

# TOWNSENDS BUSINESS & CORPORATE LAWYERS

20 August 2012

Our Ref:CH:RP:1226482

The Trustees  
Sugar Bean super Fund  
C/- Mr David Pritchard  
AGS Financial Services  
Level 2, 12-14 Falcon Street  
SYDNEY NSW 2065

**by email only:** [david@agsfinancialgroup.com.au](mailto:david@agsfinancialgroup.com.au)

Dear Trustees

## SUGAR BEAN SUPER FUND: AMENDMENT DEED

### 1. INSTRUCTIONS

- 1.1. We refer to your instructions to prepare the necessary Amendment Deed to permit the above Superannuation Fund to engage in limited recourse borrowing arrangements and to confer on the trustee various powers required for such arrangements.
- 1.2. A superannuation fund which has elected to be regulated under the *Superannuation Industry (Supervision) Act 1993* may engage in limited recourse borrowing arrangements where those arrangements satisfy the various requirements of section 67A and 67B of that Act.
- 1.3. The various provisions to be included by the Amendment Deed we believe will satisfy most lenders.
- 1.4. However, the requirements of lenders may differ and may change over time. Consequently, it is possible a particular lender may require special or additional provisions to be included in the trust deed of the Superannuation Fund. In this case, the trust deed of the Superannuation Fund may require a further amendment.
- 1.5. We note your additional instructions to prepare Change of Trustee documents for the above named Fund. We note that Clause 175 of the current trust deed states that upon appointing a corporate trustee a replacement deed must be executed to provide the mechanisms to enable a corporation to act as trustee.
- 1.6. In accordance with your instructions the Amendment Deed will, in addition to updating the limited recourse borrowing provisions, also vary Clause 175 so that it will allow the appointment of a corporate trustee without the need for the trustees to execute a replacement deed.
- 1.7. **Please note this Amendment Deed must be signed and dated prior to the Fund signing and dating the Change of Trustee documents provided to you under our separate letter of advice.**

Townsend Business & Corporate Lawyers  
Level 9, 65 York Street, Sydney NSW 2000  
T : 8 2 9 6 6 2 2 2 F : 8 2 9 6 6 2 0 0  
E : [info@townsendslaw.com.au](mailto:info@townsendslaw.com.au)  
W : [www.townsendslaw.com.au](http://www.townsendslaw.com.au)

Liability limited by a scheme approved under  
Professional Standards Legislation

## **2. DOCUMENTS PREPARED**

2.1. We have prepared the following documents:

- (a) **Amendment Resolution:** Resolution to authorise the amendment of the Superannuation Deed and the execution of the Amendment Deed.
- (b) **Amendment Deed** (in duplicate): On execution, this deed will amend the provisions of the Superannuation Fund to introduce the various provisions associated with limited recourse borrowing arrangements and allow for a corporate trustee to be appointed.
- (c) **Member Notice:** This notice to the Members provides information as to the nature and impact of the amendment on their benefits.

## **3. EFFECT OF THE AMENDMENT DEED**

- 3.1. The Amendment Deed, once executed, will amend the provisions of the superannuation fund.
- 3.2. In particular, the Amendment Deed will confer on the trustee necessary power to enter into limited recourse borrowing arrangements.

## **4. STAMP DUTY ON AMENDMENT DEED - NSW**

- 4.1. The Amendment Deed will not be liable for stamp duty on its execution.
- 4.2. Section 65(10) of the *Duties Act 1997 NSW* provides that an instrument that amends the provisions governing a complying superannuation fund is exempt from duty.

## **5. TAXATION CONSEQUENCES OF EXECUTION OF THE AMENDMENT DEED**

- 5.1. The execution of the Amendment Deed will not cause a CGT event to occur in relation to the Trustee or a member.
- 5.2. In particular CGT Events A1 ("Disposal") and D1 ("Creating Rights") do not apply as, respectively, the amendment does not constitute a disposal of assets and the amendment does not constitute a material variation of the member's interest in the Superannuation Fund (or, alternatively, section 118-305(1) of the *Income Tax Assessment Act 1997* applies).
- 5.3. The execution of the Amendment Deed will not give rise to a resettlement of the Superannuation Fund for either income tax purposes or stamp duty purposes. As the amendment does not constitute a fundamental alteration in the trust relationship established by the original deed then on the authority of the *Commercial Nominees Case*, a resettlement will not occur. Consequently, CGT Events E1 ("Creating a trust") and E2 ("Transferring asset to a Trust") do not occur.

