

ROSSMEAD HOLDINGS PTY LTD

(the Trustee)

SUPERANNUATION DEED

establishing

MALIBU SUPERANNUATION FUND

Reference: RO41339



FRANKLYN SIMON

SOLICITOR

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This DEED is made -

BY the person or persons named and described in the Schedule as the Trustee (called "the Trustee").

PROVISIONS

1. ESTABLISHMENT OF FUND

1.1 A superannuation fund (called "the Fund") for the purpose of providing superannuation benefits for persons who apply to become members of the Fund is hereby established in accordance with the terms and conditions of this Deed.

1.2 The Trustee will hold and maintain the Fund upon the trusts and with and subject to the powers and provisions contained in this Deed.

1.3 The Fund shall commence on the date specified in the Schedule and shall be known by the name described in the Schedule.

2. REGULATED SUPERANNUATION FUND

2.1 The Fund shall be a regulated superannuation fund pursuant to the Superannuation Industry (Supervision) Act 1993 (called "the Act").

2.2 Notwithstanding anything contained in this Deed, the Trustee of the Fund shall be a constitutional corporation as defined by the Act.

2.3 Notwithstanding anything contained in this Deed, the requirements and other provisions prescribed by the Act and its regulations or any other statute, regulation or statutory requirement from time to time relating to superannuation funds shall be deemed to be included in this Deed to the extent that they are required in order for the Fund to obtain the maximum income tax concessions and shall to that extent prevail in the event of any inconsistency between them and other provisions of this Deed.

3. INTERPRETATION

3.1 In this Deed unless the context otherwise requires -

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in clause 9;

"Actuary" means the actuary (if any) for the time being appointed pursuant to this Deed;

"Annuity" means an eligible annuity as defined by the Act;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying approved deposit fund pursuant to the Act;

"Auditor" means the auditor for the time being appointed pursuant to this Deed;

"Beneficiary" means a person who has a beneficial interest in the Fund at the relevant time;

"Benefit" means any amount paid or payable by the trustee out of the Fund pursuant to this Deed to or in respect of a Member;

"Commissioner" means the Insurance and Superannuation Commissioner or such other regulatory body as shall have responsibility for the supervision of the conduct of superannuation funds from time to time;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a Complying Superannuation Fund pursuant to the Act;

"Contributions" means payments to the Fund by Members and Employers in accordance with the provisions of this Deed;

"Dependant" in relation to a former Member means -

- (a) the Spouse (as later defined) of a former Member or the widow or widower of a deceased Member;
- or
- (b) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; or
- (c) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time;

"Directors" means the directors or board of management for the time being of an Employer or, as the case requires, the Trustee, and "Director" has a corresponding meaning;

"Eligible Person" means any person who is engaged in Gainful Employment;

"Employee" means a person in the employment of an Employer and includes a director of that Employer;

"Employer" means any person who employs a Member and who is admitted by the Trustee pursuant to clause 7 to make Contributions to the Fund on behalf of a Member and shall include the Principal Employer, and the person or persons described in the Schedule as Participating Employers (if any);

"Equalisation Account" means the account established pursuant to clause 11;

"Financial Year" means a period of twelve months ending on 30 June;

"Forfeiture Account" means the account established pursuant to clause 43;

"Fund Earning Rate" means the fund earning rate defined in clause 10.3;

"Fund Year" means a period of twelve months ending on the 30 June, or such other period ending on such other date as the trustee from time to time may determine;

"Gainful Employment" in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Act;

"Member" means a person who has been accepted as a Member of the Fund pursuant to clause 4 of this Deed and has not ceased to be a Member pursuant to clause 4.7;

"Nominated Dependant" means a Dependant nominated by a Member as the Nominated Dependant;

"Normal Retirement Age" means the age of 65 years for both males and females or such other age as the Trustee may determine from time to time but not being less than the minimum age prescribed under the Act for the payment of preserved benefits;

"Pension" means a Benefit payable at a yearly rate by instalments;

"Pensioner" means a person receiving a Pension;

"Policy" means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks;

"Preserved Payment" means a payment made to the Fund by an Employer or a Member or by transfer from another fund which is preserved as provided by this Deed in accordance with the Act;

"Preserved Payment Benefits" means a Benefit arising from a Preserved Payment;

"Principal Employer" means the person or persons described as such in this Deed (if any) or any Employer who elects to become the Principal Employer pursuant to the provisions of clause 7;

"Qualifying Eligible Termination Payment" shall have the meaning ascribed in the Act;

"Relative", in relation to a former Member means any of-

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that former Member or of his or her spouse; and
- (b) the spouse of any person specified in paragraph (a);

"Retires from Gainful Employment" means actual retirement by a Member from Gainful Employment or retirement as defined by the Commissioner for the payment of Benefits.

"Roll Over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances acceptable to the Commissioner to or from-

- (a) an Approved Deposit Fund;
- (b) a superannuation arrangement described in clauses 26 and 27;
- (c) an authorised organisation for the purchase of an Annuity,

and includes an eligible termination payment made by an Employer in consequence of the termination of the employment of a Member;

"Spouse" in the definition of "Dependant" means -

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member, and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED that where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable hereunder to the Spouse is to be divided between them;

"Taxation" includes income tax, capital gains tax, tax on eligible termination payments, payroll tax, land tax, stamp duty and any other taxes or duties;

"Total and Permanent Disablement" means -

- (a) physical or mental incapacity of such a degree that two registered medical practitioners have certified that in their opinion the Member is incapable of continuing to engage in his current employment with an Employer or of continuing to engage in any Gainful Employment for which he is reasonably qualified by education, training or experience; or
- (b) if the Trustee so determines, total and permanent disablement as defined in any Policy effected in respect of the Member,

and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted;

"Vested Benefits" means any part of the Benefit of a Member arising from Contributions to the Fund or earnings of the Fund or arising from a previous superannuation fund which is a Roll Over Payment to the Fund which is required by the Commissioner to be vested in and payable to a Member on cessation of Gainful Employment by the Member (subject to any preservation requirements).

3.2 In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender, words importing the singular number shall include the plural number and vice versa and references to a person includes firms, corporations, associations, trustees in their capacity as such and other juristic persons recognised by law.

3.3 The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

3.4 For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

3.5 References to any statutory enactment shall be construed as references to that enactment and its regulations as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for the statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution therefor.

