

**KILDARLIN PTY LTD
SUPERANNUATION FUND**

Deed Amendment

1990

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KILDARLIN PTY LTD SUPERANNUATION FUND

By a resolution of the Board of Directors of Kildarlin Pty Ltd, in its capacity as Principal Employer and Trustee of the Kildarlin Pty Ltd Superannuation Fund, passed on 30 day of June 1990, the following amendment was made to the Trust Deed governing the Kildarlin Pty Ltd Superannuation Fund with the intent of upgrading its provisions to comply with the Occupational Superannuation Standards Act 1987 and its Regulations.

All of the existing provisions of the Trust Deed are deleted and the following new provisions are substituted for those deleted provisions:

"1. DEFINITIONS AND GOVERNING PRINCIPLES

1.1 Definitions.

Unless the contents otherwise require, in these presents -

"Associated Employer" means any company or firm which pursuant to Clause 14 of this Deed has entered into an agreement for and has not been released from participation in the Fund.

"Auditor" means the auditor for the time being appointed pursuant to Clause 4.1(a).

"Appendix" means an appendix to this Deed.

"Beneficiary" means a person presently beneficially entitled to receive a Benefit.

"Benefit" means any amount paid or payable (as the case requires) by the Trustee pursuant to the Deed.

"Child" in relation to a Member means any child born of that Member and includes a step-child or legally adopted child of that Member.

"Clause" means a clause of the Deed.

"Deed" means these presents including the Rules and Appendices as well as additions, amendments and modifications thereto.

"Commissioner" means the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commissioner Act 1987 of the Commonwealth of Australia or a person for the time being acting as Insurance and Superannuation Commissioner under that Act.

"Dependant" means the wife, husband, Widow, Widower or Child of a Member or any person who in the opinion of the Trustee was receiving material financial support from the Member at the relevant time and includes a Registered Dependant.

"Disablement" means in respect of a Member having been absent from employment through illness or injury for six(6)consecutive months and in the opinion of the Trustee, after consideration of medical evidence, having become incapacitated to such extent as to render the Member unlikely ever to resume work or attend to any gainful occupation or profession for which he is reasonably qualified by training, qualification or experience.

"Employee" means a person in the employment of the Employer.

"Employer" means the Principal Employer or any Associated Employer, or any firm or company carrying on business in succession thereto, or in amalgamation therewith.

"Fund" means the Fund constituted by this Deed or the Excess Benefits Fund established pursuant to Clause 15.

"Fund Year" means a period of twelve (12) months ending on the thirtieth day of June or such other period of twelve (12) months which the Commissioner approves for the purpose of the Superannuation Act.

"Insurance Account" means an account established pursuant to Clause 6.1(b).

"Member" means an Employee who has been admitted to membership pursuant to Clause 8.2(b) and where the context requires includes a former Member.

"Member's Account" means an account in the Fund in the name of a Member established pursuant to Clause 6.1(a) and includes any sub-Accounts as established thereunder.

"Member's Account Balance" means the balance of a Member's Account as defined in Clause 6.2(c).

"Member's Insurance" means insurance effected pursuant to Clause 10.1.

"Registered Dependant" means a person not being the wife or husband or a Child under the age of eighteen(18) years of a Member and in respect of whom the Trustee approved as being dependent on him on the grounds of the Member providing material financial assistance to the said person, supported by any evidence required by the Trustee.

"Resignation" means the termination of the employment of a Member of his own accord.

"Retirement" means the termination of employment of a Member

(i) on or after the Member's attainment of the Retirement Age;
or

(ii) on account of Disablement; and

"Retire" has a corresponding meaning.

"Retirement Age" means the age of sixty-five (65) years or such other age as the Trustee and the Member shall mutually agree.

"Rules" means the Rules of the Fund appended to the Deed and includes any authorised amendment thereto.

"Salary" in relation to a Member means his wage or salary (calculated as an annual wage or salary) excluding director's fees, commissions, sums paid for overtime work or other special services or by way of bonuses or allowances except to such extent that the Employer at its discretion may otherwise determine.

"Superannuation Act" means the Occupational Superannuation Standards Act 1987 of the Commonwealth of Australia or any statutory modification or re-enactment there of for the time being in force and shall include any regulation prescribed under its provisions.

"Tax Act" means the Income Tax Assessment Act 1936 of the Commonwealth of Australia or any statutory modification or re-enactment thereof for the time being in force.

"Taxation" includes income tax, land tax, stamp duty and any other like tax or duty.

"Trustee" means the Trustee for the time being of the Fund.

"Widow" means the relict of a deceased Member and "Widower" has a corresponding meaning.

1.2 Plural and gender of words.

In the Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender and words importing the singular number shall include the plural number, and vice versa.

1.3 Headings to Clauses.

The headings in the Deed are for convenience and reference only and shall not affect its interpretation.

1.4 Defined words.

For convenience, words and phrases defined in the 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.

1.5 Deed governed by law of State or Territory.

The Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory in which the principal office of the Principal Employer is situated. The parties hereto for the time being, Members and Beneficiaries shall accept the jurisdiction of the Courts of the State or Territory.

PROVIDED THAT, if the Deed or any rights of any person thereunder shall lawfully be affected by law, custom or practice of the Commonwealth of Australia or of any State or Territory thereof, the Deed shall have effect subject to that law, custom or practice and the Trustee shall be empowered to determine and to adjust the rights, Contributions and Benefits to and in respect of that person to the extent necessary to comply therewith.