## **6. REGULATORY NOTIFICATIONS**

- 6.1. As the Amendment Deed does not change the name of the fund, the trustees or directors of the fund or the membership or contact details of the fund, no regulatory notification obligation arises under SIS Regulation 11.07AA.

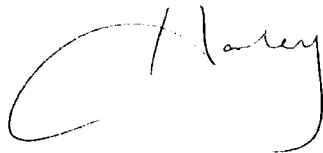
## **7. ORDER IN WHICH DOCUMENTS ARE TO BE SIGNED**

- 7.1. The documents must be signed in the following order:
  - (a) Amendment Resolution – to be signed by the Trustees;
  - (b) Amendment Deed – to be signed by the Trustees; and
  - (c) Member Notice – to be signed by the Members.

Please contact Caroline Harley if you have any queries in relation to this matter.

Yours faithfully,

**TOWNSENDS BUSINESS & CORPORATE LAWYERS**



**MICHAEL HALLINAN BA LLB FTI SSA**  
Special Counsel

**CAROLINE HARLEY BA LLB GRAD DIP LEG PRAC LLM (LEG PRAC)**  
Solicitor

Encl:

- Amendment Resolution
- Amendment Deed
- Member Notification

**SELF MANAGED SUPERANNUATION FUND  
AMENDMENT DEED**

**SUGAR BEAN SUPER FUND**

**ABN 98 219 531 773**

Townsend Business & Corporate Lawyers  
Level 9, 65 York Street, Sydney NSW 2000  
T: 8296 6222 F: 8296 6200  
E: [info@townsendslaw.com.au](mailto:info@townsendslaw.com.au)  
W: [www.townsendslaw.com.au](http://www.townsendslaw.com.au)

Liability limited by a scheme approved under  
Professional Standards Legislation

THIS AMENDMENT DEED is made at 394 SYDNEY RD, BALGOWLAH 2093  
on the 22<sup>nd</sup> August, 2012

**BY** Thomas Vui Chung Chai as trustee for Sugar Bean Super fund

and

**Veronica Hong Kun Cheng** as trustee for Sugar Bean Super fund

both of Ground Floor, 39 Battle Boulevard, Seathforth NSW

(jointly "the Trustee")

**AND** Thomas Vui Chung Chai as employer-sponsor for Sugar Bean Super Fund  
whose registered office is at Ground Floor, 394 Sydney Road, Balgowlah NSW

("the Employer-Sponsor")

## RECITALS

- A. By a Deed dated 17 April 2009 ("the Current Deed") a superannuation fund known as the "Sugar Bean Super Fund" ABN 98 219 531 773 ("the Superannuation Fund") was established for the sole purpose of providing superannuation benefits for the Members of the fund.
- B. The Current Deed contains the Governing Rules of the Superannuation Fund.
- C. The Trustees wish to amend the provisions of the Current Deed to authorise the Trustee to engage in borrowing arrangements of the kind and on the terms and conditions permitted by sections 67A and 67B of the *Superannuation Industry (Supervision) Act 1993* and to confer upon the Trustee various incidental powers in relation to such arrangements.
- D. The Trustees also wish to amend the provisions in clause 175 to enable the appointment of a corporation as the trustee of the fund without the requirement of signing a replacement deed.
- E. Clause 184 of the Current Deed provides that the Trustee may, with the consent of each member and the written consent of the Employer-Sponsor, by deed amend the provisions of the Current Deed.
- F. The Trustees are the current Trustee of the Superannuation Fund and by executing this Amendment Deed exercise the amendment power conferred on them by reason of being the Trustee with the consent of the Principal-Employer.

- G. The Trustees are of the opinion that the amendments will not result in the Superannuation Fund becoming non-complying and the amendments neither breach the *Superannuation Industry (Supervision) Act 1993* nor result in a reduction of a member's benefit.
- H. The current members of the Superannuation Fund consent to the amendments to be made by this Amendment Deed as evidenced by their signing of this Amendment Deed.
- I. The current Employer-Sponsor consents to the amendments to be made by this Amendment Deed as evidenced by his signing of this Amendment Deed.

## OPERATIVE PART

With effect on and from the date of this Amendment Deed the provisions of the Current Deed are amended as follows.

- 1. The Superannuation Trust Deed Definitions contained within the Current Deed are amended by inserting in alphabetical order the following definition:

**"Limited Recourse Borrowing Exception"** means a borrowing arrangement which satisfies the requirements of section 67A and 67B of the *Superannuation Industry (Supervision) Act 1993*."

- 2. Clause 136 is amended by replacing the clause with the following:

**"Trustee's powers in relation to limited recourse borrowings**

136. The trustee has the following powers:

136.1 to borrow for the purpose of acquiring an asset in the circumstances permitted by the Limited Recourse Borrowing Exception including borrowing to pay for costs incidental to the acquisition (such as conveyance fees, stamp duty or transaction fees) which are permitted by the Exception;

136.2 to refinance in whole or in part an existing borrowing which satisfies the Limited Recourse Borrowing Exception;

- 136.3 to acquire a property as replacement for or in substitution for any property where the replacement or substitution is in circumstances permitted by Limited Recourse Borrowing Exception;
- 136.4 to grant security over any asset which has been acquired in the circumstances permitted by the Limited Recourse Borrowing Exception;
- 136.5 to engage nominees or custodians for the purposes of holding legal title to assets acquired pursuant to arrangements which satisfies the requirements of the Limited Recourse Borrowing Exception;
- 136.6 to permit title to fund assets to be recorded in the name of nominees or custodians where the asset has been acquired pursuant to arrangements which satisfies the requirements of the Limited Recourse Borrowing Exception;
- 136.7 to grant in relation to arrangements which satisfy the Limited Recourse Borrowing Exception, guarantees to or on behalf of any person the trustee sees fit;
- 136.8 to grant, in relation to arrangements which satisfy the Limited Recourse Borrowing Exception, indemnities to or on behalf of any person the Trustee sees fit;
- 136.9 to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument in relation to any borrowing which satisfies the Limited Recourse Borrowing Exception;
- 136.10 to grant such leases, tenancies or licences to use any property which is or has been acquired pursuant to arrangements which satisfies the requirements of the Limited Recourse Borrowing Exception;
- 136.11 to authorise and permit any nominee or custodian which is holding property pursuant to an arrangement which satisfies the requirements of the Limited Recourse Borrowing Exception to deal with that property by way of granting leases, licences or tenancies in respect of that property on behalf of and as agent for the trustee;

136.12 to insure, maintain, repair, improve and develop any property acquired (or any property replacing or substituting for any property which was originally acquired pursuant to an arrangement which satisfied the requirements of the Limited Recourse Borrowing Exception);

136.13 to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument; and

136.14 to do all such things as the Trustee considers convenient or reasonably incidental to arrangements which satisfies the requirements of the Limited Recourse Borrowing Exception."

4. Clause 175 is replaced entirely and is to read as follows:

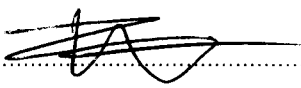
"175 The trustees may appoint a corporation as trustee by executing a deed to that effect. A corporate trustee is to have all the powers as if it were an individual acting in that capacity."

**Executed as a Deed**

Signed by

**Thomas Vui Chung Chai**

as **Trustee** in the presence of:

  
.....

Signature of Witness

ZOE CZAPLA  
.....

Name of Witness in Full

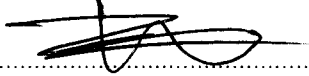
)   
) .....  
) **Thomas Vui Chung Chai**  
)  
)



Signed by

**Veronica Hong Kun Cheng**

as **Trustee** in the presence of:

  
.....

Signature of Witness

ZOE CZAPLA  
.....

Name of Witness in Full

)   
) .....

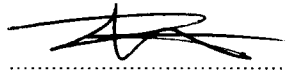
) **Veronica Hong Kun Cheng**

)  
)

Signed by

**Thomas Vui Chung Chai**

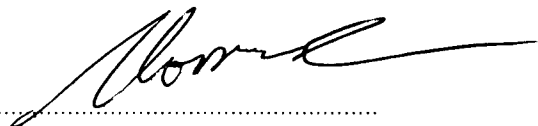
as **Employer-Sponsor** in the presence of:

  
.....

Signature of Witness

ZOE CZAPLA  
.....

