

NOTICE

TO:

The Trustee(s) of The Hillman Superannuation Fund hereby gives notice that the fund:

- (1) has elected to be a regulated superannuation fund under the Superannuation Industry (Supervision) Act;
- (2) will be administered in accordance with the requirements of SIS and the SIS Regulations;
- (3) will preserve benefits that are required to be preserved and otherwise deal with benefits as required by SIS and the SIS Regulations; and
- (4) satisfies the conditions prescribed to be a complying superannuation fund.

DATED: 29th NOVEMBER 2010

x *Jane Hill*

SIGNED: x *[Signature]*

On behalf of the Trustee(s)



CORPORATIONS ACT 2001
MINUTES OF MEETING OF DIRECTORS OF
HILLMAN INVESTMENTS (WA) PTY LTD ACN 147 071 458
HELD AT 7C CENTRO AVE SUBIACO IN WESTERN AUSTRALIA
ON THE DAY OF 2010
AT AM/PM

PRESENT Geoffrey Kent Hillman
 Jane Elizabeth Hillman

CHAIR Geoffrey Kent Hillman was elected to act as Chair of the meeting.

ESTABLISHMENT OF THE HILLMAN SUPERANNUATION FUND

It was proposed and unanimously resolved that the Company establish and maintain a superannuation fund for the purpose of providing retirement allowances and other benefits for such employed persons as were eligible to become members from time to time.

The Company also proposed and unanimously resolved that the Company agree to act as Trustee of the Fund being a company which is eligible to be the trustee (the directors not being disqualified pursuant to *Superannuation Industry (Supervision) Act*) in accordance with the terms and conditions set out in the Trust Deed establishing The Hillman Superannuation Fund and tabled herewith.

It was agreed that the Company execute each copy of the Trust Deed as evidence of its agreement to act as Trustee of the Fund.

ELECTION It was resolved that the Trustee elect to be regulated under the *Superannuation Industry (Supervision) Act 1993*.

APPLICATIONS FOR MEMBERSHIP

Resolved to nominate the following employees:

- (1) Geoffrey Kent Hillman of 546 Dwarda East Road, Dwarda
- (2) Jane Elizabeth Hillman of 546 Dwarda East Road, Dwarda

to be admitted to the membership of the Fund.

INVESTMENT STRATEGY

The Trustee resolved that the Fund's investment strategy would be as follows:

To maintain a diversified portfolio including, but not limited to:

- Cash and deposits with financial institutions
- Australian Stock Exchange listed shares
- Real Property or units in property trusts

- Fixed interest securities
- Loans, mortgages and other placements
- Individual insurance policies
- Pooled superannuation trusts
- Overseas assets


The investment objective of the Fund is to achieve long-term growth while limiting variability in returns.

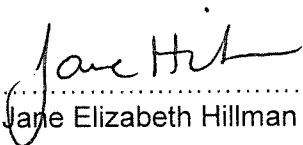
Due to the size of the Fund the composition of investments may include an emphasis on certain classes. However, as the fund grows it is envisaged that there will be more diversification in the portfolio.

CLOSURE There being no further business the Chair declared the meeting closed at am/pm.

CONFIRMATION Signed as a true and correct record.

DATED:- ____ / ____ / 2010


.....
Geoffrey Kent Hillman - Director


.....
Jane Elizabeth Hillman - Director



**TRUST DEED FOR
THE HILLMAN SUPERANNUATION FUND**

DATED *29TH NOVEMBER* 2010

PARTIES

**HILLMAN INVESTMENTS (WA) PTY LTD
ACN 147 071 458
("TRUSTEE")**

TRUST DEED made

29TH JOURNAL

2010

PARTIES **HILLMAN INVESTMENTS (WA) PTY LTD ACN 147 071 458**
of care of Anderson Chartered Accountants of 7C Centro Avenue, Subiaco,
Western Australia
("Trustee")

PARTICULARS

- Item 1 **Fund**
The Hillman Superannuation Fund
- Item 2 **Sponsoring Employer**
NOT APPLICABLE
- Item 3 **Restrictions on Persons, or Class of Persons**
Eligible to be Members (If applicable, see clause 6)

INTRODUCTION

- A. The Trustee (together with the Sponsoring Employer if applicable) wishes to establish and maintain a superannuation fund to provide superannuation benefits for those persons who become members of the Fund and in the event of their death for their Dependants.
- B. The Trustee has agreed to act as the first trustee of the Fund in accordance with the provisions of this Trust Deed.
- C. The Fund is established and maintained for the primary purpose of providing superannuation benefits for Members in the event of their retirement or in other circumstances as specified in SIS or for the Members' Dependants if a Member dies.

IT IS AGREED

1. The Fund

1.1 Establishment

The Trustee (together with the Sponsoring Employer if applicable) hereby establishes a fund (the "**Fund**") with the name set out in the Particulars as from the date of execution of this Deed.

1.2 Purpose

The Trustee agrees to maintain the Fund for the primary purpose of providing superannuation benefits for the Members in the event of their retirement and for the other core and ancillary purposes set out in SIS and:

- (1) if the Fund has individual Trustees then primarily in the form of old age pensions; and
- (2) otherwise the Fund must have a corporate Trustee.

1.3 Self Managed Fund

The Trustee may operate the Fund so that it is a self managed fund, and if so the provisions of this Deed not applicable to such funds do not need to be adhered to.

2. Covenants to Perform

2.1 General

The Trustee for itself and its successors agrees to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustee.

2.2 The Requirements

The Trustee covenants to comply with the Requirements.

3. Fund Trustee

3.1 General

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

3.2 Retirement, Removal of the Trustee

A person must cease to act as a Trustee (or as director of a corporate Trustee) if:

- (1) the Sponsoring Employer, or if there is no Sponsoring Employer then the Members, give a written notice of removal;
- (2) the Trustee gives a written resignation to a fellow Trustee, the Sponsoring Employer if applicable, or to the Members;
- (3) a director gives a written resignation to the corporate Trustee, the Sponsoring Employer if applicable, or to the Members;
- (4) the Trustee is disqualified from holding office by operation of law (in particular SIS);
- (5) being an individual, the Trustee dies; or
- (6) being a company, the Trustee is wound up.

3.3 Appointment

- (1) The then Trustee (or if there is no Trustee the Sponsoring Employer, or if there is no Sponsoring Employer, the Members) must if so required at law, appoint a new or additional trustee. The board of directors may appoint a new or additional director of a corporate trustee.
- (2) If for any reason the Members are unable to appoint a new Trustee then a new Trustee (or director) may be appointed by any person who is or may be a Beneficiary and if more than 1 then by majority.

3.4 Self Managed Fund

- (1) The Trustee and the Members must use their best endeavours to ensure the Fund remains a self managed fund.
- (2) The Trustee and the Members agree that if the Fund fails the definition of self managed fund then they will take action necessary to rectify, failing which they must appoint an approved trustee as required by SIS.

3.5 Corporate Trustee

The Trustee must (except for any period during which the provisions are to the effect that the sole or primary purpose of the Fund is the provision of old age pensions) be a constitutional corporation as defined in SIS.

3.6 Vesting of Assets

Any person who acts as a Trustee must on ceasing to be a Trustee do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

3.7 Vacancy

- (1) In the event of a vacancy occurring, a new Trustee must be appointed within 60 days.
- (2) If for any reason there is no Trustee of the Fund at any time the Members must undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions of this Deed.
- (3) If the Trustee is an individual and the Members are unable to appoint a new Trustee then upon the death of the Trustee the Trustee's legal personal representative becomes the Trustee until a new Trustee is appointed.