1.6 Employer's powers not prejudiced.

Nothing in the Deed shall affect the powers of the Employer with regard to the remuneration, terms of employment or dismissal of an Employee, or any other dealing of the Employer with the Employee.

1.7 Exercise of Employer's powers.

All powers, rights, decisions, discretions, appointments, and other authorisations of whatsoever nature or kind granted to or conferred on an Employer by, under or for the purposes of the Deed may be fully and effectively exercised, made, done or performed for or on behalf of such Employer by resolution of the directors of the Employer.

2. CONSTITUTION OF THE FUND

2.1 Moneys payable to Fund.

The Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of the Deed and shall be established and maintained by -

- (a) Contributions by Members;
- (b) Contributions by the Employer;
- (c) Interest and dividends arising from any investment and the accumulation thereof;
- (d) Profits and other benefits arising from any investment or on its sale and the accumulation thereof; and
- (e) Moneys, investments and other property transferred to the Fund from any other superannuation arrangement.

2.2 Accounts of the Fund.

Separate accounts to the extent necessary or desirable for any purpose may be instituted and maintained for the purpose of managing, administering and applying the Fund.

3. TRUSTEE

3.1 (a) Appointment and removal of Trustee.

The Principal Employer shall have the right from time to time to appoint and remove the Trustee. The Trustee, at the decision of the Principal Employer, and PROVIDED THAT its appointment is in accordance with the Superannuation Act or relevant rulings or written approval of the Commissioner may consist of -

- (i) a single person;
- (ii) more than one person; or
- (iii) a corporation

Where the Principal Employer has appointed more than one person as Trustee, the expression "Trustee" where it appears in the Deed shall mean all the Trustees or a single Trustee, as the case requires.

(b) **Vacancy in office.**

A vacancy in the office of Trustee shall arise if the Trustee -

- (i) resigns his office by notice in writing to the Principal Employer; or
- (ii) is removed from office by the Principal Employer; or
- (iii) being a person, dies; or
- (iv) being a company, is wound up.

(c) **Vacancy not filled.**

In the event of a vacancy in office occurring and not being filled within a period of sixty (60) days, a new appointment may be made by a resolution of a majority of Members PROVIDED ALWAYS during any period of vacancy in the office of Trustee, the Principal Employer shall undertake the duties of Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the Deed.

3.2 **Conditions applying where the Principal Employer has appointed more than one person as Trustee.**

(a) **Number of Trustees.**

Unless the Principal Employer otherwise determines, the Fund shall be controlled, managed and administered by not less than three (3) Trustees.

(b) **The Chairman.**

The Principal Employer shall from time to time nominate one of the Trustees as the Chairman.

(c) **Continuity of office.**

In the event of a vacancy in office pursuant to Clause 3.1(b), the continuing Trustees may act but in such cases the Principal Employer as soon as practicable shall appoint further Trustees as may be necessary to replace any vacancy which has arisen.

(d) **Meeting of Trustees.**

The Trustees shall meet at such times and places as they shall from time to time determine, but shall meet at least once in every Fund Year. Any Trustee may convene a meeting of the Trustees by giving at least three (3) days' notice in writing to the other Trustees or such lesser notice as they shall accept.

(e) **Quorum.**

Two (2) Trustees shall form a quorum for a meeting of Trustees. Whenever a Trustee is absent from a meeting, the Chairman shall record the fact of and any reason given for his absence.

(f) **Voting.**

Questions arising at any meeting of Trustees shall be decided by a majority of votes. Each Trustee shall have a deliberate vote. In the event of an equality of votes, the Chairman shall not have a second or casting vote.

3.3 Other matters affecting Trustee.

(a) **Minutes to be kept of meetings.**

The Trustee shall cause proper minutes of all meetings to be recorded in a suitable manner.

The minutes of any meeting if signed by the Trustee (or by the Chairman if there is more than one Trustee) shall be prima facie evidence of the matters recorded in those minutes.

(b) **Authentication of documents.**

The Trustee shall have power to authenticate any document affecting the Fund or issued pursuant to the Deed and to certify copies or extracts therefrom or any resolution passed by the Trustee, and any books, records and accounts of the Fund as true copies or extracts.

3.4 Remuneration of Trustee.

The Trustee shall be entitled to such remuneration in respect of his office as agreed with the Principal Employer from time to time.

3.5 Fund vested in Trustee.

The Fund shall be vested in the Trustee upon the terms and conditions and subject to the trusts, powers, and authorities contained in the Deed and shall be managed, administered and applied by the Trustee in accordance with the provisions of the Deed.

3.6 Powers of Trustee.

In addition to the powers which it might by law have and which are otherwise granted to it by the Deed, the Trustee shall have the following powers -

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to the Deed, the Fund or to the rights of Members and Beneficiaries;

- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members and Beneficiaries;
- (c) to borrow money for temporary purposes only by means of overdraft with a bank acceptable to the Commissioner and to secure the repayment thereof in any manner and upon any terms the Trustee may deem advisable and whether by a charge on all or any portion of the Fund or otherwise;
- (d) to insure or reinsure any risks, contingencies or liabilities of the Fund with an insurance company, mortgage insurance company, friendly society, superannuation fund or like body;
- (e) to retain the services of professional advisers, whether persons, firms or companies, in relation to the management, administration or investment of the Fund, to delegate to the professional advisers such powers as it shall see fit from time to time and to determine the fees payable to the professional advisers;
- (f) to indemnify, or undertake to indemnify, any person, company, government or institution in respect of the rights of Members or Beneficiaries in respect of the Fund;
- (g) to deduct any taxes or duties and management expenses from any Contributions or investment income receivable or any Benefit payable to or in respect of a Member and to pay only the residual amount in respect of the said Benefit;
- (h) to delegate to any person or persons such powers as the Trustee shall see fit from time to time;
- (i) 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 the Deed.