Name of Witness in Full

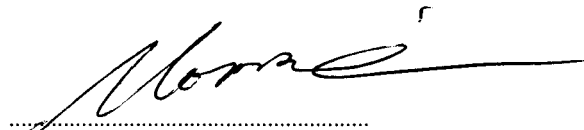
)   
) .....

) **Thomas Vui Chung Chai**

)  
)

**Member's consent to the exercise of the Amendment Power**

We, being the current members of the Sugar Bean Super Fund ABN 98 219 531 773 hereby consent to the Trustee exercising the amendment power set out in 184 to amend the provisions of the Current Deed as set out in this Amendment Deed.



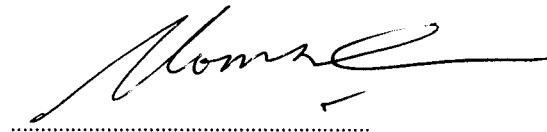
.....  
**Thomas Vui Chung Chai**  
Member



.....  
**Veronica Hong Kun Cheng**  
Member

**Employer –Sponsor's consent to the exercise of the Amendment Power**

I, being the current employer-sponsor of the Sugar Bean Super Fund ABN 98 219 531 773 hereby consent to the Trustee exercising the amendment power set out in 184 to amend the provisions of the Current Deed as set out in this Amendment Deed.



.....  
**Thomas Vui Chung Chai**  
Employer-Sponsor

**Written Resolutions of the Trustees of  
Sugar Bean Super Fund**

Thomas Vui Chung Chai

Veronica Hong Kun Cheng

("the Trustees")

**Purpose of Written  
Resolution**

The purpose of the Written Resolution is to authorise an amendment to the governing rules of the Superannuation Fund.

**Amendment of  
Governing Rules**

Noted that the Amendment Deed will introduce various provisions necessary to enable the Trustee to engage in limited recourse borrowing arrangements as permitted by s67A and 67B of the *Superannuation Industry (Supervision) Act 1993*.

Noted that the Amendment Deed will also amend provisions in the current Trust Deed to allow for the appointment of a corporation as the trustee of the Superannuation Fund without requiring that a replacement Trust Deed be executed following such an appointment.

Noted the members have been provided with a copy of the Amendment Deed and the members are aware of and consent to the amendments to be made by the Amendment Deed.

Noted that the Amendment Deed has been prepared by solicitors under instructions from the Trustee and that the solicitors have confirmed in writing that the Amendment Deed is suitable for execution and will not give rise to any adverse taxation or duty liability.

**Resolved that the Amendment Deed, a copy of which is attached to this Written Resolution, be executed by the Trustee and the Employer-Sponsor who must consent in writing to the Amendment pursuant to Rule 184 of the current Trust Deed of the Superannuation Fund.**

**Notification of  
Amendment to  
Members**

Resolved that the attached notice be issued to the Members of the Superannuation Fund to advise them of the changes made by the amendment.

**SIGNED** by the Trustees of the Fund



.....  
Thomas Vui Chung Chai  
Trustee



.....  
Veronica Hong Kun Cheng  
Trustee

Dated: 21, 08, 2012

Dated: 21, 08, 2012

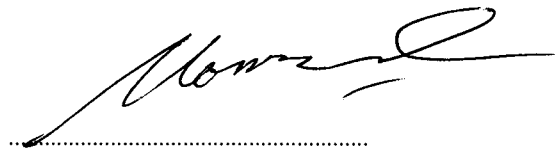
# Notice to Members of the Sugar Bean Super Fund

## Amendment of the Trust Deed of the Superannuation Fund

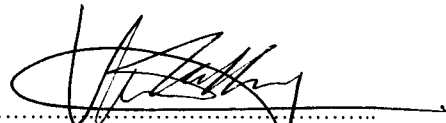
The Trust Deed of the Superannuation Fund has been amended to introduce provisions permitting the Trustee to borrow for investment purposes in the circumstances permitted by the *Superannuation Industry (Supervision) Act, 1993* – which are commonly known as “limited recourse borrowing” or “instalment warrant arrangements”

The amendment will also allow a corporation to be appointed as trustee of the Fund without the requirement for a replacement trust deed to be executed following such an appointment.

The amendments do not reduce the amount of your benefits or the manner in which your benefits are calculated.



.....  
**Thomas Vui Chung Chai**  
Member



.....  
**Veronica Hong Kun Cheng**  
Member

Dated: 22, 08, 2012

Dated: 22, 08, 2012

839 54057

82535200078

07972200041

65045910080