

**SUPERANNUATION FUND TRUST DEED**  
*(Employer Sponsored - Corporations Power)*

**D. C. M. EMPLOYEES SUPERANNUATION  
FUND**

**Dorset Construction Management  
Pty Limited**  
*(Principal Employer)*

**Dorset Construction Management  
Pty Limited**  
*(First Trustee)*

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## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
1.1	Definitions .....	1
1.2	Interpretation .....	5
1.3	Successors and assigns .....	6
1.4	Headings and table of contents .....	6
1.5	Notices .....	6
1.6	Proper Law .....	6
2.	CONSTITUTION OF FUND .....	6
2.1	Establishment of Fund .....	6
2.2	Fund to Continue Indefinitely .....	6
2.3	Trustee .....	6
3.	ELIGIBILITY AND MEMBERSHIP .....	6
3.1	Eligibility .....	6
3.2	Membership .....	7
4.	CONTRIBUTIONS AND BENEFITS .....	7
4.1	Employer Contributions .....	7
4.2	Member Contributions .....	7
4.3	Application of Contributions .....	7
4.4	Controls on Contributions .....	7
5.	ADMINISTRATION OF FUND .....	7
5.1	Member Accounts .....	7
5.2	Preservation and Cashing Restrictions .....	8
5.3	Fund Expenses .....	8
5.4	Valuation of Fund .....	8
5.5	Net Earnings Rate .....	8
5.6	Interim Crediting .....	9
5.7	Earnings on Insurance Policies .....	9
5.8	Audit of Fund .....	9
5.9	Employer Information .....	9
5.10	I.S.C. Information .....	9
5.11	Other Accounts .....	10
6.	QUALIFICATION OF TRUSTEE .....	10
6.1	Eligibility to be Trustee .....	10
6.2	Fund Membership Requiring Equal Representation .....	10
7.	RETIREMENT AND APPOINTMENT OF TRUSTEE .....	10
7.1	Vacation of Office .....	10
7.2	Removal of Trustee by Principal Employer .....	10
7.3	Appointment of New Trustee .....	11
7.4	Vacancy to be filled .....	11
8.	TRUSTEE COVENANTS .....	11

9.	DISCRETIONS AND DECISIONS OF TRUSTEE .....	12
9.1	Trustee Meetings .....	12
9.2	Trustee Discretions .....	12
9.3	Trustee Decisions .....	12
9.4	No Personal Liability .....	12
9.5	Indemnity .....	13
9.6	Trustee Interested .....	13
9.7	Custodian .....	13
9.8	Managers and Administrators .....	13
9.9	Member's Attorney .....	14
9.10	Exercise of Discretion by Person other than Trustee .....	14
10.	TRUSTEE POWERS .....	14
10.1	Investment .....	14
10.2	Restrictions on Investment .....	16
10.3	Trustee Powers in Relation to Fund .....	16
11.	INSURANCE BENEFITS .....	18
11.1	Level of Benefits .....	18
11.2	Trustee to effect necessary death and disability insurances .....	19
11.3	Commencement of death and disability insurance .....	19
11.4	Cessation of insurance cover .....	19
11.5	Scope of Insurance Cover .....	19
12.	FORFEITURE AND ASSIGNMENT OF BENEFITS .....	20
12.1	Assignment .....	20
12.2	Liens Over Benefits .....	20
12.3	Payment .....	20
12.4	Unclaimed Money .....	20
12.5	Application to General Purposes of the Fund .....	20
13.	TRANSFER FROM ANOTHER FUND .....	21
14.	TRANSFER OF BENEFIT TO NEW FUND .....	21
14.1	Transfer on Request of Member .....	21
14.2	Transfer to Successor Fund .....	21
14.3	Assets may be Transferred .....	21
14.4	Receipt of Trustee .....	21
15.	RIGHTS TO BENEFITS AND INTEREST IN FUND .....	22
15.1	Member Interest .....	22
15.2	Employer & Employee Rights not Restricted .....	22
16.	MEMBER INFORMATION .....	22
16.1	Trust Deed Available for Inspection .....	22
16.2	Information on Joining Fund .....	22
16.3	Annual Statement .....	22
16.4	Information on Cessation of Membership .....	22
16.5	Other Information .....	23
17.	ALTERATIONS TO TRUST DEED .....	23
17.1	Method of Alteration .....	23
17.2	Amendment Not to Breach Act .....	24

18.	COMPLIANCE WITH ACT .....	24
18.1	Management .....	24
18.2	Inconsistency .....	24
19.	CHANGE IN EMPLOYER .....	24
19.1	New Employer .....	24
19.2	Admission of Participating Employer .....	25
19.3	Removal of Participating Employer .....	25
19.4	Withdrawal of Employer .....	25
20.	DISSOLUTION OF THE FUND .....	25
20.1	Date of Dissolution .....	25
20.2	Benefits on Dissolution .....	26
20.3	Expenses of Dissolution .....	26
20.4	Surplus .....	26
20.5	Final Accounts .....	26
21.	PAYMENT OF BENEFITS .....	26
21.1	Lump Sum Payment .....	26
21.2	When Payable .....	26
21.3	Act to Prevail .....	27
21.4	Evidence of Entitlement .....	27
21.5	Establishing Total and Permanent Disability .....	27
21.6	Death of Member .....	27
21.8	Benefits on Temporary Incapacity .....	28
22.	BENEFITS TO PERSONS UNDER DISABILITY .....	28
22.1	Legal Incapacity of Recipient .....	28
22.2	Trustee Receipt .....	28
	SCHEDULE 1 .....	30
	SCHEDULE 2 .....	31
	SCHEDULE 3 .....	32

# SUPERANNUATION FUND TRUST DEED



THIS DEED IS MADE ON 19 NOVEMBER 1997

## PARTIES

DORSET CONSTRUCTION MANAGEMENT PTY LIMITED ACN 079 189 683 of  
47 Falcon Street, Crows Nest NSW 2065 ("Principal Employer")

DOREST CONSTRUCTION MANAGEMENT PTY LIMITED ACN 079 189 683 of  
47 Falcon Street, Crows Nest NSW 2065 ("First Trustee")

## RECITALS

- A The First Trustee and the Principal Employer have resolved to establish a fund to provide for the persons admitted as Members retirement benefits on attaining age 65, and benefits for their dependents on their earlier death and in such other circumstances as the Trustee determines.
- B The First Trustee has agreed to receive and hold the fund subject to the trusts and conditions and the discretions and powers contained in this document.