4. Trustee's Powers of Management

4.1 General Powers

The Trustee has the following powers:

- (1) those which it has at law;
- (2) those contained elsewhere in this Deed;
- (3) 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;
- (4) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;
- (5) to borrow or receive financial accommodation;
- (6) without limiting the generality of clause 4.1(5) to raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;

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- (7) to assign, pledge, charge or otherwise encumber any asset of the Fund (including any beneficial interest it may have in any asset) including to secure the payment of any money or indebtedness by mortgage, charge or other security and whether over the whole or any part of the assets of the Fund;
 - (8) to give guarantees and indemnities to or on behalf of any person the Trustee thinks fit;
 - (9) to lend or provide financial accommodation;
 - (10) to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance or like company;
 - (11) to purchase an annuity to provide all or a part of a pension payable in respect of a Member;
 - (12) to retain the services of and to appoint professional or other advisers (including actuaries) in relation to the management, administration or investment of the Fund;
 - (13) to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund;
 - (14) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
 - (15) to comply with any order of any Tribunal, Board, Court or Authority; and
 - (16) to open any account or accounts with any financial institution and to operate such account or accounts and to draw, make, accept, endorse, discount, issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferrable instrument;
 - (17) to delegate, by execution of instrument in writing, the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee, and execute any powers of attorney or other instruments necessary to effectuate such purpose;
 - (18) generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as Trustee of any other settlement or in his personal capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or the result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee; and

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- (19) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

4.2 Overriding Power

The Trustee has power to do anything, or omit to do anything, provided:

- (1) it is not contrary to SIS; and
- (2) if the action or inaction would adversely affect a Member or a Member's Benefits then it must be either:
 - (a) fair and reasonable in the Trustee's opinion; or
 - (b) the Trustee must obtain the affected Member's consent.

4.3 Trustee Fees

For any period the Fund is a self managed fund, the Trustee must not be paid any fees but may recover costs and disbursements incurred.

4.4 Trustees Indemnity

The Trustee (and in the case of a Trustee company, each director) is, except in the case of:

- (1) fraud;
- (2) wilful or reckless failure to exercise proper care and diligence; or
- (3) a civil penalty order pursuant to SIS;

indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law.

4.5 Information Confidential

The Trustee must maintain strict confidentiality (as far as practicable) of all information disclosed to or gained by it in the course of administering the Fund.

4.6 Trustee's Discretion

The Trustee in the exercise of the powers and discretions conferred by this Deed has an absolute and uncontrolled discretion. If, after the exercise of a discretion, the Trustee for any reason forms the opinion that the discretion should be exercised differently, then the Trustee may, subject to the Requirements, re-exercise that discretion.

4.7 Comply with the Regulator

The Trustee must abide by all lawful applicable directions, orders and authorities of the Regulator in force from time to time.

5. Trustee's Powers of Investment and Sale

5.1 Trustee to Invest

The Trustee has power to invest or apply the assets of the Fund in:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (2) any loan, whether secured or not, or mortgage;
- (3) on deposit with any bank, building society or like financial institution;
- (4) on deposit with or on loan to any person or organisation whatsoever (including an Employer) with or without security and at such rate of interest upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly;
- (5) in shares, stock, or warrants (of any class or description) or of any type of bond, debenture, note, option, future contracts derivative or synthetic instruments or other like security and whether the shares, stock or warrants or other assets are fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (6) any policy of assurance;
- (7) any annuity or like product;
- (8) any chose in action;
- (9) any real or personal property and the improvement or extension thereof;
- (10) any unit, sub-unit or interest in any trust whether such units, sub-units or interests are fully paid up or whether their issue involves any contingent or reserve liability; and
- (11) any other investments or applications which the Trustee considers appropriate;

provided that all investments, purchases and applications are consistent with the Requirements and the Fund's investment strategy.

5.2 Income and Profit

The Trustee may earn income or profit on Fund assets in any way it chooses, including by:

- (1) selling or otherwise disposing of the asset or any interest therein;
- (2) leasing, developing, subdividing or granting rights (e.g. profits à prendre) over property; or
- (3) granting options, warrants and like instruments over shares and stocks or other property;

provided that the Trustee is not obliged to derive income on a Fund asset and may hold the asset for capital growth.

6. Membership of Fund

6.1 Invitation by Trustee

Membership is by written application (by the person, his Employer, his agent or his legal personal representative) to, and acceptance by, the Trustee in its absolute discretion. Subject to clause 6.2 any person is eligible to be a Member.

6.2 Restricted Membership

If the Particulars specify the persons eligible to become members no person other than the persons specified are eligible to become Members.

6.3 Self Managed Fund

If the Fund is (and is to remain) a self managed fund:

- (1) each Member must be appointed a Trustee or a director of the corporate trustee or other action must be taken to ensure the Fund remains a self managed fund; and
- (2) no person may become a Member who is an employee of another Member or another Member's associate as set out in section 17A of SIS unless they are relatives.

6.4 Application Form and Information

- (1) An application for membership must be made in writing and may be in the form of Schedule 1.
- (2) The Member must supply such information to the Trustee as the Trustee requires for the purposes of the Fund.

6.5 Admission of Member

If the Trustee decides to admit a person as a Member the Member joins:

- (1) on the date determined by the Trustee;
- (2) if the Trustee makes no such determination, the same date as the completed application for membership; and

on admission the Trustee must give to the new Member the information (if any) specified in the Requirements

6.6 Type of Membership

The Trustee may determine different classes, groups or types of membership.

6.7 Conditions of Membership

The Trustee may impose conditions on membership and may impose limits or conditions upon Benefits.

6.8 Cessation of Membership

A person ceases to be a Member on:

- (1) the date of payment of all his Benefits;
- (2) his death; or
- (3) the provisions of clause 21.2 or otherwise operating to terminate his membership.

6.9 Self Managed Fund

If the Fund is (and is to remain) a self managed fund then:

- (1) a Member must on becoming a disqualified person immediately resign as a Member and advise the Trustee as to how the Member's Benefits are to be paid; and
- (2) the Member must immediately retire as a Trustee or director of a corporate trustee (if so required for the Fund to remain a self managed fund).

6.10 Membership

Nothing in clause 6.2 prevents a person from becoming entitled to a benefit (and accordingly becoming a Member) due to the membership of another person (and without limiting the generality of the foregoing because of the death of the Member or pursuant to clause 21).

6.11 Member's Attorney

In so far as permitted by SIS, where the Trustee is satisfied that a person is for the time being the donee of a valid and effective power of attorney granted by a Member (including, for the avoidance of doubt, an enduring power of attorney):

- (1) the Trustee shall permit that person to exercise all the rights, powers and functions of the Member arising under or in connection with the Fund;
- (2) everything done by that person on behalf of the Member shall be as valid, effective and conclusive as if done by the Member; and
- (3) any consent or receipt given by that person on behalf of the Member shall be as complete and effective a discharge for the Trustee as a consent or receipt given by the Member.

6.12 No Indemnity from Members

Notwithstanding anything contained or implied in this Deed, no Member (or Beneficiary or other person who may have a contingent interest in the Fund) is, by reason of any matter or by reason of its relationship with the Trustee, under any obligation to indemnify the Trustee (and in the case of a Trustee company, each director) against any liability of obligation incurred by the Trustee (or its directors) in the course of exercising its (or their) duties rights powers or authorities in relation to the Fund or if there is any deficiency of the assets of the Fund as compared with the liabilities of the Trustee in relation to the Fund.

7. Meetings of Members, Trustees and Directors

7.1 Procedure

Unless agreed otherwise the procedure set out in this clause applies to meetings of Members, Trustees and directors of a corporate Trustee.

7.2 Notice

To call a meeting requires a notice requesting a meeting to be served on the other parties signed by at least one party.

7.3 Trustee convene

The standing chairman (or chairman of the last meeting) must convene a meeting as soon as practicable and send a notice of meeting to each person.

7.4 Notice of Meeting

The notice must be posted or given not less than 7 days and not more than 14 days before the meeting and specify:

- (1) the place and time of the meeting;
- (2) if the Member may appoint a proxy to vote on his behalf at the meeting; and

(3) the matters (and any motions) to be considered at the meeting.

