

DATED: 1ST OF JULY, 1998

## Ian & Robyn Robertson Superannuation Fund

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### TRUST DEED

*establishing a regulated superannuation  
fund within the meaning of the  
Superannuation Industry (Supervision) Act 1993  
with provision to provide for allocated pension benefits*

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REF: JFD:76292



### COLTMANS PRICE BRENT

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500 Bourke Street Melbourne  
Victoria Australia 3000  
**Telephone (03) 9246 5000**  
Facsimile (03) 9246 5111  
DX 427 Melbourne

SOLICITORS

# COLTMANS PRICE BRENT

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THIS DEED is made on the 1<sup>ST</sup> day of JULY, 1998.

**BETWEEN:** IAN GREGORY ROBERTSON and ROBYN LEANNE ROBERTSON both care of RMB 833, Ballarat in the State of Victoria ("the Member" which expression shall include any members subsequently admitted to the Plan)

**AND:** IAN GREGORY ROBERTSON of and ROBYN LEANNE ROBERTSON both care of RMB 833, Ballarat in the State of Victoria ("the Trustee" which expression shall include the trustees or trustee for the time being of the Plan whether original, additional or substituted)

**RECITALS:**

- A. The Member wishes to maintain an indefinitely continuing superannuation fund to be known as the **Ian & Robyn Robertson Superannuation Fund** ("the Plan") for the benefit of the Member and the dependants of the Member.
- B. It is intended that the Plan shall be conducted as a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*.
- C. The Trustee has agreed to act as the first trustee of the Plan.

**NOW THIS DEED WITNESSES** that the Trustee by this Deed establishes the Plan which shall take effect and be administered from the date of this Deed in accordance with the Rules, which Rules as amended from time to time shall form part of this Deed and shall be construed with this Deed.

**RULES**

**1. INTERPRETATION & DEFINITIONS**

**1.1** In these Rules:

- (a) words importing the singular or plural number shall (where the context permits) include the plural or singular number respectively and words importing one gender shall include other genders;
- (b) all references to the "Rules" shall be deemed to be the Rules for the time being in operation; and
- (c) a reference to a statutory provision shall include a reference to that provision as modified or re-enacted.

**1.2** In these Rules, unless the context otherwise requires:

"**the Act**" means the *Income Tax Assessment Act 1936* of the Commonwealth of Australia and any statutory modification or re-enactment of it for the time being in force;

"**Approved Arrangement**" means a regulated superannuation fund for the purposes of the Supervision Act, an approved deposit fund for the purposes of the Supervision Act or an annuity which is issued on terms and conditions which comply with the relevant requirements of the Supervision Act in relation to annuities;

"**Auditor**" means a person who is an approved auditor within the meaning of the Supervision Act and "**the Auditor**" means the person appointed from time to time by the Trustee as Auditor of the Plan pursuant to Rule 16;

"**Dependant**" shall include the spouse (or surviving spouse) and any child of a Member, any person nominated by that Member as a Dependant

and any other person who in the opinion of the Trustee is or was at the relevant time in any way dependent on that Member;

"**Employer**" means a person or company for the time being employing or engaging the Member under contract of employment or contract for services;

"**Member Account**" means the account established and maintained in respect of the Member pursuant to Rule 5;

"**Pension Account**" means an account established by the Trustee pursuant to Rule 8.1;

"**the Supervision Act**" means the requirements set out in:

- (a) the *Superannuation Industry (Supervision) Act 1993*;
- (b) the *Income Tax Assessment Act 1936*;
- (c) the *Income Tax Assessment Act 1997*;
- (d) the *Occupational Superannuation Standards Act 1987*, now known as the *Superannuation Entities (Taxation) Act 1987*;
- (e) the *Superannuation (Resolution of Complaints) Act 1993*;
- (f) all of any regulations made under those Acts; and
- (g) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which the Trustee and the Company may determine to be a relevant law for the purposes of the Deed.

"**Taxes**" include income tax, land tax, stamp duty, charges or surcharges imposed by statute and any other tax or duty.

## 2. MEMBERSHIP OF PLAN

The Member is the initial member of the Plan which has been established solely for the provision of superannuation benefits for the Member in the event of the retirement of a Member from any business, trade, profession, vocation, calling, occupation or employment in which the Member is engaged or for the Member's Dependants in the event of the death of the Member and such ancillary purposes as are approved by the Insurance and Superannuation Commissioner.