## AGREEMENTS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this deed unless the context otherwise requires:

"Act" means the Superannuation Industry (Supervision) Act 1993;

"Adjustment Amounts" mean:

- (a) estimated costs and expenses of realising the investments of the Fund;
- (b) allowances for future losses in respect of any investment for which the market value cannot be fairly or accurately assessed;
- (c) allowance for the averaging of the earnings of the Fund whether on income account or on capital account, to take into account possible or actual periodic fluctuations in those earnings and any losses of the Fund not otherwise deducted; and

- (d) allowances for any other purpose or purposes that the Trustee considers desirable or necessary;

**"Associate"** means any person who from time to time is permitted by the Act to contribute to the Fund in respect of the Employee on an Employer's behalf;

**"Benefit"** means in relation to a Member the aggregate of the Members Account that is the Vested Amount;

**"Complying Fund"** means a superannuation fund that complies with the requirements of the Act and, where the Trustee determines, any requirements that must be observed to obtain any concessional tax treatment of the Fund, its Members or any employer;

**"Dependant"** of a Member means:

- (a) child, including adopted child, step-child and ex-nuptial child; and
- (b) any other person who is dependent on a Member or in the case of a deceased Member was dependent at the time of the Member's death for his maintenance;

**"Employee"** means a person employed by an Employer and any other person who is an "employee" for the purposes of the Act;

**"Employer"** means a person who is an "employer" for the purposes of the Act;

**"Employment"** or **"Employed"** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment;

**"Full-time"** means Employment of 30 or more hours weekly;

**"Fund Expenses"** means all amounts or costs to be taken into account in operating the Fund including:

- (a) taxation of the Fund or its income;
- (b) administration costs, charges or expenses;
- (c) costs and expenses of investing the Fund;

**"Fund"** means the superannuation fund governed by this Deed and consists of all money, investments and insurance policies held by the Trustee subject to this Deed;

**"General Fund"** means the Fund excluding all policies of insurance or assurance effected on the life of Members pursuant to the provisions hereof;

**"I.S.C."** means the office known as the Insurance and Superannuation Commissioner;

**"In-house Asset"** has the meaning ascribed to it in the Act;

**"Mandated Employer Contributions"** means:

- (a) all contributions an Employer is required to make to a superannuation fund pursuant to any law or industrial agreement or industrial award of any State or Territory or the Commonwealth of Australia;
- (b) SGC contributions;
- (c) any other amount that under the Act is a Mandated Employer Contribution;

**"Member"** means a person who becomes and for the time being is a member of the Fund;

**"Member Account"** means the account maintained in accordance with Clause 5.1;

**"Non-dependant Benefit"** means a benefit to which regulation 6.22(3) applies;

**"Participating Employer"** means the Principal Employer and any person approved as such in accordance with clause 19.2 who has not ceased to be an Employer ;

**"Part-time"** means Employment of 10 or more hours but less than 30 hours weekly;

**"Principal Employer"** means the Principal Employer who is a party to this deed and any person who accepts such obligations in place of that person;

**"Retirement"** means:

- (a) in the case of a Member who has attained age 55 -
  - (i) if an arrangement under which the Member was gainfully employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a Full-time or a Part-time basis; or

- (b) in the case of a Member who has attained age 60 - an arrangement under which the Member was gainfully employed has come to an end on or after the Member attained that age.

**"Spouse"** of a Member means:

- (a) the husband or wife of that Member; or
- (b) another person who, although not legally married to the Member lives with that Member or in the case of a deceased Member the widow or widower or who was at the date of death of the Member living with the Member on a bona fide domestic basis as the husband or wife of the Member;

**"Successor Fund"** means a fund which satisfies the following conditions:

- (a) the fund confers on the member equivalent rights to the rights that the Member had under the Fund in respect of member benefits; and
- (b) before the transfer, the trustee of the fund has agreed with the Trustee that the fund will confer on the member equivalent rights to the rights that the member had under the Fund in respect of his or her benefits;

**"SGC"** means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992;

**"Tax Act"** means the Income Tax Assessment Act 1936;

**"Totally and Permanently Disabled"**, in relation to a Member who has ceased to be gainfully employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience;

**"Transfer Fund"** means a Complying Fund, an approved deposit fund that is a complying approved deposit fund for the purposes of Section 43 of the Act and where permitted by the Act a deferred annuity;

**"Trustee"** means the First Trustee who is a party to this deed and shall include the trustee or trustees for the time being of the Fund; and

**"Vested Amount"** means:

- (a) in the case of entitlements arising on or after Retirement, on death, on becoming Totally and Permanently Disabled - the total amount recorded to the credit of the Member Account;



(b) otherwise:

(i) the amount required by the Act to be vested; and

(ii) such remaining part of the amount standing to the Member Account as the Trustee determines.

## **1.2 Interpretation**

1.2.1 A reference to:

(a) a business day means a day during which banks are open for general banking business in the state or territory the laws of which apply in the construction of this deed; and

(b) this deed includes the recitals of and any schedules, annexures and exhibits to this deed and where amended means this deed as so amended.

1.2.2 Unless the context otherwise requires a word which denotes:

(a) the singular includes the plural and vice versa;

(b) any gender includes the other genders; and

(c) a person includes an individual and a body corporate.

1.2.3 Unless the context otherwise requires a reference to:

(a) any legislation includes any regulation or instrument made under it and where amended re-enacted or replaced means that amended re-enacted or replacement legislation;

(b) any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced;

(c) a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this agreement;

(d) a group of persons includes any one or more of them;

(e) any thing or amount is a reference to the whole and each part of it; and

(f) a word or phrase appearing in a certain context which when used in a similar context in the Act would have a particular meaning, has that meaning in this deed.

**1.3 Successors and assigns**

A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this deed.

**1.4 Headings and table of contents**

Headings and the table of contents must be ignored in the interpretation of this deed.

**1.5 Notices**

Notices may be given by the Trustee to Members and former Members either personally or by sending the same by letter posted to the address last known to the Trustee. In the case of service by post the notice shall be deemed to have been received on the date when the notice would be received in the ordinary course of posting.

