

Date 17/ 8 /2010

## **Declaration of the Pillay Custody Trust**

**Kumarasan Pillay**  
and

**Kantha Pillay**

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## Declaration Of Custody Trust

Dated                /        /

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### Parties

Name	<b>Kumarasan Pillay</b>
Address	19A Griffith Street HENLEY BEACH S.A. 5022
Short name	<b>Kumarasan</b>

Name	<b>Kantha Pillay</b>
Address	19A Griffith Street HENLEY BEACH S.A. 5022
Short name	<b>Kantha</b>

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### Background

- A. The Fund is a Regulated Fund and the Trustee is the trustee of the Fund.
- B. Section 67 of the SIS Act describes circumstances in which the trustee of a Regulated Fund can enter into an agreement to borrow funds to acquire an investment for that Regulated fund. The section provides, among other things, that:
- B.1 legal title to the investment must be held by a third party on behalf of the trustee of the Regulated Fund; and
- B.2 the rights of the lender against the trustee of the Regulated Fund for any default under the borrowing agreement is limited to rights relating to the relevant investment.
- C. The Trustee intends to make an investment via an instalment warrant into an associated absolutely entitled trust for trustees of the trust to enter into a loan agreement for the purpose of purchasing a prescribed investment.
- D. The Custodian agrees to act as the third party described in Recital B.1 and hold title to the Authorised Investments in accordance with the terms and conditions of this deed.

### Operative Provisions

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#### Definitions

- 1.1 In this deed unless expressed or implied to the contrary:

**Authorised Investments** means the investments specified in a Terms Sheet.

**Cash Account** means the account established under clause 3.2.

**Custodian** means Kantha Pillay.

**Custody Arrangement** means each separate arrangement between the Trustee, the Custodian and a lender as described in a Terms Sheet.

**Custody Fund** means the Initial Sum together with the following amounts paid in respect of each Custody Arrangement:

- (a) all right title and interest of the Custodian from time to time in the Authorised Investments; and
- (b) all income and other proceeds generated from the holding of the Authorised Investments.

**Custody Trust** means the trust created by operation of this Deed.

**Deed** means this trust deed, including all schedules and appendices.

**Fund** means The Pillay Superannuation Fund.

**Lender** means each person from whom the Trustee is borrowing in order to acquire Authorised Investments, as identified in a Terms Sheet.

**Initial Sum** means the sum of \$10 paid by the Trustee to the Custodian on the date of this deed (receipt of which is acknowledged).

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cwth)

**Superannuation Law** means any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the *Superannuation Industry (Supervision) Regulations 1994* (Cwth).

**Terms Sheet** means a document in the form attached identifying the person from whom the Trustee will borrow monies, the amount of money that lender will loan or make available to The Trustee and the Authorised Investments to be purchased with those monies.

**Trustee** means Kumarasan Pillay as the Fund's trustee.

**Vesting Date** means the first to occur of:

- (a) the date which is 80 years from the date of the Deed; and
- (b) any earlier date the Custodian and Trustee jointly determine.

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## 2. Declaration of Trust

- 2.1 The Custodian declares that she will hold the benefit of the Custody Fund on trust for the Trustee subject to the terms of this Deed.
- 2.2 The Custodian and the Trustee agree that in respect of each proposed Custody Arrangement the Trustee will provide to the Custodian a Terms Sheet, executed by the

Trustee, together with all funds necessary to enable the purchase of the Authorised Investments identified in the Terms Sheet, or advice as to when and where the purchase of the Authorised Investments is to occur, at which point the Trustee will be taken to have requested the Custodian to purchase and take legal title to those Authorised Investments subject to the terms of the Deed.

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**3. Custodian to hold title**

3.1 The Custodian agrees that, subject to clause 3.2:

3.1.1 one will maintain legal title to the Authorised Investments until directed by the Trustee in accordance with clause 4; and

3.2.2 each separate parcel of Authorised Investments identified in a Terms Sheet, together with all income and other proceeds generated from the holding of those Authorised Investments, will be held by the Custodian in a manner that ensures they are separately identifiable from such amounts arising out of an Authorised Investment identified in a separate Terms Sheet.