3.7 Appointment of investment manager.

In addition to the provisions of sub-Clause 3.6(e), the Trustee may appoint in writing on such terms as it may see fit any person or corporate body as its investment manager in regard to the purchase, sale, administration or retention of and the dealing in any investments, whether in the name of that person or corporate body or otherwise, and give any indemnity reasonably required provided that the person or corporate body undertakes in writing to hold the investments made from the moneys of the Fund in its name as investment manager in trust for and on behalf of the Trustee.

The Trustee may revoke or vary any such appointment subject to the terms of any agreement entered into by the Trustee with any such person or corporate body.

3.8 Liability of Trustee.

A Trustee shall not incur any liability for anything done or omitted to be done by him as a Trustee except in respect of any fraud or wilful misconduct on his own part.

4. APPOINTMENT OF OFFICERS

4.1 (a) Appointment of Auditor and officers.

The Trustee from time to time shall appoint the following persons at such remuneration and on such other conditions as the Trustee shall think fit or as the Commissioner shall approve -

- (i) an Auditor who is an approved auditor under the Superannuation Act; and
- (ii) any other officers considered desirable for the proper management of the Fund.

(b) Removal from office.

The Trustee may remove from office any person appointed pursuant to this Clause.

(c) Office to be kept filled.

The Trustee shall ensure that the office mentioned in paragraph (i) of Clause 4.1(a) does not remain vacant for longer than is necessary to effect a new appointment and in any event does not remain vacant for a period longer than three (3) months.

5. RECORDS, FINANCIAL STATEMENTS AND REPORTS

5.1 (a) Receipt and payment of moneys.

All moneys of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank or other organization determined from time to time by the Trustee.

All cash payments out of the Fund shall be made by cheque or order signed in such manner as shall be determined by the Trustee.

(b) Issue of receipts.

A receipt given by the Trustee or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be sufficient discharge to the person by whom the moneys are paid.

5.2 Records and accounts to be kept.

The Trustee shall -

- (a) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect and pay promptly into a bank account or similar account of the Fund all moneys from time to time due to the Fund;
- (c) keep appropriate records and accounts in proper order and make suitable arrangements for their custody and for custody of documents relating to the investments; and
- (d) prepare not later than three (3) months after the end of each Fund Year a balance sheet of the Fund as at the end of the said Fund Year, together with a statement of receipts and disbursements during the same Fund Year.

5.3 Audit.

The Trustee shall ensure that the Auditor audits the books, accounts, each annual balance sheet and statement, annual return to the Commissioner and the documents relating to the investments.

Each annual balance sheet and statement and annual return to the Commissioner shall be signed by the Auditor and presented to the Trustee not later than the day by which a return to the Commissioner is required under the Superannuation Act in respect of the Fund Year to which the balance sheet and the statement relate.

5.4 Report to Members

- (a) On joining the Fund, the Trustee shall provide each Member with a written notice showing the kinds of benefits, conditions of their payment and the method of determining entitlement under the Fund and such other information required under the Superannuation Act.
- (b) As at the end of each Fund Year the Trustee shall report to each Member such information as is required under the Superannuation Act and other information as the Trustee shall determine. This report shall be made not later than 6 months after the end of each Fund Year.

5.5 Copy of Deed and statements available to Members.

A copy of the Deed, the annual return to the Commissioner, other certificates or notices referred to in Sections 12 and 13 of the Superannuation Act and the latest audited annual balance sheet and statement shall be made available on request by any Member or Beneficiary.

6. ACCOUNTS

6.1 Establishment.

The Trustee shall maintain the following accounts within the Fund:

- (a) a Member's Account in respect of each Member which shall consist of four sub-Accounts as follows:
 - (i) sub-Account No. 1. - for the purpose of maintaining the Member's basic Contributions,
 - (ii) sub-Account No. 2. - for the purpose of maintaining the Member's supplementary Contributions,
 - (iii) sub-Account No. 3. - for the purpose of maintaining the Employer's basic Contributions;
 - (iv) sub-Account No. 4. - for the purpose of maintaining the Employer's supplementary Contributions;
 - (v) sub-Account No. 5. - for the purpose of maintaining transferred amounts pursuant to Clause 8.3;
- (b) an Insurance Account;
- (c) such other Accounts as may be deemed necessary by the Trustee in order to provide for the proper administration of the Fund.

6.2 Member's Account

- (a) Each Member's Account shall be credited with -
 - (i) Contributions paid by and in respect of the Member;
 - (ii) the allocation of earnings determined pursuant to Clause 6.4;
 - (iii) moneys received by Trustee pursuant to Clause 8.3;
 - (iv) payments from the Insurance Account relating to any claim in respect of the Member's Insurance;
 - (v) any distribution which may be authorised by the Trustee from the Insurance Account;and shall be debited with -
 - (vi) any Benefit payments made to or in respect of a Member;
 - (vii) any premiums required to be paid by a Member in respect of Member's Insurance effected pursuant to Clause 10.1;

(viii) any other amounts which may be deemed necessary by the Trustee.

- (b) Except where otherwise stated in the Deed, the amount so credited or debited to a Member's Account shall be allocated to such one or more of the Member's sub-Accounts as determined by the Trustee.
- (c) The total of each Member's sub-Accounts 1 to 5 shall be the Member's Account Balance at any time.

