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Dated this 24 day of September 2008  
Gregg Lawyers Sol/JP/Cdec



## WELLSPRING SUPER FUND

Deed of Replacement

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Prepared by:  
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**SCHEDULE**

1. **Deed Date** 24.09.2004
  
2. **Resigning Trustee Details**  
Name and Address: **ANDRE FRANCISCUS KETELS**  
26 Gilmour Street, Chermside West, Queensland  
**RICHARD BROOKS JONES**  
C/- Level 7, 138 Albert Street, Brisbane, Queensland
  
3. **New Trustee Details:**  
Name and Address: **WELLSPRING INVESTMENTS PTY LTD [ACN: 132 208 489]**  
Level 7, 138 Albert Street, Brisbane, Queensland
  
4. **Members Details**  
Name and Address: **ANDRE FRANCISCUS KETELS**  
26 Gilmour Street, Chermside West, Queensland
  
5. **Date of Trust Fund Deed (Creation Date)**  
31 October 2002
  
6. **Variation Deeds**  
Not Applicable
  
7. **Name of Fund**  
**WELLSPRING SUPER FUND**
  
8. **Replacement Rule**  
Clause 3

**EXECUTED AS A DEED**

**SIGNED SEALED and DELIVERED** for and on behalf of the said **WELLSPRING INVESTMENTS PTY LTD [ACN: 132 208 489]** in accordance with section 127(1) of the Corporations Act

*L Banks*

*AF*

**SIGNED SEALED and DELIVERED** by the said **ANDRE FRANCISCUS KETELS** in the presence of:

*L Banks*

**WITNESS**

*AF*

**SIGNED SEALED and DELIVERED** by the said **RICHARD BROOKS JONES** in the presence of:

*L Banks*

**WITNESS**

*RBJ*

This Deed of Replacement is made on the Deed Date by the New Trustee the Resigning Trustee and the Member whose respective details are in the Schedule.

**RECITALS:**

- A. The Fund was established by the execution of the Trust Deed on the Creation Date.
- B. The Trust Deed was varied by the Variation Deeds.
- C. The Resigning Trustee wishes to resign as trustee of the Fund and the New Trustee has agreed to act as the trustee of the Fund.
- D. The Parties to this Deed wish to record the replacement of the trustee in accordance with the terms of the Trust Deed and have entered into this Deed accordingly.

**NOW THIS DEED WITNESSES:**

**1. INTERPRETATION AND DEFINITIONS**

**1.1 Interpretation**

Unless a contrary intention is evident or the relevant term is defined in the Deed, the terms and expressions in the Trust Deed have the same meaning as this Deed.

**1.2 Definitions**

For the purposes of this Deed the following terms shall mean as follows:

"**Act**" means the SIS Act, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Corporations Act 2001, the Family Law Act 1975 (Part VIIIB), the Social Security Act 1991, the Veterans' Entitlement Act 1986, any successor acts and all regulations made pursuant to the foregoing acts;

"**Creation Date**" means the date so specified in the Schedule;

"**Deed Date**" means the date that all the Parties sign this Deed so specified in the Schedule;

"**Member**" means the current Member or Members of the Trust Fund so specified in the Schedule and "**Members**" has the same meaning;

"**New Trustee**" means the New Trustee or Trustees so specified in the Schedule;

"**Replacement Rule**" means the clause, rule or provision of the Trust Deed so specified in the Schedule;

"**Resigning Trustee**" means the current Trustee or Trustees of the Trust Fund so specified in the Schedule;

"**Rule**" means a reference to a clause, section, rule or provision of the Trust Deed whether or not described as such in the Trust Deed; and those rules that are attached to this Deed, any amendment of or substitution of those rules, and any other rule that is deemed by any law to be a rule of the Fund;

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

"**Trust Deed**" means the deed establishing the Trust Fund signed on the Creation Date together with the Variation Deeds and all deeds or declarations amending or varying the said Deed;

"**Trust Fund**" means the superannuation fund established by execution of the Trust Deed by the name described in the Schedule and "**Fund**" shall have the same meaning;

"**Variation Deeds**" means deed(s) resolution(s) and declaration(s) signed subsequent to the Creation Date (if any) which vary or amend the Trust Deed or replace the Trustees as particularised in the Schedule.

## **2. APPOINTMENT AND ACCEPTANCE**

### **2.1 Appointment of New Trustee**

The Members in accordance with the powers conferred upon them by virtue of the Replacement Rule, and with the consent of the New Trustee, hereby appoint the New Trustee, to act as the trustee of the Fund with effect as and from the Deed Date.

### **2.2 Acceptance by New Trustee**

The New Trustee hereby accepts the appointment to act as trustee of the Fund and agrees and declares it will undertake and carry out the trusts and exercise the rights, powers, privileges and discretions and that it will observe and be bound by the restrictions and limitations imposed upon the trustee as set out and declared in the Trust Deed.

## **3. RESIGNATION**

The Resigning Trustee hereby:

- (a) resigns as trustee of the Fund with effect from the Deed Date;
- (b) declares that the estate and interest formerly held by the Resigning Trustee as trustee in the assets of the Fund shall as and from the Deed Date be vested in the New Trustee.

## **4. SUPERANNUATION INDUSTRY (*SUPERVISION*) ACT 1993**

This Deed shall not take effect, to the extent that:

- (a) any one or more of the provisions of this Deed are not able, allowed, or required to take effect pursuant to the provision of the *SIS Act*; and
- (b) the provision is not capable of amendment to enable or allow this Deed to take effect.

benefit that resulted from the commutation of a pension provided that meets the requirements of Regulation 1.06 (2).

#### **6. Allocated Pension**

The following provisions apply to Allocated Pensions:

- (a) the pension must meet the standards of Regulation 1.06(4);
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of Regulation 1.07A.

#### **7. Flexi Pension**

The following provisions apply to Life Expectancy Pensions:

- (a) the pension must meet the standard of Regulation 1.06(6)
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of Regulation 1.07B.

#### **8. Life Expectancy Pension**

The following provisions apply to Life Expectancy Pensions:

- (a) the pension must meet the standards of Regulation 1.06(7);
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the following requirements:
  - (i) where the primary beneficiary became entitled to the benefit on or after 20 September 1998 the commencement day is the day when the primary beneficiary became entitled to the pension;
  - (ii) the pension must also meet the standards of Regulation 1.07B.
- (c) a benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if the benefit meets the standards of Regulation 1.06(1B) and the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of a pension provided that meets the requirements of Regulation 1.06 (7) and also meets the standards of Regulation 1.07B.

#### **9. Market Linked Pension**

The following provisions apply to Market Linked Pensions:

- (a) the pension must meet the standards of Regulation 1.06(8);
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the following requirements:
  - (i) if the pension has a commencement day on or after 20 September 2004, the pension must also meet the standards of Regulation 1.07C;
- (c) a benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if the benefit meets the standards of Regulation 1.06(1B) and the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of a pension provided that meets the requirements of Regulation 1.06 (8) also meet the standards of Regulation 1.07C.

## 10. Simple Pensions

The following provisions apply to Simple Pensions:

- (a) the pension must meet the standards of Regulation 1.06(9A);
- (b) payment of the pension must be made at least annually; and
- (c) no capital supporting the pension can be added to by way of contribution or rollover after the pension has commenced;
- (d) for a pension in relation to which Regulation 1.06(9A)(a) applies the pension must also meet the standards of Regulation 1.07D; and
- (e) for a pension in relation to which Regulation 1.06(9A)(b) applies the pension must also meet the standards of Regulation 1.07B.

## 11. Transition to Retirement Pensions

The following provisions apply to Transition to Retirement Pensions:

- (a) the pension must meet the standards of:
  - (i) Regulation 1.06 (9A) (a); and
  - (ii) subregulation 1.06 (9A).
- (b) the pension must allow total payments (including under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:
  - (i) on 1 July in the financial year in which the payment is made; or
  - (ii) if that year is the year in which the pension commences – on the commencement day; and
- (c) the pension must comply with paragraph (b) of the definition of non-commutable allocated pension in Regulation 6.01(2), as if it were such a pension.

## 12. Particular arrangements

Subject to the Act, the Trustee may:

- (a) require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension; and
- (b) agree with the Beneficiary on particular arrangements to apply to the pension. For example, these may relate to the number and identity of any reversionary beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters.

## 13. Reserves

Subject to the Act, where it considers it appropriate, the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Rule 12, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;

- (c) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the Beneficiary to whom the pension benefit related and that Beneficiary's Dependents.

#### **14. Death benefits**

- (a) This Rule 14 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rules 8 and 12 of this Part, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule 14 applies, then unless the Trustee otherwise agrees, and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with Rule 12.6 of these Rules. For this purpose, references in Rule 12.6 of these Rules to the Member will be treated as references to the deceased pension recipient.