3.3 The Custodian must establish one or more bank accounts into which it will deposit all income and other proceeds generated from the holding of Authorised Investments, unless otherwise agreed with the Trustee.

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**4. Trustee to direct Custodian**

4.1 The Trustee has a vested an indefeasible interest in the Authorised Investments and any other assets of the Custody Trust, and is absolutely entitled to the Authorised Investments and the other assets as against the Custodian at all times up to and including the Vesting Date.

4.2 The Custodian will, whenever called on to do so by the Trustee, transfer the Authorised Investments and other assets of the Custody Fund to the Trustee or otherwise deal with the Authorised Investments as the Trustee may direct in writing.

4.3 The Custodian will use its best endeavours to pass on information it receives concerning the Authorised Investments to the Trustee as soon as practicable, including where any discretionary action on the part of the Trustee may be required including, if applicable, relating to such matter as voting, participation in bonus issues, capital reductions, share buy backs or rights plans.

4.4 If requested by the Trustee the Custodian must execute all such documents as are necessary to:

4.5.1 Charge, mortgage, or create a lien or security over the Authorised Investments to enable payment of the loan by the Lender to the Custodian; and

4.5.2 enable the payment by the Trustee to the Lender of all monies outstanding in respect of those Authorised investments and facilitate the removal of any charge.

4.6 Notwithstanding clauses 4.1 and 4.2 above, prior to transferring the Authorised Investments to the Trustee the Custodian must notify the Lender in writing of the transfer.

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**5. Warranties**

The Trustee warrants that:

- 5.1 the Fund is a Regulated Fund;
- 5.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- 5.3 the Borrower's investment in the Authorised Investment accords with the Fund's written investment strategy;
- 5.4 it is the sole trustee of the Fund;
- 5.5 it has the power and authority to enter into this Deed;
- 5.6 it has the power and authority to purchase the Authorised Investments; and
- 5.7 this Deed constitutes its legally binding obligations, enforceable against it in accordance with its terms.

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**6. Duration of Trust**

- 6.1 The Trust will commence on the date of this Deed and terminate on the Vesting Date.
- 6.2 The Trustee must ensure that all monies loaned by the Lender to the Trustee in respect of the Authorised investments have been repaid and any charge, mortgage, lien or security over the Authorised Investments has been discharged in full prior to the Vesting Date.
- 6.3 On the Vesting Date, or as soon as practicable after the Vesting Date, the Custodian must transfer the Authorised Investments and any other assets of the Custody Trust to the Trustee or otherwise deal with the Authorised Investments as the Trustee may direct in writing.

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**7. Replacement or resignation of Custodian**

- 7.1 The Trustee may at any time by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.
- 7.2 Notwithstanding clause 7.1, prior to removing the Custodian, appointing a replacement custodian or appointing an additional custodian, the Trustee must notify the Lender in writing of the removal, replacement or appointment.
- 7.3 As soon as practicable following the replacement of a custodian the outgoing custodian must sign all documents and do all things necessary to transfer legal title (and any CHESS sponsorship, if applicable ) to the Authorised Investments to the new custodian and must, if requested by the Trustee, transfer control of the Cash Account to the new custodian.
- 7.4 As soon as practicable following the appointment of an additional custodian, the continuing custodian must sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship, if applicable) to the Authorised Investments, and control of the Cash Account, to the new custodian jointly with the continuing custodian.

- 7.5 The Custodian may resign by providing not less than 60 days written notice to the Trustee, during which time the Custodian must comply with any reasonable directions of the Trustee concerning completion of the steps set out in clauses 7.1 to 7.4.
- 7.6 Further to the outgoing custodian's obligations under clauses 7.1 to 7.5, the outgoing custodian must, on its removal or resignation:
- 7.6.1 sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investments to the new custodian; and
- 7.6.2 indemnify the new custodian in respect of any acts or omissions of the outgoing custodian in respect of the Custody Trust prior to its removal or resignation.
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## **8. Indemnity**

The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian in relation to the purchase of the Authorised Investments or by virtue of the Custodian holding legal title to the Authorised Investments or as a consequence of the Custodian complying with any direction of the Trustee under this Deed.