7.5 Conduct of Meeting

Those present must appoint a chairman of the meeting who may determine the conduct of the meeting.

7.6 Quorum

A quorum for the meeting is two-thirds of the persons entitled to be present in person or by proxy. If a quorum is not present within 30 minutes of the time appointed for the meeting the chairman of the meeting must adjourn the meeting to the same time and place in each following week thereafter until a quorum is present in person or by proxy.

7.7 Members Vote

Each person (including the chairman) is entitled to one vote.

7.8 Decisions

Decisions require a two-thirds majority of those entitled to attend to vote in favour of the decision.

8. Fund Records

8.1 Receipt

A receipt given on behalf of the Fund by the Trustee or by the Trustee's delegate is a sufficient discharge to the person paying the money.

8.2 Accounts etc

The Trustee must:

- (1) keep account of all moneys received by and disbursed from the Fund and of all Fund dealings;
- (2) keep records and accounts in proper order;
- (3) make suitable arrangements for custody of all Fund documents;
- (4) prepare accounts as at the end of the Fund Year, as are specified in the Requirements and arrange for the Fund audit; and
- (5) provide to the Members, any Employers, and other persons reports, statements and notices as are specified in the Requirements.

8.3 Inspect Deed

A Member may inspect the Deed at the registered office of the Trustee during hours when that office is open.

8.4 Employer Information

An Employer must give to the Trustee on the Trustee's request all information which may be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer without further enquiry.

9. Accounts and Earnings

9.1 Establishment of Accounts

The Trustee must establish such accounts, including one or more Accumulation Accounts for each Member as the Trustee determines necessary for the operation of the Fund.

9.2 Credits to Accumulation Account

The Trustee must credit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (1) any amount paid into the Fund in respect of the Member whether contributions or a rollover payment;
- (2) the proceeds of any policy of assurance effected by the Trustee in respect of the Member where the policy is effected to provide benefits to the Member;
- (3) positive earnings as are allocated by the Trustee; and
- (4) such forfeited amounts as allocated (unless paid directly to the Member).

9.3 Debits to Accumulation Account

The Trust must debit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (1) any amount paid out of the Fund in respect of the Member whether as a benefit, a transfer or a rollover payment;
- (2) the costs of any policy of assurance effected by the Trustee in respect of the Member where the policy is effected to provide benefits to the Member;
- (3) negative earnings as apportioned by the Trustee;
- (4) any amount forfeited by the Member;
- (5) any amount the subject of a determination by the Trustee under clause 22; and
- (6) any costs (including Taxation) that relate to that particular Member as may be determined by the Trustee.

9.4 **Establishment of Income Account**

The Trustee must establish an Income Account for the Fund.

9.5 **Credits to Income Account**

The Trustee must credit the Income Account with all amounts properly referable to that account including:

- (1) income and profits of the Fund each year;
- (2) the proceeds of any insurance policy, including life insurance policy where the policy is not to provide benefits for a particular member;
- (3) any surplus arising from a valuation of assets; and
- (4) any contributions in respect of costs or which are unallocated.

9.6 **Debits to Income Account**

The Income Account shall be debited with the following:

- (1) any loss sustained on the disposal of any investments of the Fund;
- (2) the premiums in respect of any policy as mentioned in clause 9.5(2);
- (3) any costs or charges incurred or provided for (including Tax);
- (4) any deficiency arising from a valuation of Fund assets;
- (5) the allocation of earnings to the Member's Accumulation Accounts; and
- (6) any transfers to a Reserve Account pursuant to clause 9.9.

9.7 **Earning Rate**

At the end of each Fund Year the Trustee must determine at its discretion the earning rate (which may be negative) for the Fund ("**Fund Earning Rate**") taking into account the Fund's income and profits, the Fund's Reserves (and the purposes of those Reserves) and such other matters as the Trustee considers appropriate.

9.8 **Allocation of Earning Rate**

Subject to clauses 9.11, 9.14 and 9.15 the Trustee shall allocate the earnings of the Fund 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, an appropriate adjustment being made for amounts (if any) credited or debited to Accumulation Accounts since that date.

9.9 Unallocated earnings

Any amount remaining in the Income Account after distribution of earnings must be transferred to a Reserve Account.

9.10 Interim Earning Rate

If the Trustee is required to pay a Benefit during the course of a Fund Year, the Trustee must determine a Fund Earning Rate to the date of payment on an equitable basis and debit or credit the appropriate Member's Accumulation Account accordingly.

9.11 Specific Investments

- (1) The Trustee may invest or hold assets (including policies of insurance including life insurance) separately in respect of:
 - (a) certain Members;
 - (b) certain classes or groups of Members;
 - (c) certain Benefits or categories of a Benefit payable to a Member;
 - (d) current pension liabilities (whether for all Members or some Members);
or
 - (e) a Reserve Account.
- (2) The Trustee must record on whose behalf (or for which Account) such specific investments are made.
- (3) The income and profits (less losses and expenses) arising from such specific investments are to be allocated directly to the appropriate Member's Accumulation Account or Reserve Account.
- (4) If the Trustee has determined to hold assets separately for a Member or Members then no other member has, or will obtain, a beneficial interest in such assets.
- (5) If a transfer of property to the Fund is made as set out in section 122 of the *Duties Act 2008*, then only the transferor and no other member has, or will obtain a beneficial interest in such property.
- (6) If the Trustee has determined to hold assets separately for a Member or Members (and in particular if the Trustee has acquired an asset to which section 122 of the *Duties Act 2008* applies) then the asset can only be held in the Fund to be provided to that Member or those Members as a retirement benefit.

9.12 **Members interest in assets**

No Member or Beneficiary has or acquires beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole except where the Trustee has invested in specific assets under clause 9.11.

9.13 **Reserve Account**

- (1) The Trustee may establish one or more Reserve Accounts for the Fund.
- (2) Any amounts held in a Reserve Account do not form part of any Accumulation Account.
- (3) A Reserve Account may be used by the Trustee in the Trustee's absolute discretion to augment Member's Benefits, to stabilise the investment earnings of the Fund, to enable the payment of pensions, to provide Promised Benefits under clauses 27, 28 and 29, or for such other purpose as the Trustee sees fit.
- (4) The Trustee has the discretion to deal with the assets of a Reserve Account as forfeited benefits as per clause 21.4.
- (5) Upon the death of the last surviving Member, any amount in a Reserve Account (if not otherwise dealt with under paragraphs (1), (2) or (3)) shall be credited to the accumulation account of such deceased former Member.
- (6) The following amounts may be credited to a Reserve Account:
 - (a) forfeited benefits pursuant to clause 21;
 - (b) amounts arising under clause 9.3(5) pursuant to a determination under clause 22;
 - (c) amounts remaining in the Income Account pursuant to clause 9.9;
 - (d) income generated on the Reserve Account, including from assets held specifically for the Reserve Account; and
 - (e) contributions the contributor has advised the Trustee are to be credited to the Reserve Account, or the Trustee decides are not to be credited to a specific Member's account.

9.14 **Allocation of Earnings to give effect to arrangement with Member**

The Trustee may allocate earnings to give effect to any arrangement entered into with the Member in relation to Benefits provided the allocation to other Members is fair and reasonable.

9.15 **Discretionary allocation of earnings**

- (1) If the amount to the credit of a Member's Accumulation Account is in excess of, or sufficient to provide, the Member's entitlement to Benefits (including by

reason of clause 22) the Trustee may allocate the earnings of the Fund (or of particular assets) in such manner amongst the Members as the Trustee determines (including not crediting any earnings to a Member). The Trustee must be satisfied the allocation is fair and reasonable in all the circumstances.

