

DORIWALA FAMILY DORREN PROPERTY FUND

BARE TRUST DEED

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This Deed of Trust is made on:

BETWEEN:

The Parties named in Item 1 of the Schedule

DEFINITION

For the purpose of this Deed the term “the Property” shall refer to the single acquirable asset, which is the subject of this Deed, as defined in accordance with section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth).

BACKGROUND:

- A. The Custodial Trustee acquired the Property as trustee for the Beneficiary.
- B. The Beneficiary paid the deposit for the acquisition of the Property.
- C. The funds provided by the Beneficiary for the purchase of the Property will include funds, which the Beneficiary has borrowed from a financier.
- D. The Custodial Trustee acquired the Property solely for the benefit of the Beneficiary.
- E. The Custodial Trustee has legal title to the Property.

OPERATIVE PART:

- 1. In this deed, unless the context requires another meaning, a reference-
 - 1.1 to the singular includes the plural and vice versa;
 - 1.2 to a gender includes all genders;
 - 1.3 to a party means a party to this Deed including their successors, executors, administrators and permitted assigns.
- 2. Capitalised terms in this deed have the meaning set out in the Schedule, which forms part of this deed.
- 3. Any clause binding a party consisting of more than one person binds each of those persons separately, together or in any combination.
- 4. The Custodial Trustee acknowledges and declares that it holds the Property on trust on behalf of the Beneficiary as and from the date the Property was acquired.
- 5. The Beneficiary acknowledges and confirms that it holds the beneficial interest in the Property as and from the date of acquisition by the Custodial Trustee subject to the provisions of this deed.

6. The Beneficiary is entitled to the full beneficial ownership and interest in the Property and any income, rents, profits, dividends or other rights accruing from it.
7. The Custodial Trustee confirms and agrees that:
 - 7.1 The Property is the sole and absolute property of the Custodial Trustee subject to the Beneficiary's rights as contained in this deed and the Custodial Trustee has the authority and power to hold the Property on behalf of the Beneficiary;
 - 7.2 It will not deal in any way with the Property without the prior written consent of the Beneficiary.
 - 7.3 It will not transfer legal title to the property to the Beneficiary until such time as the Beneficiary has made one or more payments to extinguish its borrowing obligations in respect of the property in accordance with the provisions of section 67A(1)(c) of the *Superannuation Industry (Supervision) Act 1993* (Cth).
8. The Custodial Trustee irrevocably appoints the Beneficiary to be its attorney with power to execute all instruments of transfer and do the acts the Custodial Trustee could personally execute or do in relation to the Property and the income and rights accruing from it and the Custodial Trustee undertakes to ratify everything the Beneficiary may do pursuant to this power of attorney.
9. At the written request of the Beneficiary the Custodial Trustee must execute all necessary documents transferring the Property to the Beneficiary.
10. Except in the case of fraud or willful misconduct on the part of the Custodial Trustee the Beneficiary indemnifies the Custodial Trustee against any loss, expense, liability or damage the Custodial Trustee may sustain or incur in relation to the Property;
- 10A Custodial Trustee's liability and indemnity
 - 10A.1 No personal liability

The Custodial Trustee is not personally liable for the consequences of any act, error or omission, whether of law or of fact or generally for any breach in exercising or carrying out or failing to exercise or carry out any power contained in this deed unless the Custodial Trustee fails to act honestly or intentionally or recklessly breaches its obligations.
 - 10A.2 Indemnity

The Custodial Trustee is entitled to be indemnified from the assets of the trust being the Property against any expenses, liability or claim that is incurred by or made against the Custodial Trustee in that capacity, unless it is attributable either to the Custodial Trustee's dishonesty or to an act or omission by the Custodial Trustee which the Custodial Trustee knows is a breach of trust.
11. In relation to the replacement of the Custodial Trustee the parties confirm and agree that:

- 11.1 the Custodial Trustee may resign at any time by giving not less than 30 days' prior notice to the Beneficiary;
 - 11.2 the Beneficiary may remove the Custodial Trustee by giving not less than 30 days' prior notice to the Custodial Trustee; and
 - 11.3 on any notice of resignation or removal the Beneficiaries may appoint a successor Custodial Trustee whose appointment will be effected by its execution of a deed substantially in the form of this deed and the successor Custodial Trustee will have all the rights, powers and obligations of the retiring Custodial Trustee who will be discharged from its rights, powers and obligations apart from any liabilities arising out of anything done or omitted to be done by it while it was acting as Custodial Trustee.
- 12. The parties must do all things and execute all further documents necessary to give full effect to this deed.
 - 13. This deed is governed by the laws of the State in which the property is acquired ("the said State") and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the said State.
 - 14. Beneficiary hereby agrees that it will not direct the Custodial Trustee to transfer legal title to the property to the Beneficiary until such time as the Beneficiary has made 1 or more payments to extinguish its borrowing obligations in respect of the property.

SCHEDULE

Custodial Trustee:	SAACHI TAANI PTY LTD (A.C.N. 656-380-380) of Unit 2 380 Clayton Rd, Clayton South VIC 3169
Beneficiary:	DHARA SAGAR PTY LTD (A.C.N. 656-362-463) of in its capacity as Trustee for THE TRUSTEE FOR DORIWALA FAMILY SUPER FUND
Description of Asset:	Real Property

Limited Recourse Borrowing Trust Agreement

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This AGREEMENT is made on:

BETWEEN: The parties named in item 1 of the Schedule.

BACKGROUND:

- A. The Fund Trustee is the trustee of The Superannuation Fund as specified in the Schedule.
- B. The Fund Trustee wishes to acquire an asset using a combination of cash and borrowed funds on a limited recourse borrowing arrangement basis and, in such manner, as to comply with sections 67 and 67A of the SIS Act and the SIS Act generally.
- C. The Custodial Trustee has agreed to acquire the Property as specified in the Schedule (as an asset within the meaning of "acquirable asset" given by section 67A of the SIS Act) with funds provided by the Fund Trustee to facilitate the Superannuation Fund's acquisition of assets on a limited recourse borrowing arrangement basis.
- D. The parties wish to enter into this Agreement in order to document the terms of their arrangement.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context requires another meaning:

"Acquisition Costs" means the costs incurred in connection with the borrowed funds or the acquisition of the Property including the deposit, the balance of purchase price, stamp duty, brokerage costs, commission and loan establishment fees, GST, professional fees and disbursements, the cost of expert reports and investigations, borrowing costs and fees including conveyancing fees, and any adjustments made on settlement of the purchase;

"Agreement" means this agreement and any document that varies or supplements it;

"Custodial Trustee" means the party referred to as such in the Schedule.

"Final Instalment" means the aggregate of the following amounts which may be paid in one or more payments:

- a) all amounts required to be paid to repay any funds borrowed by the Fund Trustee for the purpose of acquiring the Property and a discharge of any mortgage or encumbrance over the Property and a release of the obligations of the Fund Trustee and the Custodial Trustee and any other party in respect of such borrowed funds; and
- b) the costs of transferring the legal ownership of the Property from the Custodial Trustee to the Fund Trustee including any stamp duty payable in respect of such transfer;

“First instalment” means an amount equivalent to the Acquisition Costs less any funds borrowed by the Fund Trustee;

"Fund Trustee" means the Trustee of the Superannuation Fund as identified in the Schedule.