## 3. CONTRIBUTIONS AND INVESTMENTS

3.1 Subject to the provisions of these Rules contributions to the Plan may be made by the Member or by any other person permitted to contribute to the Plan on behalf of the Member pursuant to the Supervision Act.

3.2 No contribution shall be accepted into the Plan other than under Rule 3.1 but this shall not prevent an amount being transferred to the Plan in respect of the Member under these Rules.

3.3 No contribution shall be accepted into the Plan in respect of a Member if, in the opinion of the Trustee, the acceptance of the contribution would or may prejudice the taxation concessions available to the Plan or otherwise cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act relating to the acceptance of contributions.

3.4 The moneys of the Plan shall be invested as a common fund by or on behalf of the Trustee in the name of the Trustee or in the name of any nominee selected by the Trustee in any of the following investments, property or modes of investment (with liberty to the Trustee at any time and from time to time to vary and transpose the same) namely:

- (a) in any investment authorised by the law of the Commonwealth of Australia or any of the States of Australia for the investment of trust funds;

- (b) in the purchase or acquisition of real estate (whether income producing or not) wherever situate or any estate or interest therein;
  - (c) on deposit at interest or otherwise with any bank, company or body corporate or on loan at interest or without interest or otherwise and either with or without security and upon such terms as the Trustee may think fit to any company or corporation or any person other than a Member;
  - (d) in the shares or stock of any class or the bonds, debentures, debenture stock, notes or other securities or obligations howsoever called of any company or body corporate; or
  - (e) in any investment or property (wherever situate) or any form or mode of investment from time to time approved by the Trustee,
- PROVIDED THAT** the Trustee shall not exercise the powers conferred by this sub-rule in any manner that would prejudice the taxation concessions available to the Plan or otherwise cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act regarding investments, borrowings (whether secured or unsecured) or loans.

3.5 Notwithstanding the provisions of this Rule 3 and subject to any relevant requirements of the Supervision Act the Trustee shall upon receipt of a direction from a Member in respect of the investment of all or part of the amount held in the Member Account of the Member arrange for such an investment in accordance with the direction of the Member.

#### 4. **OVERRIDING PROVISION RELATING TO BENEFITS**

- 4.1 It is the intention that the Plan should qualify as a regulated superannuation fund for the purposes of the Supervision Act. Accordingly, despite anything expressed or implied to the contrary in these Rules, no benefit:
- (a) shall fall below the minimum benefit which in the opinion of the Trustee is required to be paid from the Plan so that the Plan will not be in breach of or fail to comply with any relevant requirement of the Supervision Act;
  - (b) shall be paid or provided from the Plan to or in respect of any person or retained in the Plan in respect of any person in circumstances which in the opinion of the Trustee will or may prejudice the granting or continuance of any taxation concession for or in respect of the Plan under the Act or cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act; and
  - (c) that is secured or payable from the Plan to or in respect of a Member pursuant to these Rules, shall exceed the maximum benefit which in the opinion of the Trustee can be paid or provided from the Plan without prejudice to the concessions granted or available to the Plan under the Act or cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act. In order to ensure compliance with this paragraph 4.1(c), the Trustee may temporarily or permanently waive or reduce the contributions (if any) payable to the Plan by or in respect of a Member and, in any case subject always to this Rule, the Trustee may adjust the benefits provided or to be provided for or in respect of a Member and the circumstances in which the same will be provided in such manner and to such extent as may be determined by the Trustee.

4.2 Nothing in this Rule shall reduce any benefit in any manner which in the opinion of the Trustee will or may prejudice the taxation concessions

granted or available to the Plan under the Act or cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act relating to the reduction of benefits.

- 4.3 Despite anything expressed or implied to the contrary in these Rules, where the right of a Member, or of the Dependants of a Member, to receive benefits from the Plan ceases during a year of income the amount of those benefits shall be applied by the Trustee in such manner and at such times as is permitted by the relevant requirements of the Supervision Act relating to a Member ceasing to be entitled to benefits.
- 4.4 Subject to the other provisions of this Rule 4 the Member may direct the Trustee in writing that part of the benefits that might otherwise be payable to the Member must be forfeited to the Fund. In particular the Member may direct in writing that benefits exceeding the Member's reasonable benefit limit (as described in the Act) must be forfeited to the Fund. Such direction shall be deemed to be a consent by the Member to such forfeiture. The forfeited benefits shall be applied by the Trustee in such manner and at such times as is permitted by the relevant requirements of the Supervision Act relating to a Member ceasing to be entitled to benefits.