- (2) In making a determination pursuant to clause 9.15(1) the Trustee shall have regard to all the circumstances including the contributions that the Trustee reasonably expects may be made in the future in respect of the Member.
- (3) The Trustee may debit or credit amounts (or tax credits) in such manner it determines including by applying tax credits or tax losses to certain accounts and crediting amounts to one or more Reserve Accounts if the Trustee believes to do so is for the benefit of one or more of the Members of the Fund and it is fair and reasonable in all the circumstances.

10. Audit

10.1 Appointment of Auditor

The Trustee must appoint an auditor or other person able to audit the Fund pursuant to the Requirements to carry out an annual audit of the accounts and records of the Fund.

10.2 Auditor's Report

- (1) The Trustee must give the auditor access to all papers, accounts, books, records and documents in respect of the Fund.
- (2) The Trustee must give a copy of the auditor's report to the Members and any Employers.

10.3 Auditors queries

The Trustee shall use its best endeavours to satisfactorily respond to any matters raised by the Auditor pursuant to SIS.

11. Disclosure Standards

11.1 Disclosure

The Trustee must disclose to:

- (1) the Regulator;
- (2) the Members (including prospective and former Members);
- (3) any Employers;
- (4) the trustee of any other fund to which a rollover payment is made;
- (5) the auditor; and

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- (6) such other persons as may be specified in the Requirements;

such information from time to time concerning the Fund, Contributions and Benefit entitlements as the Trustee determines reasonable, and in particular so as to satisfy the disclosure provisions in the Requirements.

12. Complaint Resolution Procedure

12.1 Implementation

The Trustee may (but is not obliged to unless the Fund is no longer a self managed fund) implement a complaints resolution procedure.

13. Fund Assets

13.1 Acceptance of Money

The Trustee must deposit all money of the Fund as soon as practicable to the credit of an account in the name of the Fund kept with a Bank, Building Society or similar body as determined from time to time by the Trustee or into a trust account of a Solicitor, Accountant or Investment Manager appointed pursuant to this Deed.

13.2 Acceptance of Assets

The Trustee may accept a transfer of assets and must become the registered owner (or appoint a Custodian trustee to hold the assets) of the assets as soon as practicable. Any asset transfers by way of contribution must be recorded at market value.

13.3 Assets in Name of Trustee or Custodian

The Trustee must hold the Fund's assets in the name of the Trustee or may appoint another person in writing for that purpose (provided that if the Fund is not a self managed fund the person must satisfy the Requirements to be a custodian of Fund assets). If an asset is in the name of a custodian then the Trustee must ensure the Trustee can prove the asset is held for and on behalf of the Fund.

14. Policies of Assurance

14.1 Power to Insure

- (1) The Trustee may take out life insurance on the life of any Member whether to augment or facilitate death or disablement Benefits to the relevant Member or for any other Fund purpose.
- (2) In the event of death or disablement the Trustee shall credit the Accumulation Account of the Member or former Member or the relevant account (including other Member's account or a Reserve Account) with the amount of the proceeds received under the policy of assurance less any expenses.

14.2 Premiums

Premiums may be debited to the Accumulation Account of the relevant Member or the Income Account as the Trustee determines.

14.3 Inform Member

The Trustee must inform the Member of any policies in effect for that Member as specified in the Requirements.

14.4 Self Insurance

The Trustee may with the advice of an actuary offer defined death or disability benefits and self insure (by establishing a Reserve Account for that purpose).

15. Contributions

15.1 Contributors

- (1) Any person may make contributions to the Fund if the Trustee agrees.
- (2) The contributor must identify the Member for whom the contributions are made (unless unallocated) and the Benefits to which they are to fund.

15.2 Contribution in Cash or Assets, etc

Contributions may be paid in cash (or equivalent), by way of payment of Fund expenses or outgoings (if to do so is acceptable to the Regulator) or by transfer of assets provided that where a contribution is made by the transfer of an asset:

- (1) the Trustee must determine if the asset transferred is appropriate;
- (2) the Trustee must value the asset for the purposes of the Fund's accounts; and
- (3) there is no breach of the Requirements or this Deed.

15.3 Unallocated Contributions, Contributions on conditions

The Trustee may accept unallocated contributions or contributions subject to conditions or directions, including contributions subject to conditions which must be satisfied before the contributions vest in the Member.

15.4 Reallocation of Contributions

The Trustee may, with the consent of the person contributing, or for whom the contributions are made, and if SIS permits, reallocate contributions to other Members, or to other accounts within the Fund. Without limiting the generality of the foregoing the Trustee may on application by a Member reallocate contributions made in the prior financial year where such contributions are splittable contributions (as defined in SIS Regulation 6.42) in such manner as is consistent with the ITAA and SIS.

15.5 Refusal to Accept

Contributions must be consistent with the Requirements and if not the Trustee may refuse to accept, or repay, them.

16. Transfers to Other Funds

16.1 Transfers out

If a Member requests all or part of his entitlement in the Fund is transferred to another superannuation or like entity ("**Entity**") the Trustee may pay the amount (or transfer investments of equivalent value) to the trustee of the Entity ("**Rollover**").

16.2 Requirements

The Rollover must comply with the Requirements.

16.3 Transfer of Restricted Benefits

Where the Rollover contains Restricted Benefits the Trustee may assume that the Entity's governing rules will ensure that such amounts are preserved or dealt with in accordance with the Requirements.

16.4 Discharge

Valid payment of the Rollover is a discharge to the Trustee of all liability in respect of it and the Trustee is not responsible to see to its application.

16.5 Complete Documents

The Member must complete the documentation required by the Trustee to enable the Rollover to occur.

16.6 Consent

Unless permitted by the Requirements the Trustee must not effect a Rollover without the consent of the Member.

16.7 Payments authorised or required by SIS

The Trustee must pay Benefits to an eligible rollover fund or otherwise deal with the Benefits as determined by the Trustee in a manner consistent with SIS if SIS so requires.

17. Transfers from Other Funds

17.1 Transfers in

The Trustee may accept money or assets by transfer or otherwise from the trustee of a superannuation fund or like entity (or from any other entity able to pay an amount to the fund by way of transfer or Rollover).

17.2 Acceptance of Restricted Benefits

Where the Trustee is advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustee must deal with such amount in accordance with the Requirements.

17.3 Amount, Composition of Entitlement

On any transfer in accordance with this clause, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustee and the composition thereof is as determined by the Trustee having regard to the information provided to the Trustee.

18. Payment of Benefits

18.1 Requirements

Benefits must be paid in a manner consistent with the Requirements.

18.2 Procedure before Benefits payable

Benefits accrue and are due and payable when:

- (1) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustee:
 - (a) the evidence the Trustee requires as to the entitlement to the Benefit; and
 - (b) a written request that the Trustee pay the Benefit to or in respect of the Member identifying the intended recipient.
- (2) the Trustee has:
 - (a) received the evidence and the request;
 - (b) determined in writing the amount of the Benefit and that the Benefit is payable; and
 - (c) notified in writing the person requesting the Benefit of the Trustee's determination.

18.3 Address etc

Benefits are payable in the manner and to the address of the Member or Beneficiary advised to the Trustee from time to time or as otherwise determined by the Trustee.

18.4 Receipt

Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release as required by the Trustee.

18.5 Special Benefits, Vesting Schedule, Defined Benefits

The Trustee may determine or agree with a Member or an Employer to provide Benefits on a specified basis including the following:

- (1) Benefits vesting over a period of membership or employment (including under a vesting schedule);
- (2) by way of a promised or defined level (including by reference to a formula) of Benefits; and
- (3) by way of a guaranteed rate of return.

18.6 Deduction of Tax from Benefits Payable

The Trustee must deduct any required Taxation from any Benefit payable.

18.7 Deferral

With the consent of the Member the Trustee may defer payment (or commencement of payment) of a Benefit until the earlier of:

- (1) the Member's request for the Benefit to be paid; or
- (2) when the Requirements specify the Benefit must be paid.

19. Transfer in Specie

19.1 Assets

The Trustee:

- (1) may, with the consent of the person entitled to a Benefit, transfer investments of the Fund:
 - (a) by way of a benefit payment in which case the amount of the benefit is the market value of the asset as determined by the Trustee; or
 - (b) of equivalent value in lieu of paying the whole or part of the amount otherwise payable;
- (2) must transfer assets as a benefit payment to the relevant Member if assets are held by the Trustee for the Member pursuant to clause 9.11(6); and
- (3) must transfer assets on a death benefit payment as set out in clause 29.4.

20. Payment to Others on Behalf of Members or Beneficiaries

20.1 Payment to Others

(1) Where:

- (a) any Member or Beneficiary is under the age of 18 years; or
- (b) it would be in the Trustee's opinion in the best interests of the Member or the Beneficiary;

the Trustee may pay all or part of any Benefit to any other person to be held on trust for, or for application on behalf of, the Member or the Beneficiary.

20.2 Receipt

The receipt of the person to whom the Benefit is paid is a good discharge to the Trustee and is deemed to be payment to the Member or the Beneficiary. The Trustee is not bound or concerned to see to the application of the Benefit so paid.

21. Forfeiture of Benefits

21.1 Forfeiture Events

All Benefits:

- (1) accruing; or
- (2) accrued;

are held by the Trustee upon the trusts herein contained (and subject to the Requirements) until the Member or Beneficiary:

- (3) assigns or charges or attempts to assign or charge any Benefit;
- (4) loses entitlement to his Benefits (whether by his own act, operation of law, Court order or otherwise) because the Benefits become payable to or vested in any other person, company, government or other public authority;
- (5) has a judgment entered against him for an amount not less than \$10,000;
- (6) has a garnishee order made against him;
- (7) becomes insolvent; or
- (8) for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs.

21.2 Forfeiture

Upon the happening of an event as described in clause 21.1, subject to the Requirements and the *Bankruptcy Act*, any Member or Beneficiary immediately forfeits entitlement to:

- (1) all his Benefits which are accruing or may thereafter accrue; and
- (2) subject to the common law all his Benefits which have at that time accrued.

21.3 Residual Amounts

Any Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid to him and who still has a residual amount standing to the credit of his Accumulation Account shall forfeit such amount forthwith and such amount shall be dealt with as a Forfeited Benefit.

21.4 Dealing with Forfeited Benefits

The Trustee must hold upon trust and pay or apply any Benefits which have been forfeited as follows:

- (1) to or for the benefit of the former Member or Beneficiary or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee determines provided that any payment from the Fund is consistent with the Requirements (whether by payment to, or crediting to an account within the Fund established for, such person);
- (2) to or for the benefit of Members and former (including deceased) Members of the Fund who have or had rights to receive Benefits from the Fund, or for their Dependants or to the estate of deceased former Members, on a basis that the Trustee considers reasonable having regard to all the circumstances (and if more than one of them in such proportions between them and on such terms as the Trustee determines) (whether by payment to, or crediting to an account within the Fund established for, such person);
- (3) to a Reserve Account;
- (4) in lieu of Contributions; or
- (5) for any other purpose consistent with the Requirements or approved from time to time by the Regulator.

21.5 Components preserved

In exercising its powers under this clause the Trustee must preserve and distribute to recipients (and between the recipients as the Trustee sees fit but consistent with the Requirements) the various tax and SIS components of any amount forfeited.

21.6 Balance to former Members on Winding-Up

If on the winding up of the Fund there remains no person entitled to any Benefits forfeited hereunder then any residual amount shall be apportioned amongst the former Members or contributors (including Employers) in such proportions as the Trustee determines.

22. Excessive Benefits

22.1 RBL

This clause 22 only applies if a Member's benefits are tested for Reasonable Benefit Limit ("RBL") or like purposes.

22.2 Limit on Benefits

Notwithstanding any other clause of this Deed, the RBL amounts of Benefits payable to any Member are limited (when added to the RBL amounts of any benefits which the Member has already received) to the Member's Pension RBL.

22.3 Additional Benefit

The Trustee may determine to pay an additional amount with the consent of the Employer (if any) and provided the Fund does not jeopardise its tax concessions.

22.4 Excess Benefits

The Trustee may deal with the Benefits in excess of the Member's Pension RBL as the Trustee determines, including treating such amount as a Forfeited Benefit.

22.5 Reduction of Member's Account

If the Trustee has determined the Member's Accumulation Account is more than sufficient to meet the obligation to pay the Member's Benefit (having regard to future earnings and contributions if any) then the Trustee may reduce the Member's Accumulation Account (but only in accordance with, or in a manner allowed by, SIS) and credit the same to a Reserve, or another Account in the Fund.

23. Pension Benefits

23.1 Terms of Pension

The Trustee and the Member or the Beneficiary, must agree the terms upon which a Pension is payable including:

- (1) the commencement day of the pension;
- (2) the frequency of instalments;
- (3) the amount (whether variable or constant);

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- (4) if it is payable during the life of the Pensioner, for a fixed period, or is an allocated or similar pension;
 - (5) whether on the death of the Pensioner the pension has a reversionary component; and
 - (6) whether the Pension can be commuted.

23.2 Pension Terminates

A pension terminates only when all payments due and payable for the term of the pension (whether payable during the life of the pensioner, or otherwise) have been paid.

23.3 Trustee to adhere, and may vary

The Trustee must adhere to the terms upon which a Pension is payable. The Trustee may, with the agreement of the Pensioner vary the frequency or basis upon which a Pension is payable.

23.4 Account Based (or Simplified) Pension

If the Trustee determines to pay a simplified pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(9A) (or any additional or replacement Requirement), and if not commutable, must comply with such additional requirements as prescribed.

23.5 Allocated Pension

If the Trustee determines to pay an allocated pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(4) (or any additional or replacement Requirement), and if not commutable, must comply with the definition of "*non-commutable allocated pension*" in SIS Regulation 6.01(2).

23.6 Market Linked (or Term Allocated) Pension

If the Trustee determines to pay a market linked pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(8) (or any replacement Requirement).

23.7 Non-commutable (or transition to retirement) Pension

If the Trustee determines to pay a non-commutable pension then the terms upon which the pension is payable must comply with the relevant definition in SIS Regulation 6.01(2) (or any replacement or additional definition or Regulation).

23.8 15 Year/Life Expectancy Pensions

If the Trustee determines to pay a 15 year/life expectancy pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(7) (or any additional or replacement Requirement).

23.9 Complying Lifetime Pension

If the Trustee determines to pay a complying lifetime pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(2) (or any replacement Requirement).

23.10 Pension meeting multiple requirements

If the Trustee determines to pay a pension which must comply with more than one provision specified in the SIS Regulations or any replacement Requirement (or part thereof) then the terms upon which the pension is payable must comply with all (or the part thereof) of all the relevant SIS Regulations (or replacement Requirements).

23.11 Fixed Pension

If the Trustee determines to pay a fixed pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(6) (or any replacement Requirement).

23.12 Other Pension

If the Trustee determines to pay another type of pension (whether based on any provisions specified in the SIS Regulations, or any replacement Requirement or not) then the terms upon which the pension is payable are as determined by the Trustee (and if applicable must comply with the part of the relevant Regulation (or Requirement) as determined by the Trustee).

23.13 Non-Complying Pension

The Trustee may pay a non-complying pension on such terms as it sees fit.

23.14 Purchase of Pension or Annuity

A Pension may be provided by way of purchase of a Pension or annuity from a life office or like provider.

23.15 Additions to Pensions

Unless permitted by the Requirements the capital supporting the pension cannot be increased by contribution or rollover assets once the pension has commenced.

24. Commutation of Pension

24.1 Commutation

The Trustee may on the request of a Member or Beneficiary commute all or part of a Pension to a Lump Sum if permitted under, and in a manner consistent with, the Requirements as follows:

- (1) the Trustee must determine the amount of the Lump Sum payable (or to be retained in the Fund) in respect of the Pension being commuted and may for that purpose obtain the advice of an actuary; or

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- (2) if there is an amount remaining which is to be payable as a pension, the Trustee (who may obtain the advice of an actuary) must determine the remaining Pension.

25. Lump Sum Benefits

25.1 Time for Payment

- (1) The Trustee and the Member must agree the date on which the Benefit is payable.
- (2) The Trustee may defer for a period up to 12 months payment of the Benefit if payment could endanger the financial security of the Fund.

25.2 SIS Limitation

The payment of a Lump Sum (including by way of commutation of Pension) must be consistent with SIS.

26. Conversion of Lump Sum to Pension

26.1 Application

On the written application of a Member or Beneficiary the Trustee may pay a Pension in lieu of the whole or any part of a Lump Sum Benefit.

27. Retirement, Termination and Unrestricted Benefits

27.1 Form of Benefit

The Trustee:

- (1) may, (if a member satisfies the Requirements to permit a Benefit to be paid and the Member has requested the Benefit be paid);
- (2) must (if a member satisfies the Requirements under which a Benefit must be paid);

pay the Benefit to the Member by way of Pension or Lump Sum as requested by the Member.

27.2 Amount of Benefit

The Benefit shall, subject to this Deed, be equal to or calculated by reference to the Member's Accumulation Account.

27.3 Discretionary Benefit

The Trustee may pay an additional amount of Benefit.

28. Benefits for Incapacity, Illness etc.

28.1 Form of Benefit

If a Member has ceased (whether permanently or temporarily) to be gainfully employed as a result of Permanent Incapacity or Temporary Incapacity or has satisfied the Requirements for a benefit to be paid due to illness (including being diagnosed as terminally ill), the Trustee may pay to or in respect of the Member his Benefit by way of:

- (1) Pension or Lump Sum as requested by the Member or the Member's Legal Personal Representative in the case of Permanent Invalidity; and
- (2) Pension for the period of incapacity in the case of Temporary Incapacity.

28.2 Amount of Benefit

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to:

- (1) the Member's Accumulation Account; or
- (2) the promised Benefit;

(and for Temporary Incapacity be no more than permitted under SIS).

28.3 Discretionary Benefit

The Trustee may pay an additional amount of Benefit.

29. Death Benefits

29.1 Form of Benefit

Upon the death of a Member or Pensioner before the whole of his Benefit has been paid to him, the Trustee must pay the Benefit by way of Lump Sum or Pension (providing the Requirements allow a Pension to be paid) as determined by the Trustee in consultation with each Beneficiary.

29.2 Amount of Benefit

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to:

- (1) the former Member's Accumulation Account or Pension; or
- (2) the promised Benefit;

as applicable.

29.3 Discretionary Benefit

The Trustee may pay an additional amount of Benefit.

29.4 Binding Nomination

The Trustee must pay all or part of the Benefit (whether Lump Sum or Pension) in accordance with a binding nomination by the Member (as mentioned in SIS section 59(1A)) if (or to the extent) it is valid. The nomination may specify particular fund assets (or interests thereof) to be used in the provision of the benefit.

29.5 Duration of Nomination

Unless the nomination specifies a date upon which it expires it continues for an indefinite period until the earlier of:

- (1) its revocation by notice in writing from the Member to the Trustee; and
- (2) the divorce of the Member.

29.6 No Binding Nomination

- (1) To the extent to which there is no valid binding nomination the Trustee must pay the Benefit amongst one or more of:

- (a) the Dependants of the former Member or Pensioner;
- (b) the Estate of the former Member or Pensioner;
- (c) any other person to whom the Benefit can be paid under SIS;

in the manner, at the times, and in such proportions between them, and if more than one, as the Trustee determines.

- (2) The Trustee must have regard to, but is not bound by a non-binding nomination of a Nominated Dependant.
- (3) If there is no Dependant and no other person to whom the Benefit can be paid under SIS and the Trustee is of the opinion that a Grant of Probate or Letters of Administration in respect of the Estate will be not made the Trustee must pay the Benefit to one or more other persons (having regard to any wishes stated by the Member, the Member's next of kin and all relevant circumstances) if to do so is consistent with SIS, or treat it as a Forfeited Benefit.

29.7 Components

The Trustee may if permitted by, and subject to the Requirements allocate the separable tax components of a Lump Sum amongst the recipients as it sees fit (and must if allowed by the Requirements, do so as specified in a binding nomination).

30. Splitting Superannuation interests on Divorce

30.1 Application

This clause applies if a Member's interest in the Fund is subject to Part VIII B of the *Family Law Act 1975*.

30.2 Rules

The Trustee:

- (1) must take action as lawfully required of it in respect of a Member's interest in the Fund pursuant to Part VIII B of the Family Law Act, the Family Law (Superannuation Regulations) or by the Requirements; and
- (2) may for that purpose promulgate rules or protocols (consistent with such law) for the Fund as it in its absolute discretion determines.

30.3 Non member spouse

A non-member spouse as defined in Part VIII B of the Family Law Act is deemed not to be a Member of the Fund (in respect of his or her entitlement as a non-member spouse) except:

- (1) as specified by the Requirements;
- (2) as necessary to give effect to:
 - (a) the non-member's rights under the Family Law Act or the Family Law (Superannuation) Regulations; and
 - (b) payment or transfer of the non-member spouse's entitlement (including on his or her death in which case the Trustee has the same discretions and powers to pay his or her entitlement as if the non-member spouse were a Member);

and except as specified in this clause has no rights or entitlements under the Fund.

30.4 Separate Account

The Trustee may (but is not obliged to) create a separate interest or account for a non-member spouse.

30.5 Fees

The Trustee may, in its absolute discretion, but subject to the Requirements (and provided the Fund does not lose its status as a self managed fund), determine:

- (1) fees, recoverable at the Trustee's discretion from:
 - (a) any Account of the Member;

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- (b) any account established for, or any amount held for the benefit of the non-member spouse;
 - (c) the Member's Benefit;
 - (d) the non-member spouse's Benefit; or
 - (e) the Member or the non-member spouse personally;

provided that the fees are payable or borne by, the Member spouse and non-member spouse in equal parts, unless otherwise authorised by Regulation 59 of the Family Law (Superannuation) Regulations.

31. Reallocation of Benefits

The Trustee may with the consent of a Member or the recipient of the benefit as the case may be, and if SIS permits, reallocate Benefits otherwise accruing or payable to the Member or to the recipient to other Members of the Fund, or other persons who are able to receive such reallocation in accordance with the law. Without limiting the generality of the foregoing the Trustee may reallocate benefits attributable to splittable contributions (as defined in SIS Regulation 6.42) in such manner as is consistent with the ITAA and SIS.

32. Amendments to the Deed

32.1 General Power

The Trustee may by Deed or instrument in writing, executed by the Trustee and without giving prior notice to the Members, amend, add to or revoke all or any of the provisions of the Deed, including this clause.

32.2 Purpose of Variation

The variation may be:

- (1) to enable the Fund to comply with any law, custom or practice of the Commonwealth or any State or Territory of Australia in relation to superannuation, pensions, taxation, insurance, employee trust funds or employee benefits generally or otherwise;
- (2) for any other purpose provided that no variation may:
 - (a) vary the objects of the Deed so the Fund is no longer a superannuation fund as defined in the Requirements;
 - (b) require the Fund to operate contrary to the prohibitions contained in SIS;
 - (c) prevent the Fund from being a regulated superannuation fund under SIS;

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- (d) prejudicially affect the existing rights of any Member at the date from which the variation is to be effective unless:
 - (i) the Member consents in writing;
 - (ii) the amendment is within SIS Regulation 13.16; or
 - (iii) approval is granted in writing by the Regulator;
 - (e) impose any further liability on any Employer, without that Employer's consent.

32.3 Restricted Membership

If the Particulars specify the persons eligible to become Members of the Fund then no variation may amend the restrictions on Members of the Fund as set out in clause 6.

32.4 Advice to Members

The Trustee must notify the Members of the effect of the variation but any failure to give any such notification or its non-receipt by a Member shall not affect the validity of the variation.

33. Termination of the Fund

33.1 Trustee Determination

The Trustee may determine to wind up the Fund. The Trustee must determine to wind up the Fund if all of the Members give notice in writing to the Trustee of their desire to terminate the Fund.

33.2 Notification

The Trustee must notify in writing all Members and Employers, and if required the Regulator, of the proposed winding up.

33.3 Wind-Up

The Trustee must proceed to wind up the Fund as soon as reasonably practicable.

33.4 Application of Assets

On a winding up the Trustee must apply the Fund's assets in the following order of priority:

- (1) meet all expenses and liabilities of the Fund;
- (2) payment (including by rollover) of Benefits;
- (3) increase Benefits as the Trustee may in its absolute discretion determine;

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- (4) pay any forfeited Benefits or amounts in any Reserve Account in accordance with the Trustee's powers; and
 - (5) pay any remaining amounts to such of the Members and contributors (including Employers) in such proportions as the Trustee determines.

33.5 Dissolution

When all Benefits have been paid, and assets transferred or applied in accordance with the provisions of the Deed the Fund is dissolved.

34. Arbitration

34.1 Dispute

Unless the Fund is no longer a self managed fund (thus giving the right to appeal to the Superannuation Complaints Tribunal) any question or dispute with respect to the Fund or to the construction or meaning of this Deed shall (if the Trustee so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act 1985*.

34.2 Superannuation Complaints Tribunal

Unless the Fund is no longer a self managed fund there is no right of appeal to the Superannuation Complaints Tribunal.

34.3 Right of Action

No right of action shall accrue in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

35. Proper Law

35.1 Law

- (1) This Deed is governed, construed and takes effect in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the Deed is executed.
- (2) The Trustee, Members and Beneficiaries and any Employers must accept the jurisdiction of the Courts of that State.

36. SIS

36.1 Deemed inclusion

Despite any other provision in the Deed:

- (1) the Deed is deemed to include those provisions of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustee to elect for

the Fund to become a regulated fund and for the Fund to be complying (and to the extent of any inconsistency those provisions of SIS prevail);

- (2) the Trustee has power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements;
- (3) the Trustee may do anything permitted by SIS; and
- (4) the Trustee is not prohibited from doing anything unless it is prohibited by, and an offence under, SIS.

36.2 **Specific Provision**

Without limiting clause 36.1:

- (1) the Trustee has power to elect under SIS for the Fund to become a regulated fund;
- (2) the Trustee (and each director of a corporate Trustee) is, to the maximum extent permitted by SIS, indemnified out of the Fund against all liabilities incurred by the Trustee in the exercise (or purported or attempted exercise) of the trusts powers authorities and discretions vested in the Trustee pursuant to the Deed or by operation of law;
- (3) the provisions contained in SIS which do not apply to certain small funds (whether defined in SIS as “**self managed funds**” or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition.

36.3 **Non-mandatory Requirements**

The Trustee may determine not to comply with any non-mandatory Requirements.

37. **Interpretation - General**

37.1 **Headings**

The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed. Headings in the Particulars define the person or thing.

37.2 **Capitals**

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.

37.3 **Statutes**

References to any statute or regulation are references to that statute or regulation as amended, substituted or re-enacted from time to time.

37.4 **Gender etc**

Unless the context otherwise requires:

- (1) the singular includes the plural and vice versa;
- (2) one gender include all other genders; and
- (3) person means and includes a natural person, firm or corporation.

37.5 **Meaning in Act**

Any word or expression defined in SIS, the ITAA or the Requirements which is used but not defined herein shall adopt the same meaning.

37.6 **Recitals, Particulars, Schedules**

The recitals, particulars (being as set out on page 1 of this Deed) and schedules (if any) form part of this Deed.

37.7 **Severability**

If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason the same is severed from this Deed with the remainder in full force and effect.

37.8 **Notice etc**

- (1) Any notice or other communication to be made or given under this Deed shall be in writing and signed by the party giving it and shall be served either by delivery, by facsimile transmission or by prepaid registered mail to the address of the party as herein specified or at the last known address of such party.
- (2) All notices shall be deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted.
- (3) Notices sent by facsimile transmission shall be deemed to be delivered on the date of transmission.

37.9 **Clauses etc**

Unless the context otherwise requires, references in this Deed to clauses and schedules means clauses and schedules of this Deed.

37.10 **Successors**

This deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

37.11 Unless the context otherwise requires:

- (1) the singular shall include the plural and vice versa;
- (2) the use of one gender shall include all other genders;
- (3) representations, agreements, covenants, obligations or warranties, express or implied, by more than one person shall include those persons jointly and each of them severally;
- (4) every provision, express or implied, which applies to more than one person shall apply to those persons jointly and each of them severally; and
- (5) person means and includes a natural person, firm or corporation.

38. Interpretation - Definitions

38.1 Unless the context otherwise requires:

- (1) **"Accumulation Account"** means the account established on behalf of each Member pursuant to clause 9.1;
- (2) **"Beneficiary"** means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;
- (3) **"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;
- (4) **"Child"** includes an adopted child and a step child;
- (5) **"Commissioner of Taxation"** means the Federal Commissioner of Taxation;
- (6) **"Contributions"** means payments to the Fund by Members, Employers, Spouses, family members and others and include payments of a shortfall component pursuant to the SGC and Government co-contributions;
- (7) **"Deed"** means this Deed as amended from time to time;
- (8) **"Dependant"** in relation to a Member means:
 - (a) the Spouse of a Member;
 - (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;
 - (c) any other person who, in the opinion of the Trustee, was financially dependent on the Member at the relevant time;
 - (d) any other person who is a dependant as defined in the Requirements;
or

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- (e) if SIS permits, a person in an inter-dependent relationship with the Member;
- (9) “**Employee**” means a person in the employment of, or a director or office holder of, an Employer or an associate of an Employer;
- (10) “**Employer**” means any employer who contributes to the Fund for a Member; and includes the Sponsoring Employer if applicable;
- (11) “**Fund Year**” means the 12 month period ending on the 30th June, or such other period ending on such other date as the Trustee from time to time may determine;
- (12) “**ITAA**” means the *Income Tax Assessment Acts 1936 and 1997* as amended from time to time and the regulations under those Acts;
- (13) “**Lump Sum**” means the amount of Benefit, other than a Pension, payable to or in respect of a Member;
- (14) “**Member**” means a person who has been accepted by the Trustee as a member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a Pensioner;
- (15) “**Minimum Benefits**” means the minimum benefits which are required to be applied in respect of a member pursuant to Part 5 of the SIS Regulations;
- (16) “**Nominated Dependant**” means a Dependant nominated by a Member as such and includes a reversionary beneficiary of a Pension;
- (17) “**Pension**” includes a pension as defined in SIS, as set out in this Deed or any other regular form of payment, and where the context requires includes a reversionary Pension;
- (18) “**Permanent Incapacity or Permanent Invalidity**” has the same meaning as in the Requirements or as prescribed by the Regulator provided that where any part of a Benefit payable in that event is insured, the definition contained in the policy of insurance applies to the extent of that part of the Benefit;
- (19) “**Promised Benefit**” means a Benefit as agreed with the Trustee (whether by reference to a formula or otherwise);
- (20) “**Regulator**” means the regulator to whom the Trustee must provide reports under SIS or whose determination is relevant in the circumstances, being the Australian Securities and Investment Commission, the Commissioner of Taxation or Australian Prudential Regulation Authority as the case may be;
- (21) “**Requirements**” means such of the provisions of SIS, SGC, ITAA or other legislation and any requirements of the Regulator or any Minister of the Crown applicable to superannuation fund compliance with which is mandatory for the Fund;