3.6 Except so far as the contrary intention appears in this Deed, an expression has, in a provision of this Deed that deal with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

- 3.7 Nothing in this Deed shall permit -
- (a) the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any person other than as provided by section 58(2) of the Act; and
 - (b) a discretion under this Deed that is exercisable by a person other than a trustee to be exercised other than as provided by section 59(1) of the Act.

4. ADMISSION OF MEMBERS

- 4.1 Any person who is engaged in Gainful Employment may apply for membership of the Fund by completing a written application in the form of Annexure A or in such other form as the Trustee may from time to time determine.
- 4.2 Each applicant for membership shall furnish such information as the Trustee considers necessary for the purposes of the Fund.
- 4.3 Upon receipt of a membership application, the Trustee may determine in its discretion to admit the applicant to membership of the Fund and the Member shall be deemed to have joined on a date determined by the Trustee or, if the Trustee makes no such determination, the date of the membership application.
- 4.4 Subject to any other conditions which may be applied pursuant to this Deed, the Trustee may impose such conditions on an applicant's admission and his rights and duties as a Member as it shall determine and may limit and impose conditions on Benefits as it sees fit and the Trustee may remove or vary all or any of the conditions at any time.
- 4.5 Upon acceptance of the application by the Trustee, the Member shall become bound by the provisions of this Deed in all respects as if the Member was an original party to this Deed.
- 4.6 As soon as practicable after the admission of a person as a Member of the Fund, the Trustee shall give to the Member a written statement containing such details as the Act requires.
- 4.7 The rights of the Members and their Dependants to receive the benefits payable under this Deed shall be fully secured within the meaning of the Act.

5. CESSATION OF MEMBERSHIP

A person shall cease to be a Member of the Fund upon the earliest to occur of the following-

- (a) the date upon which payment of all his Benefits is made to him;
- (b) the completion of a Roll Over Payment by the Trustee in respect of all his Benefits;
- (c) his death;
- (d) the commencement of the payment to him of a Pension or the purchase for him of an Annuity;
- (e) the provisions of clause 43 operating to terminate his membership;
- (f) such date as the Trustee shall reasonably determine;

PROVIDED that where a Policy providing disablement benefits has been effected in respect of a Member, he shall remain a Member for such period following resignation, dismissal or retirement as the Trustee shall determine.

6. MEETINGS OF MEMBERS

- 6.1 A meeting of Members may be called by Members serving a notice on the Trustee signed by at least two Members, or if there is only one Member, that Member, requesting a meeting of Members.
- 6.2 The Trustee shall convene a meeting of Members within 14 days of receiving the request and shall send a notice of meeting to each Member.
- 6.3 The Trustee may at any time convene a meeting of Members by notice in writing.
- 6.4 Every notice of meeting shall -
- (1) be posted or given at least 3 days before the meeting unless all Members otherwise agree;
 - (2) advise the place and time of the meeting;
 - (3) advise the Member that he may appoint a proxy to vote on his behalf at the meeting PROVIDED that the proxy is lodged with the Trustee not later than 24 hours before the meeting;
 - (4) be accompanied by a form of proxy approved by the Trustee;
 - (5) set out the matters including any resolutions to be considered at the meeting.
- 6.5 Every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at his last known address and when so posted the notice shall be deemed to have been given three days after the date of posting.
- 6.6 The Trustee shall appoint a Chairman of the meeting and shall make such regulations concerning the conduct of the meeting or meetings as it may decide.

6.7 A quorum for the meeting shall be two Members present in person or by proxy or 25% of the Members of the Fund whichever is the lesser and if there is only one Member, that Member PROVIDED that if a quorum is not present within 30 minutes of the time appointed for the meeting the Chairman of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

6.8 Each Member shall be entitled to one vote AND in the event of an equality of votes, the Chairman shall not have a casting vote.

7. ADMISSION OF EMPLOYERS

In the event that any company, person or group of companies or persons -

- (a) makes application to the Trustee in the form of Annexure B or in such other form as the Trustee determines from time to time to be admitted to make Contributions to the Fund as an Employer; and
- (b) the application is approved by the Trustee,

the Employer shall be admitted to the Fund as an Employer subject to the provisions of this Deed and it shall then be bound by the provisions of this Deed.

8. FUND ASSETS

The gross assets of the Fund shall consist of -

- (a) such contributions as are made to the Fund from time to time by a Member or an Employer for the credit of an individual Member together with all interest, dividends, profits (less losses) and other benefits arising from the investment of the Contributions and the assets of the Fund;
- (b) all assets, real and personal property, any Policy in which any monies of the Fund are invested or paid or by which they are represented and all income and profits derived therefrom together with the proceeds of any Policy received by the Fund;
- (c) cash, money, investments and other property for the time being held by the Trustee; and
- (d) money, investments and other property transferred to the Fund as a Roll Over Payment.

9. ACCUMULATION ACCOUNT

9.1 The Trustee shall establish an Accumulation Account in respect of each Member.

9.2 The following amounts shall be credited to the appropriate Accumulation Account:-

- (a) any Contributions made by the Member;
- (b) any Contributions made in respect of the Member or Beneficiaries by an Employer;
- (c) any amount paid into the Fund in respect of the Member as a Roll Over Payment;
- (d) the proceeds of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiaries;
- (e) such positive earnings as are determined by the Trustee in accordance with clauses 10.3, 10.4, 11.4 or 12.3;
- (f) such forfeited amounts as are allocated to but not paid directly to the Member pursuant to clause 43.4.

9.3 The following amounts shall be debited to the appropriate Accumulation Account:-

- (a) any amount paid out of the Fund in respect of the Member or Beneficiary as a Roll Over Payment;
- (b) any other Benefit payments made to or in respect of the Member or Beneficiary;
- (c) the costs of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary;
- (d) such negative earnings as shall be determined by the Trustee in accordance with clause 10.3, 10.4 or 12.3;
- (e) such amount as is forfeited pursuant to clause 43;
- (f) such of the costs or charges incurred pursuant to clause 19 or 24 as the Trustee shall determine;
- (g) such proportion of any amount payable by way of Taxation in respect of Contributions to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll Over Payment as the Trustee may determine.