**1.6 Proper Law**

This deed shall in all respects be governed and construed in accordance with the law of the State of New South Wales.

**2. CONSTITUTION OF FUND**

**2.1 Establishment of Fund**

There is hereby constituted the Fund to be known as the D. C. M. Employees Superannuation Fund.

**2.2 Fund to Continue Indefinitely**

The Fund shall be an indefinitely continuing fund and will only be terminated in accordance with the provisions in this deed.

**2.3 Trustee**

The Trustee accepts the appointment as trustee and will hold the Fund subject to the provisions of this deed and any amendments.

**3. ELIGIBILITY AND MEMBERSHIP**

**3.1 Eligibility**

The persons eligible for membership of the Fund shall be such of those who apply in writing (in the form set out in Schedule 1) as the Trustee shall from time to time determine.

### **3.2 Membership**

A person eligible for membership shall become a Member on the day determined by the Trustee and on the payment or forfeiture of the whole of a Member's rights to benefit hereunder, the person's membership shall cease.

## **4. CONTRIBUTIONS AND BENEFITS**

### **4.1 Employer Contributions**

Each Employer and its Associates, if any, may from time to time contribute to the Fund for each Employee who is a Member such amount as the Trustee and the Employer may from time to time agree.

### **4.2 Member Contributions**

A Member may contribute to the Fund such amount as the Trustee and the Member may from time to time agree.

### **4.3 Application of Contributions**

The Trustee in its absolute discretion shall determine the manner in which contributions will be invested.

### **4.4 Controls on Contributions**

The Trustee will not accept contributions for a Member where the Act does not permit payment to a Complying Fund.

### **4.5 Employer to pay interest**

Each Employer and Associate as at the thirtieth day of June in every year shall pay or credit to the Trustee interest on the amount of any moneys owing to the Trustee by the Employer or Associate calculated on daily balances at such rate as may be agreed upon by the Trustee and the Employer or Associate.

## **5. ADMINISTRATION OF FUND**

### **5.1 Member Accounts**

The Trustee shall keep, with respect to each Member, a Member Account showing such of the following amounts as may be required:

- (a) contributions in respect of the Member;
- (b) any amounts transferred to the Fund in accordance with clause 13;
- (c) sums credited or debited to such account pursuant to the provisions hereof.

## 5.2 Preservation and Cashing Restrictions

The Trustee shall record in the accounts of each Member in respect of the Member's Benefit:

- (a) the amount that is preserved;
- (b) the amount that is a restricted non-preserved benefit;
- (c) the amount that is the subject of a "Nil" cashing requirement for the purposes of the Act;
- (d) the Vested Amount, if not fully vested.

## 5.3 Fund Expenses

5.3.1 The Trustee may in its discretion deduct all Fund Expenses from Member accounts in such proportions as is fair and reasonable between Members. For this purpose the Trustee may set one or more fees.

5.3.2 Any amount of Fund Expenses not deducted from Member accounts shall be taken into account in determining fund income.

## 5.4 Valuation of Fund

5.4.1 The Trustee shall cause the whole of the assets of the General Fund to be valued in such manner as the Trustee shall determine as at the thirtieth of June in each year. The Trustee may value the whole or any part of the assets of the Fund in such manner as it shall determine whenever in its opinion it is necessary or desirable to do so.

5.4.2 In valuing the General Fund the Trustee shall make provision for:

- (a) such Adjustment Amounts as the Trustee thinks is prudent;
- (b) Fund Expenses not deducted from Member Accounts.

## 5.5 Net Earnings Rate

5.5.1 Each time the General Fund is valued the Trustee shall declare a daily crediting rate (whether positive or negative) for the General Fund for the year or such shorter period as is the subject of the valuation.

5.5.2 A positive crediting rate must not be an amount that would, if the Fund were terminated immediately after crediting the crediting rate to Members Accounts, result in the assets of the Fund being insufficient to pay all amounts standing to Members Accounts.

5.5.3 If a positive daily crediting rate is declared, the daily balance standing to each Member Account shall be credited with an amount equal to the daily crediting rate.

5.5.4 If a negative crediting rate is declared, the daily balance standing to each Member Account shall be debited with an amount equal to the daily crediting rate.

#### **5.6 Interim Crediting**

Where a Benefit is paid after the end of a period for which a crediting rate is determined, the Member's Account shall be credited or debited (as the case may be) with an interim daily crediting rate determined by the Trustee on the daily balance for the period from the date on which the crediting rate was last determined and the date on which the Benefit is paid.

#### **5.7 Earnings on Insurance Policies**

Where any part of the Fund is invested in a superannuation policy or other policy of insurance or assurance, the earnings rate for such policy shall be the increase or decrease in value of such policies or for each Member (as advised by the insurer) and the accounts of the Members for whose benefit such policy is held shall be debited or credited accordingly.

#### **5.8 Audit of Fund**

Each year an approved auditor appointed by the Trustee shall audit the accounts and records of the Fund and shall report to the Trustee not later than the date the return is required to be lodged with the I.S.C.

#### **5.9 Employer Information**

The Trustee shall give to an Employer who makes an SGC contribution:

- (a) on request, a copy of this deed and any alteration to it;
- (b) on request by an Employer making an SGC contribution, a certificate in the form set out in Schedule 2;
- (c) if the Fund should cease to be a complying Superannuation Fund, written notice of that fact to each Employer who contributes to the Fund as soon as practicable after becoming aware of such fact.

#### **5.10 I.S.C. Information**

The Trustee shall ensure that the I.S.C. is given such notices on entitlements of the Fund and is advised of such matters as shall be necessary in order to comply with any requirements of the Act.

**5.11 Other Accounts**

The Trustee shall keep such other accounts as may be necessary to record the financial transactions by the Trustee and to record the Members' entitlements and changes in nature of entitlements.

**6. QUALIFICATION OF TRUSTEE**

**6.1 Eligibility to be Trustee**

Only a constitutional corporation having power so to act and to carry out the trusts hereof shall be eligible to be the trustee of the Fund.

**6.2 Fund Membership Requiring Equal Representation**

In the event that the membership of the Fund is such that the Act requires the board of the Trustee to have equal Member and Employer representation then the Trustee shall within ninety days of the event requiring Member representation take all necessary steps and do all necessary things to ensure that the number, qualification and composition of the board of the Trustee complies with the Act.