## **5. ACCOUNTS AND VALUATION**

- 5.1 The Trustee shall keep or cause to be kept a Member Account with respect to each Member.
- 5.2 Each Member Account shall be credited with:
- (a) all contributions to the Fund by the Member or in respect of the Member;
  - (b) any income earned on moneys invested in respect of the Member as determined by the Trustee;
  - (c) the proceeds of any insurance policy maintained by the Trustee on behalf of the Member pursuant to these Rules; and
  - (d) any other amount to be credited to a Member Account pursuant to these Rules.
- 5.3 Each Member Account shall be debited with:
- (a) the amount of any benefit paid to or in respect of the Member;
  - (b) any losses and expenses incurred on moneys invested in respect of the Member as determined by the Trustee;
  - (c) the premium or premiums for any insurance policy maintained by the Trustee on behalf of the Member pursuant to these Rules; and
  - (d) any other amount to be debited to a Member Account pursuant to these Rules.
- 5.4 The Trustee may establish such other accounts as are required for the purposes of the Plan.
- ## **6. MEMBER NOT TO DEAL WITH BENEFIT**
- 6.1 A Member shall not at any time charge or otherwise deal with his interest in the Plan or any of the Plan's investments.
- 6.2 If a Member charges or otherwise attempts to deal with his interest in the Plan then his interest in the Plan shall determine and the Trustee may, subject always to the provisions of these Rules and any relevant requirement of the Supervision Act relating to a Member ceasing to be entitled to benefits, at any time pay or apply a benefit not exceeding the

interest of the Member determined as described above to the Member and his Dependants to the exclusion of the others or other of them as the Trustee shall in the absolute discretion of the Trustee determine **PROVIDED THAT** no benefit shall be paid to or in respect of the Member at a time before the time for the payment of a benefit specified in Rule 7.2 except with the approval in writing of the Insurance and Superannuation Commissioner.

**7. BENEFITS ON DEATH DISABILITY OR RETIREMENT**

7.1 Subject to the provisions of these Rules, upon the death of a Member prior to the application of paragraph 7.3 of this Rule the Trustee shall pay a lump sum from the amount equal to the total value of the Member Account to or for the benefit of any one or more of:

- (a) such of the Dependants of the Member as the Trustee shall in the absolute discretion of the Trustee determine; and
- (b) the Member's personal representative;

and in such shares and proportions between them as the Trustee shall in his absolute discretion think fit.

7.2 Notwithstanding the provisions of paragraph 7.1 of this Rule the Trustee shall upon receipt of written notification from a beneficiary stating that a beneficiary elects to receive any or all of the benefit by way of a pension, pay a pension on such terms and conditions and at such rate as shall be determined by the Trustee.

7.3 Subject to the provisions of these Rules, upon a Member:

- (a) attaining the age by which benefits must commence to be paid pursuant to the relevant requirements of the Supervision Act;
  - (b) attaining the age of 55 years and establishing to the satisfaction of the Trustee that the Member has retired from his employment or profession;
  - (c) retiring from his employment or profession in circumstances where the Trustee is satisfied that the Member is totally and permanently incapacitated;
  - (d) satisfying the Trustee that the payment will not prejudice the granting or continuance of any taxation concession for or in respect of the Plan under the Act or cause the Plan to breach or fail to comply with any relevant requirement of the Supervision Act;
- the Trustee shall pay to the Member a pension on such terms and conditions and at such rate as shall be determined by the Trustee from the amount equal to the total value of the Member Account.

7.4 Notwithstanding anything expressed or implied to the contrary in these Rules, if in the opinion of the Trustee benefits must commence to be paid or be paid to the Member in order to comply with any relevant requirement of the Supervision Act relating to the age for payment of benefits then the Trustee shall pay to the Member a pension on such terms and conditions and at such rate as shall be determined by the Trustee from the amount equal to the total value of the Member Account at the time required by the said requirements of the Supervision Act.

**8. PENSION PAYMENT PROVISIONS**

8.1 Where a Member is to receive any benefit pursuant to these Rules by way of pension, the Trustee shall establish a Pension Account in respect of the Member.

