

ESTABLISHED 1887

PAYNE BUTLER LANG
SOLICITORS

**DONJAN STAFF SUPERANNUATION
FUND**

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TABLE OF CONTENTS

DEFINITIONS	1
1. Definitions and Interpretation	1
2. Parties to Deed	4
THE FUND	4
3. Establishment of Fund	4
4. Name	4
COMPLIANCE WITH SIS	5
5. Regulated Fund	5
6. Standards Incorporated in Deed	5
7. Excluded or Self Managed Fund	5
TRUSTEE	5
8. Trustee - Vacancy, Appointment, Removal and Representation	5
9. Powers of Trustee	6
10. Investment Strategy	6
11. Borrowing	6
12. Exercise of Trustee's Powers and Discretions	6
13. Trustee's Indemnities	7
14. Trustee's Fees	7
MEMBERSHIP	7
15. Membership of Fund	7
16. Restrictions on Membership	8
17. Classes of Membership	8
18. Information from Employers, Members and Beneficiaries	8
19. Employers	9
CONTRIBUTIONS AND TRANSFERS	10
20. Contributions to Fund	10
21. Transfers to Other Superannuation Entities	10
22. Transfer to Eligible Rollover Funds	10
23. Transfers from Other Superannuation Entities and Roll Overs	10

ACCOUNTS.....	11
24. Accounts and Records.....	11
25. Accumulation Account	11
26. Income Account.....	12
27. Equalisation Account	13
ADMINISTRATION	14
28. Assets in Name of Trustee or Custodian	14
29. Allocation of Fund Income	14
30. Revaluation of Assets	14
31. Separate Investments.....	15
32. Policies	15
33. Confidentiality	15
34. Audit	15
35. Disclosure Standards.....	16
36. Complaints by Beneficiaries.....	16
37. Costs of the Fund	16
BENEFITS AND PAYMENTS	17
38. Payment of Benefits in Various Circumstances	17
39. Amount of Benefit.....	18
40. Manner of Payment of Benefit	19
41. Benefits by Transfer of Assets.....	20
42. Procedure for Payment of Benefits.....	20
43. Payment to Others on Behalf of Members or Beneficiaries.....	20
44. Payment of Benefit May Be Deferred.....	21
45. Money Owing to Fund or an Employer.....	21
46. Forfeiture of Benefit.....	21
47. Benefits Payable in Accordance with Standards	22
48. Allocated Pension	22
49. Fixed Pension.....	22
50. 15 Year/Life Expectancy Pensions	23
51. Variation of Pensions	25
52. Segregation of Pension Assets.....	25
53. Commutation of Pension.....	25
54. Lump Sum May Be Converted to Pension	25

WINDING UP	26
55. Termination of Fund.....	26
GENERAL.....	27
56. Variation of Deed	27
57. Relationship between Employer and Member	27
58. Severability	27
59. Notices.....	27
60. Governing Law and Jurisdiction	28
Schedule 1 Application For Membership	29

DEED made *22 NO MAY* 2001

PARTIES **DONJAN INVESTMENTS PTY LTD** A.C.N. 010 812 736
of 8 Thornton Street, Bundaberg, Queensland, 4670
("Principal Employer")

AND **DONALD COWLEY SMITH** and **JANINE HEATHER SMITH**
of 8 Thornton Street, Bundaberg, Queensland, 4670
("Trustee")

INTRODUCTION

- A. The Principal Employer wishes to establish a regulated superannuation fund.
- B. The primary purpose of the Fund is to pay old age pensions.
- C. The name of the Fund is the **DONJAN STAFF SUPERANNUATION FUND**.

IT IS AGREED

DEFINITIONS

1. Definitions and Interpretation

1.1 Statutory Definitions

- (1) Any word or expression defined in ITAA, SIS or the SIS Regulations which is used but not defined in this Deed has the meaning given to that word or expression in ITAA, SIS or the SIS Regulations (as the case may be).
- (2) If a word or expression is defined in both ITAA and SIS and the meanings are inconsistent, the word or expression has the meaning given by SIS.

1.2 Definitions

In this Deed:

- (1) "**Accumulation Account**" means one of the accounts described in clause 25;
- (2) "**Assets of the Fund**" mean all the cash, investments and other property held by or on account of the Trustee upon the trusts of this Deed;
- (3) "**Beneficiary**" means a person entitled, or who may be entitled, to a Benefit by reason of the membership of another person;
- (4) "**Benefit**" means any amount payable out of the Fund to or in respect of a Member or Beneficiary;

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- (5) **“Contributions”** means:
- (a) payments to the Fund by Members or Employers in accordance with the provisions of this Deed; and
 - (b) payment of the shortfall component under the Superannuation Guarantee Administration Act, and related legislation;
- (6) **“Deed”** means this document, including any schedule or annexure to it;
- (7) **“Employer”** means the Principal Employer and any Participating Employer and, in relation to a Member, means the Employer of that Member (if there is one);
- (8) **“Equalisation Account”** means the account described in clause 27.1;
- (9) **“Fund”** means the superannuation fund established by this Deed;
- (10) **“Fund Year”** means a period of 12 months ending on 30 June or other period ending on some other date the Trustee determines;
- (11) **“Income Account”** means the income account described in clause 26.1;
- (12) **“ITAA”** means the *Income Tax Assessment Act 1936* (“**1936 Act**”) or the *Income Tax Assessment Act 1997* (“**1997 Act**”) as the case may be;
- (13) **“Lump Sum”** means the amount of Benefit, other than a pension, payable to or in respect of a Member;
- (14) **“Member”** means a person who has been accepted by the Trustee as a member of the Fund and has not ceased to be a member;
- (15) **“Nominated Dependant”** means the Dependant nominated by a Member;
- (16) **“Participating Employer”** means:
- (a) the Employer (if any) described as such at the beginning of this Deed; and
 - (b) any Employer admitted under clause 19.1;
- (17) **“Pensioner”** means a person receiving a pension;
- (18) **“Policy”** includes a policy on the life of a Member for endowment, term, whole of life, disablement, accident or sickness insurance effected either as an individual policy or as a group policy and any policy of any 2 or more of these types;
- (19) **“Principal Employer”** means Donjan Investments Pty Ltd ACN 010 812 736 or any Employer which elects to assume by deed the obligations of the Principal Employer under this Deed;