6.3 Insurance Account.

The Trustee shall credit the Insurance Account with the following amounts -

- (a) any Contributions made by the Employer pursuant to Clause 10.1 or any payments made pursuant to Clause 6.2(a)(vi);
 - (b) payments received from any insurance company arising as a result of a claim on any Member's Insurance;
 - (c) the allocation of earnings determined pursuant to Clause 6.4;
 - (d) any amount forfeited pursuant to Clause 10.4;
 - (e) any amount in respect of a Member who has left the Fund and has been paid a final Benefit, such amount being the difference between the Member's Account Balance and the total payment made to that Member;
- and shall debit the Account with -
- (f) any premiums required to be paid to insurance companies in order to effect Members' Insurances pursuant to Clause 10.1;
 - (g) any insurance payable in respect of a Member arising as a result of claims against that Member's Insurance;
 - (h) any other amount to be credited to a Member's Account arising from a direction of the Employer.

6.4 Determination of net earnings to be allocated to Members' Accounts and Insurance Account as at the end of each Fund Year.

- (a) As at the end of each Fund Year the Trustee shall determine the net earnings to be allocated to Members' Accounts and the Insurance Account being the difference between (i) and (ii) hereof where -
 - (i) is the total value of all assets held in the Fund as at the end of that Fund Year and may include creditors and such other amounts determined by the Trustee or the Employer; and

(ii) is the sum of the Insurance Account and all Members' Account Balances as at the end of the Fund Year prior to making any allocation pursuant to Clause 6.5.

(b) For the purpose of Clause 6.4(a)(i), the value of all assets shall be determined by the Trustee on a basis it considers reasonable, provided that the Trustee, from year to year, shall not alter the basis of valuation of any particular assets or group of assets without first obtaining the approval of the Auditor.

6.5 Allocation between Accounts of net earnings as at the end of each Fund Year

(a) In order to allocate the net earnings to each Account as at the end of the Fund Year the Trustee shall determine the following values -

(i) the mean value of the account held in the Insurance Account over the Fund Year;

(ii) in respect of each Member, the following amount for each of that Member's sub-Accounts, namely -

the Member's sub-Account at the start of the Fund Year increase by one-half (or such other factor as may be determined by the Trustee) of the income less outgo credited or debited to that sub-Account during the Fund Year, provided that where the Member joined the Fund during the Fund Year the amount calculated in respect of him, as aforesaid shall be reduced in the ratio of the number of completed months for which he has been a Member to twelve;

(iii) the sum of all values determined in paragraphs (i) and (ii) above.

(b) The net earnings to be allocated to the Insurance Account shall be the amount determined pursuant to Clause 6.4(a) reduced in the ratio that the mean value of the Insurance Account determined pursuant to Clause 6.5(a)(i) bears to the amount determined pursuant to Clause 6.5(a)(iii).

(c) The net earnings to be allocated to each sub-account of all Members shall be:

The amount determined pursuant to Clause 6.4(a) reduced in the ratio that the amount determined pursuant to Clause 6.5(a)(ii) in respect of the particular sub-account bears to the amount determined pursuant to Clause 6.5(a)(iii).

6.6 Payment of Benefit prior to allocation at the end of the Fund Year.

Notwithstanding the provisions of Clause 6.7, where it is necessary to determine a Member's Account Balance for the purpose of paying a Benefit at a date following the end of the Fund year but before the allocation to Accounts pursuant to Clause 6.5, the Trustee may make an interim payment of such amount as it sees fit prior to making a final Benefit payment from the Fund after the allocation as aforesaid has been made.

6.7 Determination of Member's Account Balance during Fund Year.

Where it is necessary to determine a Member's Account Balance as at a date other than the end of a Fund Year that Balance shall be calculated by determining the following amounts in respect of each sub-Account of the Member -

- (a) the balance in the sub-Account as at the start of the Fund Year;
- (b) any payments credited or debited to that sub-Account pursuant to Clause 6.2 since the start of the Fund Year;
- (c) interest, at a rate determined by the Trustee, calculated on the amount in (i) and one-half of the amount in (ii) for the number of completed months since the start of the Fund Year;
- (d) the sum of the amounts determined in (i), (ii) and (iii) above.

The Member's Account Balance shall be the sum of the amounts determined pursuant to paragraph (iv) above in respect of each of the Member's sub-Accounts.

7. INVESTMENTS

7.1 Investments authorised.

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by the Deed, shall be invested as soon as practicable by and under the control and in the name of the Trustee, in any of the following investments -

- (a) 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.
- (b) any mortgage of or charge on freehold or leasehold land situated in Australia or elsewhere, even though the amount of the loan may exceed two-thirds (2/3rds) of the value of the land, and whether or not a report has been obtained on the value of the land and even though the mortgage or charge shall not rank as a first charge on the lands;

- (c) on deposit with any company, building society, trust fund, person or partnership with or without security and at the rate of interest and upon terms which the Trustee may deem expedient;
- (d) the purchase or acquisition in any way of shares and stock (of any class or description) and of all or any type of bonds, mortgages or debentures in or of any building society, or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock by fully or partly paid up and of any notes, options or other like securities issued by any of these companies or societies and whether secured or unsecured, registered or unregistered;
- (e) any mortgage of or charge on any personal property;
- (f) any policy of insurance or annuity contract whether by proposal, purchase or otherwise, and any choses in action, interest for life or any lesser terms or in reversion and howsoever arising;
- (g) the purchase or acquisition of any interest either jointly or in partnership or in any unit of interest;
- (h) discounting of loans, mortgages, contracts, hire purchase agreements, or leases;
- (i) any other investments which the Trustee could make if acting personally and not as the Trustee

PROVIDED THAT:

- (I) a loan shall not be made directly or indirectly to a Member or his relatives; and
- (II) no investment shall contravene the Superannuation Act or a relevant ruling of the Commissioner.