- 8.2 The Trustee shall transfer to the Pension Account of a Member such amount of money from the Member's Account as the Trustee shall from time to time deem necessary.
- 8.3 In relation to a pension payable in respect of a Member the Trustee shall:
- (a) segregate the assets of the Member for the sole purpose of enabling the discharge of the whole or part of any current or non-current liability in relation to the payment of such pension;
  - (b) allocate the liabilities in relation to the Member between those assets which are segregated; and
  - (c) obtain such certificates in relation to the adequacy of the assets segregated to meet the current and non-current liabilities as the Trustee considers necessary or as any provision of the Supervision Act shall require and the Trustee shall constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of the Act.
- 8.4 In making any payment to a Member in the form of a pension, the Trustee shall observe the following conditions:
- (a) the pension shall be paid from the amount standing to the credit of the Pension Account of the Member;
  - (b) the pension shall be paid at least annually;
  - (c) the amount of the pension in any year shall be such amount as is nominated by the Member and notified to the Trustee in writing from time to time **PROVIDED THAT** the amount shall not be greater than or lesser than the amounts calculated respectively as the maximum and minimum limits specified by the Supervision Act for the payment of a pension described in the Regulations to the Supervision Act;
  - (d) the pension shall not be transferred to any person other than a Dependant on the death of the Member and shall be transferred only upon such other terms as are permitted by the Supervision Act; and
  - (e) the capital value of the Pension Account and any income from it shall not be used by any person as security for a borrowing.
- 9. ELECTION TO HAVE BENEFITS PAID OTHER THAN AS A PENSION**
- 9.1 Despite anything expressed or implied to the contrary in these Rules, the Trustee shall, upon receipt of a written notice from a Member or beneficiary stating that the Member or beneficiary elects to receive all or any portion of the Member's Account by way of lump sum, commute that sum to a lump sum **PROVIDED THAT** the commutation is permitted by the Supervision Act.
- 9.2 The Trustee shall, upon receipt of a written notice from a Member stating that the Member elects to receive all or any portion of the Member's Account by way of an annuity, purchase such an annuity **PROVIDED THAT** the purchase is permitted by the Supervision Act.
- 9.3 The Trustee may with the approval of a Member distribute to the Member assets in specie in satisfaction of any lump sum payment made in respect of the Member pursuant to Rule 9.1.
- 10. DEDUCTION OF TAXES DUTIES OR CHARGES**
- The Trustee may deduct from:
- any moneys paid into the Plan;
  - any payment made from the Plan; or
  - any income or capital of the Plan,



any amount in respect of Taxes, duties or administration charges which the Trustee believes is or may be payable in respect of the Plan in such manner as the Trustee thinks fit and shall have power to remit the amount or such other amount as the Trustee thinks fit to the Commissioner of Taxation, other relevant authority or other party.

**11. TRANSFERS TO AND FROM APPROVED ARRANGEMENTS**

- 11.1 Subject to Rules 11.3 and 11.4, the Trustee may, upon the request of a Member, transfer to an Approved Arrangement, in lieu of providing a benefit from the Plan, an amount representing the value of the benefit the Member would otherwise have received from the Plan as determined by the Trustee. Upon such transfer being effected all interest of whatsoever nature of the Member in the Plan shall cease, and the Trustee shall thereby be released and discharged accordingly in respect of the Member.
- 11.2 Subject to Rules 11.3 and 11.4, the Trustee shall have the right to receive from the trustees or administrators or other controlling body of an Approved Arrangement by way of transfer or otherwise any moneys or other assets in respect of a Member's interest in that other fund and the Trustee shall increase the amount of the benefits otherwise payable to or in respect of the Member accordingly.
- 11.3 The Trustee shall have power to impose such conditions relating to any amount transferred pursuant to Rule 11.1 or received pursuant to Rule 11.2 as the Trustee shall think fit including, without limitation, such conditions as shall be necessary or desirable in order to comply with the requirements of the Supervision Act in relation to the provision, preservation or portability of benefits.
- 11.4 Despite anything expressed or implied to the contrary in these Rules, no payment or transfer shall be made received or arranged pursuant to Rule 11.1 or Rule 11.2 if in the opinion of the Trustee the payment or transfer will or may prejudice the taxation concessions available to the Plan or otherwise cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act relating to the provision, preservation or portability of benefits.