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- (20) **"Regulator"** means the Commissioner of Taxation, the Australian Prudential Regulation Authority or any other person or body to which the Trustee must give a notice of election under SIS or report as to the Fund's compliance with SIS;
- (21) **"Restricted Benefit"** means a Benefit which may only be cashed on or after satisfaction of a condition of release;
- (22) **"Roll-over Payment"** means any payment made by or received by the Trustee to which section 27D of ITAA applies;
- (23) **"SIS"** means the *Superannuation Industry (Supervision) Act* and where appropriate includes the SIS Regulations;
- (24) **"SIS Regulations"** means the *Superannuation Industry (Supervision) Regulations*;
- (25) **"Standards"** means the standards or requirements of:
- (a) SIS and the SIS Regulations;
 - (b) ITAA or the Commissioner of Taxation; or
 - (c) the circulars, rulings and standards published by the Regulator, the Commissioner of Taxation or the Treasurer of Australia;
- which must be complied with to obtain the maximum income tax concessions available to superannuation funds;
- (26) **"Taxation"** includes income tax, surcharge, tax on Benefits and any other taxes or duties;
- (27) **"Transferred Amount"** means the amount determined by the Trustee in accordance with clause 21.1 to reflect the entitlement of the Member being transferred;
- (28) **"Transfer In"** means the asset or payment accepted by the Trustee in accordance with clause 23.1 or clause 23.2; and
- (29) **"Trustee"** means the trustee for the time being of the Fund.

1.3 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate or entity as defined in the ITAA;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns; and

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- (e) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:
- (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter does not alone imply that the word or phrase is used with a meaning different from that given by its definition.

2. Parties to Deed

- 2.1 If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- 2.2 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 2.3 A party which is a trustee is bound both personally and in its capacity as a trustee.

THE FUND

3. Establishment of Fund

- 3.1 The Trustee accepts appointment as trustee of the Fund and is bound by this Deed.
- 3.2 The Fund commences on the date of execution of this Deed.
- 3.3 The primary purpose of the Fund is the provision of old age pensions..

4. Name

- 4.1 The name of the Fund is the Donjan Staff Superannuation Fund.

COMPLIANCE WITH SIS

5. Regulated Fund

- 5.1 The Trustee must give the Regulator notice of election that SIS applies to the Fund.

6. Standards Incorporated in Deed

- 6.1 The Standards are incorporated in this Deed and have the same force and effect as if they were fully set out in this Deed.
- 6.2 If there is any inconsistency between the Standards and any provision of this Deed, the Standards apply.
- 6.3 The Trustee need not comply with a Standard which is not mandatory.
- 6.4 The Trustee must use its best endeavours to administer the Fund as a complying superannuation fund.

7. Excluded or Self Managed Fund

- 7.1 Standards which do not apply to certain small or self managed funds do not apply to the Fund unless they must.

TRUSTEE

8. Trustee - Vacancy, Appointment, Removal and Representation

- 8.1 The Fund must be held and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.
- 8.2 The Trustee and any director of a corporate trustee must satisfy the Standards.
- 8.3 The Trustee ceases to be Trustee:
- (1) if the Trustee fails to satisfy the requirements of the Standards so far as they relate to trustees of regulated superannuation funds;
 - (2) if the Trustee is disqualified from holding office by operation of law;
 - (3) if it is wound up or being an individual dies;
 - (4) in any other circumstances provided for or required by the Standards; or
 - (5) if it is removed by notice from the Principal Employer.
- 8.4 The Trustee may resign by giving written notice of resignation to the Members or the Employer.

8.5 A retiring or outgoing Trustee must:

- (1) do everything necessary to vest the Fund in the new Trustee; and
- (2) deliver all records and other books of the Fund to the new Trustee.

8.6 On the Trustee ceasing to be Trustee, the new Trustee is:

- (1) the trustee nominated by the immediately preceding Trustee (while still Trustee);
- (2) in default of any nomination by the immediately preceding Trustee, the trustee nominated by the Principal Employer; or
- (3) in default of any nomination by the Principal Employer, the trustee nominated by a majority of the Members and if no Members then by the first Beneficiary to make a nomination.

8.7 If a trustee is not nominated under clause 8.6 the Principal Employer is the Trustee.

9. Powers of Trustee

9.1 The Trustee has all the powers in respect of the Fund and the Assets of the Fund which it could exercise if it was the absolute and beneficial owner of the Fund and the Assets of the Fund subject only to:

- (1) the restrictions imposed under SIS;
- (2) compliance with the Standards; and
- (3) the exercise of those powers being consistent with the "sole purpose test" prescribed by SIS.