7.2 Power to sell and vary investments.

The Trustee shall have the power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by the Deed.

8. NEW ENTRANTS TO FUND

8.1 Eligibility.

An Employee nominated by the Employer shall be entitled to join the Fund.

8.2 (a) Application.

An Employee nominated by the Employer and desirous of joining the Fund shall -

- (i) make written application to join the Fund in the form set out in Appendix 1 to this Deed, or such other form as shall be required by the Trustee from time to time;
- (ii) submit evidence of his age and any evidence of the state of his health required by the Trustee;
- (iii) provide any other information reasonably required by the Trustee; and
- (iv) declare in writing that on acceptance of his application he shall be bound by the terms and conditions of the Deed.

(b) Admission of applicants.

The Trustee shall not refuse to admit such a nominated Employee who complies with all the foregoing requirements but shall admit such Employee to membership of the Fund. Such admission to membership shall be notified to the Member as soon as practicable.

8.3 Admission on transfer from another Fund.

Where an Employee who has been admitted to the Fund was a member of another superannuation arrangement and -

- (a) there is paid or transferred to the Trustee for the credit of the Fund an amount equal to the whole or any part of the value of that Employee's interest in the other superannuation arrangement, including the capital value of any life insurance policy or annuity contract; or
- (b) there is assigned and transferred absolutely to the Trustee as beneficial owner any policy of life insurance or annuity contract in respect of the life of the Member or any Dependant;

the Trustee shall determine the value of such payment, assignment or transfer and shall credit it to the Member's sub-Accounts established pursuant to Clause 6.1(a), on a basis determined by the Trustee, provided that the Trustee shall determine what amount, if any, forming part of the total value of such payment, assignment or transfer shall be deemed to arise from past contributions made by the Member and shall credit this amount to the Member's sub-Account No.1.

8.4 Members and Beneficiaries to provide information.

- (a) Every Member and Beneficiary when requested by the Trustee shall furnish any information the Trustee shall deem necessary for the purposes of any investigation or otherwise in connection with the Fund and shall submit to medical examination as required by the Trustee by a registered medical practitioner nominated by the Trustee. If a Beneficiary fails to comply with the provisions of this Clause the Trustee may suspend the payment of any Benefit until he has done so.
- (b) Where the information furnished by or in respect of a Member or Beneficiary in any statement submitted to the Trustee is fraudulently incorrect in any material particular, the Benefits paid to or in respect of him shall be adjusted to such amounts as shall be determined by the Trustee.

8.5 Member bound by the Deed.

Notwithstanding that a Member may have failed to make the declaration referred to in Clause 8.2(a) (iv), he shall by virtue of his becoming a Member be deemed to have agreed to and to be bound by the Deed.

9. CONTRIBUTIONS AND EXPENSES

9.1 Member and Employer Contributions.

In respect of each Member, contributions by the Member and by the Employer shall be at such rates as set out in the Rules.

9.2 Deduction of a Member's Contributions from his Salary

Unless the Trustee otherwise determines or the law does not allow, Contributions payable by a Member shall be deducted by the Employer from each payment of his Salary and paid forthwith to the Trustee, or paid at such other times as directed by the Trustee.

9.3 Expenses.

The Trustee shall be empowered to pay all expenses incurred in the management of the Fund, unless the Employer otherwise determines, and to debit the Fund with the amount of expenses paid.

10. BENEFITS

10.1 Member's Insurance.

In respect of any Member the Trustee or the Employer may effect, or the Employer and the Member may from time to time agree to effect, one or more policies of insurance for the member providing benefits in such events as the Trustee or the Employer, as the case may be, determines.

The Employer shall make sufficient Contributions to the Insurance Account to enable the Trustee to meet the premiums due under Members' Insurances provided that if the Employer decides that a Member or any group of Members should meet the premium due on their own Member's Insurance and advises the Trustee in writing to this effect, the Trustee may debit the cost of each Member's Insurance against that member's sub-Account No. 1.

10.2 Moneys owing to Fund or the Employer.

Where a Member at the time he ceases to be a Member, owes any moneys to the Fund or the Employer, or commits a fraud or is guilty of defalcation against the Employer, the Trustee may deduct from any Benefit payable to or in respect of him such moneys (including any costs of any prosecution or civil proceedings and interest on those moneys at a rate decided by the Trustee) and pay them to the Fund or the Employer, as the case may be, with priority to the Fund PROVIDED THAT any moneys payable to the Employer shall not exceed the difference between the Member's Account Balance and amount of the Member's vested benefit pursuant to the Superannuation Act.

10.3 (a) Forfeiture of Benefits.

Any Member or Beneficiary -

- (i) who assigns or charges or attempts to assign or charge any Benefit; or
- (ii) whose Benefits whether by his own act, operation of law or otherwise become payable to or vested in any other person, company, government or other public authority; or
- (iii) becomes bankrupt or insolvent; or
- (iv) who 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; or
- (v) who (subject to reasonable enquiries having been made by the Trustee) cannot be located and whose Dependants cannot be located by the Trustee during a period of six (6) years after a payment was last made to him by the Employer or the Trustee;

shall forfeit all his benefits.

(b) Application of forfeited Benefits.