**12. STATUTORY FINANCIAL MANAGEMENT OF THE PLAN**

If the Trustee determines that the financial position of the Plan is unsatisfactory or that the funding and solvency of the Plan is such that the statutory financial management provisions of the Supervision Act apply, then the Trustee must initiate winding up proceedings or otherwise administer and deal with the assets of the Plan in accordance with such provisions of the Supervision Act.

**13. TRUSTEE**

- 13.1 The Trustee shall be a constitutional corporation within the meaning of the Supervision Act or if the Trustee shall be an individual or group of individuals, then the Plan must be one which has as its sole or primary purpose the provision of old-age pensions.
- 13.2 The number of trustees constituting the Trustee shall be one or such greater number as the Member determines **PROVIDED THAT** any relevant requirement of the Supervision Act relating to decisions of or the composition, appointment or removal of trustees, or vacancies amongst trustees, is observed.

- 13.3 The Member may at any time by notice to the Trustee and signed by no less than 75% of the Members remove the Trustee or any one of them from office and whenever a vacancy occurs of the Trustee or amongst the Trustees the Members may by notice in writing fill the vacancy.
- 13.4 Despite anything to the contrary in these Rules, any person or combination of persons may only be appointed as a Trustee of the Plan so long as that person's or combination of persons':
- (a) appointment to and removal from office is effected in accordance with the relevant requirements of the Supervision Act relating to the composition, appointment and removal of trustees; and
  - (b) holding of such office will not prejudice the taxation concessions granted or available to the Plan under the Act or otherwise cause the Plan to breach or to fail to comply with the relevant requirements of the Supervision Act relating to the composition, appointment and removal of trustees.
- 13.5 The Trustee may with the approval of the Members appoint and remunerate out of the Plan:
- (a) a Plan Secretary on such terms as the Trustee determines and delegate to any such Plan Secretary such secretarial or administrative functions as the Trustee thinks fit;
  - (b) one or more investment managers or custodian trustees in relation to all or part of the assets of the Plan and delegate to any such investment manager or custodian trustee such powers, authorities and discretions as the Trustee shall think fit **PROVIDED THAT** the Trustee shall not be liable for any loss as a result of any of such appointment.
- 13.6 The Trustee or a director of the Trustee shall not be under any personal liability in respect of any loss or breach of trust relating to the Plan unless the same shall have been due to his failure to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the Trustee or director of the Trustee is required to exercise in the circumstances.
- 13.7 Subject to Rule 13.6, the Trustee shall be indemnified by the Plan against all liabilities and damages incurred by such Trustee in the execution or purported or attempted execution or in respect of the non-execution of the trusts, authorities, powers and discretions contained in the Rules and the Trustee shall have a lien on and may use any moneys for the repayment of all proper legal and other costs, charges and expenses of administering or winding up the Plan and otherwise performing the Trustee's duties under the Rules. This indemnity shall apply to any payment made on the death of a Member to any person whom the Trustee bona fide believes to be entitled to it **PROVIDED THAT** no such lien shall be exercised if in the opinion of the Trustee the exercise of the lien will or may prejudice the taxation concessions available to the Plan or otherwise cause the Plan to breach or to fail to comply with any relevant requirement of the Supervision Act relating to the vesting or preservation of benefits or liens over benefits. The Trustee shall not have any right of indemnity against any Member.
- 13.8 The Trustee shall have power to effect a policy of insurance for death and disability cover for a Member on such terms as the Trustee thinks fit and to vary, cancel and renew any such policy and the premiums payable in respect of such a policy shall be paid out of the Plan.

- 13.9 The Trustee shall keep or cause to be kept books of the Plan in which all transactions of the Plan shall be recorded.

**14. ALTERATION TO RULES**

These Rules may from time to time be altered, repealed or added to by the Trustee by an instrument in writing and such alterations, repeals or additions may in like manner be altered, repealed or added to **PROVIDED THAT** a Member's rights to accrued benefits as defined for the purposes of the Supervision Act shall not be adversely affected without his consent in writing **AND PROVIDED FURTHER THAT** the alteration, repeal or addition is not prohibited by the Supervision Act or where the Supervision Act requires any approval or consent from any person or persons before an amendment may be made to the governing rules of a regulated superannuation fund then no amendment shall be made pursuant to this Rule without that consent or approval in such form as is required by the Supervision Act.