10. INCOME ACCOUNT

10.1 The Trustee shall establish an Income Account for the Fund to which shall, subject to clause 12, be credited with the following:-

- (a) all income and profits of the Fund each year;
- (b) any credits arising out of adjustments pursuant to clause 10.7;
- (c) any surplus arising from a valuation undertaken pursuant to clause 13; and
- (d) any amount transferred from the Equalisation Account.

10.2 The Income Account shall, subject to clause 12, be debited with the following:-

- (a) any loss sustained on the disposal of any investments of the Fund;

- (b) any costs or charges incurred pursuant to clause 19 or 24 which are not debited to an Accumulation Account;
- (c) any debits arising out of adjustments pursuant to clause 10.7;
- (d) any deficiency arising from a valuation undertaken pursuant to with clause 13;
- (e) such proportion of any amount payable or which may become payable by way of Taxation in respect of the Contributions and the Income and profits of the Fund which are not debited to an Accumulation Account as the Trustee may determine.

10.3 Following the debiting of the Income Account as specified in clause 10.2 above, at the end of each Fund Year the Trustee shall determine at its discretion the earning rate (which may be negative) for the Fund after taking into account any adjustments under clause 10.7 and such provision or reserve for future contingencies as the Trustee shall consider reasonable (called "the Fund Earning Rate"). The Trustee shall when required by the Act notify the Member of the basis of the calculation of the Fund Earning Rate. The Trustee shall then allocate to each Accumulation Account the earnings due calculated equitably in accordance with the Fund Earning Rate.

10.4 The amount distributed as the earnings of the Fund pursuant to clause 10.3 above shall be allocated to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account at the beginning of the Fund Year in respect of which the distribution is being made, but the Trustee may make an appropriate adjustment for amounts (if any) credited or debited to the Accumulation Account since that date.

10.5 Any amount remaining in the Income Account after distribution of earnings pursuant to clause 10.1 and 10.2 shall be transferred to the Equalisation Account established pursuant to clause 11.

10.6 In the event that the Trustee is required to pay out a Benefit during the course of a Fund Year and is thus required to establish a Fund Earning Rate in respect of a portion of a Fund Year, such Fund Earning Rate for that period shall be determined by the Trustee on a basis which it considers equitable. The Trustee shall notify the Member of the basis of the calculation of the Fund Earning Rate.

10.7 In determining the amount standing to the credit of an Accumulation Account at the time a Benefit is calculated or becomes payable, the Trustee shall make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as it shall at its discretion consider equitable and in accordance with the requirements of the Commissioner and the Income Account shall be debited or credited accordingly.

11. EQUALISATION ACCOUNT

11.1 The Trustee shall have the power at any time to establish the Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account pursuant to clause 10.5.

11.2 Whilst any monies are held in the Equalisation Account they shall not form part of any Accumulation Account and any income derived by the Fund on the monies held in the Equalisation Account shall be credited to that Account and any taxation on that income shall be debited to that account.

11.3 The Equalisation Account shall be used by the Trustee to stabilise the investment earnings of the Fund and to provide for such future contingencies as the Trustee considers reasonable and the Trustee shall have the discretion to deal with the assets of the Equalisation Account as it shall see fit in the supplementation of the investment earnings of the Fund.

11.4 When a person ceases to be a Member the Trustee shall take into account the Member's interest in the Equalisation Account (if any) and shall take the advice of the Actuary in determining whether any amount should be transferred from the Equalisation Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

12. SPECIFIC INVESTMENTS

12.1 The Trustee may undertake to invest separately in respect of certain Members or Beneficiaries as determined by the Trustee from time to time.

12.2 The Trustee shall record on whose behalf the specific investments are made for the purposes of making up a Member's Accumulation Account for each Class.

12.3 In that event, the income and profits (less losses) arising from specific investments and any costs or charges applicable to specific investments which are incurred pursuant to clauses 19 or 24 and any Taxation which is payable or may become payable in respect of specific investments shall not be allocated to the Income Account but to the particular Accumulation Account. The income and profits (less losses) arising from specific investments applicable to any particular Accumulation Account shall be credited directly to that Accumulation Account which shall also be debited directly with the appropriate proportion of any costs or charges applicable to specific investments which are incurred pursuant to clauses 19 or 24 and any Taxation which is payable or may become payable in respect of specific investments.

13. VALUATION

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Commissioner shall require (including but without limitation at the time of the payment of a Benefit to a Member), the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

14. FUND RECORDS, AUDIT AND REPORTING TO MEMBERS

14.1 The Trustee shall -

- (a) keep account of all monies received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into the bank account of the Fund, all monies from time to time due to the Fund;
- (c) keep a record of all decisions made by the Trustee in respect of matters affecting the Fund;
- (d) keep a record of changes of changes of the Trustee and of directors of the Trustee and of all consents given by the Trustee or a director of the Trustee;
- (e) keep copies of reports given to all Members of the Fund;
- (f) keep appropriate records, books and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments of the Fund as required by the Act;
- (g) prepare an annual balance sheet of the Fund as at the end of the Fund Year, together with a statement of income and expenditure for that Fund Year.

14.2 The accounts and statements of the Fund shall be audited by the Auditor annually or at such other time or times as shall be required by the Act.

14.3 The Trustee shall provide to Members and former Members of the Fund such information in relation to the conduct of the Fund and the Benefits payable from the Fund as shall be required by the Act.

14.4 A copy of this Deed shall be made available for inspection by any Member on the request of that Member.

15. COVENANTS BY TRUSTEE

Notwithstanding anything contained in this Deed, 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 beneficiaries of the Fund;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (1) that are held by the Trustee personally; or
 - (2) that are money or assets, as the case may be, of an Employer or an associate of an Employer of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers but this shall not prevent the Trustee from engaging or authorizing persons to do acts or things on behalf of the Trustee;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund as required by the Act;
- (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 beneficiary access to any prescribed information or any prescribed documents.

16. APPOINTMENT AND REMOVAL OF THE TRUSTEE

16.1 A majority of Members may by notice in writing or by Deed:-

- (a) remove any Trustee;
- (b) appoint an additional Trustee; or
- (c) appoint a new Trustee in place of any Trustee who ceases to be a Trustee for any reason,

AND any Member or Employer is eligible to be a Trustee.

16.2 The office of a Trustee shall become vacant and a Trustee shall cease to be a Trustee if the Trustee -

- (a) resigns his office by notice in writing to the Members;
- (b) is removed from office by the Members pursuant to clause 16.1;
- (c) is disqualified from office by operation of law;

- (d) if being an individual, he dies or is declared mentally ill;
- (e) it becomes insolvent or is wound up; or
- (f) becomes a disqualified person or is suspended or removed from office under the Act.