**7. RETIREMENT AND APPOINTMENT OF TRUSTEE**

**7.1 Vacation of Office**

The office of a trustee shall become vacant if it:

- (a) resigns its office by notice in writing to the Principal Employer; or
- (b) is placed in liquidation, makes an assignment to or composition with its creditors, a receiver or a receiver and manager is appointed in respect of property beneficially owned by the trustee, an administrator is appointed or a provisional liquidator is appointed;
- (c) is required to vacate office by a majority of Members by notice in writing to the Trustee; or
- (d) is removed from office in accordance with the provisions of this Clause 7.

**7.2 Removal of Trustee by Principal Employer**

The Principal Employer:

- (a) may remove any Trustee as a trustee; and
- (b) shall remove a Trustee as trustee on becoming aware a responsible officer of the Trustee is or has become a disqualified

person and that person does not cease to be a responsible officer within 14 days of the Trustee becoming so aware.

### **7.3 Appointment of New Trustee**

The Principal Employer may appoint as a trustee a person eligible to be appointed trustee in accordance with the Act's requirements.

### **7.4 Vacancy to be filled**

Any vacancy occurring pursuant to this Part shall be filled within 90 days of the day on which the vacancy occurs.

## **8. TRUSTEE COVENANTS**

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of an Employer or an associate of an Employer.
- (e) not to enter into any contract, or do any other act or thing, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or

involve the Fund in being exposed to risks from inadequate diversification;

(iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;

(iv) the ability of the Fund to discharge its existing and prospective liabilities;

(g) if there are any reserves of the Fund, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;

(h) to allow a Member access to any information or any documents prescribed by the Act.

## **9. DISCRETIONS AND DECISIONS OF TRUSTEE**

### **9.1 Trustee Meetings**

The Trustee (or through its directors in the case of the Trustee being a company) may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

### **9.2 Trustee Discretions**

The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the authorities powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and its decision as to the interpretation and effect of this deed shall be final.

### **9.3 Trustee Decisions**

The Trustee may act by resolution of its board of directors.

### **9.4 No Personal Liability**

9.4.1 No Trustee or director of the Trustee shall be under any personal liability in respect of any loss or breach of trust in respect of the Fund or the benefits of a Member unless the same shall have been due to:

(a) its own failure to act honestly in a matter concerning the Fund;

(b) intentional or reckless failure to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or director was required to exercise; or



- (c) a liability for a monetary penalty under a civil penalty order under the Act.

9.4.2 The Trustee may take out such indemnity and fidelity insurance as it thinks fit and the cost of such shall be an expense of the Fund.

## 9.5 Indemnity

9.5.1 The Trustee and the directors of the Trustee shall be indemnified against all liabilities and expenses incurred by them in the execution of their duties hereunder and shall have a lien on the Fund for such indemnity.

9.5.2 The costs charges and expenses incurred by the Trustee in and incidental to the administration and winding up of the Fund or otherwise in relation thereto shall be paid out of the Fund.

9.5.3 The indemnity in this clause shall not apply to the Trustee or a director of the Trustee where the Trustee or that director:

- (a) fails to act honestly in a matter concerning the Fund;
- (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or director is required to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order under the Act.

## 9.6 Trustee Interested

No director of the Trustee shall by virtue of his office be disqualified from being or becoming a Member or from exercising any rights or deriving any benefit as a Member and a director of the Trustee who is or is about to become a Member may be counted in a quorum and vote at any meeting of the Trustee or its board of directors and generally participate in the exercise of the functions of the Trustee notwithstanding that he is interested in the matter.

## 9.7 Custodian

The Trustees may appoint, on such terms as they consider appropriate, a corporate body as custodian trustee to hold on their behalf the title to some or all of the securities, policies or other assets or investments of the Fund.

## 9.8 Managers and Administrators

The Trustee may appoint in writing, on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more corporate bodies to act on behalf of the Trustee in regard to the

investment and management of the assets and administration of the Fund.

**9.9 Member's Attorney**

Each Member hereby irrevocably appoints the Trustee his attorney to execute and sign all such deeds and instruments and do all such things the Trustee considers necessary or desirable in administering the Fund.

**9.10 Exercise of Discretion by Person other than Trustee**

Except where the Fund is an excluded fund no discretion under these trusts is exercisable by a person other than the Trustee unless:

- (a) the Trustee consents to the exercise of that discretion; or
- (b) the exercise of the discretion relates to the contributions that an Employer will, after the discretion is exercised, be required or permitted to pay to the Fund; or
- (c) the exercise of the discretion relates solely to a decision to terminate the Fund; or
- (d) the circumstances in which the discretion was exercised are covered by regulations to the Act.

**10. TRUSTEE POWERS**

**10.1 Investment**

The Trustee, in addition to all powers conferred upon it by law, shall have all the powers of a sui juris beneficial owner of the Fund, including power to enter into any type of commercial or other undertaking either alone or together with others and, without limiting the generality of the foregoing, shall have the following powers:

- (a) to invest the Fund or any part thereof in any part or parts of the world;
- (b) to invest in companies incorporated anywhere in the world by way of shares, stock, options or debentures or in rights of any kind to any such shares, stock, options or debentures:
  - (i) whether or not a public company;
  - (ii) whether such company's liability is limited or not;
  - (iii) whether or not the shares or stock carry any rights to dividends or not or to share in any distribution of capital on a winding up or reduction of capital; and

- (iv) whether the or not the shares or stock carry any rights to vote or not;
- (c) to invest in real property of any description and to subdivide and build on any land and to maintain improve extend and demolish any buildings in whole or part;
- (d) to invest in personal property of any description;
- (e) to lend or advance money with or without security;
- (f) to acquire any interest in a trust of any kind including a cash management trust, an equity trust, a public securities trust or a property trust;
- (g) to invest in ships, aircraft and chattels of any description and any shares or interest therein;
- (h) to acquire book debts, options, futures contracts, futures options, swap agreements, forward rate agreements, foreign currency, other contracts of a derivative nature and other choses in action wheresoever situated or enforceable and any shares or interests therein;
- (i) to enter into securities lending arrangements;
- (j) to invest in any reversionary or deferred property or rights of any description wheresoever situate or enforceable and whether by way of original creation or assignment or otherwise;
- (k) to invest part of the Fund in assets for the purposes of capital gain only or which may be of a wasting or speculative nature;
- (l) subject to the Act, to borrow from a bank or other financial institution on such terms and conditions, without security, as it shall in its absolute discretion think fit for the purposes of temporary finance in order to overcome cash flow problems in the payment of superannuation benefits or to settle an acquisition of an asset ;
- (m) to invest or expend any part of the Fund in any policy for an annuity or policy of assurance or insurance upon the life of any of the Members to secure payment upon the death of a Member or the happening of any other event in respect of a Member for such amount as the Trustee in its absolute discretion thinks fit;
- (n) to invest all or part of the Fund in one or more superannuation policies or pooled superannuation trusts;
- (o) to make deposits with any bank in any part of the world for any period whatsoever;

- (p) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) to enter into bill facility or promissory note agreements.

