



Adapt. Chart new markets.

BINDING FINANCIAL AGREEMENT

made under section 205ZN of the *Family Court Act 1997* (WA)

between

MISTY C. SHORE

and

EVAN KEEL

Being an agreement made in contemplation of entering into a
de facto relationship it's also commonly referred to as a:

DE FACTO PRENUPTIAL AGREEMENT "PRENUP"

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Date

Parties

MISTY C. SHORE of 1000 Marine Parade, Cottesloe Beach WA 6012	<i>(Misty C.)</i>
EVAN KEEL of 1000 Marine Parade, Cottesloe Beach WA 6011	<i>(Evan Keel)</i>

Recitals

- A In order to arrange their property affairs and avoid potential litigation, Misty C. and Evan Keel are entering into this agreement under section 205ZN of the *Family Court Act 1997* (WA) (the *FCA*). This agreement is intended to be legally binding upon the parties.
- B In accordance with section 205ZN(2)(a) of the FCA, this agreement stipulates how, in the event of a breakdown of the Relationship, the property and financial resources of the parties, including:
- (a) their respective property and resources as at the date of this agreement; and
 - (b) property and financial resource acquired at a later time and during the Relationship,
- are to be dealt with.
- C At the time of the making of this agreement, no other agreement under sections 205ZN, 205ZO or 205ZP of the FCA is in force between the parties with respect to any of the matters referred to in Recital B.
- D The parties intend the terms of this agreement to be given effect to by any court having jurisdiction to determine financial matters in issue between them under the FCA.
- E Further details about the parties are set out in Schedule 1.
- F The parties have not been living in a De Facto Relationship prior to entering into this agreement. They intend to commence living in a De Facto Relationship on or about 20 October 2020 and this agreement will commence on the date when the parties begin living together. The parties do not intend to Marry.
- G The parties have no children together.
- H At the date of this agreement both parties are residents of the State of Western Australia.

.....
Misty C. **SHORE**

.....
Evan Keel

Operative provisions

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

After-Acquired Property means Property acquired by either or both of the parties after the date of this agreement and before the breakdown of the Relationship.

After-Incurred Liability means a liability incurred by either or both of the parties after the date of this agreement and before the breakdown of the Relationship.

Business Day means, in respect of the receipt of any notice under this agreement, a day (other than a Saturday, Sunday or public holiday) when banks are open for business in the state or territory in which the recipient address is situated.

Corporations Act means the *Corporations Act 2001* (Cth).

Declaration Time has the meaning given in section 205ZPA(5) of the FCA.

De Facto Relationship has the meaning given in sections 5 and 13A of the Interpretation Act.

Existing Separate Property means Property owned by one of the parties and not the other at the date of this agreement.

FCA has the meaning given in Recital A.

Insolvency Event means, in respect of a particular person:

- (a) a bankruptcy notice is issued against the person;
- (b) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
- (c) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
- (d) the person proposes or effects a moratorium involving any of the person's creditors;
- (e) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (f) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (g) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
- (h) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (g) of this definition happens to the person under the law of any jurisdiction.

Interpretation Act means the *Interpretation Act 1984* (WA).

Living Separately means the parties living separately and apart for the purposes of section 205ZPA of the FCA. As at the date of this agreement, those provisions provide that the parties may be held to have separated and to have lived separately and apart notwithstanding that:

- (a) the cohabitation was brought to an end by the action or conduct of one only of the parties; and/or
- (b) they have continued to reside in the same residence or that either party has rendered some household services to the other.

Property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (whether tangible or intangible) and wherever situated, including money and choses in action. For the avoidance of doubt, the interests of beneficiaries in the assets of a discretionary trust are included within this definition.

Relationship means the De Facto Relationship between the parties.

Separation means a Separation Declaration having been made by either party in compliance with the FCA.

Separation Declaration means a separation declaration for the purposes of section 205ZPA of the FCA. As at the date of this agreement, those provisions provide that the declaration must state that:

- (a) the parties have separated and are Living Separately at the Declaration Time; and
- (b) in the opinion of the party making the declaration, there is no reasonable likelihood of cohabitation being resumed.

Superannuation Interest means an interest of a party in a self-managed superannuation fund, or account with any other superannuation fund, whether acquired before or after entry into this agreement.

References to Property

1.2 In this agreement, a reference to:

- (a) Property includes a reference to a proportionate interest in any Property, whether held as joint tenants or tenants in common;
- (b) the Property of a party, or to Property owned/held by a party, is a reference to Property to which that party is beneficially entitled, whether in possession or reversion. For the avoidance of doubt, Property legal title to which is held by a party as trustee only is not considered to be Property of that party for the purposes of this agreement; and
- (c) Property acquired by a party is a reference to Property to which that party becomes beneficially entitled after the date of this agreement.

Other rules of interpretation

1.3 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) all recitals, annexures, schedules and attachments to this agreement are part of this agreement;
- (g) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (i) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Authority and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (j) a reference to writing includes any communication sent by post, facsimile or email;
- (k) time is of the essence;
- (l) all monetary amounts are in Australian currency;
- (m) a reference to a liability includes a present, prospective, future or contingent liability;
- (n) the word "*month*" means calendar month and the word "*year*" means 12 calendar months;
- (o) the meaning of general words is not limited by specific examples introduced by "*include*", "*includes*", "*including*", "*for example*", "*in particular*", "*such as*" or similar expressions;
- (p) a reference to a "*party*" is a reference to a party to this agreement (including any person that executes an Agreement of adherence to this agreement), and a reference to a "*third party*" is a reference to a person that is not a party to this agreement;
- (q) a reference to any thing is a reference to the whole and each part of it;
- (r) a reference to a group of persons is a reference to all of them collectively and to each of them individually;

- (s) words in the singular include the plural and vice versa; and
- (t) a reference to one gender includes a reference to the other genders.