16.3 If at any time there is no Trustee for any reason, any of the Members may act as the Trustee for the purpose only of convening a meeting of Members to appoint a new Trustee.

16.4 Notwithstanding the provisions of Section 7(2) of the Trustees Act, a sole Trustee may be appointed and act as a trustee irrespective of whether previously there had been more than one Trustee appointed AND a Trustee may be discharged from the office of trustee notwithstanding that a sole Trustee remains or is appointed where more than one trustee was originally appointed.

17. LIABILITY OF TRUSTEE

With the exception of fraud or wilful neglect or misconduct on the part of the Trustee or any director or officer of the Trustee, the Trustee shall not incur any liability for -

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) the act or default of any co-Trustee or of any Member;
- (c) the neglect or default of any agent employed in good faith by the Trustee;
- (d) any act or acts done or omitted to be done in conformity with any decisions of the Trustee;
- (e) any mistake or determination or erroneous decision that exposes the Trustee to any claim action suit or demand at the instance of any Member or of any claimant or of any person having at any time an interest in the Fund.

18. INDEMNITY OF TRUSTEE

Each of the Trustee and any directors of the Trustee shall be indemnified out of the Fund against all liabilities incurred by them or any of them as a result of any action taken or omitted in good faith in the administration of the fund including the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it under this Deed or at law and shall have a lien on and may use any part of the Fund for the purposes of this indemnity PROVIDED that this provision shall not exempt the Trustee from, or indemnify the Trustee against -

- (a) liability for breach of trust if the Trustee -
 - (1) fails to act honestly in a matter concerning the Fund; or
 - (2) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order under the Act,

AND this provision shall not indemnify a director of the Trustee against -

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

19. PROCEEDINGS OF TRUSTEE

19.1 Any determination by the Trustee in exercise of any power conferred on the Trustee by this Deed may be made -

- (a) in writing signed by all the Trustees;
- (b) by a resolution duly passed at a meeting of the Trustee;
- (c) in the case of a sole corporate Trustee, in the manner set out in clause 19.2; or
- (d) by telephone or other similar means if each Trustee has been given written or verbal notice of the meeting and each Trustee takes part and each is able to hear each of the other Trustees.

19.2 A corporate Trustee may exercise or concur in exercising any power conferred on the Trustee by a resolution of the company or of its directors.

19.3 The Trustee if at any time they are more than one shall act jointly.

20. APPOINTMENT OF AUDITOR AND OTHER OFFICERS

20.1 The Trustee shall appoint an auditor who shall be an approved auditor under the Act as the Auditor of the Fund.

20.2 The Trustee may if necessary appoint a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia as the Actuary. The Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or act upon the advice so provided.

20.3 The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more firms (individually called "the Manager") to act on behalf of the Trustee in regard to the purchase, sale, management, administration or retention of and the dealing in any or all of the investments of the Fund whether in the name of that Manager or otherwise.

20.4 The Trustee from time to time may appoint such other officers as it considers desirable for the proper management of the Fund.

20.5 Subject to the Act, the appointment of a person under this clause shall be on such terms as the Trustee thinks fit and the Trustee may remove from office that person appointed pursuant to this clause.

21. TRUSTEE'S POWERS INCLUDING INVESTMENT

21.1 So much of the monies forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested as soon as practicable by and under the control and in the name of the Trustee in any of the following investments in Australia or elsewhere:-

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) any mortgage on freehold property, whether first or otherwise;
- (c) on deposit with or on loan to any bank, building society, credit co-operative or other financial institution on such terms and conditions as the Trustee shall determine;
- (d) on deposit with or on loan to any person (including an Employer) with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing;
- (e) the purchase or acquisition of shares or stock of any class or description or any debenture, note, bond, mortgage, option or other security in or of any person (including an Employer);
- (f) any Policy or Annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or howsoever arising;
- (g) the purchase or acquisition of any real or personal property from any person (including an Employer) and the improvement or extension of that property;
- (h) the purchase or acquisition of or subscription for any unit or sub-unit in any Unit Trust whether individually or jointly and whether the units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (i) any other investments which the Trustee considers appropriate and which are acceptable to the Commissioner;

PROVIDED that the Trustee shall not -

- (a) make a loan to or provide any other financial assistance to a Member or a relative of a Member;
- (b) acquire an asset from a Member or the Relative of a Member; or
- (c) breach the in-house asset rules contained in Part 8 of the Act;

other than as permitted by the Act.

21.2 In addition to the powers conferred by law and otherwise granted by this Deed, the Trustee shall have the following powers:-

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members, or Beneficiaries;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of the Members, former Members or Beneficiaries;
- (c) to set aside out of the Fund from time to time such sums of money as may in the Trustee's opinion be sufficient to meet any debt or obligation due or accruing;
- (d) to pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or securities;
- (e) to assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other securities modifying any rights, privileges or interest in relation to the Fund and to agree to and concur in any scheme of arrangement for the increase or reduction of its value or amount in the capital of any company in which any such shares stock or debentures forming any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
- (f) to vary or transpose any investments into or for any other investment or investments of any nature or kind authorised by this Deed and to vary the terms of any document or security;
- (g) to borrow money and to secure its repayment in any manner and upon any terms (including with or without security) which the Trustee may deem advisable in order to secure temporary borrowing permitted by section 67 of the Act;
- (h) subject to the Act to retain the services of professional or other advisers in relation to the management or administration of the Fund and to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund including the payment of fees to the advisers;

- (i) to insure or re-insure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company or superannuation fund;
- (j) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member, which Annuity shall be in the name of the Trustee or, if the Trustee so determines, in the name of the former Member;
- (k) to act in accordance with the Act notwithstanding that this Deed may not otherwise expressly authorize the Trustee to do so;
- (l) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, and preservation of the Fund and in the performance of its obligations under this Deed;
- (m) subject to the Act, to delegate to any person such terms as the Trustee thinks fit any of the powers or duties conferred upon it by this Deed and may deliver to that person any assets comprised in the Fund and from time to time may revoke that delegation or vary its terms,

PROVIDED that nothing in this Deed is to be construed as allowing the exercise of the powers of the Trustee to be under the direction of any other person unless permitted by the Act or the exercise of a discretion of the Trustee to be made by any other person.

21.3 Subject to the Act, no Trustee or a director of a Trustee (in this clause called "director") shall be disqualified by his office from contracting with the Trustee on behalf of the Fund, nor shall that contract or any contract entered into by or on behalf of the Fund in which any Trustee or director shall be in any way interested be avoided, nor shall any Trustee or director so contracting or being so interested be liable to account to the Fund for any profit realised by that contract by reason only of the Trustee or a director holding that office or of the fiduciary relationship thereby established.

21.4 Subject to the Act, a Trustee or a Director may vote in respect of any contract or arrangement in which he is interested, and may be counted for the purpose of any resolution regarding that contract or arrangement in the quorum present at the meeting and may participate in the execution of any instrument by or on behalf of the Trustee.

22. POLICIES OF ASSURANCE

22.1 The Trustee exercising its power contained in clause 21 may effect separate Policies and may secure a Member's Benefits by means of an individual Policy or Policies or a group Policy or Policies or by means of life cover providing benefits payable to the Trustee on the death or disablement of the relevant Member (and the term "Policy" includes a Policy for or including such life cover) or partly in one way and partly in another. The Trustee shall not be responsible or liable to the Member, the Member's legal personal representative or his Dependants should the Trustee determine not to exercise that power and effect such insurance PROVIDED that the Member may direct the Trustee to effect separate Policies or separate life cover and may further specify the type of Policy to be effected.

22.2 Any monies received by the Trustee being the proceeds of any Policy (whether or not the event giving rise to the payment occurs after the Member has retired from Gainful Employment) shall be paid or applied by the Trustee as if it were part of the Member's Benefit derived from the Contributions to the Member's Accumulation Account from which the premiums were paid and shall be dealt with as provided in this Deed.

22.3 If in connection with any Policy effected by the Trustee against death or disablement, an insurance company refuses to insure or seeks to impose any limitations or special conditions in respect of a Member, notwithstanding the Benefits payable pursuant to this Deed in respect of any of these contingencies, the Trustee after obtaining the advice of the Actuary (if any) may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member as it shall determine.

23. CONTRIBUTIONS TO FUND

23.1 Each Member may contribute to the Fund such amounts as the Member with the approval of the Trustee may agree from time to time which contribution may be deducted for him from his wage or salary by the Employer when each payment of wage or salary is made and shall be paid into the Fund on his behalf as directed by the Trustee.

23.2 Each Employer may contribute to the Fund in respect of a Member in its employment such amount as the Employer may from time to time agree with the Trustee.

23.3 No contribution shall be payable by a Member or in respect of a Member by his Employer after the Member's termination of employment or after the date on which a benefit becomes payable from the Fund to or in respect of him.

23.4 No contribution shall be accepted by the Trustee contrary to section 63 or any other provision of the Act.

23.5 Contributions may be made to the Fund -

- (a) in respect of a Member for the purposes of the Superannuation Guarantee (Administration) Act so that the Superannuation Guarantee charge is not payable by the Employer making the contributions; or

(b) as a payment of the shortfall component under the Superannuation Guarantee (Administration) Act in relation to the Member,

AND the Employer shall advise the Trustee of these contributions which shall vest immediately in the Member and which shall be preserved in accordance with the Act.

24. ADMINISTRATION COSTS

24.1 All costs, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation and winding up of the Fund shall be borne and paid by the Trustee out of the Fund and the Trustee shall indemnify any Member in respect of any costs which have been incurred by the Member in connection with the Fund.

24.2 The Trustee shall be entitled to charge reasonable fees and to recover costs and disbursements incurred in respect to the administration of the Fund.

25. NOTIFICATION OF OTHER FUNDS

25.1 Every Member of the Fund shall notify the Trustee -

- (a) if he becomes a Member of any other Complying Superannuation Fund (called "the Other Fund") or becomes entitled to benefits from an Approved Deposit Fund or by way of an Annuity;
- (b) if, being a Member of the Other Fund or being entitled to the other benefits, he ceases to be a Member of the Other Fund or entitled to the other benefits; or
- (c) if he ceases to be Gainfully Employed such that he is no longer able to contribute to the Fund.

25.2 Where pursuant to clause 25.1, the Member is required to make a disclosure to the Trustee such disclosure shall be in writing setting out all benefits which at that time have been provided, are being provided or may at some future time be provided for the Member or his Dependants together with such additional information as is relevant to the notification.

26. TRANSFERS FROM OTHER FUNDS

26.1 Where a Member is or was a member of or is or was the beneficiary under any other superannuation arrangement including an Approved Deposit Fund or Annuity, the Trustee may by resolution take over or acquire by transfer or otherwise from the trustee of the other superannuation arrangement or Approved Deposit Fund or Annuity the whole or any part of the assets of the superannuation arrangement with the intent of preserving the rights entitlements and interests of any of the existing members of such superannuation arrangement at the time of takeover or acquisition.

26.2 The Trustee shall hold the assets as part of the Fund and reflect such rights entitlements and interests in the particular Member's Accumulation Account as it shall determine and, if the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date he became a member of the original fund from which the benefit was transferred.

27. TRANSFERS TO OTHER FUNDS

27.1 Where a Member joins or is eligible to join any other Complying Superannuation Fund (called "the Other Fund") and the Member requests that the whole or part of his entitlement in the Fund be transferred to the Other Fund, the Trustee may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount (called "the Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Member in the Fund at the time of the request for the transfer as the Member has requested be transferred.

27.2 The Trustee may require that the Member or former Member be entitled to such rights in the Other Fund as it shall agree with the trustee of the Other Fund are just and equitable and, in particular, may require that such portion only of the Transferred Amount as it shall determine is to be regarded in the Other Fund as being attributable to Contributions by the Member or former Member.

27.3 The Benefit of a Member in respect of whom a Transferred Amount is paid under this clause shall be reduced by the amount of the Transferred Amount and the receipt of the Transferred Amount by the proper officer of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect of that amount and, except as provided in clause 27.2, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

27.4 Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund to the extent of his Accumulation Account he shall make a request to the Trustee in writing nominating the institution to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification together with such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner.

27.5 Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund, the Trustee shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Benefit must be preserved in accordance with the requirements of the Act.

28. BENEFITS PAYABLE ON RETIREMENT

28.1 Where a Member :-

- (a) retires from Gainful Employment at or after the age of 55 years;
- (b) retires from his employment with an Employer at or after the Normal Retirement Age;
- (c) reaches the age of 65 years; or
- (d) fulfils the criteria of the Commissioner for the payment of Benefits notwithstanding that the Member continues in employment,

the Member shall be entitled to be paid the amount standing to the credit of his Accumulation Account as at the date of payment.

28.2 Where a Member is eligible for payment of a Benefit in accordance with the preceding sub-clause and wishes to have the whole or any part of his Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 38 and 39.

29. RETIREMENT PRIOR TO NORMAL RETIREMENT AGE

29.1 Subject to clause 30, where a Member ceases to be Gainfully Employed prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Trustee shall pay to the Member the amount standing to the credit of the Member's Accumulation Account as at the date of payment.

29.2 Where a Member is eligible for payment of a Benefit in accordance with the above sub-clauses and wishes to have the whole or any part of the Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 38 and 39.

30. PRESERVED PAYMENT BENEFITS

Notwithstanding the provisions of this Deed, no Preserved Payment Benefit shall be paid to a Member or his Dependants until retirement of the Member from Gainful Employment or the attaining of the age of 55 years whichever is the later, his earlier death or in other circumstances and in a form allowed under the Act.

31. TEMPORARY TOTAL DISABLEMENT

31.1 Where a Member becomes in the opinion of the Trustee totally disabled as defined in this clause and a Policy has been effected by the Trustee in respect of the Member which covers total disablement, the following provisions of this clause shall take effect.

31.2 A Member will be recognised as having become totally disabled (but not Totally and Permanently Disabled) if -

- (a) he is disabled as a result of illness, accident or injury which commences at or prior to his attaining the age of 65 years or his Normal Retirement Age (whichever is the earlier); and
- (b) as a result of the illness, accident or injury the Member has been continuously absent from his business, trade, profession, vocation, calling, occupation or employment for the eligibility period contained in any Policy effected in respect of the Member; and
- (c) the Trustee after consultation with the Insurance Company is satisfied that the Member is disabled within the meaning of the definition of temporary total disablement agreed upon by the Trustee and the Insurance Company; and
- (d) the Trustee expects the Member's disablement to be temporary.

31.3 The Member shall be paid (to the extent acceptable under the Act) an income benefit of an amount equal to the amount payable as a result of the Member's total disablement under the Policy arranged between the Trustee and the Insurance Company and advised to the Member at the time the person became a Member or at the time the Policy was effected at the times and in the manner specified in the Policy.

32. TOTAL AND PERMANENT DISABLEMENT

32.1 Where a Member becomes in the opinion of the Trustee Totally and Permanently Disabled as defined in clause 3, that Member shall be paid by the Trustee a lump sum Benefit equal to the full amount standing to the credit of the Member's Accumulation Account as at the date of his payment.

32.2 Where a Member is eligible for payment of a Benefit in accordance with the preceding subclause and wishes to have the whole or any part of the Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 38 and 39.

33. BENEFITS PAYABLE ON DEATH

33.1 On the death of a Member while he is still a Member prior to the Normal Retirement Age, the Trustee shall pay a lump sum Benefit equal to the total of the amounts standing to the credit of the Member's Accumulation Account as at the date of payment to such persons in accordance with the provisions of this clause.

33.2 On the death of a former Member or a Beneficiary who is at the time of his death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may subject to the Act pay to the Dependants of the former Member or to the estate of the Member in such proportions as it shall in its absolute discretion determine the balance of the Member's Accumulation Account which has not been paid out by way of a Pension during his lifetime.

33.3 Where this Deed provides for the payment of a Benefit on the death of a Member or former Member or Beneficiary leaving Dependants, the Trustee shall pay or apply the Benefit to or for the benefit of the Nominated Dependant of the former Member but in the event that there is no Nominated Dependant or the Trustee considers it inappropriate to pay the Benefit to any Nominated Dependant, the Trustee shall pay or apply the Benefit to or for the benefit of such one or more of the former Member's Dependants or the legal personal representative of the Member in the manner, at the times, and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine.

33.4 Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependants, the Trustee shall pay the Benefit to his legal personal representative, or if there is no legal personal representative, to or for the benefit of such Relatives of the former Member as appear to the Trustee to be entitled to share in his estate, provided that if there be no Relatives and subject to the requirements of the Act in respect to Vested Benefits, the Benefit shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with clause 43.

34. AMOUNTS OF INSTALMENTS OF PENSION

34.1 Notwithstanding anything to the contrary where the Benefit payable in respect of a Member is payable in the form of a Pension, or where the Trustee purchases an Annuity on behalf of a Member, the instalments of the Pension or the purchase price of the Annuity shall be equal to such amount as the Trustee considers appropriate taking into account the amount standing to the credit of the Member's Accumulation Account (or the amount represented by the proportion of the Accumulation Account to which the Member is entitled, if less).

34.2 Any Pension payable pursuant to clause 34.1 shall, if required by the Commissioner, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED that the amount of the increase expressed as a percentage shall not exceed for the corresponding period the percentage increase in the Consumer Price Index (All Groups) weighted average of eight capital cities (as published by the Australian Bureau of Statistics), or in the event that the Consumer Price Index (All Groups) weighted average of eight capital cities ceases to be published, such other measure of cost of living increases as the Trustee considers appropriate.

34.3 On the death of a former Member who is at the time of his death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may unless specifically requested to the contrary by the Spouse of the former Member pay a Pension not exceeding 85% of the Pension that was being paid to the former Member as at the date of his death or such other amount as shall be acceptable under the Act to the Spouse.

35. PERSONS TO WHOM BENEFITS ARE PAYABLE

35.1 Subject to the provisions of this Deed, the Trustee shall pay the Benefits referred to in this Deed as follows -

(a) Where the Benefit or balance of the Benefit is payable following the death of the Member or former Member, the payment shall, subject to paragraph (d), be made in accordance with the provisions of clause 33.

(b) Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund he shall make a request to the Trustee in writing nominating the institution to which the payment is to be made, and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification or such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner PROVIDED that in circumstances acceptable under the Act the Trustee may effect a Roll Over Payment without the consent of the Member or former Member.

(c) Where the Benefit or balance of the Benefit is payable following the disablement of a Member, it shall be paid to the Member or alternatively, in the event of the death of the Member, to the Dependants of the Member.

(d) Where the Benefit or balance of the Benefit is payable as a reversionary Pension, it shall be paid in accordance with the provisions of clause 34.3.

(e) When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person

for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

(f) In all other cases the Benefit shall be paid to the Member.

- 35.2 Notwithstanding any provision of this Deed which may be construed to the contrary -
- (a) no Member or his Dependants shall be entitled to receive any Benefit under this Deed prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances acceptable under the Act;
- (b) any Pension or Annuity that a Member or the Dependants of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or his Dependants have a right to receive from the Fund are to be paid, not later than the 65th birthday of the Member or at such other time as is acceptable under the Act.

36. RETENTION OF BENEFIT IN FUND

At the request of a Member or Beneficiary, the Trustee may at its absolute discretion retain all or part of any Benefit payable under this Deed until -

- (a) the former Member or Beneficiary entitled requests that it be paid to him;
- (b) the Member dies in which event it will be paid pursuant to clause 35;
- (c) the Member attains the age of 65 years or his Normal Retirement Age, whichever is earlier; or
- (d) the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of the Accumulation Account of that Member or Beneficiary as at the date of payment PROVIDED that all Benefits must be paid in accordance with the Act.

37. LIMITATION OF BENEFITS

Notwithstanding any other provision of this Deed, the Trustee shall not pay any Benefits to Members, their Dependants or Beneficiaries where the payment would breach the Act or prevent the Fund from qualifying for concessional taxation status.

38. CONVERSION OF LUMP SUM TO PENSION

38.1 On the written application of a Member the Trustee may pay to the Member from the Fund a Pension in accordance with the provisions of clause 39 in lieu of the whole or any portion of any lump sum Benefit which is otherwise payable to the Member.

38.2 The amount of any Pension payable pursuant to this clause shall be determined by the Trustee after obtaining the advice of the Actuary.

39. PENSION PAYMENT CONDITIONS

39.1 Where any Benefit under the Fund is payable in the form of a Pension, the Pension shall be payable in such manner and on such conditions as the Trustee shall determine and the Commissioner shall allow, and shall be payable by instalments which may be equal or unequal and on such dates as the Trustee determines after consultation with the person to whom the Pension is payable.

39.2 All or a part of a Pension payable to or in respect of a Member shall (except to the extent that it has been provided by the purchase of an Annuity) be payable from his Accumulation Account, and where so payable it will be payable only to the extent the Accumulation Account will permit. If the former Member and all the Beneficiaries to whom the Pension is payable die whilst there is still an amount standing to the credit of the Accumulation Account, the balance of the Accumulation Account shall be dealt with in accordance with the provisions of clause 43.

39.3 The Trustee may provide a pension payable under this Deed by applying the Benefit to the purchase, in the ownership of either the Trustee or the Member, of an annuity which complies with the requirements of the Act.

39.4 The Trustee may, in its absolute discretion, agree with a Member to vary the amount of a pension payable under this Deed and the contingencies on which the pension depends provided that the value of the Benefit is unaltered and the variation does not breach the Act.

40. COMMUTATION OF PENSION

40.1 On the written application of a Member or Beneficiary the Trustee shall commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to a Member, former Member or Beneficiary, as applicable PROVIDED that -

- (a) the commutation of the Benefit is acceptable under the Act;

- (b) the amount of the commuted Benefit including the value of any remaining Pension shall be subject to the provisions of clause 37;
- (c) any amount in excess of the amount allowable under clause 26 shall be dealt with as required by the Commissioner;
- (d) where any amount remains in the Fund after all Members' entitlements have been paid out the amount so remaining shall be dealt with in accordance with clause 43 as a forfeited Benefit;
- (e) in the opinion of the Trustee, the commutation would not be to the disadvantage of the Fund.

40.2 The Trustee after obtaining the advice of the Actuary and in accordance with the provisions of this Deed shall determine the amount of the lump sum payable in respect of the Pension being commuted.

41. TRANSFER OF BENEFITS IN SPECIE

41.1 Where a Member and his Dependants are entitled to be paid or the Trustee in its discretion determines to pay to a Member the whole or any part of the Member's Accumulation Account which includes any interest in a Policy of any kind on the life of the Member, the Trustee may in its absolute discretion and in lieu of surrendering the Policy assign it to such Member or to his Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of the Policy as at the date of assignment shall be debited as a payment to the Member in the assessment of his entitlement as reflected by the Member's Accumulation Account, and the Trustee shall not be liable to pay any premiums thereafter becoming due and owing under the Policy as from the date of the assignment.

41.2 The Trustee may with the consent of a Member or Beneficiary to whom a Benefit is payable transfer assets of the Fund of equivalent value to the Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed PROVIDED that the transfer will not cause the Fund to fail to satisfy the Act.

41.3 Notwithstanding any other provision of this Deed, no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst the asset or assets remain subject to the provisions of this Deed.

42. PAYMENT OF TAX ON BENEFITS AND CONTRIBUTIONS

42.1 The Trustee or with the agreement of the Trustee, an insurance company or other appropriate organisation, shall deduct from any Benefit payable to any Member pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it and shall pay the deduction to the relevant authorities. A Member or Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation.

42.2 The Trustee or with the agreement of the Trustee, an insurance company or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution. Where the Taxation has been deducted from a Contribution, a reference to the crediting of a Contribution to an Accumulation Account means the crediting of the Contribution after the deduction of such Taxation.

43. FORFEITURE OF BENEFITS

43.1 Subject to the Act, any Member, Former Member, Beneficiary or any of the Dependants or the legal personal representative of a deceased Member -

- (a) who assigns or charges or attempts to assign or charge any Benefit;
- (b) whose Benefits whether by his own act, operation of law, an order of any Court or otherwise become payable to or vested in any other person, government or other public authority;
- (c) who commits an act of bankruptcy;
- (d) who in the opinion of the Trustee is incapable of managing his affairs;
- (e) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits;
- (f) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee during a period of five years after a payment was last made to him by the Trustee,

shall forfeit entitlement to all his Benefits (other than a vested benefit) and, in the case of a Member, he shall cease to be a Member of the Fund.

43.2 The Trustee shall hold upon trust and pay or apply any Benefits which have been forfeited for the benefit of the Beneficiary, the former Member or his Nominated Dependants or if no nomination is made to any one or more of them in such proportions amongst them as the Trustee may from time to time in its absolute discretion determine.

43.3 If the former Member or Beneficiary has died and if after reasonable enquiries no Dependants can be located the Trustee may pay the Benefit to his legal personal representative or if there is no legal personal representative to such Relatives of the deceased Member as appear to the Trustee to be entitled to share in his estate.

43.4 Any Benefits or amounts remaining in relation to a Member or Beneficiary referred to in clause 43.1 after the application of monies pursuant to clause 43.2 shall be applied for all or any of the following purposes:-

- (a) the provision of Benefits for other Members of the Fund or their Dependants or such one or more of them to the exclusion of the other or others of them as the Trustee shall determine; or
- (b) the provision for other Members of the Fund who have rights to receive benefits from the Fund or for the Dependants of additional benefits on a basis that is reasonable having regard to all the circumstances; or
- (c) to a separate account to be called the Equalisation Account established pursuant to clause 11.4; or
- (d) to repay to any Employer amounts representing Contributions and accumulated earnings on those Contributions made in respect of a Member whose rights to receive Benefits under the Fund have ceased; or
- (e) for any other purposes approved from time to time by the Commissioner.

44. TERMINATION OF EMPLOYER'S CONTRIBUTIONS

44.1 Where an Employer has been admitted to make Contributions to the Fund pursuant to clause 7, its contributions to the Fund shall terminate and the Employer shall cease to be an Employer for the purposes of the Fund on the date that -

- (a) the Employer enters into liquidation or is placed in receivership; or
- (b) the Employer terminates its Contributions by notice in writing to the Trustee.

44.2 Where an Employer has terminated its Contributions in accordance with clause 44.1, the Trustee shall continue to hold the interests of the Member in accordance with the provisions of this Deed.

44.3 In the event that an Employer is admitted to make Contributions to the Fund on behalf of a Member, and that Employer is reconstructed, goes into liquidation for the purposes of reconstruction, is merged or amalgamated with another Employer, or if it disposes of all or any of its undertaking, the Trustee may enter into a deed of adoption with the successor to that Employer with the object of that successor continuing to act as an Employer of the Fund and to make Contributions on behalf of Members.

45. SUBSTITUTION OF PRINCIPAL EMPLOYER

If the Principal Employer (if any) is for any reason unable or unwilling to continue as a Principal Employer the Trustees may appoint by resolution or by deed any person that is willing to continue as and be a contributor to the Fund to take the place of the Principal Employer and that person shall become Principal Employer for the purposes of the Trust Deed as if the person had been an original party to the Trust Deed.

46. VARIATION OF TRUST DEED

46.1 Subject to this clause, the Trustee may add to, amend, alter, modify or vary (called "the Variation") any trust, power or provision in this Deed from time to time by written resolution of the Trustee or by Deed executed by the Trustee.

46.2 The Trustee shall as soon as practicable advise the Members of the Fund of the nature and purpose of the Variation and the effect (if any) on their entitlements.

46.3 No Variation shall have the effect of reducing or adversely affecting the rights of any Member in relation to an accrued Benefit or the amount of any accrued Benefit payable to any Member or Beneficiary in the Fund without either the written consent of those Members of the Fund who are required to consent under the Act or the written approval of the Commissioner.

46.4 No variation shall impose any increase in liability on any Employer or any Member to contribute to the Fund without that Employer's or Member's consent.

47. DISSOLUTION OF THE FUND

47.1 When the last remaining Member ceases to be a Member of the Fund, the Fund shall be wound up.

47.2 If any amount remains in the Fund after all entitlements of former Members or their Dependants have been paid, the amount so remaining shall be paid to the former Members or their Dependants in such proportions as the Trustee considers equitable subject to the Act.

ANNEXURE A

APPLICATION FOR MEMBERSHIP

To: The Trustee,

I hereby apply for admission to membership of the Fund.

I agree and undertake as follows:

- (a) I understand the terms and conditions of the Trust Deed and I acknowledge I have been informed of my rights and the rights of my Dependants pursuant to the Deed.
- (b) I will be bound by the provisions of the Deed governing the Fund.
- (c) I am not nor have been a member of any superannuation fund nor have an interest in any Approved Deposit Fund or Rollover Annuity other than as disclosed on the reverse of this Application.
- (d) I will make a full disclosure in writing of any benefits I have received, may receive or may be entitled to receive from any other superannuation fund, Approved Deposit Fund or Roll Over Annuity.
- (e) I will notify the Trustee if at any time I cease to be Gainfully Employed as defined in the Deed.
- (f) I consent to the Trustee acting as Trustee of the Fund.
- (g) In the event of my death, I nominate the following persons as my Nominated Dependants:-
(Note - a nomination is not necessary and if made must be reviewed from time to time.)

NAME	ADDRESS	RELATIONSHIP	PERCENTAGE OF TOTAL BENEFIT OR FIXED AMOUNT
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Dated the day of 19.....

Name:

Address:
.....

Signature:

ANNEXURE B

APPLICATION FOR PARTICIPATION BY EMPLOYER

To: The Trustee,

.....
of.....

(called "the Employer") hereby applies to participate in the Fund and to include the employees of the Employer as Members of the Fund. In consideration of the acceptance of the application, the Employer undertakes to contribute to the Fund and be bound by the Deed governing the Fund as if it were originally named in the Deed.

Dated the day of 19.....

The COMMON SEAL of)
PTY LTD)
(ACN))
was hereunto affixed by)
authority of the Directors)
in the presence of -)

.....
Director

.....
Director/Secretary

SCHEDULE

TRUSTEE: ROSSMEAD HOLDINGS PTY LTD (ACN 009 309 335) of 30 Kathleen Street Cottesloe Western Australia

PARTICIPATING EMPLOYERS: KIRKE SECURITIES PTY LTD (ACN 009 115 440) of 4-S Ord Street West Perth

NAME OF FUND: MALIBU SUPERANNUATION FUND

DATE OF ESTABLISHMENT OF FUND: The date of execution of this Deed

EXECUTED on the 25th day of February 1996.

The COMMON SEAL of
ROSSMEAD HOLDINGS PTY LTD
(ACN 009 309 335)
was affixed in the presence of -

Moloney

.....
Sole Director and Sole Secretary/Director

B.D. Moloney

.....
Director/Secretary