## **10.2 Restrictions on Investment**

- 10.2.1 The Trustee may not lend any money or give other financial assistance to a Member or relative of a Member and the level of In-house Assets shall not exceed the level determined by the Act.
- 10.2.2 The Trustee must not invest money of the Fund unless the Trustee and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction or, if the Trustee or any of its directors is interested and if permitted by the Act, the terms are no less favourable to the Trustee than those which it is reasonable to expect if the parties had been dealing with each other at arms length in respect of the transaction.
- 10.2.3 The Trustee shall not acquire an asset (other than cash) from a Member or a relative of a Member except where permitted by the Act.

## **10.3 Trustee Powers in Relation to Fund**

The Trustee shall have the following powers to be exercised or not by it in its absolute discretion in relation to the Fund and such powers may be exercised together or separately and from time to time and at any time or times and may be exercised alone or jointly with any other person or persons:-

- (a) to sell, transpose, exchange, or vary any or all assets from time to time included in the Fund for others which the Trustee is by this deed or by law authorised to acquire;
- (b) to sell, transfer, mortgage, charge, exchange, lease, hire or license the use of the whole or any part of the Fund upon such terms and conditions as to payment or repayment as it shall think fit;
- (c) to pay, agree or settle all or any accounts arising out of or in relation to the acquisition, purchase, sale or disposal of any investments made under the powers and trusts declared in this deed and for any such purpose to execute and deliver effectual receipts, releases and discharges;
- (d) for the purposes of investment, to establish, promote, acquire, invest in, or cause the incorporation or join in or consent to the establishment or re-organisation of companies, partnerships, joint ventures or unit trusts, as it shall think fit and to act from time to time as director, manager, officer or agent of any such body;

- (e) to grant or cause to be granted options over the whole or any part of the Fund or over the capital of any company or the units of any unit trust in which part of the Fund may stand invested or over patent, property or other rights to which it may be entitled, whether directly or indirectly, as Trustee;
- (f) to employ managers, servants, agents and contractors irrespective of whether such person has any beneficial interest, whether direct or indirect, in the Fund or any parts thereof and to pay out of the Fund any person or persons to do any act or acts (including the receipt of money) in connection with or arising out of the exercise of the powers under this deed and including, without restricting the generality hereof, acts which the Trustee could perform personally;
- (g) to establish or maintain, as it may think fit from time to time, reserve funds or sinking funds to provide for the amortisation of the cost of or depreciation in the value of any property forming part of the Fund or of any liability to which it is subject;
- (h) to prosecute and as it may think fit to defend, answer, discontinue, compromise or settle any claims, actions, suits, or proceedings whatsoever and to refer and submit to arbitration any dispute or matter concerning any part of the Fund or relating to the trusts of this deed;
- (i) to make, do, sign, seal, deliver and execute all acts, deeds, matters and things whatsoever necessary or incidental to the exercise or performance of the powers or trusts of this deed or to satisfy its obligations under the Act or give any notices required under that Act;
- (j) to delegate to any person, firm or corporation, including any firm or corporation in which the Trustee may be interested, any of its discretions, powers and authorities including the receipt or payment of money for such period and subject to such conditions or restrictions as the Trustee shall in its absolute discretion deem fit and to pay to any such person out of the Fund all proper fees, charges, commissions and disbursements;
- (k) to take and act upon the opinion or advice of any accountant, auditor, banker, lawyer, valuer or other expert or professional person or body (whether or not a shareholder or director of the Trustee) and in relation to any such opinion or advice the Trustee shall not be responsible for any loss, depreciation or damage of any nature to the Fund resulting from any decision of the Trustee to act or not to act as the Trustee may in his absolute discretion think fit in accordance with any such opinion or advice;

- (l) to open any account or accounts with any bank or banks and to operate in all usual ways on such accounts;
- (m) to appoint by deed or otherwise any person to act as its Attorney in any place in the world to do any acts in connection with or arising out of the exercise of the trusts, powers and discretions under this Deed and in relation to all or any part of the Fund in the same manner as the Trustees could do personally. Such Attorney may be given such ancillary powers and be subject to such provisions and restrictions as the Trustees thinks fit including a power to appoint substitutes. The Trustee shall not by reason only of having made the appointment be responsible for any loss arising thereby;
- (n) to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by these presents;
- (o) to compromise, compound, abandon, release, forgive, submit to arbitration or otherwise settle any debt, claim or thing whatsoever relating to the Fund or owing to the Trustee on any account whatsoever;
- (p) to take on lease or hire and make improvements to any real or personal property on such terms and conditions as the Trustee shall in its absolute discretion determine;
- (q) to pay out of the Fund or the income thereof all costs, charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income or other taxes payable in respect of the Fund;
- (r) to allocate franking credits as the Trustee considers reasonable;
- (s) to deduct and pay as required all taxes, charges and levies payable on contributions made to the Fund and on benefits payable from the Fund and to charge for the costs and expenses directly or indirectly attributable to administering such tax, charge or levy.

## 11. INSURANCE BENEFITS

### 11.1 Level of Benefits

The amount and nature of death or total and permanent disability or temporary disability benefits (hereinafter called the "Insured Benefits") shall be determined by the Trustee.

**11.2 Trustee to effect necessary death and disability insurances**

To provide any death and disability benefits payable, the Trustee may effect one or more group insurance policies with an insurer for amounts and on terms and conditions agreed between the Trustee and the insurer.