The Trustee shall hold and apply the Benefits which would have been payable had they not been forfeited as aforesaid upon trust to make any payments pursuant to Clause 10.2 and to pay or apply the balance thereof for the benefit of the Member or Beneficiary (as the case requires) and his

Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may determine in its absolute discretion from time to time.

10.4 Moneys not applied as Benefits to remain in Fund.

Moneys released in respect of any benefits forfeited and not subsequently paid or applied pursuant to Clause 10.3(b) shall remain in the Fund and shall be transferred to the Insurance Account established in accordance with Clause 6.1.

10.5 Benefits not grounds for increasing any claim for damages.

The Benefits to which a Member might claim to be entitled under the Deed shall not be used as grounds for increasing, or as means of assessing damages in any claim made or action brought by a Member against the Employer.

10.6 Deduction of tax from Benefits.

The Trustee may deduct from any Benefit or payment under the Deed any tax or duty payable from or in respect of it whether by the Beneficiary or the Fund, and shall thereupon pay the said tax or duty to the relevant authorities. The Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction has been made.

10.7 Payments of Benefits.

- (a) Subject to Clause 10.3, where a Benefit in respect of a Member is due to be paid during the lifetime of the Member it shall be paid to the Member.
- (b) Subject to Clause 10.3, where a Benefit in respect of a Member is due to be paid after the death of the Member it shall be paid -
 - (i) to such one or more of the Dependants of the Member and in such shares and proportions as the Trustee in its absolute discretion shall determine; or
 - (ii) if there are no Dependants, to the Member's legal personal representative.

If there are no Dependants and if no probate is granted or letter of administration taken out within twelve (12) months of the Member's death (or such longer period as the Trustee may determine), nor to the knowledge of the Trustee have these been applied for, any entitlement to Benefits shall be forfeited and Clause 10.4 shall have effect.

- (c) Benefits are payable at the office for the time being of the Employer provided that the Trustee may forward a Benefit to the postal address last notified pursuant to Clause 10.7(d), or in any other manner as the Trustee at the request of the Beneficiary shall approve.
- (d) Every Beneficiary or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary shall, when the Benefit becomes payable or immediately after he changes his residence, notify the Trustee in writing of his place of residence and its full postal address.

10.8 Payments to others on behalf of a Beneficiary.

When any Beneficiary is under the age of twenty-one (21) years, the Trustee may pay all or part of any Benefit to any other person to be held in trust for application on behalf of the Beneficiary or to his Dependants, and the receipt of their person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary.

10.9 Disablement Benefit payable by instalments.

Where a Benefit is to be payable to a Member on account of his Disablement, the Trustee may determine to pay such Benefit by instalments over such period as the Trustee shall determine.

Where payment of the Benefit is made by instalments (at a frequency to be determined by the Trustee in its sole discretion) the balance of the Benefit will bear interest at a rate of interest decided by the Trustee from time to time. In the event of the death of the former Member, or upon his attainment of the Retirement Age, prior to the completion of the period over which instalments are payable, the balance of the Benefit shall be paid as a single lump sum.

10.10 Transfer to another fund

Where a Member joins or is eligible to join another superannuation agreement (herein called the "Transferee Fund") the Employer with the approval of the Member and of the Commissioner may pay or transfer to the trustees of the Transferee Fund the Member's Benefit as at the date immediately prior to its transfer (herein called the "Transferred Amount").

The Former Member in respect of whom the Transferred Amount is paid under this Clause shall not be entitled to any other Benefit and the receipt of the proper officer of the Transferee Fund shall be a complete discharge to the Employer of all liability to and in respect of the Former Member and the Employer shall have no responsibility to see to the application of the Transferred Amount.

10.11 Excessive Benefit.

Notwithstanding any other Clause of the Deed, Benefits under the Deed shall be limited to amounts with which the benefits payable under any other superannuation funds are not excessive for the purposes of the Superannuation Act, Tax Act or any other government legislation or regulation prescribed under any such other legislation. The Trustee shall inform a Member of any reduction in or limitation of his entitlement under the Deed arising from the operation of this Clause.

10.12 Receipt for Benefits.

Any person to whom a Benefit is payable shall, if required by the Trustee, furnish the Trustee with a receipt provided that where a final Benefit is being paid to any Member or Beneficiary the Trustee shall obtain a receipt and release in a form (or similar form) to that shown in Appendix 2 to this Deed.

10.13 Calculation of Benefits.

All Benefits shall be calculated and paid to the nearest cent, and exact one-half cent being taken as a whole cent.

11. ALTERATION OF THE DEED

11.1 Power of alteration of the Deed for maximum exemption from tax and duty.

The Trustee may from time to time with the consent of the Employer by deed executed by the Trustee and the Employer or by a resolution of the Employer and of the Trustee amend alter or modify the provisions of the Deed (including the provisions of this Clause) and the Rules hereto where the principal purpose of such amendment alteration or modification is to enable

- (a) the Fund, the income of the Fund or contributions by the Employer or Members -
 - (i) to be exempted from Taxation or to be allowable deductions for Taxation, or for a greater proportion thereof to be exempted from Taxation, or deductions for Taxation; or
 - (ii) to be assessable for Taxation at a lower rate, than could reasonably be expected if the amendment were not made; or
- (b) the maximum relief of the Fund, the Employer or Members to be obtained from probate, stamp, estate succession and other duties in consequence of the death of a Member or payment of a Benefit for any other reason.