10. Investment Strategy

10.1 The Trustee must formulate and implement an investment strategy in respect of the Fund having regard to the Standards.

11. Borrowing

11.1 The Trustee must not borrow or maintain an existing borrowing of money unless the Standards permit it.

12. Exercise of Trustee's Powers and Discretions

12.1 Every discretion vested in the Trustee is absolute and uncontrolled. The Trustee may re-exercise a discretion.

12.2 A discretion vested in the Trustee is not exercisable by a person other than the Trustee unless:

- (1) the consent of the Trustee is given to the exercise of that discretion; and
- (2) it is otherwise permitted by the Standards.

12.3 Every power vested in the Trustee is exercisable at its absolute and uncontrolled discretion.

12.4 The Trustee may, if the Standards permit, by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred upon it by this Deed.

12.5 The Trustee must not be subject to the direction of any other person in the exercise of any of its powers unless the Standards permit it.

13. Trustee's Indemnities

13.1 The Trustee and its directors are indemnified out of the Fund against all liabilities incurred by them through any act or omission in the exercise or purported or attempted exercise of the trusts, powers, authorities, duties and discretions vested in the Trustee under this Deed or at law to the extent the Standards permit.

13.2 The indemnity conferred by this clause 13 extends to payments made to a person whom the Trustee bona fide believes to be entitled to those payments although it may be subsequently found that the person was not in fact so entitled.

14. Trustee's Fees

14.1 The Trustee may (unless to do so would cause the Fund to become a public offer fund) charge fees for the services it provides as trustee of the Fund.

MEMBERSHIP

15. Membership of Fund

15.1 Only persons who are:

- (1) eligible to become members of a regulated superannuation fund under the Standards; and
- (2) invited to join the Fund by an Employer;

may become Members.

15.2 If invited by an Employer to join the Fund, an employee or other person who wishes to become a Member must apply to the Trustee in writing in the form specified in the Schedule or in any other form the Trustee approves. If an applicant for membership

is unwilling or unable to complete an application his or her Employer or spouse may complete the application on the applicant's behalf.

15.3 The Trustee may admit or reject an applicant for membership. On admission the Trustee must give the information about the Fund prescribed in the Standards.

15.4 The Member joins on:

- (1) the date determined by the Trustee; or
- (2) otherwise, the date of the completed application for membership.

15.5 The Trustee may impose conditions on:

- (1) an applicant's admission; and
- (2) Benefits for that Member.

The Trustee, subject to the Standards, may remove or vary any of these conditions.

15.6 A person ceases to be a Member when:

- (1) all that Member's Benefit has been paid or forfeited; or
- (2) the Member dies.

16. Restrictions on Membership

16.1 Despite clause 15 the only persons who are eligible to become Members are Donald Cowley Smith and Janine Heather Smith. No variation to this Deed can delete or amend this restriction.

17. Classes of Membership

17.1 The Trustee may create different classes of membership. The Trustee may determine the class of membership in respect of which the Member is admitted.

17.2 Where a Member is included in more than 1 membership class, any person making Contributions must designate in relation to which membership class or classes it is being made and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Accounts.

18. Information from Employers, Members and Beneficiaries

18.1 An Employer, Member or Beneficiary when requested by the Trustee must:

- (1) furnish any information the Trustee considers necessary for the purposes of the Fund; and

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- (2) in the case of a Member, submit to medical examinations by a registered medical practitioner nominated by the Trustee.
- 18.2 If a person fails to comply with the provisions of clause 18.1, the Trustee may to the extent permitted by the Standards:
- (1) suspend the acceptance of any Contributions; or
 - (2) withhold or reduce any Benefit;
- until the person complies.
- 18.3 Where an Employer, Member or Beneficiary furnishes information affecting a Benefit payable and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to the amount that would have applied had full and accurate information been supplied.

19. Employers

- 19.1 The Trustee may admit Participating Employers. With the consent of the Trustee any Participating Employer may assume the obligations of the Principal Employer.
- 19.2 The participation of an Employer may be terminated:
- (1) by the Employer by notice in writing to the Trustee; or
 - (2) by the Trustee by notice in writing to the Employer.
- 19.3 On termination of participation:
- (1) the Trustee must specify a date ("**Retirement Date**") upon which the Employer ("**Retiring Employer**") must retire;
 - (2) the Retiring Employer must immediately pay all arrears (if any) of Contributions up to the Retirement Date;
 - (3) Benefits payable on or before the Retirement Date continue to be payable out of the Fund;
 - (4) the Trustee must certify the proportion of the Assets of the Fund including arrears (if any) of Contributions still to be made under clause 19.3(2) attributable to Members employed by the Retiring Employer at the Retirement Date; and
 - (5) the Trustee may make arrangements it thinks proper for the provision of Benefits for Members employed by the Retiring Employer and their dependants.

CONTRIBUTIONS AND TRANSFERS

20. Contributions to Fund

- 20.1 An Employer may make whatever Contributions in respect of Members employed by it, and at whatever times, the Employer decides.
- 20.2 A Member (or any other person permitted by the Standards) may make whatever Contributions are agreed between the Employer, the Trustee and the Member (or the person making the Contribution).
- 20.3 The Trustee may refuse to accept a Contribution.
- 20.4 The Trustee may accept Contributions in respect of a Member only when permitted by the Standards.
- 20.5 The Trustee may accept Contributions by the transfer of assets, in which case the value of the asset as determined by the Trustee is the amount of the Contribution.