**11.3 Commencement of death and disability insurance**

A Member will not be insured against death or total and permanent disability or temporary disability under any policy arranged by the Trustee until:

- (a) he or she is admitted as a Member;
- (b) the Employer has notified the Trustee that insurance is required in respect of that Member;
- (c) the Member and any relevant Employer have provided information required by the insurer.

**11.4 Cessation of insurance cover**

A Member's interest in and rights under any death or total and permanent disability or temporary disability insurance arranged by the Trustee cease:

- (a) if the Member ceases to be within the class of persons covered by the policy or otherwise ceases to be covered under the terms of the policy;
- (b) upon the insurer terminating the policy or the Member's cover;
- (c) on written request to the Trustee given by the Member;
- (d) on the Trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the Trustee;
- (e) if the amount standing to the credit of a Member's accounts is insufficient to pay for the Member's cover;
- (f) on payment of the Member's Benefit or on transfer of the Benefit to another Complying Fund.

**11.5 Scope of Insurance Cover**

Any Insured Benefit shall be subject to the terms of the insurance policy or policies taken out by the Trustee to provide the relevant Insured Benefit and no payment shall be required to be made in respect of a Member in satisfaction of any Insured Benefit that is greater than

the amount received by the Trustee under the insurance policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to those amounts.

## **12. FORFEITURE AND ASSIGNMENT OF BENEFITS**

### **12.1 Assignment**

The interest of a Member in the Fund is personal to the Member and the Trustee shall not recognise any assignment, claim or charge in respect of that interest unless that assignment, claim or charge is permitted expressly or by necessary implication by the Act.

### **12.2 Liens Over Benefits**

The Trustee shall not be a party to a lien nor vary an existing lien, over those benefits of a Member which are required to be preserved or vested by the Act except in the case of an identified debt owed by the Member to the Trustee in its capacity as trustee of the Fund.

### **12.3 Payment**

The Benefit or any interest in a Benefit may only be cashed in favour of the Member or, if the Member has died, his Dependants and/or legal personal representative or in the case of a Non-dependant Benefit in accordance with clause 21.6(b). If any part of the Benefit cannot be paid in accordance with this clause and is not required to be paid in accordance with clause 12.4 then it may be applied for the general purposes of the Fund.

### **12.4 Unclaimed Money**

12.4.1 Where a Member has reached the eligibility age for an age pension and the Trustee is unable to pay the benefit and the circumstances preventing payment are such that the Act's provisions as to unclaimed money require payment then the Trustee shall pay the benefits in accordance with the Act.

12.4.2 Where a benefit is payable other than in circumstances where clause 12.4.1 applies and the Trustee is unable to pay the benefit then the Trustee may transfer the benefits to an eligible roll-over fund.

12.4.3 Payment to the Commissioner or trustee of an eligible roll-over fund in accordance with the Act shall be a good discharge to the Trustee.

### **12.5 Application to General Purposes of the Fund**

Subject to clause 12.3 if when any benefit becomes payable to a Member or his Dependents or legal personal representative and the Member or his Dependents or legal personal representative refuse to accept the Benefit or part thereof or the Trustee is not for a period of three years



immediately thereafter (after reasonable enquiry) aware of the location of the Member the amount of the benefit shall be forfeited and applied for the general purposes of the Fund.

**13. TRANSFER FROM ANOTHER FUND**

The Trustee may accept into the Fund in respect of the Member an amount transferred from another superannuation fund or similar fund or fund in which the Member has participated and the benefit payable under the Fund in respect of the Member shall be adjusted in such a manner as is agreed upon by the Trustee and the Member to take into account the value of the amount transferred.

**14. TRANSFER OF BENEFIT TO NEW FUND**

**14.1 Transfer on Request of Member**

Any Member who is not absolutely entitled to a benefit may, with the consent of the Trustee terminate his membership of the Fund and transfer or apply the amount standing to his Member Account to a Transfer Fund nominated by the Member in accordance with the Act.

**14.2 Transfer to Successor Fund**

Any other moneys and assets comprising the benefit of a Member that are not dealt with in accordance with clause 14.1 on the Member ceasing to be a Member of the Fund or in any other circumstance where the Trustee determines shall be transferred to a fund that the Trustee is satisfied is a Successor Fund. In that event no claim shall lie against the Trustee by the Member as a result of the Trustee so paying the amount to such fund.

**14.3 Assets may be Transferred**

The Trustee may with the agreement of the Member or a beneficiary to whom a benefit is payable transfer assets of the Fund of equivalent value to the amount otherwise payable to the Member or beneficiary under the provisions of this deed provided that such transfer is permitted by the I.S.C.

**14.4 Receipt of Trustee**

The receipt of the trustee of the Transfer Fund to which the transfer is made shall be a complete discharge to the Trustee in respect of any money or asset so paid or transferred.

**15. RIGHTS TO BENEFITS AND INTEREST IN FUND**

**15.1 Member Interest**

Except as provided in these presents a Member shall have no right to or interest in any money or other assets of the Fund.

**15.2 Employer & Employee Rights not Restricted**

Nothing herein contained shall restrict the right of an Employer to dismiss an Employee or be used to increase damages in any action brought against the Employer in respect of such dismissal or affect the legal rights of a Member or legal personal representative arising out of or in the course of his or her employment with the Employer.

**16. MEMBER INFORMATION**

**16.1 Trust Deed Available for Inspection**

A copy of the Trust Deed shall be kept by the Trustee at its head office and shall be open to inspection by the Member at all reasonable times.

**16.2 Information on Joining Fund**

16.2.1 The Trustee shall give to a person who is a prospective Member or who has just become a Member a written statement containing details of the kinds of benefits provided to Members by the Fund, the conditions relating to those benefits and the method of determining entitlements of Members. The information shall include that set out in Schedule 3.

16.2.2 Where the Fund is not an excluded fund such other information as is required to be disclosed by the Act.

**16.3 Annual Statement**

The Trustee shall give to each Member of the Fund as soon as practicable after the end of each year and in any event not later than six months after the end of the year a written statement setting out the information required by the Act as to the Member's entitlements and any other information required by the Act.

**16.4 Information on Cessation of Membership**

Where a Member ceases to be a Member of the Fund the Trustee shall give, or arrange to be given, to the Member (or if the Member is deceased his legal personal representative) as soon as is practicable thereafter a written statement setting out:

- (a) the entitlements of that Member, identifying any amounts that must be preserved in order to satisfy the Acts requirements as to preservation; and
- (b) such other information as is required by the Act.