11.2 Other powers of alteration of the Deed.

In addition to the powers conferred pursuant to Clause 11.1, the Trustee may from time to time with the consent of the Employer by deed executed by the Trustee and the Employer or by a resolution of the Employer and of the Trustee amend alter or modify the provisions of the Deed (including the provisions of this Clause) and the Rules hereto provided that no such amendment alteration or modification shall -

- (a) vary the main purpose of the Deed, namely, to provide Benefits to a Member on Retirement or to his Dependants in the event of his death before Retirement.
- (b) authorise the making of any payment to the Employer out of the Fund except as provided in the Deed;
- (c) take effect without written advice to all Members and Beneficiaries;
- (d) except with the written approval of the Commissioner or all of the Members:
 - (i) The Deed shall not be amended so as to reduce any benefits that have accrued to any Member, or affect the basis for calculating the amount of retirement benefits of any Member in a way that reduces that amount with respect to the period of membership before the date of the alteration of the deed; and
 - (ii) A retrospective reduction in benefits accrued or payable to any Member shall not otherwise be permitted.

11.3 Advice to Members of Deed Change

Any alteration of the Deed pursuant to this Clause 11 shall be advised in writing by the Trustee as soon as practicable thereafter to all Members explaining the nature and purpose of such alteration and the effect (if any) of the alteration on entitlements of Members.

12. WINDING UP OF FUND

- 12.1 If at any time there shall be no Members and there are no deceased Members in respect of whom there are Benefits remaining to be paid, the Fund shall thereupon be wound up by the Trustee transferring the balance of investments remaining, if any, after allowance for any expenses expected to be incurred in winding up the Fund to the Employer or, if there is no Employer, to the last person who was a Member or to his Dependants or his estate, in such proportions as the Trustee may decide in its absolute discretion and upon completion of such transfer and payment of all final expenses, this Trust and this Fund shall ipso facto cease and determine.

13. **ARBITRATION**

13.1 If any question or dispute shall arise with respect to the Fund or the construction or meaning of the Deed and if the Trustee so requires, the question or dispute shall be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement to an arbitrator or arbitrators appointed pursuant to the provisions for the time being of the Arbitration Act of the State or Territory in which the principal office of the Employer is situated.

14. **ASSOCIATED EMPLOYERS**

14.1 The Employer and the Trustee may with the approval of the Commissioner enter into an agreement with any corporation which the Employer deems it desirable and convenient to include as an Associated Employer to the intent that the employees of that corporation shall become Members of the Fund upon the same terms and conditions as applied to existing members at the date of such agreement.

14.2 The Trustee may with the approval of the Employer release an Associated Employer and its Employees who are Members from participation in the Fund as from a date to be determined by the Trustee upon such terms and conditions as the Trustee shall determine and thereupon the interest in the Fund of such Associated Employer and its Employees who are Members shall be ascertained by the Trustee and dealt with in such manner as the Trustee and such Associated Employer shall determine.

14.3 If any Member of the Fund is transferred in his employment from one Associated Employer to any other Associated Employer he shall notwithstanding anything contained in the Deed remain a Member of the Fund. For the purposes of this Clause, Associated Employer shall be deemed to include the Employer.

15. **EXCESS BENEFITS**

15.1 The Trustee shall transfer in respect of a Member any benefit that is in excess of the Maximum Benefit and/or that portion of the Contributions which would have been otherwise payable hereunder to a separate and distinct fund (hereinafter called "the Excess Benefits Fund") not being a Fund the income tax of which is wholly or in part exempt from income tax under the Tax Act and which the Trustee shall establish for the purpose of holding any such excessive benefit or any further contributions in trust for those persons who would have been entitled thereto had such excessive benefit or contribution been paid subject to the trusts and powers contained herein.

15.2 The Trustee shall establish a new Deed in respect of the Excess Benefits Fund which it may establish pursuant to this Clause and which shall be subject to the same trusts, powers, authorities and provisions as are contained in this Deed save and except for the following:-

- (a) the provisions of this Clause;
- (b) the Clauses concerning the contributions to be made;
- (c) such other matters as the Trustee in its absolute discretion shall determine to omit;

and containing such other trusts, powers, authorities and provisions as the Trustee shall determine to insert.

16. **SUPERANNUATION STANDARDS**

- 16.1 The standards prescribed under the Superannuation Act shall be deemed to be included in the Deed to the extent that they have not been included in specific provisions of the Deed.

RULES

R1. APPLICATION

R1.1 These Rules shall apply to any Employee who is admitted to the Fund as a Member pursuant to Clause 8.2 of the Deed.

R2. CONTRIBUTIONS

R2.1 A Member shall make basic Contributions to the Fund of such amount or such rate as expressed as percentage of his Salary as may agreed between the Member and his Employer from time to time; all such contributions shall be credited to the Member's sub-Account No. 1.

R2.2 Subject to the approval of the Employer and the Trustee, a Member may make supplementary contributions to the Fund of such amounts and at such times as the Member determines; all such Contributions shall be credited to the Member's sub-Account No.2.

R2.3 The Employer shall make basic Contributions in respect of a Member of such amount or such rate as expressed as percentage of his Salary from time to time, or at such higher rate that the Employer may agree to contribute; all such Contributions shall be credited to the Member's sub-Account No.3.

R2.4 The Employer may make supplementary Contributions in respect of a Member for any amount in excess of the basic Contributions payable pursuant to Rule 2.3; all such Contributions shall be credited to the Member's sub-Account No.4.

R3. BENEFITS

R3.1 Benefit on Retirement

Upon the retirement of the Member from the Service of the Employer

(i) at his Retirement Age, or

(ii) after his Retirement Age, or

(iii) not more than 10 years before his Retirement Age

the Trustee shall pay him a pension.