21. Transfers to Other Superannuation Entities

- 21.1 Where a Member requests that the whole or a part of that Member's entitlement in the Fund be transferred to another superannuation entity, the Trustee may determine the amount of the Member's entitlement and pay that amount or the part requested to the trustee of the other superannuation entity. The Member must complete the forms the Trustee requires.
- 21.2 The Transferred Amount must reflect the value of the Member's entitlement (or the part of it) at the time of the request.
- 21.3 The receipt of the Transferred Amount by the proper officer of the other superannuation entity is a complete discharge to the Trustee of all liabilities in respect of the Transferred Amount.
- 21.4 The Trustee has no responsibility to see to the application of the Transferred Amount.
- 21.5 The payment of the Transferred Amount must satisfy the Standards .

22. Transfer to Eligible Rollover Funds

- 22.1 The Trustee may, if the Standards permit, apply to the trustee of an eligible rollover fund on behalf of a Member for the issue to the Member of a superannuation interest in the eligible rollover fund in exchange for the payment of the Transferred Amount.

23. Transfers from Other Superannuation Entities and Roll Overs

- 23.1 Where a Member has an entitlement under any other superannuation entity, the Trustee may accept from that superannuation entity the whole or any part of its assets relevant to the Member.

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- 23.2 Where a Member has an eligible termination payment, the Trustee may accept it as a roll over under the ITAA.
- 23.3 The Trustee must hold the Transfer In as part of the Fund and credit the Member's Accumulation Account with the amount, or the value of the assets as determined by the Trustee, at the time of receipt.
- 23.4 The Trustee must ensure that any Transfer In which includes a Restricted Benefit is dealt with in accordance with the Standards.
- 23.5 The Trustee must, unless it has evidence to the contrary, accept the composition of the Transfer In as advised to the Trustee by the other superannuation entity.

ACCOUNTS

24. Accounts and Records

24.1 The Trustee must:

- (1) keep account of all money received for and disbursed from the Fund and of all relevant dealings;
- (2) collect, and pay promptly into the bank account of the Fund, all money paid to the Fund;
- (3) keep appropriate records, books and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments of the Fund;
- (4) prepare accounts as at the end of the Fund Year, as are specified in the Standards; and
- (5) provide to the Members, the Employers and other persons reports, statements and notices as are specified in the Standards;

to enable the Trustee to meet its obligations under SIS and the ITAA.

- 24.2 The Trustee may disclose information concerning the Fund to Employers, Members and Beneficiaries, and must do so if required by the Standards.

25. Accumulation Account

25.1 An Accumulation Account must be established in respect of each Member.

25.2 The following amounts must be credited to a Member's Accumulation Account:

- (1) any Transfer In in respect of the Member;
- (2) any Contributions in respect of the Member;

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- (3) the proceeds of any Policy effected in respect of the Member other than those proceeds the Trustee determines should be credited to the Equalisation Account;
 - (4) the Members proportion of earnings, profits and any revaluations under clauses 29, 30 and 31;
 - (5) any amount allocated to the Member under clause 39.4;
 - (6) any forfeited amounts allocated to but not paid directly to the Member; and
 - (7) any reimbursement of Fund expenses made by or on behalf of the Member which is not credited to the Income Account.

25.3 The following amounts must be debited against a Member's Accumulation Account:

- (1) any amount paid out of the Fund in respect of the Member under clause 21.1;
- (2) any Benefit paid in respect of the Member;
- (3) any Taxation in respect of the Member as determined by the Trustee;
- (4) the costs of any Policy effected in respect of the Member other than the costs of any Policy the Trustee determines should be debited to the Income Account;
- (5) any negative earnings determined in accordance with clause 29.1;
- (6) any losses allocated under clause 31;
- (7) any reduction made to the amount of the Member's Benefits under clause 39.3;
- (8) any amount forfeited under clause 46.1; and
- (9) any costs relating to the Member other than those costs the Trustee determines should be debited to the Income Account.

25.4 If costs in connection with a Policy have been debited to the Member's Accumulation Account the Trustee may determine to credit the proceeds of the Policy to the Equalisation Account, except that the Trustee must credit to the Member's Accumulation Account out of the proceeds an amount sufficient to reimburse those costs (without interest).

26. Income Account

26.1 An Income Account for the Fund must be established.

26.2 The following amounts must be credited to the Income Account:

- (1) all income and profits of the Fund (except income or profits referred to in clause 31);
- (2) any reimbursement of Fund expenses which is not credited to an Accumulation Account; and
- (3) any surplus arising from any valuation undertaken in accordance with clause 30 which is not credited directly to an Accumulation Account.

26.3 The following amounts must be debited against the Income Account:

- (1) any loss sustained on the disposal of any investments of the Fund other than losses referred to in clause 31;
- (2) any Fund expenses (including the costs of any Policy) which are not debited to an Accumulation Account;
- (3) any deficiency arising from a valuation undertaken in accordance with clause 30;
- (4) any amount of Taxation which is not debited to an Accumulation Account;
- (5) the allocation of earnings to the Member's Accumulation Account; and
- (6) any amount credited to the Equalisation Account under clause 27.2.