“GST” means GST as defined by the GST law;

“GST law” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time and any associated legislation including without limitation delegated legislation;

“Property” means the Property referred to in the Schedule or any Replacement Property;

“Rate of GST” means 10% or such other rate of GST as is payable under the GST law;

“Replacement Property” means any asset replacing the Property referred to in the Schedule as permitted by section 67B of the SIS Act;

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

1.2 References to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this Agreement.

1.3 Headings in this Agreement are for convenience only and do not affect interpretation or construction.

1.4 In this Agreement unless the context requires another meaning, a reference-

- a) to the singular includes the plural and vice versa;
- b) to a gender includes all genders;
- c) to a party means a party to this agreement including their successors, executors, administrators and permitted assigns;
- d) to a person means a natural person and any association, body or entity whether incorporated or not;
- e) to any legislation, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any legislation, proclamation, rule, code, regulation or ordinance replacing it;
- f) to time refers to time in the State in which the property is acquired ("the said State");
- g) to a “Business Day” means a day other than a Saturday, Sunday or public holiday in the said State;
- h) to any thing is a reference to the whole and each part of it;

- i) to a group of persons is a reference to all of them collectively and to each of them individually;
- j) to a document includes all amendments or supplements to, or replacements or novations of, that document.

2. PROPERTY IDENTIFICATION AND ACQUISITION COSTS

- 2.1 The Fund Trustee will identify the Property it wishes to acquire and will determine the Acquisition Costs.
- 2.2 The Custodial Trustee will advise the Fund Trustee will acquire the identified Property and the requirements (if any) for doing so
- 2.3 The Fund Trustee must pay funds equivalent to the Acquisition Costs. The payment of such funds may be made by a combination of cash and borrowed funds.

3. FIRST INSTALMENT

- 3.1 The Fund Trustee must provide or make available the First Instalment. The First Instalment may be paid by one or more payments.
- 3.2 The First Instalment to the Acquisition Costs including the deposit for the Property shall be paid by the Fund Trustee.

4. SUBSEQUENT INSTALMENTS/BORROWED FUNDS

- 4.1 After payment of the First Instalment the Fund Trustee must obtain funding for the balance of the Acquisition Costs in a manner that is consistent with the requirements of sections 67 and 67A of the SIS Act and of the SIS Act generally.
- 4.2 If requested by the Fund Trustee, the Custodial Trustee must grant an encumbrance over the Property to secure the borrowed funds referred to in clause 4.1. The Fund Trustee must ensure that it has the primary liability to repay the funding under any such encumbrance and must sign all documentation as required by the lender(s) of the borrowed funds.
- 4.3 The Custodial Trustee must sign any other documentation required by a lender(s) of the borrowed funds to enable the Fund Trustee to secure the funding including the granting of any mortgage, guarantee, indemnity or guarantee and indemnity or where the Property is to be leased:
 - a) a direction to any tenant to pay all rent to the lender; or
 - b) an agreement that the net rental be remitted to the lender to repay any mortgage granted to the lender.
- 4.4 The Custodial Trustee and the Fund Trustee agree, to do all things necessary to ensure that the Superannuation Fund complies with sections 67 and 67A of the SIS Act and of the SIS Act generally in relation to the Property.

- 4.5 The acquisition of the Property by the Custodial Trustee will only be with monies provided or sourced by the Fund Trustee.

5. FURTHER INSTALMENTS

- 5.1 The Fund Trustee is responsible for, and agrees to pay and indemnify the Custodial Trustee in respect of expenses incurred by the Custodial Trustee in connection with the acquisition and maintenance and repair of the Property including:
- a) rates, taxes, duties levied upon the Property;
 - b) insurances;
 - c) leasing and management costs;
 - d) the costs of complying with applicable legislation; and
 - e) any other expenses relating to the ownership of the Property as permitted by section 67A of the SIS Act.
- 5.2 The payments referred to above must be made by instalments on such dates and in such manner as required.