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- (22) **"Reserve Account"** means an account established pursuant to clause 9.13 and which for the avoidance of doubt includes any unallocated amount maintained to provide Promised Benefits;
- (23) **"Restricted Benefit"** means a benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;
- (24) **"SGC"** means the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992* and the Superannuation Guarantee (Administration) Regulations as the context requires;
- (25) **"SIS"** means the *Superannuation Industry (Supervision) Act 1993* and the SIS Regulations;
- (26) **"SIS Regulations"** means the Superannuation Industry (Supervision) Regulations;
- (27) **"Sponsoring Employer"** means:
- (a) the person or entity, if any, named in the Particulars as the employer-sponsor of the Fund, by whatever named called (other than a person or entity expressed to retire from that office by the Deed by which these Rules are adopted to govern the Fund); or
 - (b) where:
 - (i) the Sponsoring Employer of the Fund declares by Deed that it wishes to retire from the office of Sponsoring Employer, or
 - (ii) the Trustee declares by Deed that the Sponsoring Employer of the Fund has ceased to perform the duties and functions of that office,any other person or entity who by Deed covenants with the Trustee to undertake and perform the duties and functions of the Sponsoring Employer in substitution for the Sponsoring Employer wishing to retire or ceasing to perform the duties and functions of the office, as the case may be;
- (28) **"Spouse"** means:
- (a) a person legally married at any time to a Member;
 - (b) a person (whether of the same sex or not) with whom the Member is in a relationship registered under a law for the purposes of section 22B of the *Acts Interpretation Act 1901*; or
 - (c) a person not legally married to the Member who, in the opinion of the Trustee, lives with the Member as the husband or wife (or if SIS permits the same sex partner) of the Member;

provided that where there is more than one such person the Trustee may determine one to the exclusion of the other;

- (29) "**Taxation**" includes income tax, capital gains tax, tax on Benefits, superannuation surcharge, payroll tax, land tax, stamp duty and any other taxes or duties;
- (30) "**Trustee**" means the Trustee or trustee for the time being of the Fund whether original, additional or substituted; and
- (31) "**Vested Benefit**" means that part of the Member's Accumulation Account which has vested in, and become payable to, the Member.

Schedule 1

THE HILLMAN SUPERANNUATION FUND

APPLICATION FOR MEMBERSHIP

1. I hereby apply for admission to membership of the Fund.
2. I state I am eligible to be admitted as a member of the Fund and (if the Fund is a self managed fund) appointed a Trustee (or a director of a corporate Trustee).
3. I agree as follows:
 - (1) I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
 - (2) I understand the terms and conditions of the Trust Deed, including the benefits payable, my rights and the rights of my Dependants.
 - (3) I consent to the Trustee acting as Trustee of the Fund.
 - (4) I agree and consent (if the Fund is a self managed fund) to be appointed a Trustee or a director of the corporate Trustee and declare I am eligible to be so appointed pursuant to the law.
 - (5) I agree to give to the Trustee my details (including my Tax File Number), or obtain them from my Employer.
 - (6) I agree to give any other information the Trustee may require for the purposes of the Fund.

Dated the _____ day of _____ 2010.

Name:
Address: Signature:
Occupation:
Date of Birth: Date:

NOMINATED DEPENDANT(S)

I nominate the following persons as my Nominated Dependants (and acknowledge that this is not a binding nomination):

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
.....
.....
.....
.....

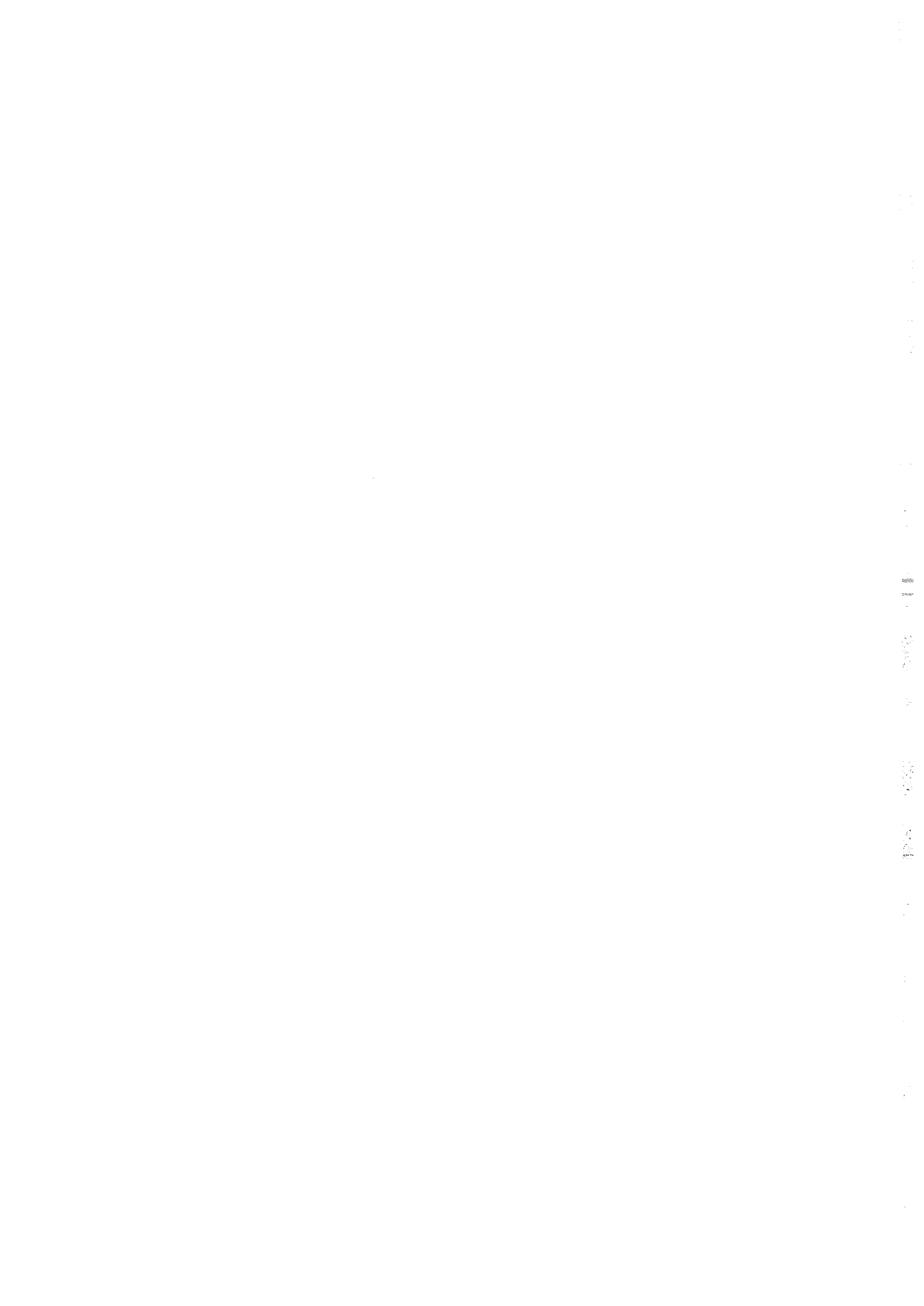


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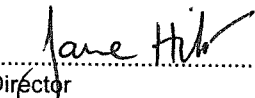
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Executed as a Deed

EXECUTED by **HILLMAN INVESTMENTS**)
(WA) PTY LTD ACN 147 071 458 as Trustee)
in accordance with section 127 of the)
Corporations Act 2001:)


.....
Director/Company Secretary

GEOFFREY HILLMAN.
.....
Name of Director/Company Secretary
(BLOCK LETTERS)


.....
Director

JANE HILLMAN
.....
Name of Director (BLOCK LETTERS)