**15. COMPLAINTS AND INQUIRIES PROCEDURES**

The Trustee shall establish arrangements and procedures under which a Member has the right to make inquiries into or complaints about the operation or management of the Plan in relation to that Member in accordance with any requirement of the Supervision Act.

**16. AUDITOR**

- 16.1 The Trustee shall appoint an Auditor who shall be remunerated out of the Plan.

- 16.2 The appointment of any Auditor in accordance with Rule 16.1 shall be on such terms and for such periods as the Trustee thinks fit and the Trustee may remove any auditor and appoint another in his stead **PROVIDED THAT** no appointment shall be made under this Deed which would result in the Plan being in breach of any relevant requirement of the Supervision Act.

- 16.3 The Trustee shall require the Auditor to:
- (a) audit the financial statements of the Plan annually or at such other intervals as may be required for the purposes of the Supervision Act; and
  - (b) prepare such reports as may be required for the purposes of the Supervision Act and deliver them to the Trustee.

**17. INFORMATION TO MEMBERS AND OTHERS**

The Trustee shall comply with the relevant requirements of the Supervision Act in relation to the provision of information and documents including extracts of documents to Members and other persons entitled to them.

**18. KEEPING AND RETENTION OF RECORDS**

The Trustee shall comply with any relevant requirement of the Supervision Act in relation to the keeping and retention of records.

**19. OVERRIDING COMPLIANCE PROVISION**

- 19.1 Where a requirement of a standard prescribed under the Supervision Act is applicable to the operation of a superannuation fund, the requirement, in force from time to time, shall be taken to be included in the Rules.

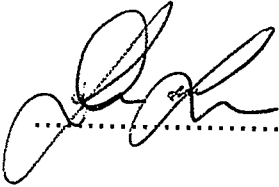
19.2 In the event of any inconsistency between a requirement included in the Rules by virtue of Rule 19.1 and any other provision of the Rules, the requirement included by virtue of Rule 19.1 shall prevail and the other provision of the Rules shall be read down to such extent as is necessary or desirable in the opinion of the Trustee to give such other provision valid operation so far as is practicable and if such other provision cannot be read down it shall be deemed to be deleted from the Rules.

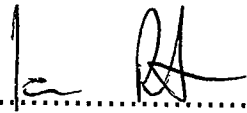
19.3 In the event of any doubt or difference concerning the operation or interpretation of these Rules, the Trustee shall determine such doubt or difference and such determination shall be binding on any Employer, the Members and any person claiming through or under the Members.

**EXECUTED AS A DEED**

**SIGNED SEALED AND DELIVERED** by  
**IAN GREGORY ROBERTSON** as Member  
in the presence of:

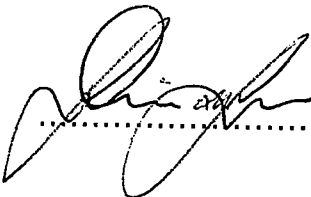
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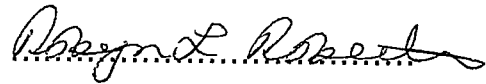
  
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**SIGNED SEALED AND DELIVERED** by  
**ROBYN LEANNE ROBERTSON** as Member  
in the presence of:

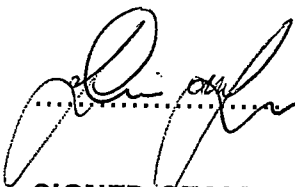
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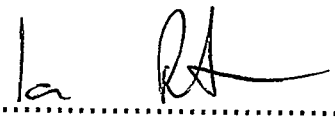
  
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**SIGNED SEALED AND DELIVERED** by  
**IAN GREGORY ROBERTSON** as  
Trustee in the presence of:

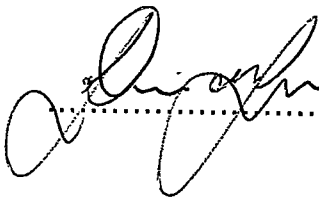
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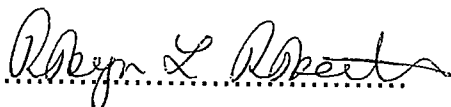
  
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**SIGNED SEALED AND DELIVERED** by  
**ROBYN LEANNE ROBERTSON** as  
Trustee in the presence of:

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