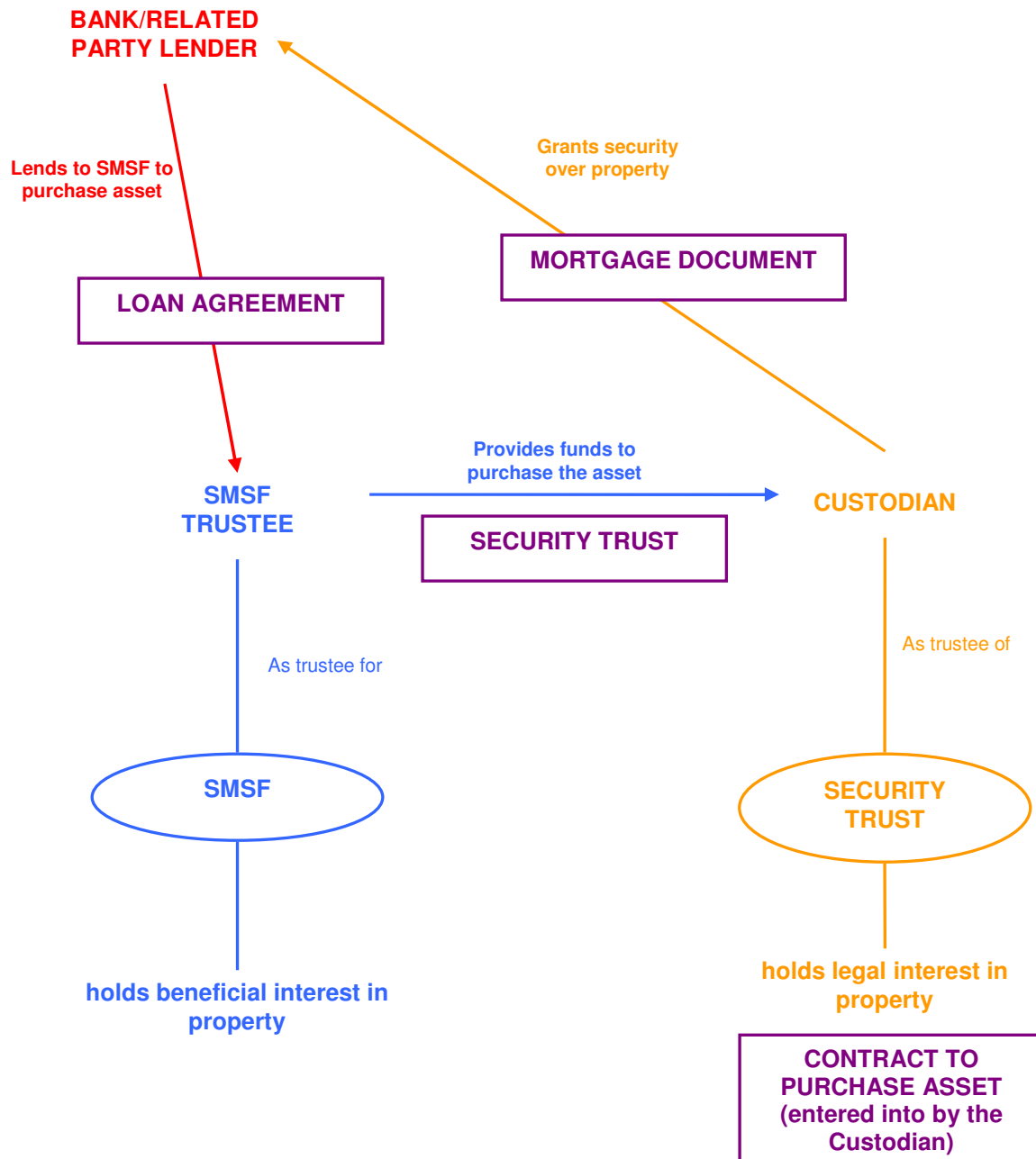
# Schedule 1

## Checklist

Task	Completed	Date
Ensure that the Fund's trust deed allows for, or has been amended to allow for, the Fund to borrow through a limited recourse loan.	<input type="checkbox"/>	/ /
Ensure that the Fund's investment strategy allows for, or has been amended to allow for, the SMSF to establish a borrowing arrangement.	<input type="checkbox"/>	/ /
Identify an investment and ensure that it: 1. can be acquired under the SIS Act; 2. is suitable for the Fund, considering the trust deed and investment strategy; 3. is suitable for the members of the Fund; and 4. is appropriately managed.	<input type="checkbox"/>	/ /
Determine the total amount of monies required to acquire the asset, along with the amount to be borrowed.	<input type="checkbox"/>	/ /
Select a suitable financier from which the monies will be borrowed to acquire the assets/investment.	<input type="checkbox"/>	/ /
Arrange for the execution of the following documents in the following order: 1. Resolution of Trustee; 2. Resolution of Custodian; 3. Security Trust Deed; 4. property contract; 5. all other documents that may be necessary to establish the borrowing and acquisition of the asset.	<input type="checkbox"/>	/ /

## Schedule 2

### SMSF Borrowing Structure



**WALKER MEDICAL AUSTRALIA PTY LTD ACN 117 205 188 AS TRUSTEE OF THE WALKER  
SUPERANNUATION FUND**

**RESOLUTION OF TRUSTEE**

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**BORROWING**

Walker Medical Australia Pty Ltd ACN 117 205 188 (**Trustee**) is trustee of the Walker Superannuation Fund (**Fund**). The Fund was established pursuant to a deed of trust dated 15 February 2008 which contained the rules for the Fund (**Trust Deed**).

Pursuant to clause \_\_\_\_ of the Trust Deed, the Trustee may borrow money.

Pursuant to clause \_\_\_\_ of the Trust Deed, the Trustee may appoint a custodian to hold the legal title of any asset acquired.

Pursuant to clause \_\_\_\_ of the Trust Deed, the Trustee may acquire, dispose of, mortgage or charge real property.

Section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) provides, amongst other things, that a trustee of a “regulated superannuation fund” is not prohibited from borrowing money provided:

1. the money is applied for the acquisition of a single acquirable asset;
2. legal title to the investment must be held by a third party on behalf of the trustee of the regulated superannuation fund; and
3. the lender’s rights against the trustee of the regulated superannuation fund for any default under the borrowing agreement are limited to the rights attached to the acquirable asset.

**Confirmed** that the Trustee of the Fund wishes to borrow money to purchase an authorised Investment (**Investment**).

**CONFIRMATION OF ADVICE**

**Confirmed** that the Trustee of the Fund has sought advice in respect of the borrowing and is satisfied that the borrowing is in accordance with the requirements of the *SIS Act*, *Superannuation Industry (Regulations) 1994* (Cth) and the Trust Deed.

**RESOLUTIONS**

Resolved that:

1. the Trustee borrow the sum of \$\_\_\_\_\_ from \_\_\_\_\_ (**Lender**) on the terms contained within in a Loan Agreement to be provided by the Lender;
2. the Trustee arranges for a Security Trust Deed to be prepared and a custodian appointed to hold legal title in the Investment on behalf of the Trustee;
3. the Trustee ensure that the Custodian grants security over the Investment to the Lender; and
4. the Trustee does all other things that may be necessary to establish the borrowing and acquire the asset.

**WALKER MEDICAL AUSTRALIA PTY LTD ACN 117 205 188 AS TRUSTEE OF THE WALKER  
SUPERANNUATION FUND**

**RESOLUTION OF TRUSTEE**

---

**EXECUTED by WALKER MEDICAL  
AUSTRALIA PTY LTD ACN 117 205 188:**

---

Signature of director

---

DAVID WALKER

Name (BLOCK LETTERS)

---

Signature of director

---

BERNADETTE ELIZABETH WALKER

Name (BLOCK LETTERS)

---

Date signed



**D & B WALKER PROPERTIES PTY LTD ACN 133 788 511 AS CUSTODIAN OF THE  
WALKER SUPER PROPERTY TRUST**

**RESOLUTION OF CUSTODIAN**

---

**BORROWING**

Walker Medical Australia Pty Ltd ACN 117 205 188 (**Trustee**) as trustee for the Walker Superannuation Fund (**Fund**) wishes to enter into an arrangement to borrow money from \_\_\_\_\_ (**Lender**) to purchase an asset in accordance with the provisions of section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).

The Trustee wishes to enter into an arrangement with D & B Walker Properties Pty Ltd ACN 133 788 511 (**Custodian**) to purchase an authorised investment (**Investment**).

**Confirmed** that the Trustee will provide the Custodian with an amount of \$ \_\_\_\_\_ being lent to purchase the property and has requested that the Custodian:

1. review and execute the attached Walker Super Property Trust (**Security Trust**) which provides that the Custodian will hold the Investment as bare trustee for the Trustee; and
2. review and execute the attached property contract to ensure the Custodian holds legal title to the Investment.

**RESOLUTIONS**

Resolved that the Custodian:

1. execute the Security Trust;
2. execute the property contract;
3. do all other things necessary to ensure compliance with the terms of the Security Trust and property contract.

**EXECUTED by D & B WALKER  
PROPERTIES PTY LTD  
ACN 133 788 511:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
DAVID WALKER  
Name (BLOCK LETTERS)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
BERNADETTE ELIZABETH WALKER  
Name (BLOCK LETTERS)

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

# **WALKER SUPER PROPERTY TRUST**

**Walker Medical Australia Pty Ltd ACN 117 205 188 as trustee of the  
Walker Superannuation Fund**

**D & B Walker Properties Pty Ltd ACN 133 788 511**

Level 14 Central Plaza One  
345 Queen Street  
BRISBANE QLD 4000  
Tel: (07) 3231 0600  
Fax: (07) 3221 2921  
Our ref: NJD:TNH:LIC:98603

[www.mcw.com.au](http://www.mcw.com.au)

**Brisbane**  
Maroochydore  
Southport

Affiliated office  
Sydney

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# WALKER SUPER PROPERTY TRUST

## DATE

## DETAILS OF PARTIES

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Name	Walker Medical Australia Pty Ltd ACN 117 205 188 as trustee of the Walker Superannuation Fund
Label	<b>Trustee</b>
Address	C/- Marsh Tincknell Level 1, 1454 Logan Road MOUNT GRAVATT QLD 4122

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Name	D & B Walker Properties Pty Ltd ACN 133 788 511
Label	<b>Custodian</b>
Address	c/- Marsh Tincknell Level 1, 1454 Logan Road MOUNT GRAVATT QLD 4122

---

## BACKGROUND

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

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### 1.1 Definitions

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

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

**Custody Fund** means the following assets transferred to the Custodian:

- 
- (a) all right, title and interest of the Custodian from time to time in any asset acquired by the Custodian to be held under this document;
  - (b) all income and other proceeds generated from the holding of the assets referred to in paragraph (a); and
  - (c) any other amounts which accrue to the Custodian from time to time.

**Defunct Body** means a body or agency that has ceased to exist, been renamed or replaced, or had its powers or functions removed.

**Fund** means the Walker Superannuation Fund.

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

**Notice** means a notice, demand, certificate, consent, approval, waiver or communication given under this agreement.

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

**Security** means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including any set-off or “flawed-asset” arrangement), having the same or equivalent effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition.

**Security Trust** means the Walker Super Property Trust created by operation of this document.

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

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

## 1.2 Rules for Interpreting this Document

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

- (a) The Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;

- 
- (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
  - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) a body or agency that is a Defunct Body means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
  - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
  - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
  - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
  - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
    - (A) excluding the day, or the day of the act or event; and
    - (B) including the day on which the purpose is to be fulfilled.

- 
- (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
    - (A) the day, or the day of the act or event; until
    - (B) the corresponding day in the next appropriate week, calendar month or year.
  - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
  - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
  - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

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

### **2.1 Declaration of Trust**

The Custodian:

- (a) acknowledges it has received the Initial Sum from the Trustee;
- (b) declares that it will hold the benefit of the Custody Fund on trust for the Trustee in accordance with the terms of this document; and
- (c) acknowledges that it will use the Initial Sum as part of the purchase price for a single acquirable asset, to form part of the Custody Fund.

### **2.2 Funds and information to be provided to Custodian**

The Custodian and the Trustee agree that the Trustee will:

- (a) provide to the Custodian all funds necessary to enable the Custodian to purchase any asset which is to form part of the Custody Fund; and
- (b) tell the Custodian when and where the purchase of any such asset is to occur.

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

When the Trustee notifies the Custodian of the information detailed in clause 2.2, it will be taken to have requested the Custodian to purchase and take legal title to that asset on its behalf.

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

The Custodian agrees that it will maintain legal title to each asset of the Custody Fund until the Trustee directs it under clause 4.1.

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

### **4.1 Trustee's interest in assets of the Custody Fund**

At all times the Trustee:

- (a) has a vested and indefeasible interest in the assets comprising the Custody Fund; and
- (b) is absolutely entitled to those assets as against the Custodian.

### **4.2 Transferral of assets of Custody Fund**

- (a) The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the assets comprising the Custody Fund. The Custodian must do as directed.
- (b) Before the Custodian transfers, or otherwise deals with, the assets comprising the Custody Fund, the Custodian must first seek consent from the Trustee in writing.

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

The Custodian will use its best endeavours to obtain information concerning the assets of the Custody Fund and the Custodian will communicate all that information to the Trustee as soon as practicable.

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

The Custodian must execute all documents the Trustee asks it to execute that are necessary to charge the assets of the Custody Fund to secure the Trustee's payment to any lender of money owed in respect of those assets.

### **4.5 Trustee may acquire legal ownership**

For the avoidance of doubt only, the Trustee, in accordance with section 67A of the *SIS Act*, has the right to acquire the legal ownership of any asset comprising the Custody Fund by making one or more payments after acquiring a beneficial interest in the asset.

### **4.6 Power to Secure or Mortgage**

The Custodian may mortgage, charge or pledge any real or personal property of the Custody Fund or any interest in it wherever in the world it might be located.

### **4.7 Security**

- (a) By any Security over all or any of the present or future assets of the Custody Fund, or in any other manner which the Custodian considers appropriate, and with or without giving any other form of Security or acknowledgement, and whether alone or jointly or jointly and severally with others, the Custodian may give Security for:
  - (i) repayment of any financial accommodation provided or to be provided to any person;
  - (ii) payment of any debt or liability incurred or to be incurred by any person;
  - (iii) performance of any guarantee, indemnity, contract, covenants, obligation or other engagement by any person; or



- 
- (iv) payment of any interest, fees or charges connected with the Security.
  - (b) The Custodian may purchase, redeem or pay off any Security over any asset of the Custody Fund.

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

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

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

The Trustee warrants that:

- (a) the Fund is a Regulated Fund;
- (b) the Fund has a written investment strategy which accords in all respects with the *SIS Act*;
- (c) the Trustee's investment in each asset of the Custody Fund accords with the Fund's written investment strategy;
- (d) the Trustee is the sole trustee of the Fund;
- (e) the Trustee has the power and authority to enter into this document;
- (f) the Trustee has the power and authority to purchase each asset of the Custody Fund; and
- (g) this document constitutes its legally binding obligations, enforceable against it in accordance with its terms.

## **7. DURATION OF TRUST**

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

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

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

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

### **8.2 Outgoing Custodian**

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

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

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### **8.3 Continuing Custodian**

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

### **8.4 Resignation of Custodian**

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

## **9. TRUSTEE INDEMNIFIES CUSTODIAN**

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

- (a) in relation to the purchase of the assets comprising the Custody Fund;
- (b) by virtue of the Custodian holding legal title to the assets comprising the Custody Fund; and
- (c) as a consequence of the Custodian complying with any direction of the Trustee under this document.

## **10. TRUSTEE TO PAY CUSTODIAN'S COSTS**

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

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

## **11. NOTICES**

### **11.1 Service of Notice**

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post, email or fax to the party's address specified in the Details of Parties on page 1, or any other address notified by a party to the other party as its address for service.

### **11.2 Effective Service**

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

- 
- (b) A Notice is taken to be received at the time specified below:
- (i) if hand delivered – when delivered;
  - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
  - (iii) if sent by email – when, under the *Electronic Transactions (Queensland) Act 2001* (Qld), an electronic communication is taken to be received;
  - (iv) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### 11.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;
- (c) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

### 11.4 Additional Provisions Regarding Email

- (a) A Notice given by email is taken to be in writing, whether or not the email is printed by the addressee.
- (b) A Notice given by email is taken to be signed by the party if:
  - (i) the party's name is typewritten into the Notice; or
  - (ii) the party's handwritten signature (which may be a digital image or copy of the signature) appears in the Notice.
- (c) If:
  - (i) the originator of an email requests a read receipt from the addressee; and
  - (ii) the originator receives a read receipt from the addressee specifying the time and date that the email was read or received,

the email is taken to be received no later than the time and date specified in the read receipt.

A read receipt does not by itself amount to an admission by the recipient regarding the content or effect a Notice.

- 
- (d) Nothing in this clause 11 affects the provisions of the *Electronic Transactions (Queensland) Act 2001* (Qld) regarding attribution of electronic communications.

## **12. MISCELLANEOUS**

### **12.1 No Merger**

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

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

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

### **12.2 Amendment**

This document can only be amended, supplemented, novated or replaced by another document signed by the parties. That other document may be entered into by electronic communication as described in clause 12.7.

### **12.3 Severability**

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

### **12.4 Conflict of Interest**

A party's rights and remedies under this document may be exercised even if it involves a conflict of interest or a party has a personal interest in their exercise.

### **12.5 Governing Law**

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

### **12.6 Counterparts**

This document may be executed in counterparts. All counterparts together are taken to constitute one instrument.

### **12.7 Formation of Deed by Electronic Communications**

- (a) The parties agree that a deed on the terms of this document may be entered into by electronic communication between the parties if a full and legible copy of this document showing the signature of each party is communicated by fax or email to each other party.

- (b) For the purposes of clause 12.7(a), 'copy' includes an electronic file in portable document format containing a scanned image of this document.
- (c) The electronic communication by a party (**Signatory**) to another party of a copy of this document, signed by the Signatory, constitutes consent by the Signatory to the deed being formed by electronic communication.
- (d) If a party requests it, the parties will subsequently sign and circulate printed copies of this document, so that each party holds a printed copy containing the original ink signatures of all parties. This does not affect or delay the enforceability of the deed as formed by electronic communication.
- (e) Nothing in this clause 12.7 affects the provisions of the *Electronic Transactions (Queensland) Act 2001* (Qld) regarding attribution of electronic communications.

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## Execution

**Executed** as a deed.

**EXECUTED** by **WALKER MEDICAL  
AUSTRALIA PTY LTD ACN 117 205 188:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
DAVID WALKER  
Name (BLOCK LETTERS)

**EXECUTED** by **D & B WALKER  
PROPERTIES PTY LTD  
ACN 133 788 511:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
DAVID WALKER  
Name (BLOCK LETTERS)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
BERNADETTE ELIZABETH WALKER  
Name (BLOCK LETTERS)

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

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
BERNADETTE ELIZABETH WALKER  
Name (BLOCK LETTERS)

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

25 September 2014

**BY EMAIL**

David Moore  
Senior Accountant  
Virtu Super  
davidm@virtusuper.com.au

**Inv No**  
679286  
**Our ref**  
NJD:LIC:98603  
**Contact**  
Neal Dallas  
**Tel**  
(07) 3014 6513  
**Fax**  
(07) 3221 0479  
**Email**  
thartley@mcw.com.au  
**Principal**  
Neal Dallas  
**ABN: 30 137 213 015**

**TAX INVOICE**

**WALKER SUPERANNUATION FUND – LIMITED RECOURSE BORROWING**

PROFESSIONAL FEES	Amount	GST	Total
Preparation of limited recourse borrowing documents for Walker Superannuation Fund	\$500.00	\$50.00	\$550.00
<b>TOTAL INCLUDING GST</b>	<b>\$500.00</b>	<b>\$50.00</b>	<b>\$550.00</b>

Yours faithfully  
**McInnes Wilson Lawyers**



**Neal Dallas**  
Principal

Paul Tully  
John Hamilton  
Matthew Lyons  
Mylton Burns  
Allison Langford  
Scott Falvey  
Patrick McGrath  
Terry McCormick  
Chris McManus  
Christopher Davis  
David Jesser  
Glenn Caligaris  
Brian Schech  
Fred Smith  
Mark Woolley  
Paul McCowan  
Alicia Hill  
Emma Chapman  
Neal Dallas  
Jacqui Eager  
Carl Moseling  
Trevor Gallienne  
Andrew Mewing  
Michael Batch  
Trenton Schreurs



**Our terms are strictly 14 days – this account is due on or before 09 October 2014.**

This tax invoice is a request for payment/notice of withdrawal under *Legal Profession Regulation 2007 (Qld) s 58(3)(b)*.

We reserve the right to withdraw this tax invoice, or issue another tax invoice or adjustment note, if there is an error or omission in it. Payment by credit card will incur a fee calculated on the amount paid, at the following rates (including GST): AMEX - 3%; other credit cards including VISA and Mastercard - 1.07%. Interest is payable on this tax invoice if it remains unpaid for more than 30 days, at the Reserve Bank of Australia's Cash Rate Target plus two percentage points. Interest is calculated daily on the unpaid balance.

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