27. Equalisation Account

27.1 An Equalisation Account must be established for the Fund.

27.2 The Equalisation Account must be credited with:

- (1) the proceeds of any Policy effected in respect of a Member which are not credited to that Member's Accumulation Account;
- (2) all forfeited Benefits under clause 46.2;
- (3) any balance remaining in the Income Account after distributing earnings to the Accumulation Accounts; and
- (4) any Contributions which the contributor requests the Trustee not to credit to a Member's Accumulation Account.

27.3 Money held in the Equalisation Account does not form part of any Accumulation Account and any income derived must be credited to the Equalisation Account.

27.4 The Trustee may use the Equalisation Account to:

- (1) stabilise the investment earnings of the Fund;

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- (2) provide for any future contingencies the Trustee considers reasonable;
 - (3) pay Fund expenses; and
 - (4) provide additional Benefits to Members or Beneficiaries.

ADMINISTRATION

28. Assets in Name of Trustee or Custodian

- 28.1 The Trustee may hold the Assets of the Fund or may authorise another person to do so. If the Fund has 5 or more Members the person must satisfy the requirements of SIS to be a custodian of fund assets.

29. Allocation of Fund Income

- 29.1 The Trustee must:

- (1) determine the investment return (which may be negative); and
- (2) allocate the investment return to the Accumulation Accounts, in a way that is fair and reasonable (and complies with the Standards) as between:
 - (a) the Members; and
 - (b) the various kinds of Benefits of each Member;

at the following times:

- (3) at the end of each Fund Year;
- (4) if requested, in respect of a portion of a Fund Year; or
- (5) if the Trustee pays a Benefit during the course of a Fund Year, at or about the date of payment.

30. Revaluation of Assets

- 30.1 At any time the Trustee may:

- (1) make a valuation of the Assets of the Fund at that date; and
- (2) determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account or to an Accumulation Account.

- 30.2 If a value is determined in respect of an asset under clause 30.1 that value must then be reflected in the accounts of the Fund.

31. Separate Investments

- 31.1 The Trustee may invest in respect of certain Members either separately or collectively.
- 31.2 The Trustee must record on whose behalf any specific or collective assets or investments are acquired or made.
- 31.3 The profits or losses arising from any separate investments and any costs or charges applicable to those investments must be allocated in the appropriate portions directly to the relevant Members' Accumulation Accounts and must not be allocated to the Income Account.

32. Policies

- 32.1 The Trustee may acquire Policies in respect of Members.
- 32.2 The Trustee is not liable to any Member or any Member's legal personal representative or dependants if the Trustee does not acquire a Policy in respect of that Member.
- 32.3 If in connection with any Policy an insurance company refuses to insure or seeks to impose limitations or special conditions in respect of a Member or Beneficiary, the Trustee may impose corresponding limitations or special conditions in respect of the Benefits payable to the Member or Beneficiary.

33. Confidentiality

- 33.1 The Trustee, the Principal Employer and every Participating Employer must treat as strictly confidential (so far as is practicable and in compliance with SIS the ITAA and any privacy legislation) all information disclosed to or gained by each of them in the course of administering the Fund.

34. Audit

- 34.1 The accounts and statements of the Fund in respect of a Fund Year must be audited by an auditor who is authorised to do so under the Standards.
- 34.2 The Trustee must make such arrangements as are necessary to enable the audit of those accounts and statements.
- 34.3 The Trustee must ensure the auditor provides a certificate relating to the accounts, statements and returns of the Fund within the period specified in the Standards.
- 34.4 The certificate must be in the form approved under the Standards.
- 34.5 The audit must, if required by the Standards, include a review and report on compliance with SIS.

35. Disclosure Standards

35.1 The Trustee must disclose to:

- (1) the Regulator;
- (2) the Members, prospective Members and former Members;
- (3) Employers;
- (4) the auditor;
- (5) the trustee of any superannuation entity to which a Roll-over Payment is made; and
- (6) others specified by the Standards;

information concerning the Fund, the Contributions, the investment strategy, the Benefits and arrangements with an eligible rollover fund as the Standards require in the manner and at the times the Standards require.

36. Complaints by Beneficiaries

36.1 If the Standards require, the Trustee must ensure that there are in force arrangements under which:

- (1) Beneficiaries and Members have the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to the Beneficiary or the Member making the enquiry or complaint; and
- (2) enquiries or complaints so made will be properly considered and dealt with within 90 days after they are made;

and inform the Members about the arrangements as the Standards require.

37. Costs of the Fund

37.1 All costs, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation or winding up of the Fund, must be borne and paid out of the Fund.

37.2 The Trustee must reimburse the Employer out of the Fund all costs which are properly incurred by the Employer in connection with the expenses of the Fund.

BENEFITS AND PAYMENTS

38. Payment of Benefits in Various Circumstances

38.1 Retirement and Termination of Employment Benefits

The Trustee may pay the Benefit upon the Member's retirement or, if consistent with SIS, upon the Member terminating employment with the Employer.

38.2 Benefits for Incapacity

The Trustee may pay the Benefit upon the Member becoming either temporarily or permanently incapacitated (as defined in regulation 6.01(2) of the SIS Regulations).

38.3 Death Benefits

- (1) The Trustee must pay the Benefit upon the death of a Member.
- (2) The Trustee may pay the death Benefit to the Nominated Dependant, but if:
 - (a) there is no Nominated Dependant; or
 - (b) the Trustee considers it inappropriate to pay the Benefit to any Nominated Dependant;

the Trustee may pay the death Benefit to:

- (c) any one or more of the Member's Dependents; or
 - (d) any other person entitled under the Standards to receive the Benefit;
- in the manner, at the times, by the instalments and in the proportions between them, if more than one, which the Trustee determines.
- (3) The Trustee must pay the benefits to the Nominated Dependant if the nomination satisfies SIS Regulation 6.17A.