6. INCOME AND RIGHTS DERIVED FROM THE PROPERTY

- 6.1 The Custodial Trustee acknowledges that as the registered proprietor of the Property, the Fund Trustee is entitled to all income, gains, benefits and opportunities earned by, derived or arising from the Property.
- 6.2 The Custodial Trustee agrees to act under the direction of the Fund Trustee with respect to any decision, option, right or entitlement that may arise in connection with the Property and will seek the direction of the Fund Trustee with respect to these matters. In the event that no such direction is provided, the Fund Trustee acknowledges that the Custodial Trustee will make its own decision whether to act or not. The Custodial Trustee will be held harmless by the Fund Trustee for any decision made by the Custodial Trustee in good faith.
- 6.3 Any additional or bonus entitlements or augmentations to the Property that arise from any decision or exercise of option, right or entitlement will be held by the Custodial Trustee for the benefit of the Fund Trustee on the same terms and conditions expressed in this Agreement or that arise by necessary implication.

7. FINAL INSTALMENT AND TRANSFER OF THE PROPERTY

- 7.1 The Fund Trustee will require the transfer of the Property to it as trustee for The Superannuation Fund and the Custodial Trustee must do all things to enable the Fund Trustee to take title to the Property subject to any borrowed amount used to acquire the property being repaid in full.
- 7.2 Each of the Fund Trustee and the Custodial Trustee hereby irrevocably appoints the other (or any director of the other) with effect from the time of request pursuant to clause

7.1 as its true and lawful attorney to discharge any encumbrance or transfer the Property and to sign all notices deeds and documents for the purpose of such discharge and transfer in the name of the other, and on such discharge and transfer the parties are freed and discharged from any action suit claim or demand by or obligation to the other in respect of the Property under or by virtue of this Agreement.

8. SALE OF PROPERTY AND/OR ROLLOVER OF PROPERTY

8.1 At the request of the Fund Trustee subject to any rights of the Lender the Custodial Trustee must do all things necessary to sell, dispose or exchange the Property referred to in the Schedule and must if directed by the Fund Trustee:

- a) pay any net proceeds after discharging any encumbrance over the Property to the Fund Trustee; or
- b) retain any net proceeds for use in the acquisition of a Replacement Property as permitted by section 67B of the SIS Act.

9. OBLIGATIONS OF THE CUSTODIAL TRUSTEE

9.1 The Custodial Trustee agrees at all times:

- a) to act in a proper and businesslike manner;
- b) to carry out the instructions of Fund Trustee including (if applicable):
 - i) to keep the Property insured;
 - ii) to enter into or surrender leases and otherwise deal with lessees of the Property;
 - iii) to do all things necessary for the preservation, maintenance, and repair of the Property; and
 - iv) to replace the Property referred to in the Schedule by acquiring a Replacement Property.
- c) to provide the Fund Trustee with a copy of all documents relating to the Property referred to in the Schedule or any Replacement Property.
- d) to allow or facilitate registration in respect of the Property with a notation that the Fund Trustee holds an interest in the Property for the benefit of the Superannuation Fund.

9.2 The Custodial Trustee may request additional instalment payments from the Fund Trustee in order to carry out the instructions of the Fund Trustee referred to in clause 9.1b) and otherwise contemplated by this Agreement.

9.3 The Custodial Trustee agrees that it will not without the prior consent of Fund Trustee:

- a) carry out any other business enterprise;
- b) further encumber the Property;

- c) dispose of any Property unless any encumbrance is in default and the Custodial Trustee reasonably believes that the disposal of the Property is in the best interest of the Superannuation Fund and necessary to discharge the encumbrance.

10. GST

- 10.1 If any supply made under this Agreement constitutes a supply under GST Law and GST is levied or imposed in respect of such supply, the recipient of the supply after receiving a tax invoice must pay the supplier the GST at the GST Rate.