2. Conditionality and commencement

The parties acknowledge and agree that this agreement:

- (a) is a binding financial agreement made under section 205ZN of the FCA;
- (b) is conditional upon a De Facto Relationship having formed between the parties within the meaning of sections 5 and 13A of the Interpretation Act; and

becomes a binding agreement between the parties when the parties begin living together.

3. Acknowledgements and warranties

Acknowledgements

3.1 Each party acknowledges and agrees that he/she:

- (a) is contracting out of, and foregoing, the rights that he/she would otherwise have under Part 5A of the FCA;
- (b) has entered into this agreement in reliance upon the disclosures made in this agreement and the warranties provided by the other party under clauses 3.2 to 3.4;
- (c) has, before entering into this agreement, received, understood and given due consideration to independent legal advice from a legal practitioner regarding:
 - (i) the effect of this agreement on his/her rights; and
 - (ii) the advantages and disadvantages to him/her of entering into this agreement as at the time when the advice was provided; and
- (d) is entering into this agreement freely and voluntarily and his/her entry into this agreement is not the result of any fraud, duress, coercion, pressure or undue influence exercised upon him/her by, or on behalf of, the other party or any other person.

Warranties

3.2 Misty C. represents and warrants to Evan Keel that the information contained in:

- (a) row number 1 of the table in Schedule 1 is true and correct; and
- (b) Schedule 2 is true and correct and a full and frank disclosure by Misty C. of her Existing Separate Property.

3.3 Evan Keel represents and warrants to Misty C. that the information contained in:

- (a) row number 2 of the table in Schedule 1 is true and correct; and
- (b) Schedule 3 is true and correct and a full and frank disclosure by Evan Keel of his Existing Separate Property.

3.4 Each party represents and warrants to the other party that, as at the date of this agreement:

- (a) he/she is not the subject of any Insolvency Event;
- (b) his/her obligations under this agreement are legal, valid, binding and enforceable; and
- (c) this agreement will be binding upon his/her heirs, administrators, assigns and successors in title – and his/her executors and legal personal representatives under section 205ZT of the FCA – and may be enforced on behalf of, and against, his/her deceased estate.

4. Existing Property

Existing Separate Property of Misty C.

- 4.1 The parties acknowledge and agree that:
- (a) in the event of the breakdown of the Relationship as evidenced by Separation, all Existing Separate Property of Misty C. will remain owned by Misty C. to the exclusion of Evan Keel; and
 - (b) the assets set out in Schedule 2 are Existing Separate Property of Misty C. owned by Misty C. to the exclusion of Evan Keel and the parties agree to the values ascribed to such Existing Separate Property as set out in Schedule 2.

Existing Separate Property of Evan Keel

- 4.2 The parties acknowledge and agree that:
- (a) in the event of the breakdown of the Relationship as evidenced by Separation, all Existing Separate Property of Evan Keel will remain owned by Evan Keel to the exclusion of Misty C; and
 - (b) the assets set out in Schedule 3 are Existing Separate Property of Evan Keel owned by Evan Keel to the exclusion of Misty C. and the parties agree to the values ascribed to such Existing Separate Property as set out in Schedule 3.

Dealing with Existing Separate Property by the parties

- 4.3 The parties will have the full right to own, control, dispose of, mortgage, transfer or otherwise deal with their respective Existing Separate Property.

5. After-Acquired Property

- 5.1 Subject to clauses 5.2 and 5.3, the parties acknowledge and agree that, in the event of the breakdown of the Relationship as evidenced by Separation, all After-Acquired Property will be taken to be held by the parties as joint tenants regardless of whether such Property is held only in the name of one party or the other or in the names of both parties.
- 5.2 Notwithstanding clause 5.1, the following After-Acquired Property will be – and, in the event of the breakdown of the Relationship as evidenced by Separation, will remain – owned by the party who acquires it to the exclusion of the other party:
- (a) Property acquired by gift, bequest or inheritance from a third party to one but not both of the parties;
 - (b) Property acquired after the parties began Living Separately;

- (c) Property acquired after Separation;
- (d) Property acquired after the death of any one party or both parties;
- (e) Superannuation Interests;
- (f) Property that the parties agree in writing will be owned separately;
- (g) Property:
 - (i) acquired in exchange for; and
 - (ii) all income and other gains derived, or to be derived, from, any Property referred to in this clause 5.2 (whether by way of sale, investment or other dealing); and
- (h) the increase in value of any Property referred to in this clause 5.2 (whether attributable to enhancement or appreciation due in whole or in part to market conditions and/or to the services, skills or efforts of either party).

Superannuation Interests

- 5.3 Notwithstanding any other provision of this agreement, in the event of the breakdown of the Relationship as evidenced by Separation, each party:
- (a) will remain the owner, to the exclusion of the other party, of all Superannuation Interests standing in his/her name; and
 - (b) covenants not to bring any claim seeking an entitlement to any Superannuation Interest standing in the name of the other party.

6. After-Incurred Liabilities

- 6.1 The parties acknowledge and agree that, in the event of the breakdown of the Relationship as evidenced by Separation, each After-Incurred Liability will be owed by the parties jointly in equal proportions, regardless of whether such After-Incurred Liability is owed only in the name of one party or the other or in the names of both parties.

7. No adjustment

Change of circumstances

- 7.1 The parties have had regard to the possibility that one or both of them, and/or any child of the Relationship, may be subject to a change of circumstances, including:
- (a) illness, injury or death;
 - (b) changes in employment or level of income;
 - (c) an Insolvency Event;
 - (d) inheritance of assets; and
 - (e) entry into a marriage or de facto relationship by any child of the Relationship and breakdown of any such marriage or de facto relationship,