38.4 Benefits on Request

The Trustee may, upon request for payment, pay:

- (1) any part of the Member's Benefit which is unrestricted non-preserved;
- (2) the Member's Benefit upon the Member attaining an age at which the Standards permit a Benefit to be paid; or
- (3) any Benefit (by way of roll over under the ITAA) to any entity eligible to receive roll overs of superannuation benefits.

38.5 Request for Deferral

If the Benefit is payable, the Member may apply to the Trustee in writing to defer payment of the Benefit (or any part of it). The Trustee may defer payment of the Benefit unless the Standards require the Benefit to be paid.

38.6 Unclaimed Benefits

Where a Benefit is payable to a Member and:

- (1) the Member has reached the eligible age for an age pension;
- (2) the Member has not applied to the Trustee to have the Benefit paid; and
- (3) the Trustee is unable to pay the Benefit to the Member because the Trustee is unable to find the Member after having made reasonable efforts to do so;

the Trustee must deal with the Member's Benefit in the manner required by the Standards.

38.7 Payment of Deferred Benefit

If the Trustee agrees to defer payment of a Benefit under clause 38.5, the Member may request payment of part or all of the Benefit.

38.8 Time for Payment

If the Member requests payment under clauses 38.4 or 38.7, the Trustee must:

- (1) unless the Trustee otherwise determines, pay the amount requested by the Member on a day not less than 30 days after receipt of the request; and
- (2) debit the amount to the Member's Accumulation Account.

38.9 Relation to Other Clauses

The provisions of this clause 38 are subject to clauses 46 and 47

39. Amount of Benefit

39.1 Subject to this clause and clauses 45 and 54, the amount of a Member's Benefit:

- (1) if payable as a Lump Sum, is the credit balance in the Member's Accumulation Account on the date the Benefit becomes payable;
- (2) if payable as a pension, has a capital value equal to the credit balance in the Member's Accumulation Account on the date the pension commences; or
- (3) if payable because of temporary incapacity, is limited to an amount consistent with the Standards.

39.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the Assets of the Fund can provide in respect of the Pensioner, Member or Beneficiary (as the case may require).

39.3 The amount of a Benefit may be reduced by an amount the Trustee determines if:

- (1) the Member or Beneficiary has consented to the reduction; and
- (2) the reduction does not relate to the Member's minimum benefits;

or the reduction otherwise complies with the Standards.

39.4 The amount of any reduction of Benefit made must be applied for:

- (1) the benefit of other Members or their dependants on a basis the Trustee considers reasonable; or
- (2) any purpose or manner permitted by the Standards or approved by the Regulator.

39.5 The Trustee must unless it determines otherwise, reduce the Member's Benefit if the Benefit would otherwise exceed the Member's reasonable benefit limit to an amount equal to the Member's reasonable benefit limit. The Trustee does not need the Member's consent under clause 39.3 to the reduction. A reduction under this clause 39.5 must not relate to the Member's minimum benefits.

39.6 The Trustee may increase a Benefit if it so determines.

40. Manner of Payment of Benefit

40.1 The primary method of paying a Benefit is to pay it as a pension but the Trustee may pay or apply a Benefit in any of the following ways:

- (1) pay it as a Lump Sum to the Member;
- (2) apply it to purchase an annuity in the name of the Member or of the Member and one or more dependants of the Member; or
- (3) pay it to another superannuation entity.

40.2 The Fund must not be administered and Benefits must not be paid, in a way which would be inconsistent with the primary purpose of the Fund being the provision of old age pensions.

40.3 The Trustee must give consideration to any request by the Member, Pensioner or Beneficiary as to the manner of payment, but is not liable to any person if it chooses not to comply with the request.

41. Benefits by Transfer of Assets

- 41.1 The Trustee may, with the agreement of the recipient of the Benefit, pay the Benefit, or any part of it, by the transfer of an Asset of the Fund.
- 41.2 The value of the asset as at the date of assignment must be debited against the Member's Accumulation Account and treated as the amount of the Benefit.
- 41.3 Neither the Trustee nor the Employer is liable to pay any costs in relation to the asset (including if the asset is a Policy, any premiums) becoming due and owing as from the date of assignment.

42. Procedure for Payment of Benefits

- 42.1 The Trustee must pay the Benefits in the manner agreed between the Trustee and the recipient.
- 42.2 In the absence of agreement the Trustee may pay the Benefits by cheque sent to the recipient's last known address or in such manner as the Trustee determines.
- 42.3 Every Member and Beneficiary, must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member or Beneficiary changes address of:
- (1) the Member's or Beneficiary's place of residence and full postal address; and
 - (2) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.
- 42.4 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

43. Payment to Others on Behalf of Members or Beneficiaries

43.1 If:

- (1) a Member or a Beneficiary is under age 18; or
- (2) in the opinion of the Trustee it would be in the best interests of the Member or Beneficiary;

the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Member or Beneficiary.

- 43.2 The receipt of the person to whom the Benefit is paid under this clause 43 is a complete discharge to the Trustee for the payment of the Benefit paid.
- 43.3 The Trustee is not bound or concerned to see to the application of the Benefit so paid.

44. Payment of Benefit May Be Deferred

- 44.1 If the Trustee considers that the payment of a Benefit (including an instalment of a pension) will endanger the financial security of the Fund, payment may be deferred for a period it determines consistent with the Standards.

45. Money Owing to Fund or an Employer

- 45.1 The Trustee may, if the Standards permit, reduce a Member's Benefit, or debit a Member's Accumulation Account, by:

- (1) any amount owed by the Member, or by a person claiming through or under the Member, to an Employer or to the Trustee;
- (2) the amount of any loss or damage suffered by an Employer or the Trustee because of the misconduct, misappropriation or fraud of the Member; and
- (3) any costs incurred by the Employer or the Trustee in attempting to recover an amount referred to in clause 45.1(1) or clause 45.1(2);

and reimburse or pay itself or the Employer as the case may be.

46. Forfeiture of Benefit

- 46.1 Any Member or Beneficiary:

- (1) who assigns or charges or attempts to assign or charge the Benefit;
- (2) whose Benefit whether by the person's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (3) who for any reason is unable personally to receive or enjoy the whole or any portion of his or her Benefit or, in the opinion of the Trustee, is incapable of managing his or her own affairs; or
- (4) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct;

forfeits the Benefit other than that part to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

- 46.2 Any amount forfeited by reason of clause 46.1 must be applied by the Trustee as the Standards permit for:

- (1) the benefit of the Member or Beneficiary or that person's Dependants or any one or more of them in the proportions between them and on the terms the Trustee determines (except that where the Member remains in the employment of the Employer any payments so made must be limited to the relief of hardship of the former Member or of the Member's Dependants);

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- (2) the benefit of other Members or their Dependants on a basis that the Trustee considers reasonable, including payment in lieu of Contributions which were otherwise payable; or
 - (3) any purpose permitted by the Standards or approved by Regulator.

47. Benefits Payable in Accordance with Standards

- 47.1 Benefits must not be paid contrary to the Standards but must be paid when the Standards require.

48. Allocated Pension

- 48.1 If the Trustee determines to pay an allocated pension then the terms upon which the pension is payable must be as the Trustee determines in consultation with the Member and must include the following terms:

- (1) the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (2) the capital value of the pension and the income from it cannot be used as security for a borrowing;
- (3) payments are made at least annually;
- (4) the payments in a year, except a payment by way of commutation, are not larger nor smaller in total than the maximum and minimum limits for a pension calculated in accordance with Schedule 1A of the SIS Regulations; and
- (5) if the commencement day of the pension occurs before 1 April in the financial year then there must be an amount paid, calculated pro rata on a daily basis during that financial year.

49. Fixed Pension

- 49.1 If the Trustee determines to pay a fixed pension then the terms upon which the pension is payable must be as the Trustee determines in consultation with the Member and must include the following terms:

- (1) any variation in payments from year to year must not exceed in any year the average rate of increase in the CPI in the preceding 3 years;
- (2) the pension does not have a residual capital value;
- (3) the pension cannot be commuted;

-
- (4) the pension is payable for life or for the life expectancy of the Pensioner as determined at the commencement of the pension determined under Australian life tables except that if the life expectancy is greater than 15 years the pension may be for a term of not less than 15 years as agreed by the Trustee with the Member;
 - (5) the pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
 - (6) the capital value of the pension and the income from it cannot be used as security for a borrowing; and
 - (7) payments in accordance with the contracted size must be made at least annually.

50. 15 Year/Life Expectancy Pensions

50.1 If the Trustee determines to pay a 15 year/life expectancy pension the pension must not have a commencement date prior to the age at which the Member would be entitled to receive the age pension.

50.2 The terms upon which the pension is payable must be as the Trustee determines in consultation with the Member and must include the following terms:

- (1) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary:
 - (a) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years - throughout a period equal to the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); or
 - (b) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more - throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years);
- (2) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day when the primary beneficiary became entitled to the pension;

(3) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year ("**previous total**"), and does not exceed the previous total:

- (a) if CPI_c is less than or equal to 4% - by more than 5% of the previous total; or
- (b) if CPI_c is more than 4% - by more than $CPI_c + 1\%$;

where:

CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

- (4) the total amount of payments to be made in a year in accordance with clauses 50.2(2) or 50.2(3) may be varied only to allow commutation to pay a superannuation contributions surcharge;
- (5) the pension does not have a residual capital value;
- (6) the pension cannot be commuted except:
 - (a) within 6 months after the commencement day of the pension;
 - (b) by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary;
 - (c) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary;
 - (d) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under rules that meet the standards of SIS subregulation 1.06(2), (3) or (7) or under a contract that meets the standards of SIS subregulation 1.05(2), (3) or (9); or
 - (e) to pay a superannuation contributions surcharge;
- (7) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion;
- (8) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation;

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- (9) the pension cannot be transferred to a person except:
- (a) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (b) on the death of the reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
- (10) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.

51. Variation of Pensions

- 51.1 The Trustee may, subject to the Standards, vary the frequency or basis upon which any pension is payable.

52. Segregation of Pension Assets

- 52.1 In relation to each pension, the Trustee may:
- (1) set aside Assets of the Fund for the purpose of enabling the Fund to pay the pension; and
 - (2) obtain such certificates from an actuary as the Trustee considers necessary for the purposes of obtaining an exemption from Taxation of all or part of the income of the Fund.

53. Commutation of Pension

- 53.1 On the written application of a Member or Beneficiary, the Trustee may commute to a Lump Sum Benefit the whole or part of a pension to the extent the Standards permit if the Trustee considers that the commutation would not be to the disadvantage of the Fund, other Members or Beneficiaries.
- 53.2 On the commutation to a Lump Sum Benefit of the whole or part of a pension the amount remaining (if any) of the commuted value not paid by way of Lump Sum continues to be payable by way of pension.

54. Lump Sum May Be Converted to Pension

- 54.1 The Trustee may at the request of a Member or Beneficiary convert payment of a Lump Sum to a pension.

WINDING UP

55. Termination of Fund

55.1 The Fund must be wound up upon the happening of any of the following events:

- (1) if there are no Members or Beneficiaries and the Trustee resolves to terminate;
- (2) if the liabilities (excluding any liability for future Benefits payable to Members) of the Fund exceed the Assets of the Fund;
- (3) if the Principal Employer by notice in writing requests termination of the Fund;
or
- (4) if for any other reason the Trustee resolves to terminate the Fund.

55.2 Upon the occurrence of an event referred to in clause 55.1, the Trustee must give notice in writing to Members (if any), all Employers and the Regulator that the Fund will be wound up on a specified date.

55.3 Following the giving of the notices referred to in clause 55.2 and until termination, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (1) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 55.2, may be accepted; and
- (2) no new Members may be admitted.

55.4 On a winding up the Trustee must apply the Assets of the Fund in the following order of priority:

- (1) to meet all expenses and liabilities of the Fund (including amounts due to the Employers);
- (2) the payment (including rollover) of Benefits;
- (3) to increase Benefits as the Trustee (with the consent of the Principal Employer) may determine; and
- (4) to pay any remaining amounts to such of the Employers and in such proportions as the Trustee may determine.

55.5 When all Benefits and assets have been paid, transferred or applied in accordance with the provisions of this Deed, the Fund is dissolved.

GENERAL

56. Variation of Deed

- 56.1 The Trustee with the approval of the Principal Employer may amend, revoke or vary the provisions of this Deed, but:
- (1) the amendment must not allow the Trustee to be other than a constitutional corporation, unless the provisions of this Deed provide, and will continue to provide after the amendment is made, that the sole or primary purpose of the Fund is the provision of old age pensions; and
 - (2) the amendment must be of a type permitted by the Standards.
- 56.2 An amendment may take effect from a date before or after the time it is made.
- 56.3 The Trustee must notify the Members of the effect of variation but any failure to notify or non-receipt by a Member does not affect the validity of the variation.

57. Relationship between Employer and Member

- 57.1 Dealings between the Employer and a Member are not affected by this Deed.
- 57.2 The rights of a Member or that Member's personal representative to claim damages or compensation under:
- (1) common law;
 - (2) any workers' compensation legislation; or
 - (3) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer;

are not affected by this Deed.

58. Severability

- 58.1 If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

59. Notices

- 59.1 A notice or other communication connected with this Deed ("**Notice**") has no legal effect unless it is in writing.

59.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
- (2) sent by facsimile to the facsimile number of the addressee; or
- (3) delivered at the address of the addressee set out in this Deed or subsequently notified.

59.3 A Notice must be treated as given and received:

- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (2) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

59.4 Despite clause 59.3(2) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.

59.5 For the purpose of this clause 59 "**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

60. **Governing Law and Jurisdiction**

60.1 The law of Queensland governs this Deed.

60.2 The Employers, Trustee, Members and Beneficiaries submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

Schedule 1
Application For Membership

(clause 15.2)

CONFIDENTIAL

To: The Trustee
Donjan Staff Superannuation Fund

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

I agree and undertake as follows:

1. I will be bound by the Deed governing the Fund.
2. I understand the terms and conditions of the Deed and more particularly the terms and conditions of the Deed concerning Benefits payable.
3. I acknowledge I have received all information needed by me for the purpose of:
 - (a) understanding the main features of the Fund;
 - (b) making an informed judgment about the management and financial conditions of the Fund; and
 - (c) making an informed judgment about the investment performance of the Fund.
4. I consent to the Trustee acting as trustee.

Dated

.....
Signature

Name :

Address :

Occupation :

Date of Birth :

Tax File Number :

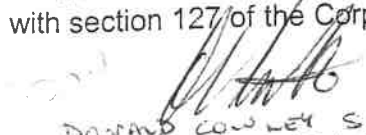
Nominated Dependant(s)

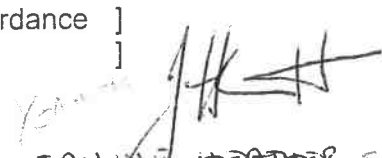
I nominate the undermentioned persons as my Nominated Dependants:

Surname(s)	Given Name(s)	Relationship	% of Total Benefit
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXECUTED as a deed

EXECUTED by **DONJAN INVESTMENTS PTY LTD**
A.C.N. 010 812 736 as Principal Employer in accordance
with section 127 of the Corporations Law:


DONALD COWLEY SMITH
Name of Sole Director and Sole Company Secretary
(BLOCK LETTERS)


JANINE HEATHER SMITH
Sole Director and Sole Company Secretary
(BLOCK LETTERS)

SIGNED SEALED AND DELIVERED by
DONALD COWLEY SMITH and
JANINE HEATHER SMITH as Trustee
in the presence of: *Perry Connell*

WITNESS
Witness

Perry Connell