

Mr Justin Francis Keating  
(Founder)

and

Mr Justin Francis Keating, Mrs Barbara Louise Keating  
(Trustee/Member)

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**Keating Superannuation Fund**

**TRUST DEED**

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*I certify that this is a true copy of the  
Keating Superannuation Fund Trust Deed*

*C Farrington*

*Solicitor 11/8/02*

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## RECITALS

- A. The Trustee has decided to establish and indefinitely continuing a regulated self-managed superannuation fund (the "Fund").
- B. The Trustee has agreed to act as the first trustee of the Fund.

## OPERATIVE PROVISIONS

- 1. The Trustee Declares that the primary purpose of the Fund is to ensure that the benefits to which the Members are entitled shall be applied in payment to them of old-age pensions in accordance with the Rules and the Statutory requirements but that the benefits may be commuted to a lump sum pursuant to the Rules.
- 2. The Fund shall come into operation on the date of this deed ("commencement date").
- 3. The "**Rules**" means the rules and schedules attached hereto as amended from time to time, and they shall have effect as if set out in the body of this deed.
- 4. The assets of the fund shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
- 5. The Fund shall be managed and administered in all respects according to the Rules.
- 6. The power of appointing and removing Trustees shall be as provided in the Rules.
- 7. The provisions of this deed may be amended in the manner set out in the Rules.
- 8. This deed and the Rules shall be governed by and construed in accordance with the laws of Victoria.

## THE RULES

### 1. INTERPRETATION

- 1.1 In this deed and in these Rules unless the context indicates otherwise the following words and expressions have the following meanings:

"**Accumulated contributions**" shall mean in respect of a Member his actuarial interest in the fund determined as follows:

- (a) each 30 June the Trustee shall determine, upon a basis determined after taking such advice as it considers necessary

(including advice from the actuary appointed to the Fund, if any), in respect of each person who was at any time a Member during the previous 12 months, the accumulated contributions in respect of such Member. Regard shall be had in making such determination to the contributions made by or in respect of the Member, earnings or losses, relating to such contributions, any contributions tax liability relating to such contributions, and the insurance premiums paid in respect of that Member;

- (b) the accumulated contributions in respect of each Member at a date other than 30 June shall be the accumulated contributions at the previous 30 June, less insurance premiums paid by the Trustee in respect of the Member since the previous 30 June, plus or minus such additional amount (referable to the earnings or losses as the case may be relating to such accumulated contributions during the period since the previous 30 June) as the Trustee thinks appropriate in the circumstances PROVIDED ALWAYS that at any particular date the Accumulated contributions in respect of a Member shall include any amount received by the Trustee under any policy or policies of insurance, assurance or endowment effected in respect of the Member; and
- (c) benefits payable in respect of a Member shall be debited to that Member's Accumulated contributions, but pending the exhaustion of such Accumulated contributions they shall continue to attract their proportion of the net income of the Fund and shall suffer their proportion of any losses.

**"Act"** means The Superannuation Industry (Supervision) Act 1993.

**"Allocated pension account"** means an account to which a Member's eligible termination payment is rolled over and from which pension payments are made under these Rules.

**"Approved deposit fund"** means a fund established for the purpose of qualifying as such under the Income Tax Assessment Act and which satisfies all Statutory requirements.

**"Binding Death Benefit Nomination"** means the process followed pursuant to the Act whereby a Member gives a notice to the Trustee requiring the Member's benefit to be paid on his or her death to Dependants or the legal personal representative.

**"Complying superannuation fund"** means a superannuation fund which satisfies all Statutory requirements for the purposes of the Income Tax Assessment Act 1936 - and thereby receives a concessional taxation treatment.

**"Dependants"** means the spouse and children (including posthumous children) of a Member and all other persons who are, in the opinion of the Trustee in its absolute discretion, at the relevant time dependent in whole or in part upon the Member for their financial maintenance and support.

**"Eligible person"** means a person engaged in any business, trade, profession, vocation, calling, occupation or employment on his or her own account or as an employee (as defined in sections 82AAA(1) and 82AAA(2) of the Income Tax Assessment Act 1936 (Cth)) of an Employer provided that such employee

has been invited by the Trustee to become a Member and such employee agrees to be a Member.

**“Employer”** means a person or company by whom a Member is employed whether on a full-time or part-time basis, and in relation to any particular Member the Employer by whom that Member is for the time being employed. Reference to the Employer in any Rule requiring the exercise of any discretion, any agreement, determination or approval of any matter, or a decision, opinion, appointment or declaration by it, shall in the case of an Employer being a company mean the Principals of such Employer or any person appointed by the Principals of such employer to act on their behalf. The Trustee may also be an Employer hereunder if it employs any Eligible person who applies to be a Member and is admitted to membership of the Fund.

**“Financial year”** means a period of 12 calendar months ending on the last day of June, or any part of such a period that may occur at the commencement or termination of the Fund.

**“Fund Earning Rate”** means that rate or rates determined by the Trustee in its absolute discretion that may apply to any Member’s account to determine the Member’s benefits.

**“Independent Trustee”** means, means a trustee of the fund who:

- (i) is not a member of the fund; and
- (ii) is neither an employer-sponsor of the fund nor an associate of such an employer-sponsor; and
- (iii) is neither an employee of an employer-sponsor of the fund nor an employee of an associate of such an employer-sponsor; and
- (iv) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (v) is not, in any capacity, a representative of an organisation representing the interests of one or more employer-sponsors of the fund.

**“Individual trustee”** in relation to a fund, scheme or trust, means an individual who is a trustee of the fund, scheme or trust. .

**“Independent Director”** means the independent director as defined in the Act as follows in relation to a corporate trustee of a fund, means a director of the corporate trustee who:

- (i) is not a member of the fund; and
- (ii) is neither an employer-sponsor of the fund nor an associate of such an employer-sponsor; and
- (iii) is neither an employee of an employer-sponsor of the fund nor an employee of an associate of such an employer-sponsor; and
- (iv) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (v) is not, in any capacity, a representative of an organisation representing the interests of one or more employer-sponsors of the fund.

**“Mandated employer contributions”** means contributions by or on behalf of an Employer, comprising contributions which reduce the Employer’s potential liability for the superannuation guarantee charge imposed by Section 5 of the Superannuation Guarantee Charge Act 1992, or payments of shortfall components and contributions towards satisfaction of the Employer’s obligations under an award made on or after 1 July 1986 by an industrial authority as defined in the Statutory requirements.

**“Member”** means:

- (i). an Eligible person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in Rule 7; and
- (ii). former Members who continue to have rights or contingent rights to benefits under this Fund; and
- (iii). any Member as defined in the Act.

**“Preservation age”** means a person’s preservation age depending on the birth date of the person as set out in the table below:

<b>Date of birth</b>	<b>Preservation age</b>
Before 1 July 1960	<b>55</b>
1 July 1960 – 30 June 1961	<b>56</b>
1 July 1961 – 30 June 1962	<b>57</b>
1 July 1962 – 30 June 1963	<b>58</b>
1 July 1963 – 30 June 1964	<b>59</b>
After 30 June 1964	<b>60</b>

**“Principals”** means the directors for the time being of the relevant Employer.

**“Retire”** means cease to be engaged in the business, trade, profession, vocation, calling, occupation or employment in which the Member is for the time being engaged. A Member who ceases to devote at least 10 hours per week to a business, trade, profession, vocation, calling, occupation or employment shall be deemed to have retired from that business, trade, profession, vocation, calling, occupation or employment.

**“Self Managed Superannuation Fund (SMSF)”** is a fund with less than 5 members. The Australian Taxation Office regulates superannuation funds that meet the definition of a SMSF.

**“Spouse”** means the legal spouse of a Member and any person regarded by the Trustee, in its absolute discretion, as a de facto spouse and any previous spouse or de facto spouse who is dependent upon the Member.

**“Statutory requirements”** means the requirements imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund or any approved deposit fund, as the case may be, in order to qualify for income tax concessions.

**“Statutory Authority”** means, as the case may require, any one or more of the Insurance and Superannuation Commissioner, the Commissioner of

Taxation, or any other governmental authority responsible for administering the Statutory requirements.

**“Total and permanent disablement”** has the same meaning which it has under any policy of insurance which the Trustee has obtained for the purpose of providing a benefit on a Member’s total and permanent disablement. In the absence of any such policy, or any relevant definition in such a policy, or if the Trustee otherwise determines, a Member shall be deemed to suffer total and permanent disablement if that person has, in the opinion of the Trustee (after have regard to such medical evidence as the Trustee considers appropriate) become incapacitated through illness, accident or injury to such extent as to render that person unlikely ever to be able to resume that person’s usual occupation or any occupation of a similar nature.

**“Trustee”** means for Non Corporate Trustees each member acting jointly including the Independent Trustee as required by the Act, and for Corporate Trustees the incorporated body whose board of directors is composed of the Directors who are Members, and the Independent Director as required by the Act.

1.2 Unless the context indicates otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing one gender shall include each other gender;
- (c) references to a person shall be construed as references to an individual, firm, body corporate, association, government or governmental authority; and
- (d) references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing them.

1.3 Headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.

## 2. ASSETS AND INVESTMENTS

2.1 The assets of the Fund shall be held by the Trustee upon trust to be applied in accordance with the provisions of these Rules.

2.2 The expenses of the operation of the Fund shall be paid out of the Fund.

2.3 Subject to the Statutory requirements all moneys received by the Trustee but not required to meet current payments may, in the absolute discretion of the Trustee, either be and remain on deposit in the name of the Trustee, or be reinvested directly or indirectly, in any manner in which the Trustee, if it were personally entitled to such assets, could invest. Without restricting the generality of the foregoing such may be invested:

- (a) on deposit with any bank, company or financial institution;
- (b) in the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and

wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as the Trustee shall think fit;

- (c) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
- (d) in units of any common fund, property trust or unit trust; or
- (e) in any policies of life insurance, assurance or endowment, including policies providing a sum or sums on the death, or disablement of a Member, with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with his own property may do so PROVIDED THAT the Trustee shall not invest in:
  - (1) loans to Members; or
  - (2) loans to or investments in Employers or associates of Employers which do not comply with Statutory requirements..

2.4 Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee shall from time to time determine.

2.5 The Trustee may borrow money if:

- (a) the purpose is to enable the Trustee to make a payment to a beneficiary which the Trustee is required to make and which, apart from the borrowing, the Trustee would not be able to make;
- (b) the period of the borrowing does not exceed 90 days; and
- (c) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of the Fund.

2.6 The Trustee shall also be entitled to borrow money if:

- (a) the purpose is to enable the Trustee to pay for bonds, debentures, stock, bills of exchange or other securities, shares in a company, units in unit trusts, futures contracts, forward contracts, interest rate swap contracts, currency swap contracts, forward exchange rate contracts, forward interest rate contracts, a right or option in respect of such a security, share, unit, contract or policy, any similar financial instrument, and foreign currency;
- (b) at the time when the investment decision was made it was likely that the borrowing would not be needed;



- (c) the borrowing is not taken under a written determination from the approved regulator under the Act, to be exempt from this paragraph;
- (d) the period of the borrowing does not exceed 7 days; and
- (e) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of Fund.

### **3. ADMINISTRATION**

- 3.1 Every Member shall have the right to inspect a copy of these Rules at the address of the Trustee during usual business hours.
- 3.2 Every Member and every person claiming a benefit shall, from time to time, give to the Trustee such information and produce to it such documents, as the Trustee considers are required for the purpose of putting these Rules into effect, and for arranging insurances for the purposes of the Fund.
- 3.3 Nothing in these Rules shall restrict the right of an Employer to dismiss an employee, or be used to increase damages in any action brought against the Employer in respect of such dismissal, or effect the rights of a Member or his legal personal representative, or other persons, to claim damages or compensation at common law, or under a Workers' Compensation Act or any other statute in force governing compensation, to a Member injured or dying from an accident arising out of, or in the course of, his employment with the Employer.

### **4. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES**

- 4.1 So long as the Fund is a SMSF fund:
  - (a) the Members may at any time by a notice in writing signed by at least 75% of them and given to the Trustee remove any one or more of the Trustees and appoint another Trustee of the Fund; or
  - (b) unless a company is the sole Trustee or unless there are at least 2 Members, there shall be at least 2 Trustees.

### **5. COVENANTS BY TRUSTEE**

In the exercise of its powers and the discharge of its duties and responsibilities as Trustee of the Fund, the Trustee shall perform and observe the following covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) in relation to all matters affecting the Fund to exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;

- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of a standard employer-sponsor or an associate of a standard employer-sponsor of the Fund;
- (e) not to enter into any contract or do anything else which would prevent or hinder the Trustee from properly performing or exercising its functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
  - (i) the risk involved in making, holding and realising and the likely return from Fund's investments, having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole, including the extent to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing prospective liabilities.
- (g) to formulate and give effect to a strategy for the prudential management of any reserves of the Fund consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Member access to any prescribed information or any prescribed documents; and
- (h) to act in accordance with any valid Nominated Death Benefit provided by the member.

The covenant referred to in Rule 5(e) shall not prevent the Trustee from engaging or authorising persons to do acts or things on its behalf. An investment strategy shall be taken to be in accordance with Rule 5(f), even if it provides for a specified beneficiary or specified class of beneficiaries to give directions to the Trustee where:

- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of particular asset or assets of the Fund; and
- (b) the directions are given in circumstances covered by the relevant law.

If, at any time, the relevant law prescribes covenants additional to those set out in Rule 5, those additional covenants shall be deemed to be included in these Rules.

## 6. TRUSTEES GENERALLY

- 6.1 Upon a change of Trustee, the retiring Trustee or Trustees shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name or of the new Trustee or Trustees.
- 6.2 Without prejudice to the powers vested in the Trustee by the deed and the Rules or otherwise, the Trustee shall have the following powers:
- (a) to purchase or otherwise acquire, and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
  - (b) to appoint at its discretion remove or suspend any actuary, auditor, investment managers, administration managers, secretaries, clerks, agents and other servants or appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments. The Trustee may require security in such instances and to such amount as it may think fit, and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the Trustee;
  - (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
  - (d) to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
  - (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
  - (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
  - (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;

- (h) to pay benefits out of the Fund to persons entitled;
- (i) to decide, as and when the need shall arise, who are Dependants for the purposes of these Rules;
- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to benefits, to pay or apply such benefits or any part thereof at its discretion to, or for the benefit of, such person and the Dependants of such person, or any of them as the case may be, without being responsible for seeing to the application of payments under this paragraph, or payments made in the exercise of any other power vested in the Trustee by the deed and the Rules; and
- (k) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the deed, the Rules or any other document or statute or as to the administration of the trusts hereof, without being liable to any Members or their Dependants in respect of any act done by it in accordance with such opinion.

6.3 The Trustee shall not be liable for any act or default done or omitted in good faith in the administration of the Fund or for any loss or damage incurred by the Fund and shall be fully indemnified by the Fund for any act done or omitted in good faith in administering the Fund, unless:

- (a) the Trustee fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee is required by law to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the Statutory requirements.

The Trustee shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the Members or any of them or any other person entitled to benefits from the Fund and the Members shall not be liable for the debts of the Fund.

6.4 For the purposes of the deed and the Rules, the Trustee shall be entitled to regard an exercise of a discretion, or the giving of any instruction or other authorisation made orally, or written and signed by, or purported to be signed by, a principal for the time being of any Employer as a valid exercise of discretion, instruction or other authorisation of the Employer.

6.5 Where there is more than one Trustee, the Trustees:

- (a) may meet together for the dispatch of business;
- (b) may adjourn and otherwise regulate their meetings as they think fit;
- (c) may determine the quorum necessary for the transaction of business provided it is no less than 2/3rds of the Trustees;

- (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
- (e) may act on any resolution approved by 2/3rds of the Trustees.

Where the Trustees cannot agree upon a chairman for the time being, or from time to time, or of a particular meeting, the chairman shall be the Trustee chosen by the Trustees present for the meeting. A determination by 2/3rds of the Trustees shall for all purposes be deemed a determination of the Trustees.

- 6.6 Where there is more than one Trustee, a resolution in writing, signed by all the Trustees for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees.
- 6.7 If the Trustee is a company, then such a company may exercise or concur in exercising any discretion or power conferred on the Trustee by the deed or by these Rules by a resolution of its directors or governing body in accordance with the company's memorandum and rules of association or constituent document. Such a company may delegate the right and power to exercise, or concur in exercising any such discretion or power, to one or more members of its board of directors or governing body, appointed as aforesaid from time to time by the said directors or governing body for the purpose.
- 6.8 Any individual Trustee (where the Trustee is a company, any director or other officer of the Trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the Trustee by the deed or by these Rules, or by law given to the Trustee notwithstanding that it, or he respectively, may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion. Any Trustee or director or officer as aforesaid may abstain from acting except as a merely formal party in any manner in which he may be so personally interested.
- 6.9 Subject to the Statutory requirements, the Trustee in the exercise of the powers, authorities and discretions vested in it by this deed and these Rules shall have an absolute and uncontrolled discretion. The Trustee may exercise or enforce all or any of those powers, authorities and discretions at any time, and from time to time, or may refrain from exercising all or any of them from time to time, or at all.
- 6.10 Where there is more than one Trustee, the Trustees may, from time to time, delegate to any one or more of their number the right and power on behalf of the Trustees to sign, draw, accept, make, endorse, issue, discount or otherwise execute, (as the case may be) all or any cheques, promissory notes, drafts, bills or exchange, bills of lading and other negotiable or transferable instruments all or any receipts for money paid to the Trustees, and all or any other documents connected with the due administration of the Fund, or with this deed or these Rules. The Trustees may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or investment manager appointed by them.
- 6.11 The Trustee may cause:

- (a) minutes of any proceedings of meetings of the Trustee, as the case may be, to be entered in books kept for that purpose; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

6.12 Any minutes entered in accordance with Rule 6.11(a) in books kept for that purpose that purport to be signed as provided in Rule 6.11(b) shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

## **7. ADMISSION OF EMPLOYEES OF EMPLOYERS**

- 7.1 The Trustee may admit to the Fund any person employed by an Employer if that person and the Employer have been approved by the Trustee and have agreed in writing to be bound by these Rules. On such admission the Trustee may make such arrangements as it shall think fit with the Employer regarding the terms on which its employee is to be admitted to membership of the Fund.
- 7.2 The participation in the Fund of such an employee admitted as a Member may be terminated by the Employer by notice in writing to the Trustee.
- 7.3 On termination of participation as aforesaid:
  - (a) the Trustee in an agreement with the Employer in question shall specify a date ("the retirement date") upon which the Employer ("the retiring employer") shall retire;
  - (b) the retiring employer and its employees who are Members shall forthwith pay all arrears, if any, of contributions up to the retirement date;
  - (c) benefits which have become payable on or before the retirement date shall continue to be payable out of the Fund;
  - (d) the Trustee shall certify each Member's credit in respect of all Members who were in the employ of the retiring employer at the retirement date; and
  - (e) the Trustee in its discretion may make such arrangements as it thinks proper for the provision (in lieu of the benefits which would otherwise be payable out of the Fund to Members who were in the employ of the retiring employer at the retirement date) of benefits of equivalent value to their respective Member's credits at the retirement date for such Members and their Dependants.

## **8. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT**

- 8.1 The Trustee shall keep or cause to be kept a complete record of all persons who become Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund.
- 8.2 The Trustee shall appoint an auditor to the Fund, or a firm of such persons, who shall comply with all Statutory requirements and may remove any such auditor.
- 8.3 The Trustee shall each Financial year cause to be prepared an income and expenditure account and balance sheet of the Fund which shall, if the Trustee thinks fit, or if necessary to comply with Statutory requirements, and within any time limits specified by Statutory requirements, be audited by the auditor. The auditor shall have access to all papers accounts and documents connected with the Fund and shall report in writing to the Trustee the result of such audit, if any and where relevant, within the time limits specified by Statutory requirements. A copy of the income and expenditure account and balance sheet shall be sent by the Trustee to every Employer.
- 8.4 The Trustee shall disclose to Members such information, at the time and in the manner, prescribed in Statutory requirements to be so disclosed to Members.
- 8.5 The Trustee shall comply with the Statutory requirements concerning records of the Fund and their retention.

## 9. ELIGIBILITY AND MEMBERSHIP

- 9.1 Any Eligible person may make application in writing to the Trustee in a form prescribed by the Trustee, from time to time, to join the Fund. Until the Trustee determines to the contrary such form of application shall be in the form appended to these Rules. Every such application shall include full details of the Eligible person's membership of any Approved deposit fund and Complying superannuation fund, and shall also include an undertaking by the Eligible person to notify the Trustee immediately if he becomes a member of any other Complying superannuation fund or Approved deposit fund.
- 9.2 The Trustee may accept or refuse any application for membership in its absolute discretion and shall not be required to assign any reason for any refusal.
- 9.3 A person shall become a Member from the date when notice in writing by the Trustee that it approves that person's application has been given to that person.
- 9.4 A person ceases to be a Member on the happening of the first of the following:
  - (a) when that Member dies;
  - (b) when the total amount of all amounts payable under the Rules in respect of membership has been paid; or

- (c) when under the Rules any benefit payable to that Member or any person on that Member's account ceases to be payable.
- 9.5 Each Member shall, by virtue of making an application to join the Fund, be deemed to have consented to be bound by the provisions of this deed and the Rules.

## 10. CONTRIBUTIONS

- 10.1 Subject to the provisions of this Rule, a Member may contribute to the Fund at such rate as that Member determines.
- 10.2 No Member shall make a contribution to the Fund in any Financial year which would bring the total amount of that Member's deductible contributions (as defined in the Income Tax Assessment Act 1936 (Cth)) made during that Financial year to the Fund, and to any other Complying superannuation fund, above the limit approved from time to time by the Statutory Authority PROVIDED THAT if a Member is unable to make in any Financial year the maximum approved deductible contribution to the Fund that Member may by additional deductible contributions in excess of the approved maximum in either or both of the next two succeeding Financial years make up all or any part of the deficiency BUT nothing in this Rule shall limit the amount of non-deductible contributions (as defined in the Income Tax Assessment Act 1936 (Cth)) which may be made to the Fund in any Financial Year by a Member.
- 10.3 If any Member ceases to be an Eligible person, the Member shall not make any further contribution to the Fund until that Member shall again become an Eligible person.
- 10.4 Subject to the provisions of this Rule, if and so long as a Member is employed, that Member's Employer may contribute to the Fund in respect of the Member at such rate as may be agreed from time to time between the Employer, the Member and the Trustee.
- 10.5 An Employer wishing to contribute to the Fund in respect of a Member shall make application to the Trustee in the form prescribed by the Trustee from time to time provided that every such application shall include an undertaking by the Employer to be bound by the provisions of this deed and Rules. Until the Trustee determines to the contrary such form of application shall be in the form appended to these Rules.
- 10.6 No Employer shall make a contribution at any time to the Fund in respect of a Member which would make the total of the benefit of such Member or that Member's Dependants under the Fund, and the benefit payable to the Member or that Member's Dependants under any other Complying superannuation fund, or Approved deposit fund, exceed the amount as may from time to time be approved by the Statutory Authority.
- 10.7 An Employer may, at any time and from time to time, by notice in writing to the Trustee suspend payment of or reduce the contributions payable by it in respect of a Member.



- 10.8 The Trustee shall not accept from a Member or from any person in respect of a Member any contribution to the Fund while to its knowledge that Member continues not to be an Eligible person.
- 10.9 Within 60 days of becoming aware that a Member has ceased to be an Eligible person, the Trustee shall refund to the Member or to the other person making the same as the case may be, any contributions made to the Fund in respect of the Member since that Member ceased to be an Eligible person, and for the purpose of determining the Member's interest in the Fund it shall be assumed that such contributions were not made to the Fund.
- 10.10 If at any time the anticipated benefit payable hereunder to, or in respect of, a Member together with benefits payable to, or in respect of, that Member from any other Complying superannuation fund or Approved deposit fund of which the Member may be a participant or the contributions made by a Member hereunder together with contributions made by that Member to any Complying superannuation fund or Approved deposit fund of which such Member is a participant are deemed to be excessive, the Trustee may arrange for a reduction of such benefit or such contributions hereunder, as the case may be, but only to the extent that is necessary to comply with the Statutory requirements.

## 11. ACCOUNTS

- 11.1 In relation to each Member who is an employee of an Employer (including the Trustee in its capacity as an Employer), the Trustee shall cause the following accounts to be opened and maintained in respect of each Member:
- (a) an employer contribution account in which shall be recorded:
    - (i) contributions to the Fund by an Employer (other than Mandated employer contributions) in respect of the Member;
    - (ii) amounts debited to the account to pay premiums on policies of insurance effected to provide benefits on the death or disability of the Member;
    - (iii) proceeds of policies of insurance effected to provide benefits on the death or disability of a Member;
    - (iv) amounts transferred to or from the forgone benefits account;
    - (v) any part of an amount transferred from another fund in respect of the Member which the Trustee has determined shall be credited to this account;
    - (vi) amounts credited or debited to this account in respect of the earnings of the Fund; and

- (vii) any amounts debited to this account in respect of any contributions tax liability referable to amounts credited to this account.
- (b) A member contribution account in which shall be recorded:
  - (i) contributions to the Fund by the Member;
  - (ii) Mandated employer contributions;
  - (iii) amounts transferred from another fund in respect of the Member except to the extent that the Trustee has determined that the same shall be credited to the employer contribution account in respect of the Member;
  - (iv) amounts credit or debited to this account in respect of earnings of the Fund;
  - (v) amounts debited to this account in respect of any contributions tax liability referable to amounts credited to this account; and
  - (vi) eligible termination payments which shall be credited to the Member's Allocated pension account.

11.2 The Trustee shall maintain a forgone benefits account to which shall be credited any balance remaining of any Member's credit after payment or preservation of his withdrawal benefit, and any other amounts required by these Rules to be transferred to the forgone benefits account. The amount standing to the credit of the forgone benefits account may be applied as the Trustee in its discretion and with the consent of the Employer determines for any one or more of the following purposes:

- (a) the payment of contributions otherwise payable by any Employer or Member;
- (b) the provision of additional benefits for Members or their Dependants on a basis that is reasonable having regard to all the circumstances;
- (c) by way of refund to an Employer of contributions made by it;  
or
- (d) other purposes that comply with Statutory requirements.