R3.2 Benefit on Death in Service or Disablement

In the event of the Member's death in Service, or his Retirement on account of his Disablement, the Trustee shall pay a benefit to the Member or in respect of the former Member equal to:

(i) the Member's Account Balance, together with

(ii) the proceeds of any Member's Insurance effected by the Trustee or Employer pursuant to Clause 10.1 of the Deed, provided that the Trustee shall not pay any amount arising on the death or Disablement of a Member until a claim has been admitted by the insurance company with which the Member's Insurance is effected.

R3.3 Benefit payable on Resignation or dismissal

In the event of the resignation or dismissal of a Member prior to his Retirement Age where no Benefit is payable pursuant to Rule R3.1 or R3.2, the Trustee shall pay a Benefit to the Member equal to the sum of:

- (i) the Member's sub-Account No. 1; and
- (ii) the Member's sub-Account No. 2; and
- (iii) the Member's sub-Account No. 5; and
- (iv) the proceeds, if any, of the Member's Insurance effected pursuant to Clause 10.1 for which the amount of premiums has been debited to the Member's sub-Account No.1.

PROVIDED THAT

- (a) the Trustee shall hold in the Fund and pay to the Member on retirement after the age of 55 such proportion of the Member's sub-Account No 3 and Member's sub-Account No 4 as agreed between the Member and the Employer, and
- (b) where a Member has transferred a benefit pursuant to Clause 8.3 from a superannuation fund which contained provisions that such a benefit or part thereof cannot be paid as a cash benefit before retirement after age 55, the amount payable under this Rule shall be reduced by such transferred benefit together with any interest thereon, and
- (c) where the Trustee is holding moneys pursuant to proviso (a) and proviso (b) of this Rule, the Member may apply to transfer such moneys to another fund pursuant to Clause 10.10, or apply to the Trustee to receive such moneys due to permanent departure from Australia or in such other circumstances as the Commissioner approves.

R3.4 Member may take over Insurance

Where a Member is entitled to the proceeds of his Member's Insurance pursuant to Rules R3.2 and R3.3 the Member may subject to the requirements of the insurance company concerned take over the policy which has not attained its maturity value.

R3.5 Commutation of Pension

A Member may elect to commute to a cash sum such proportion of the pension payable pursuant to Rule R3.1 as the Member specifies PROVIDED THAT if he commutes more than 50% of the said pension or such other proportion pursuant to the Superannuation Act or a regulation or guideline of the Commissioner, the following provisions shall apply:

- (i) The amount to be paid on commutation including the value of any remaining pension shall be limited to the amount specified in the lump sum guidelines established under the

Superannuation Act, Tax Act or other legislation or regulation which exist at the date of commutation;

- (ii) In the event of commutation, the amount (if any) in excess of the amount specified in the lump sum guidelines referred to in proviso (i) of this Rule is to be dealt with in terms of such guidelines.
- (iii) Where any amount remains in the Fund after all Members' entitlements have been paid out, the amount so remaining is to be paid to the Employer. Any amount so paid to the Employer represents assessable income to the Employer pursuant to Section 82AAQ of the Tax Act.

The rate of commutation shall be in direct proportion to the Member's Account Balance.

KILDARLIN PTY LTD SUPERANNUATION FUND

APPLICATION FOR MEMBERSHIP

I, the undersigned, hereby apply to become a Member of the KILDARLIN PTY LTD SUPERANNUATION FUND. The Trust Deed governing the operation of the Fund has been made available to me, and if admitted as a Member, I agree to be bound by the Deed in all respects. I consent to the Trustee acting as Trustee of the Fund.

I declare that I am not* a member of any other superannuation fund and I hereby undertake to advise the Trustee if I subsequently join such a fund.

Surname.....(BLOCK LETTERS)

Other Names.....(BLOCK LETTERS)

Address.....

For the purposes of the Deed I recommend as my Beneficiaries in the event of my death, the following persons who are financially dependent upon me and the percentages of the Benefit I wish each of them to receive. (If none leave this space blank). I understand that this recommendation is in no way binding upon the Trustee.

BENEFICIARIES				
Surname (Block letters)	First Names (Block letters)	Address (Block letters)	Relationship to Member (Block Letters)	% of Benefit to Beneficiary

Dated this.....day of.....19....

.....
(Witness)

.....
(Signature)

* If a member of any other superannuation fund, delete the word "not" and give the name of such other fund below -

KILDARLIN PTY LTD SUPERANNUATION FUND

RECEIPT FOR FINAL BENEFIT

PAID FROM FUND

I,

of

hereby acknowledge receipt ofdollars

.....cents(\$ -) from the
KILDARLIN PTY LTD SUPERANNUATION FUND in full settlement of
all my rights and interests under the Deed.

I hereby acknowledge that I have no further claim against nor
financial interest in the Fund.

Dated this.....day of.....19....

.....
(Witness)

.....
(Signature)"

.....
Chairman

Kildarlin Pty Ltd

Minutes of Meeting of Directors held on the 30th day
of JUNE 1990.

PRESENT: William Harrison (Chairman)
Joyce Harrison

- RESOLVED:
1. That the Minutes of the last meeting be confirmed.
 2. That the Company approves the amendment of the Kildarlin Pty Ltd Superannuation Fund Declaration of Trust dated 10th October 1978 by adding the new provisions contained in the amending Resolution tabled by the Chairman and attached hereto.

A TRUE AND CORRECT RECORD

.....
CHAIRMAN

W.H.