## 16.5 Other Information

The Trustee shall give to the Members any information required to be given by the Act and such other information as the Trustee reasonably believes a Member reasonably needs to understand the nature or purpose of the event or to make an informed decision about the effects generally and on the Member's current and future entitlements where:

- (a) an event in relation to the Fund is such as to require the Members to be informed; or
- (b) such other circumstances as are required by the Act.

## 17. ALTERATIONS TO TRUST DEED

### 17.1 Method of Alteration

17.1.1 The Trustee may by deed or in writing or by oral resolution with consent of the Principal Employer rescind, alter, or add to any of the provisions of this Deed for the time being.

17.1.2 No amendment may alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits unless:

- (a) where required, the consent of the Members and/or the Commissioner is to be obtained in accordance with the requirements of Regulation 13.16;
- (b) the alteration is necessary for compliance with the Act or the Tax Act;
- (c) the alteration is expressly permitted by the Act;
- (d) in the case of an amendment solely to correct a mistake which has advantageously altered a Member's right or claim to accrued benefits or the amount of those accrued benefits - the Commissioner has approved of the amendment.

17.1.3 No amendment may be made which permits benefits which are required by the Act to be preserved to be paid in circumstances not permitted by the Act.

17.1.4 The Trustee may vary, add to or rescind all or any of the provisions of clause 17.1.2 unless inconsistent with the standards applying to amendment of the governing rules of a superannuation fund.

**17.2 Amendment Not to Breach Act**

This deed may not be amended so as to permit the appointment of an individual as a trustee unless the terms of the Fund are amended to provide as its sole or primary purpose the provision of old-age pensions.

**18. COMPLIANCE WITH ACT**

**18.1 Management**

The Fund shall be managed and administered as a Complying Fund and as such, notwithstanding anything expressed or implied to the contrary in this deed, shall satisfy all requirements applying to Complying Funds.

**18.2 Inconsistency**

To the extent that there is an inconsistency between the provisions of this deed and the Act or that this deed does not deal with any matter required to be dealt with by the Act applying to a Complying Fund those requirements shall be deemed to be included in this deed and any inconsistent provisions of this deed shall be deemed to be amended or deleted to the extent necessary for the Fund to be classified as a Complying Fund.

**19. CHANGE IN EMPLOYER**

**19.1 New Employer**

If:

- (a) a Participating Employer is dissolved or being a company is wound up and a company person or firm shall agree to undertake the obligation of such Participating Employer in respect of the Fund; or
- (b) another company person or firm acquires all or a substantial part of the undertaking and assets of an Participating Employer and agrees to undertake the obligations of such Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund,

then that Employer shall upon the happening of either such event be released from all obligations in respect of the Fund and the Trust Deed shall thereafter have effect as if such other company, person or firm had been a party to the Trust Deed instead of the then Employer.

**19.2 Admission of Participating Employer**

The Trustee may, in its absolute discretion, admit as a Participating Employer a person who is an Employer and who consents to be bound by the terms of this deed.

**19.3 Removal of Participating Employer**

The Trustee in its absolute discretion, may at any time remove a Participating Employer other than the Principal Employer as a Participating Employer.

**19.4 Withdrawal of Employer**

If an Employer gives one month's notice in writing of its intention to cease its participation in the Fund, or if in the opinion of the Trustee by reason of liquidation or for any other reason an Employer has ceased to be such, then participation in the Fund, so far as regards that Employer (hereinafter called "the Withdrawing Employer") and its Employees who are Members (hereinafter called "Outgoing Members") and who have not become Employees of another Employer or otherwise remain Members of the Fund, shall be determined in the following manner:

- (a) All arrears, if any, of contributions shall be paid up to the date on which withdrawal is to take place ("withdrawal date");
- (b) The Trustee shall, after taking such advice as the Trustee considers appropriate, determine the proportion of the assets of the Fund which is properly attributable to the Outgoing Members as at the withdrawal date;
- (c) The Trustee shall:
  - (i) if required pay any amount that may be paid in accordance with clause 21.2; and
  - (ii) transfer the remaining Benefits of all Outgoing Members in accordance with clause 14.

**20. DISSOLUTION OF THE FUND**

**20.1 Date of Dissolution**

If there shall cease to be any Members or if the Trustee resolves to terminate the Fund, the Fund shall be dissolved as from the date on which the last person ceases to be a Member of the Fund or date determined by the Trustee.

**20.2 Benefits on Dissolution**

On the dissolution of the Fund the Trustee shall after deducting expenses in accordance with clause 20.3 deal with benefits in accordance with paragraph (c) of clause 19.4.

**20.3 Expenses of Dissolution**

On the dissolution of the Fund the Trustee shall be reimbursed its expenses of administering and dissolving the Fund out of the assets of the Fund.

**20.4 Surplus**

If after providing benefits for Members under the provisions of this deed a surplus remains, such surplus or part thereof may, at the discretion of the Trustee, be paid to Members or former Members or their Dependants by way of further benefits or subject to the Act be paid to the Employers.

**20.5 Final Accounts**

The Trustee shall cause final accounts of the Fund to be taken and shall have those accounts audited by an approved auditor.

**21. PAYMENT OF BENEFITS**

**21.1 Lump Sum Payment**

Benefits payable under this deed will be by way of lump sum or, if the Trustee agrees in any case, a pension or in purchase of an annuity.

**21.2 When Payable**

21.2.1 The Trustee must pay (or where a pension, commence to pay) Benefits to a Member:

- (a) on or after the date on which the Member attains the age of 65, if he is not Employed on a Full-time basis or Part-time basis; or
- (b) on or after the date on which the Member attains the age of 70, if he is not Employed on a Full-time basis.

21.2.2 On the death of a Member Benefits shall be paid in accordance with clause 21.6.

21.2.3 The Trustee will, if requested by the Member, pay Benefits:

- (a) on Retirement;
- (b) on becoming Totally and Permanently Disabled;

- (c) upon permanently departing Australia; or
- (d) at any other time to the extent that the Benefit is a benefit that is the subject of "Nil" cashing restrictions for the purposes of the Act.