11.3 The Trustee shall, on such distribution dates as it shall determine but at least once in each Financial year, after taking such advice as it thinks fit, declare a Fund Earning Rate or rates in respect of particular individuals for the distribution period being the period commencing on the commencement date or the day after a distribution date and ending on the next distribution date concerned, being such rate, whether positive or negative, as the Trustee may in its discretion determine, but in making such determination the Trustee shall have regard to:

- (a) the actual earnings of the Fund, including all income and realised and unrealised capital gains;
  - (b) the losses and expenses of the Fund including expenses of taxation;
  - (c) the past and likely future earnings and losses of the Fund and the desirability or otherwise of avoiding large fluctuations of fund earning rates from year to year;
  - (d) the amount, if any, standing to the credit of the general reserve account; and
  - (e) such other matters as it thinks fit.
- 11.4 The Trustee shall on the distribution date, credit or debit as the case may be to the employer contribution account and member contribution account of each Member earnings or losses at the fund earning rate on the balance standing thereto from time to time since the preceding distribution date or, in the case of the first distribution period, since the commencement date.
- 11.5 Any difference between the actual earnings or losses of the Fund and the total amounts required to be credited or debited pursuant to Rules 11.4 and 11.6 shall form an adjustment to a reserve account to be called the general reserve account, provided that, notwithstanding the terms of Rule 11.3, the Trustee shall not in respect of any Financial year declare a fund earning rate that would leave the general reserve account in debit.
- 11.6 At the commencement date and at each distribution date the Trustee shall declare an interim fund earning rate which shall be applied to credit earnings or losses as the case may be to the employer contribution accounts and member contribution accounts of Members or deceased Members in respect of whom, and at such time as, the last benefits payable from the Fund in respect of them become payable before the next distribution date. Such interim fund earning rate shall be determined on such basis as the Trustee thinks fit provided that the Trustee may in its discretion alter an interim fund earning rate during the period to which it applies.
- 11.7 In relation to each Member who is not an employee of an Employer (including the Trustee in its capacity as an Employer) the Trustee shall cause to be opened and maintained in respect of each Member a member contribution account in which shall be recorded the matter referred to in Rule 11. 1(b)(i), (iii), (iv) and (v) and, so far as is relevant, the provisions of Rules 11.2, 11.3, 11.4, 11.5 and 11.6 shall apply equally thereto.

## 12. BENEFITS

- 12.1 A Member who Retires on or after attaining the Preservation age shall be entitled to receive a retirement benefit equal to that Member's accumulated contributions.

- 12.2 A Member who Retires before attaining the Preservation age shall on the date of attaining the Preservation age, or at such earlier date as the Statutory Authority may approve, be entitled to receive a retirement benefit equal to accumulated contributions made by that Member.
- 12.3 A Member who Retires on the grounds of Total and permanent disablement shall be entitled to receive a Total and permanent disablement benefit equal to accumulated contributions made by that Member.
- 12.4 On the death of a Member a death benefit shall become payable equal to accumulated contributions made by that Member.

### 13. PAYMENT OF BENEFITS

- 13.1 A Member's retirement benefit or Total and permanent disablement benefit shall be paid by way of annuities, pensions or other periodical payments, or lump sum payments, or any combination of such methods of payment as the Trustee and the Member shall agree PROVIDED THAT, subject to Statutory requirements, the Member shall be entitled to require the Trustee to pay a retirement benefit or Total and permanent disablement benefit as a lump sum.
- 13.2 Any pension or annuity paid pursuant to Rule 13.1 shall commence to be paid no later than the Member's 70th birthday.
- 13.3 Any lump sum payment made pursuant to Rule 13.1 shall be made no later than the Member's 70th birthday.
- 13.4 (a) A Member wishing to designate a Dependant as a nominated beneficiary shall do so in writing to the Trustee in such form as it may from time to time approve.  
(b) A Member may from time to time change his nominated beneficiary by completing and lodging with the Trustee a new form.
- 13.5 (a) Any death benefit shall be paid, as the Trustee in its absolute discretion, decides by way of purchased annuities, pensions or other periodical payments (in each such case upon such terms as the Trustee may decide), or lump sum payments, or any combination of such methods of payment, either:
  - (i) to such one or more of the nominated beneficiaries (if any) or other Dependents of the Member and in such proportions as the Trustee in its absolute discretion decides; or
  - (ii) to the legal personal representative of a Member.  
(b) If the Trustee of the Fund holds, at the time of a Member's death, a Notice of Binding Death Benefit Beneficiary Nomination ("BDBBN Notice"), which is effective and valid, the Trustee must pay a Member's superannuation death benefit to the Nominated Beneficiary referred in the BDBBN Notice.
- 13.6 Any pension or annuity paid pursuant to Rule 13.5 shall commence to be paid not later than the Member's 70th birthday and any lump sum payment shall be made no later than the Member's 70th birthday

PROVIDED THAT where the Member was, pursuant to Rule 13.5 receiving a pension or annuity when he died Rule 13.6 shall be deemed to have been complied with if the pension or annuity paid pursuant to Rule 13.5 commences to be paid upon the death of the Member, notwithstanding that this may occur after the Member's 70th birthday.

- 13.7 The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any benefit or other amount payable pursuant to the provisions of this deed or the Rules, transfer any of the assets of the Fund of equivalent value to the person so entitled PROVIDED THAT in the case of a transfer of an asset other than a life insurance policy the Trustee obtains any consent necessary for the Fund to remain a Complying superannuation fund.
- 13.8 The Trustee may, at the request of a person entitled, pay all or part of any benefit payable pursuant to the provisions of the Rules to such Approved deposit fund, Complying superannuation fund, or for the purchase of such annuity as the person so entitled may request.
- 13.9 In the case of the death of a Member who is in receipt of a pension, the Trustee, in its absolute discretion shall determine which dependant or dependants shall receive a reversionary pension.
- 13.10 In relation to the payment of any pension benefit the Trustee must prior to determining any benefit, seek the advice of an actuary as defined in the Act, as to the level of pension benefit that should be paid.