11. GENERAL

- 11.1 A covenant, warranty, agreement, representation, provision or obligation in this Agreement which is made or given by or which applies to more than one person or which extends to or is for the benefit of more than one person binds and extends to or is for the benefit of, as the case may be, all of them jointly and each of them severally.
- 11.2 This Agreement is governed by the laws of the said State and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the said State.
- 11.3 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this Agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Agreement.
- 11.4 If any provision of this Agreement is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.
- 11.5 This Agreement may not be varied except by mutual agreement of the parties.
- 11.6 A notice or other communication required or permitted to be given by a party to another must be in writing and:
 - a) delivered by hand; or
 - b) sent by post, postage prepaid; or
 - c) sent by facsimile transmissionto that party's address or facsimile number for service as set out in the Schedule or any other address or facsimile number that a party may notify to the other.
- 11.7 A notice or other communication will be taken, for the purposes of this Agreement, to have been given if:
 - a) delivered by hand, upon delivery to the recipient's address;
 - b) mailed, on the expiration of 3 Business Days after posting; or

- c) sent by facsimile transmission, on receipt by the sender of an acknowledgement of transmission report generated by the sender's facsimile machine indicating the facsimile was sent to the recipient's number.

11.8 The Fund Trustee is responsible for the costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

11.9 No party may assign or otherwise transfer the benefit of this Agreement without the prior consent of the other party or parties.

Cus

SCHEDULE

Superannuation Fund Trustee	DHARA SAGAR PTY LTD (A.C.N. 656-362-463) of
Superannuation Fund	THE TRUSTEE FOR DORIWALA FAMILY SUPER FUND of
Custodial Trustee	SAACHI TAANI PTY LTD (A.C.N. 656-380-380) of Unit 2 380 Clayton Rd, Clayton South VIC 3169
Description of Asset	Real Property
Lender	

THE TRUSTEE FOR DORIWALA FAMILY SUPER FUND
DORIWALA FAMILY DORREN PROPERTY FUND Arrangement
MEMBERS ACKNOWLEDGEMENT

Members: SAGAR DORIWALA
 DHARA SAGAR DORIWALA

Declare that:

1. We are members of THE TRUSTEE FOR DORIWALA FAMILY SUPER FUND and controllers of that fund.
2. We acknowledge and approve the super fund borrowing for the purpose of acquiring the asset detailed in the trustee minutes and entering into the agreement referred to in the trustee minutes (the "**Arrangement**").
3. We understand that the nature, purpose and effect of the arrangement, specifically with respect to the fact that it involves a borrowing of funds so as to finance an acquisition of an asset which secures the borrowing.
4. We believe that the entering into of the arrangement is in the interests of the members individually and collectively.
5. We have directed the trustee to enter the arrangements so as to give effect to these.
6. I have read the documents tabled and referred to in the minutes/resolution.

Signed:

.....
SAGAR DORIWALA

.....
DHARA SAGAR DORIWALA

Dated:

STATUTORY DECLARATION

I, SAGAR DORIWALA, C/- make the following declaration under the *Statutory Declarations Act 1959*.

1. I have the authority to make this declaration.
2. The Directors of DHARA SAGAR PTY LTD (A.C.N. 656-362-463) ("the Superannuation Fund Trustee") for the THE TRUSTEE FOR DORIWALA FAMILY SUPER FUND are SAGAR DORIWALA and DHARA SAGAR DORIWALA, the Beneficiary referred to in a Bare Trust Deed ("the Beneficiary") established by SAACHI TAANI PTY LTD (A.C.N. 656-380-380) as the Custodial Trustee and the Beneficiary regarding the real property asset situated at ("the Asset").
3. The initial deposit for and the remainder of the purchase proceeds for the Asset shall be paid by the Beneficiary.
4. It is the objective of the Custodial Trustee and Superannuation Trustee that at all material time the Custodial Trustee will retain proprietorship of the Asset solely for the Beneficiary absolutely.
5. The Beneficiary was established simultaneously or prior to the creation of the Bare Trust Deed.

AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of the said state rendering persons making a false declaration punishable for willful and corrupt perjury.

DECLARED at _____ in the said State this _____ day of _____ 20____

.....
SAGAR DORIWALA

Before me:

.....
Name.....

Address.....
.....

Occupation.....

Please complete name and address of the Authorised Witness for Statutory Declarations