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## **9. Costs**

Further to clause 8, the Trustee indemnifies the Custodian against, and will pay the Custodian on demand the amount of, all losses, liabilities, costs and expenses (including, Without limitation, legal expenses on full indemnity basis) and Taxes in connection with:

- 9.1 the negotiation, preparation, execution, stamping and registration of the Deed;
- 9.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Deed; and
- 9.3 any amendment to, or consent, waiver or release of or under, this Deed.
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## **10. Notices**

- 10.1 All notices to be given to or demands to be made under this Deed must be in writing and may be delivered in person or sent by mail or facsimile to the party's current business address.
- 10.2 All notices are deemed served 48 hours after the date of posting or if delivered personally, on the actual date of receipt or if sent by facsimile, in the normal course of transmission.
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## **11. General and Interpretation**

- 11.1 This Deed may only be varied or replaced by a document duly executed by the parties.
- 11.2 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including to complete the purchase of Authorised Investments identified in a Terms Sheet.

- 11.3 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties and survives this Deed's termination.
- 11.4 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.
- 11.5 The warranties, undertakings, agreement and continuing obligations in the Deed do not merge on completion.
- 11.6 The Deed is governed by and is to be construed in accordance with the laws of the jurisdiction specified in South Australia.
- 11.7 If a party consists of more than one person, this Deed binds them jointly and each of them severally.
- 11.8 The Deed may be executed in any number of counterparts all of which taken together constitute one instrument.
- 11.9 If a payment or other act is required to be made or done on a day which is not a business day, the payment or act must be made or done on the next following business day.
- 11.10 A reference in this Deed to:
- 11.10.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 11.10.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 11.10.3 a person includes the legal personal representatives, successors and assigns of that person;
  - 11.10.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
  - 11.10.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - 11.10.6 the singular includes the plural and vice versa; and
  - 11.10.7 gender includes the other genders.
- 11.11 Where a party is a trustee and the party makes a covenant, agreement, undertaking, representation or warranty, it will be construed to be a covenant, agreement, undertaking, representation or warranty made in the same capacity and as trustee of the relevant trust.

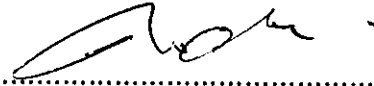


## Signing Page

Executed by the parties in South Australia on

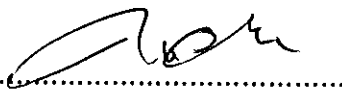
17 August 2010

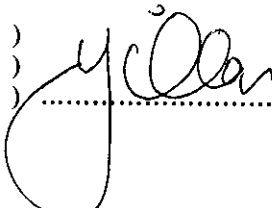
**SIGNED SEALED AND DELIVERED** by  
**Kantha Pillay** in ones capacity as  
Custodian in the presence of:

  
.....  
Witness

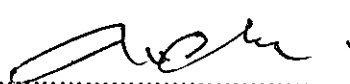
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**SIGNED SEALED AND DELIVERED** by  
**Kumarasan Pillay** in ones capacity as a  
Fund trustee in the presence of:

  
.....  
Witness

)  
)  
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.....

**SIGNED SEALED AND DELIVERED** by  
**Kantha Pillay** in one capacity as a  
Fund trustee in the presence of:

  
.....  
Witness

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## Schedule

### Pro Forma Terms Sheet

To:

<b>Name of Fund:</b>	The Pillay Superannuation Fund
<b>Name of Trustee:</b>	Kumarasan Pillay
<b>Authorised Investments:</b>	
<b>Settlement Date (if applicable):</b>	
<b>Lender:</b>	
<b>Lender ABN/CAN (if applicable):</b>	As per the address and notice details set out in the relevant loan Agreement.
<b>Loan Amount:</b>	
<b>Indicative Loan Term:</b>	