### **21.3 Act to Prevail**

The payment of Benefits in accordance with these provisions is subject to any inconsistent requirements of the Act and where the provisions of the Act are inconsistent, payment shall be made in accordance with the provisions of the Act at such other times as the Act requires.

### **21.4 Evidence of Entitlement**

As a precondition to payment, the Trustee may require the payee of any benefit to produce satisfactory evidence of his or her entitlement and to execute documents and do other things reasonably required by the Trustee. Payment of the benefit payable in respect of a Member to the person entitled will discharge the Trustee and satisfy that Member's rights under the Trust.

### **21.5 Establishing Total and Permanent Disability**

A Member shall not be treated as Totally and Permanently Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled.

### **21.6 Death of Member**

Where the Member has died:

- (a) the Trustee must pay the Benefit to or for the benefit of such of the Dependants and legal personal representative of the deceased Member as the Trustee in its absolute discretion considers appropriate; and
- (b) in the case of a Non-dependant Benefit it may be paid to the person or persons who would benefit on the intestacy of the Member.

### **21.7 Benefits not Fully Vested**

Any amount not fully vested in the Member on the Member being paid his Benefits shall be forfeited and applied as the Trustees think fit.

**21.8 Benefits on Temporary Incapacity**

Where the Trustee is satisfied on such evidence as it considers necessary that a Member is suffering temporary incapacity the Trustee may, in its absolute discretion pay to the Member an income benefit not exceeding the Act's requirements.

**22. BENEFITS TO PERSONS UNDER DISABILITY**

**22.1 Legal Incapacity of Recipient**

Where any amount is payable or transferable to a person who is a minor or who, in the opinion of the Trustee, is unable to give a good receipt or is otherwise under a legal incapacity, then the Trustee may in its discretion:

- (a) defer payment of such moneys or transfer of such assets or any part thereof until such time as such person is in the opinion of the Trustee able to give a good receipt therefor and in the meantime invest such moneys in any investment authorised hereunder; or
- (b) pay or transfer the amount or any part thereof to any parent guardian or committee of such firstmentioned person or to any person with whom he is residing for his maintenance, education, advancement or benefit;
- (c) pay or transfer the amount to the Public Trustee or a trustee company or two or more trustees to be held by it upon trust to pay or apply to transfer or otherwise deal with the same in its discretion in such shares and proportions and in such manner as it shall think fit to or for the benefit of such persons or any one or more of them and with power for such Trustee to pay or transfer the same in accordance with subclause (b).

**22.2 Trustee Receipt**

No Trustee shall be concerned to see to the application of any amount paid in accordance with clause 22.1 and the receipt of the recipient shall be a good and sufficient discharge for any moneys so paid or any assets so transferred.



**EXECUTED AS A DEED**

The common seal of **DORSET CONSTRUCTION MANAGEMENT PTY LIMITED ACN 079 189 683** is affixed in accordance with its articles of association:

*Paul St*  
.....

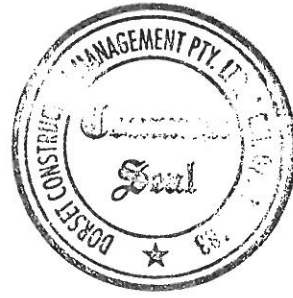
Signature of authorised person

*DIRECTOR*  
.....

Office held

*PAUL SIMPSON*  
.....

Name of authorised person (print)



.....  
Signature of authorised person

.....  
Office held

.....  
Name of authorised person (print)

The common seal of **DORSET CONSTRUCTION MANAGEMENT PTY LIMITED ACN 079 189 683** is affixed in accordance with its articles of association:

*Paul St*  
.....

Signature of authorised person

*DIRECTOR*  
.....

Office held

*PAUL SIMPSON*  
.....

Name of authorised person (print)



.....  
Signature of authorised person

.....  
Office held

.....  
Name of authorised person (print)

**SCHEDULE 1**  
**(Clause 3.1)**  
**D.C.M. EMPLOYEES SUPERANNUATION FUND**  
**APPLICATION FORM**

Applicant Details .....

(In BLOCK letters) (Surname) (First Names)

.....

.....

(Address)

Occupation .....

Date of Birth / 19

I hereby apply for admission as a Member of D. C. M. Employees Superannuation Fund and if admitted as a Member I agree to be bound by the Trust Deed and Rules for the time being constituting the said Fund. I agree to the appointment of Dorset Construction Management Pty Limited ACN 079 189 683 as trustee. I request my employer to deduct from my salary the appropriate contributions from time to time payable by me thereunder.

Preferred Dependant .....

Details (Surname) (First Names)

.....

.....

(Address)

Are you transferring to this Fund any amount from another superannuation fund?

Yes ..... No .....

If yes, please provide details of the name and address of the fund and the amount.

.....

.....

Date .....

.....

(Signature of Applicant)

SCHEDULE 2  
(Clause 5.9)

NOTICE AS TO COMPLYING STATUS

To

(Employer)

You are hereby given notice that the Superannuation Fund established by Deed of Trust dated 199 and known as the D. C. M. Employees Superannuation Fund is:

- (a) a resident regulated superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 ("Act");
- (b) not subject to direction under Section 63 of the Act.

For and on behalf of

.....  
(Trustee)

Date:

**SCHEDULE 3  
(Clause 12.2)**

**PROSPECTIVE MEMBER/NEW MEMBER STATEMENT**

To Prospective/New Member

**Notice as to benefits offered by Fund**

1. The Fund is an accumulation fund which provides benefits on retirement usually age 65. Another age may be agreed where such is in accordance with the superannuation legislation.
2. All benefits are fully vested, unless the employer has advised otherwise. Entitlements are determined by contributions made in respect of the member and earnings on fund investments which are credited to member accounts.
3. In addition the member may elect to take out life insurance benefits.
4. Benefits must be retained in this fund or another complying fund or approved deposit fund until a condition of release is satisfied.
5. If a Member dies before leaving the fund, benefits are payable to such of the dependants or legal personal representative as the trustee in its absolute discretion determines.
6. As to the management and financial condition of the Fund, the Fund has not carried out any activities to date to report on.
7. As to the investment performance of the Fund, the fund has no investment performance to report on. Investment of assets received will be made by the Trustee with a view to obtaining maximum trust returns.

Signature of the trustee:

Date: