

DARREN JOHN CROFTS and JODIE LOUISE CROFTS

(the Trustee)

SUPERANNUATION DEED

establishing

D AND J CROFTS SUPERANNUATION FUND

Reference: ACR4318

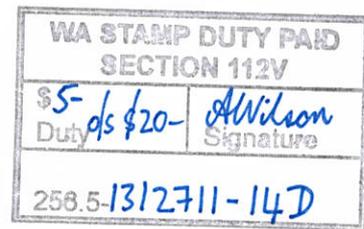
*Franklyn Simon*  
*Solicitor*

49 Colin Street West Perth  
Western Australia

**Telephone: 9322 1399**  
Facsimile: 9322 2727

INDEX

<u>CLAUSE</u>	<u>SUBJECT MATTER</u>	<u>PAGE</u>
1.	Establishment of Fund.....	1
2.	Regulated Superannuation Fund.....	1
3.	Interpretation .....	1
4.	Admission of Members .....	4
5.	Cessation of Membership.....	4
6.	Meetings of Members.....	5
7.	Admission of Employers.....	5
8.	Fund Assets.....	5
9.	Accumulation Account.....	5
10.	Income Account .....	6
11.	Equalisation Account .....	7
12.	Specific Investments.....	7
13.	Valuation .....	7
14.	Fund Records, Audit and Reporting to Members.....	7
15.	Covenants by Trustee .....	8
16.	Appointment and Removal of the Trustee.....	8
17.	Liability of Trustee .....	8
18.	Indemnity of Trustee .....	9
19.	Proceedings of Trustee.....	9
20.	Appointment of Auditor and Other Officers .....	9
21.	Trustee's Powers Including Investment .....	10
22.	Policies of Assurance .....	11
23.	Contributions to Fund.....	11
24.	Administration Costs .....	12
25.	Notification of Other Funds .....	12
26.	Transfers from Other Funds.....	12
27.	Transfers to Other Funds.....	12
28.	Benefits Payable on Retirement.....	13
29.	Retirement Prior to Normal Retirement Age.....	13
30.	Preserved Payment Benefits.....	13
31.	Temporary Total Disablement .....	13
32.	Total and Permanent Disablement .....	14
33.	Benefits Payable on Death .....	14
34.	Amounts of Instalments of Pension .....	14
35.	Persons to Whom Benefits are Payable .....	15
36.	Retention of Benefit in Fund.....	15
37.	Limitation of Benefits .....	15
38.	Conversion of Lump Sum to Pension.....	16
39.	Pension Payment Conditions.....	16
40.	Commutation of Pension.....	16
41.	Transfer of Benefits in Specie.....	16
42.	Payment of Tax on Benefits and Contributions.....	17
43.	Forfeiture of Benefits .....	17
44.	Termination of Employer's Contributions .....	17
45.	Substitution of Principal Employer.....	18
46.	Variation of Trust Deed.....	18
47.	Dissolution of the Fund .....	18
	Annexure A .....	19
	Annexure B.....	20
	The Schedule .....	21



This DEED is made -

BY the person or persons named and described in the Schedule as the Trustee (called "the Trustee").

### PROVISIONS

#### 1. ESTABLISHMENT OF FUND

1.1 A superannuation fund (called "the Fund") for the purpose of providing superannuation benefits for persons who apply to become members of the Fund is hereby established in accordance with the terms and conditions of this Deed.

1.2 The Trustee will hold and maintain the Fund as an indefinitely continuing superannuation fund upon the trusts and with and subject to the powers and provisions contained in this Deed.

1.3 The Fund shall commence on the date specified in the Schedule and shall be known by the name described in the Schedule.

#### 2. REGULATED SUPERANNUATION FUND

2.1 The Fund shall be a regulated superannuation fund pursuant to the Superannuation Industry (Supervision) Act 1993 (called "the Act").

2.2 Notwithstanding anything contained in this Deed, the primary purpose of the Fund is the provision of old-age pensions as defined by the Act.

2.3 Notwithstanding anything contained in this Deed, the requirements and other provisions prescribed by the Act and its regulations or any other statute, regulation or statutory requirement from time to time relating to superannuation funds shall be deemed to be included in this Deed to the extent that they are required in order for the Fund to obtain the maximum income tax concessions and shall to that extent prevail in the event of any inconsistency between them and other provisions of this Deed.

#### 3. INTERPRETATION

3.1 In this Deed unless the context otherwise requires -

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in clause 9;

"Actuary" means the actuary (if any) for the time being appointed pursuant to this Deed;

"Annuity" means an eligible annuity as defined by the Act;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying approved deposit fund pursuant to the Act;

"Auditor" means the auditor for the time being appointed pursuant to this Deed;

"Beneficiary" means a person who has a beneficial interest in the Fund at the relevant time;

any policy covering any two or more of the foregoing risks;

"Preserved Payment" means a payment made to the Fund by an Employer or a Member or by transfer from another fund which is preserved as provided by this Deed in accordance with the Act;

"Preserved Payment Benefits" means a Benefit arising from a Preserved Payment;

"Principal Employer" means the person or persons described as such in this Deed (if any) or any Employer who elects to become the Principal Employer pursuant to the provisions of clause 7;

"Qualifying Eligible Termination Payment" shall have the meaning ascribed in the Act;

"Relative", in relation to a former Member means any of-

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that former Member or of his or her spouse; and
- (b) the spouse of any person specified in paragraph (a);

"Retires from Gainful Employment" means actual retirement by a Member from Gainful Employment or retirement as defined by the Commissioner for the payment of Benefits.

