

**Date 17/8/2010**

## **Tenants in Common Deed**

**Kantha Pillay as custodian of the The Pillay Superannuation Fund  
and**

**Kumarasan Pillay AND Kantha Pillay as investors**

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## Tenants In Common Deed

**Dated** 17/ 8 / 2010

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## Parties

Name	Kantha Pillay as custodian of the The Pillay Superannuation Fund
Address	19A Griffith Street HENLEY BEACH S.A. 5022
Short name	Custodian

Name	Kumarasan Pillay AND Kantha Pillay as investors
Address	19A Griffith Street HENLEY BEACH S.A. 5022
Short name	Investors

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## Background

- A. The Custodians and the Investors have or will purchase the property known as Lot 391 Nicklaus Pde, Nth Lakes, **(Property)** as tenants in common.
- B. The parties have agreed to specify in this Deed their mutual rights and obligations as joint owners.

## **The Parties Agree**

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### **1. Ownership**

#### **1.1 Shares**

The parties agree that they own the Property in the following shares:

1.1.1 Custodians – 24%; and

1.1.2 Investors – 76%.

#### **1.2 Entitlement**

The parties confirm they are entitled to the Property as legal and beneficial owners in these shares.

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### **2. Mortgage**

#### **2.1 Mortgagee**

The Custodians acknowledge and agree that the Investors may mortgage their share in the Property (**Investor Mortgage**) to such bank or lender as the parties may agree (**Mortgagee**).

#### **2.2 Default**

The parties agree that if there is default under the Investor Mortgage or the Mortgagee Requires the sale of the Property to repay the funds secured by the Investor Mortgage, then The Property must be sold.

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### **3. Sales of Shares**

#### **3.1 Sale Notice and Contract**

If a party wishes to sell any part of its interest in the Property, that party must serve on the other party:

3.4.1 notice of intention to sell nominating the sale price; and

3.4.2 a draft contract for sale of land,

(together being the **Sale Notice**).

#### **3.5 Negotiation and Dispute Resolution**

If a party is interested in purchasing the share of the Property in the Sale Notice, it must notify the selling party and the provisions of this clause will apply. The interested parties will negotiate in good faith to agree the sale price and contract. If within 35 days from the date of service of the Sale Notice:

3.5.1 the parties are unable to agree the sale price, then either party may refer this to determination by a valuer, pursuant to the Dispute Resolution clause, for the valuer to determine the sale price which will be the relevant share of the then current market value of the Property; and

3.5.2 the parties are unable to agree the contract, then either party may refer this to a barrister, pursuant to the Dispute Resolution clause, for the barrister to determine that the contract will be the then printed contract issued by the Law Society of New South Wales, amended as necessary and relevant for the Property with all required vendor disclosure documents attached.

The determination of the sale price and contract pursuant to the Dispute Resolution clause will be final and binding on the parties, who will then promptly enter into a contract and proceed with the sale of the interest in the Property.

### **3.6 No Court Orders**

The parties agree not to seek any order for partition or sale of the Property until the procedures set out in this clause have been completed.

### **3.7 Cooperation**

The parties agree to cooperate in implementing the provisions of this clause and sign all relevant contracts, transfers and other documents.

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## **4. Sale of the Property**

### **4.1 Application**

The provisions of this clause will apply if:

4.1.1 the Property must be sold as required under clause 2.2; or

4.1.2 either party requests the sale of the Property.

### **4.2 Sale Procedure**

If the Property is to be sold the parties must:

4.2.1 appoint a real estate agent to market the Property on an exclusive basis;

4.2.2 appoint a solicitor to prepare the contract for the sale of the Property and act on the conveyance; and

4.2.3 proceed with the sale of the Property to obtain the best price for the Property as agreed by the parties or, failing agreement, the Property will be auctioned.

### **4.3 Distribution of Proceeds**

The sale proceeds after payment of the agent's commission and expenses, legal fees and disbursements, will be aid to the parties in their respective shares, subject to any deduction or adjustment for costs and expenses incurred in respect of the Property.

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## **5. Obligations**

### **5.1 Management**

The parties agree that all decisions to be made in respect of the Property must only be made

With the joint agreement of all parties, including:

- 5.3.1 construction of improvements and development on the Property;
- 5.3.2 leasing of the Property;
- 5.3.3 appointment of agents to manage the Property; and
- 5.3.4 maintenance of the Property.

### **5.4 Outgoings and Income**

The parties will:

- 5.4.1 bear in their respective shares all outgoings and expenditures relating to the
- 5.4.2 Property including:
  - (a) local council rates, land tax, statutory charges and management fees;
  - and
  - (b) maintenance costs including inspections and repairs;
- 5.4.3 be entitled in their respective shares to any income from the Property, including rent.

### **5.5 General**

The parties agree that while they remain tenants in common of the Property:

- 5.5.1 they will comply with all laws relating to the Property, including restrictions on the use and occupation of the Property;
- 5.5.2 they will maintain the Property and services to the Property in good repair and working condition;
- 5.5.3 they will not make any alterations or improvements to the Property or otherwise develop the Property without the joint agreement of all parties;
- 5.5.4 none of them will occupy the Property as a residence or otherwise.

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## **6. Dispute Resolution**

### **6.1 Application**

In a dispute between the parties in connection with the Property or this Deed, the procedure set out in this clause will apply.

## **6.2 Qualified expert**

The parties to the dispute will use their best endeavours to agree an expert to determine the dispute. If the parties are unable to agree an expert within 14 days after one party has given the other notice nominating an expert, (or an agreed or previously nominated expert refuses or fails to make a determination) either party may request an expert be nominated as follows:

- 6.5.1 for disputes regarding value, a registered valuer nominated by the President of the Australian Property Institute Inc New South Wales Chapter;
- 6.5.2 for disputes relating to issues of law, a barrister of more than 5 years standing with expertise in the relevant area of law nominated by the President of the Bar Association New South Wales;
- 6.5.3 for disputes regarding insurance, an insurance assessor appointed by the President of the Insurance Institute of New South Wales; and
- 6.5.4 for other disputes the relevant expert properly qualified appointed by the President of the Institute of Arbitrators and Mediators Australia, New South Wales Chapter.

## **6.6 Expert Determination**

**The Qualified Expert will:**

- 6.6.1 act as an expert and not as an arbitrator and his decision will be final and binding on the parties;
- 6.6.2 take into account any submissions by the parties and conduct any proceedings in the manner he considers appropriate; and
- 6.6.3 be asked to hand down a decision with reasons in writing within 21 days after his appointment.

## **6.7 Parties co-operation**

The parties must provide the Qualified Expert with all assistance and documents and may at any hearing conducted by the Qualified Expert appear personally or be legally represented or be represented by any consultant.

## **6.8 Cost of Expert**

The costs of the Qualified Expert will be borne equally by the parties involved in the dispute

Unless otherwise determined by the Qualified Expert.

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## **7. No Partnership**

This Deed will not be taken as creating a partnership between the parties and no owner is entitled to incur liabilities on behalf of another owner without that owner's consent except for outgoings necessarily incurred in connection with the Property.

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## 8. Definitions

In this document unless expressed or implied to the contrary:

**Business Day** means Monday to Friday excluding public holidays in New South Wales.

**Investors** means Kumarasan Pillay and Kantha Pillay.

**Sale Notice** means the Notice and draft Contract referred to in clause 3.1.

**Qualified Expert** means the expert agreed by the parties or otherwise nominated in accordance with clause 5.2.

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## 9. Interpretation

### **Number, gender and corporation**

Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

### **Bodies and Associations**

References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.

### **Statutes and Regulations**

Reference to a statute or ordinance includes all regulations under and amendments to That statute or ordinance whether by subsequent statute or otherwise and a statute or Ordinance passed in substitution for the statute or ordinance.

### **Headings**

Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Deed.

### **Monthly and Yearly**

A reference to month and year means respectively calendar month and calendar year.

### **Entire Agreement**

This Deed constitutes the entire agreement of the parties on everything connected with the subject matter of this Deed and supersedes all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior representations with respect to the subject matter of this Deed except those set out in this Deed.

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**Counterparts**

This document may be executed in any number of counterparts all of which taken Together constitute one instrument.

**Business Days**

Where under or pursuant to the Deed the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the State or place in which the Premises are situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

**Include**

The word include (in any form) when introducing one or more specific items does not Limit the meaning of the general words to those items or to items of a similar kind.

**Rule of Construction**

In the interpretation of this Deed no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Deed.

**Notices etc**

Any notices, notification, nomination, request, demand authorisation, approval or consent must be in writing and will be properly executed if signed by an officer, manager or solicitor of the party giving it.


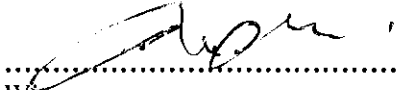
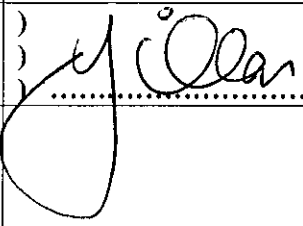
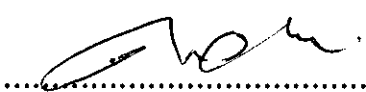
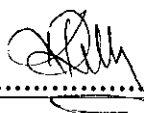
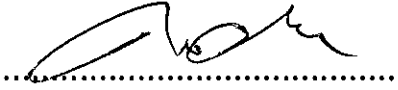
**Service**

A document may be served by leaving it at or sending it by pre-paid post to the Relevant Officer or manager at the address of the party set out in this Deed or such other address subsequently notified. A document sent by post will be deemed to be delivered at the time when it would be delivered in the ordinary course of post.



## Signing Page

Executed by the parties

<b>Signed Sealed and Delivered by Kantha Pillay as custodian of the The Pillay Superannuation Fund in the presence of:</b>	) ) )  .....
 ..... Witness	
<b>Signed Sealed and Delivered by Kumarasan Pillay as investor in the presence of:</b>	) ) )  .....
 ..... Witness	
<b>Signed Sealed and Delivered by Kantha Pillay as investor in the presence of:</b>	) ) )  .....
 ..... Witness	