#### **14. FORFEITED BENEFITS**

- 14.1 Benefits payable out of the Fund shall be:
  - (a) forfeited if, without the prior approval of the Trustee, the person entitled thereto purports to assign, alienate or charge such benefits or part thereof; or
  - (b) suspended if the person entitled thereto (being either under Preservation age or not yet having retired at the relevant time) becomes or is in the opinion of the Trustee, mentally ill, or of unsound mind, or incapable of managing themselves or their own affairs.
- 14.2 The whole of the benefits forfeited by a person under Rule 14.1(a) shall be applied by the Trustee as the Trustee may think fit for the benefit of such person and that person's Dependants (or any one or more of them) PROVIDED THAT while such person is a Member the Trustee shall not make any payment to, or for the benefit of, the person or that person's Dependants until the Member's Preservation age birthday other than for personal maintenance and support in case of hardship.
- 14.3 The whole of the benefits to which a person would otherwise have been entitled but which have been suspended under Rule 14.1(b) shall be dealt with in accordance with, and shall be subject to, the following provisions:

- (a) upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such benefits;
- (b) if, prior to the date upon which the person ceases to be a Member for any reason whatsoever, the person ceases to be one to whom Rule 14.1(b) applies then the suspension of such benefits shall cease and the Trustee shall thereafter hold such benefits in respect of the person as if the suspension had not intervened;
- (c) if such benefits remain suspended at the time when the person ceases to be a Member for any reason whatsoever, such benefits shall thereupon be forfeited; or
- (d) while such benefits are suspended, the Trustee may pay amounts thereout to, or for the benefit of, the relevant person or that person's Dependants for, but only for, personal maintenance and support in the case of hardship.

14.4 The Trustee shall be entitled to treat as unclaimed and forfeited and use for the general purpose of the Fund, any moneys in the Fund to which any person may be entitled whose whereabouts are unknown to it, and if after making such enquiries as it deems appropriate it is unable positively to trace any person entitled to the benefit of such moneys.

## **15. TRANSFERS FROM AND TO OTHER FUNDS**

15.1 The Trustee may make such arrangements as it thinks proper with any Member, or any previous Employer of the Member, or the trustees of any superannuation fund of which the Member was or is a member, or any of them, for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to, or consequent upon, the transfer of such assets to the Fund.

15.2 Should a Member become eligible to join another Complying superannuation fund the Trustee may, if requested by the Member, in lieu of part or all of any other benefit to which the Member may be entitled under these Rules, transfer to the trustee of such fund such portion of the assets of the Fund as the Trustee considers equitable having regard to the Member's accrued benefit at the date of transfer.

## **16. TERMINATION OF TRUST**

16.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if it shall appear to the Trustee that the Fund is insolvent and it resolves to terminate the Fund;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund; or

- (c) if there are no Members in the Fund and the Trustee resolves to terminate the Fund.
- 16.2 Upon the trusts hereof ceasing and terminating in accordance with Rule 16.1 the Trustee shall give notice in writing to each Employer and the Members, if any, that the Fund shall be wound up on a specified date ("the closing date"). As from the closing date the following shall apply:
- (a) no further contributions shall be made by any Employer or any Member, other than arrears of contributions due to the closing date; and
  - (b) arrears of contributions, if any, shall be called in immediately.
- 16.3 Upon the trusts ceasing and terminating in accordance with Rule 16.1, the Trustee shall make such provision out of the Fund, after meeting expenses and liabilities as is necessary to provide for the payment of the following benefits in the following order of priority:
- (a) payments which on, or before the closing date have become payable to Retired Members or Dependants;
  - (b) payments to each Retired Member who has not yet attained the Preservation age equal to that Member's accumulated contributions; or
  - (c) payments to each Member who has not Retired equal to that Member's accumulated contributions.
- 16.4 Where a Member dies before receiving a benefit to which that Member has become entitled pursuant to Rule 16.3 such benefit shall be paid to such of the Member's legal personal representatives and Dependants and in such proportions as the Trustee determines.
- 16.5 If after providing benefits for Members and their Dependants in terms of Rule 16.3 a surplus remains, such surplus shall be paid by the Trustee, to or for the benefit of:
- (a) any Members;
  - (b) any former Members;
  - (c) any Dependants of any such Members or former Members;
  - (d) the legal personal representatives (in their capacities as such) of any such Member, former Members or Dependants; or
  - (e) any Employer or former Employer who has contributed, as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines.
- 16.6 Subject to Rule 13.7 the payment to be provided under Rules 16.3 and 16.5 shall be in cash, life insurance policies, participation in any other Complying superannuation fund, or otherwise as determined by the Trustee, but shall not be payable to, or for the benefit of, a Member unless and until that Member has attained the Preservation age and

Retired other than for personal maintenance and support in case of hardship.

## 17. AMENDMENT OF DEED

- 17.1 So long as the Fund is a SMSF fund and subject to Rule 17.2, the Trustee with the consent of at least 75% of the Members may at any time by resolution, or by instrument in writing, amend all or any of the provisions of these Rules.
- 17.2 No reduction of the accrued benefit of a Member shall be made without that Member's consent in writing.
- 17.3 As soon as practicable after the Rules have been amended pursuant to Rule 17.1, the Trustee shall give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

## 18. MISCELLANEOUS

- 18.1 To the extent that they are not incorporated in these Rules, the Statutory requirements applicable to the Fund from time to time shall be deemed to be incorporated herein. If there is any inconsistency between these Rules and the Statutory requirements, the latter provisions shall prevail.
- 18.2 Where in these Rules the Trustee is expressed to have a power or discretion, it shall be exercised at all times having regard to the Statutory requirements.

Unless the Fund is a SMSF fund, the Trustee must take all reasonable steps to ensure that there are at all times in force arrangements under which:

- (a) Members have the right to make enquiries into or complaints about the operation or management of the Fund in relation to the Member making the enquiry or complaint; and
- (b) enquiries or complaints so made will be properly considered or dealt with within 90 days after they were made.
- 18.3 So long as the Fund is a SMSF the Trustee shall give to each person who becomes a Member of the Fund a statement in the following terms:

"This fund is not subject to detailed prudential supervision".

### 18.4 Binding Death Benefit Beneficiary

- (a) A member may nominate to the Trustee one or more Beneficiaries to receive the Death Benefit provided by the Fund provided:



- (i) The Member completes the Binding Death Benefit Beneficiary Nomination Form ("the Nomination") and provides the Nomination to the Trustee;
  - (ii) the Nominated Beneficiary must, at the time of Member's death, be either a Dependant or Legal Personal Representative; and
  - (iii) the Nomination is current.
- (b) A Nomination will cease to be current, if not revoked by the Member earlier, 3 years from the date of its issue.
  - (c) To remain current the Nomination must be reissued by the Member before it expires.

**ATTESTATION CLAUSES**

EXECUTED by the Parties as a Deed on the Execution Date.

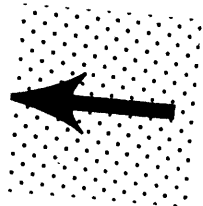
**BY THE FOUNDER**

**SIGNED SEALED and DELIVERED** by

Mr Justin Francis Keating Justin Francis Keating  
in the presence of:

Witness D. Brittain

Name (please print) David Brittain



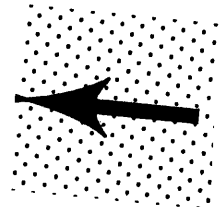
**BY THE TRUSTEE/MEMBER**

**SIGNED SEALED and DELIVERED** by

Mr Justin Francis Keating Justin Francis Keating  
in the presence of:

Witness D. Brittain

Name (please print) David Brittain



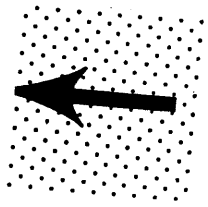
**SIGNED SEALED and**

**DELIVERED** by

Mrs Barbara Louise Keating Barbara Keating  
in the presence of:

Witness D. Brittain

Name (please print) David Brittain



**PARTICULARS OF THE FUND**

**NAME OF FUND:** Keating Superannuation Fund

**EXECUTED DATE OF THIS DEED:** 5/8/02.



**COMMENCEMENT DATE OF THE FUND:** The execution date of this Deed

**FOUNDER:** Mr Justin Francis Keating  
26 Whitfeld St Floreat  
Perth, WA 6014

**TRUSTEE/MEMBER:** Mr Justin Francis Keating  
26 Whitfeld St Floreat  
Perth, WA 6014

**TRUSTEE/MEMBER:** Mrs Barbara Louise Keating  
26 Whitfeld St Floreat  
Perth, WA 6014

**EMPLOYER:** Not Applicable  
(if applicable)

## Deed of Variation for the Keating Superannuation Fund

**THIS DEED OF VARIATION** is made by:

Justin Keating  
And Barbara Keating

Of 26 Whitfeld St Floreat WA 6014 Australia ("**Trustee**").

### **BACKGROUND**

- A. The Keating Superannuation Fund (the "**Fund**") was evidenced by a deed made on 5<sup>th</sup> August 2002 (as amended from time to time) ("**Trust Deed**").
- B. Pursuant to the Trust Deed, the Trustee has the power to revoke, add to and vary the trusts constituted by the Trust Deed.
- C. The Trust Deed's trust fund has not vested.
- D. The trustee seeks to vary the Trust Deed from the date of this deed ("**Deed of Variation**") and the parties to the Trust Deed consent to this variation.

### **THIS DEED STATES:**

#### **1. How does this Deed vary the Trust Deed?**

Pursuant to the powers given to the Trustee by the Trust Deed, the Trustee varies the Trust Deed from the date of the Deed of Variation by applying the following:

##### **1.1 Contributions**

The Fund will accept Federal Government superannuation co-contributions paid to members of the Fund.

##### **1.2 What do these words mean**

For the purposes of this Deed of Variation, unless the context indicates otherwise the following words and expressions have the following meanings:

**"Member"** means:

- (i) An Eligible person who has met all of the requirements of this Fund and has been admitted to membership of the Fund.
- (ii) Former members who continue to have rights or contingent rights to benefits under this Fund; and
- (iii) Any Member as defined in the Act.

**"Eligible person"** means a person engaged in any business, trade, profession, vocation, calling, occupation or employment on his or her own account or as an employee (as defined in sections 82AAA(1) and 82AAA(2) of the Income Tax Assessment Act 1936 (Cth)) of an Employer provided that such employee has been invited by the Trustee to become a Member and such employee agrees to be a Member.

**"Act"** means The Superannuation Industry (Supervision) Act 1993.

Dated and signed as a deed on 28th. day of January 2009

**Signed by the Trustee/Member**

**Justin Francis Keating**

*J Keating*

In the presence of:

Witness signature:

*D Brittain*

Witness name:

David Brittain

Witness address:

86 Birkdale Street  
Floreat  
WA 6014

Witness occupation:

Teacher

**Signed by the Trustee/Member**

**Barbara Louise Keating**

*Barbara Keating*

In the presence of:

Witness signature:

*D Brittain*

Witness name:

David Brittain

Witness address:

86 Birkdale Street  
WA. 6014

Witness occupation:

Teacher