"Roll Over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances acceptable to the Commissioner to or from-

- (a) an Approved Deposit Fund;
- (b) a superannuation arrangement described in clauses 26 and 27;
- (c) an authorised organisation for the purchase of an Annuity,

and includes an eligible termination payment made by an Employer in consequence of the termination of the employment of a Member;

"Spouse" in the definition of "Dependant" means -

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member, and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED that where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable hereunder to the Spouse is to be divided between them;

"Taxation" includes income tax, capital gains tax, tax on eligible termination payments, payroll tax, land tax, stamp duty and any other taxes or duties;

"Total and Permanent Disablement" means -

- (a) physical or mental incapacity of such a degree that two registered medical practitioners have certified that in their opinion the Member is incapable of continuing to engage in his current employment with an Employer or of continuing to engage in any Gainful Employment for which he is reasonably qualified by education, training or experience; or
- (b) if the Trustee so determines, total and permanent disablement as defined in any Policy effected in respect of the Member,

and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted;

"Vested Benefits" means any part of the Benefit of a Member arising from Contributions to the Fund or earnings of the Fund or arising from a previous superannuation fund which is a Roll Over Payment to the Fund which is required by the Commissioner to be vested in and payable to a Member on cessation of Gainful Employment by the Member (subject to any preservation requirements).

3.2 In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender, words importing the singular number shall include the plural number and vice versa and references to a person includes firms, corporations, associations, trustees in their capacity as such and other juristic persons recognised by law.

3.3 The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this

## 6. MEETINGS OF MEMBERS

6.1 A meeting of Members may be called by Members serving a notice on the Trustee signed by at least two Members, or if there is only one Member, that Member, requesting a meeting of Members.

6.2 The Trustee shall convene a meeting of Members within 14 days of receiving the request and shall send a notice of meeting to each Member.

6.3 The Trustee may at any time convene a meeting of Members by notice in writing.

6.4 Every notice of meeting shall -

- (1) be posted or given at least 3 days before the meeting unless all Members otherwise agree;
- (2) advise the place and time of the meeting;
- (3) advise the Member that he may appoint a proxy to vote on his behalf at the meeting PROVIDED that the proxy is lodged with the Trustee not later than 24 hours before the meeting;
- (4) be accompanied by a form of proxy approved by the Trustee;
- (5) set out the matters including any resolutions to be considered at the meeting.

6.5 Every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at his last known address and when so posted the notice shall be deemed to have been given three days after the date of posting.

6.6 The Trustee shall appoint a Chairman of the meeting and shall make such regulations concerning the conduct of the meeting or meetings as it may decide.

6.7 A quorum for the meeting shall be two Members present in person or by proxy or 25% of the Members of the Fund whichever is the lesser and if there is only one Member, that Member PROVIDED that if a quorum is not present within 30 minutes of the time appointed for the meeting the Chairman of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

6.8 Each Member shall be entitled to one vote AND in the event of an equality of votes, the Chairman shall not have a casting vote.

## 7. ADMISSION OF EMPLOYERS

In the event that any company, person or group of companies or persons -

- (a) makes application to the Trustee in the form of Annexure B or in such other form as the Trustee determines from time to time to be admitted to make Contributions to the Fund as an Employer; and
- (b) the application is approved by the Trustee,

the Employer shall be admitted to the Fund as an Employer subject to the provisions of this Deed and it shall then be bound by the provisions of this Deed.

## 8. FUND ASSETS

The gross assets of the Fund shall consist of -

- (a) such contributions as are made to the Fund from time to time by a Member or an Employer for the credit of an individual Member together with all interest, dividends, profits (less losses) and other benefits arising from the investment of the Contributions and the assets of the Fund;
- (b) all assets, real and personal property, any Policy in which any monies of the Fund are invested or paid or by which they are represented and all income and profits derived therefrom together with the proceeds of any Policy received by the Fund;
- (c) cash, money, investments and other property for the time being held by the Trustee; and
- (d) money, investments and other property transferred to the Fund as a Roll Over Payment.

## 9. ACCUMULATION ACCOUNT

9.1 The Trustee shall establish an Accumulation Account in respect of each Member.

9.2 The following amounts shall be credited to the appropriate Accumulation Account:-

- (a) any Contributions made by the Member;
- (b) any Contributions made in respect of the Member or Beneficiaries by an Employer;

Fund Earning Rate then applying as it shall at its discretion consider equitable and in accordance with the requirements of the Commissioner and the Income Account shall be debited or credited accordingly.

#### 11. EQUALISATION ACCOUNT

11.1 The Trustee shall have the power at any time to establish the Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account pursuant to clause 10.5.

11.2 Whilst any monies are held in the Equalisation Account they shall not form part of any Accumulation Account and any income derived by the Fund on the monies held in the Equalisation Account shall be credited to that Account and any taxation on that income shall be debited to that account.

11.3 The Equalisation Account shall be used by the Trustee to stabilise the investment earnings of the Fund and to provide for such future contingencies as the Trustee considers reasonable and the Trustee shall have the discretion to deal with the assets of the Equalisation Account as it shall see fit in the supplementation of the investment earnings of the Fund.

11.4 When a person ceases to be a Member the Trustee shall take into account the Member's interest in the Equalisation Account (if any) and shall take the advice of the Actuary in determining whether any amount should be transferred from the Equalisation Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

#### 12. SPECIFIC INVESTMENTS

12.1 The Trustee may undertake to invest separately in respect of certain Members or Beneficiaries as determined by the Trustee from time to time.

12.2 The Trustee shall record on whose behalf the specific investments are made for the purposes of making up a Member's Accumulation Account for each Class.

12.3 In that event, the income and profits (less losses) arising from specific investments and any costs or charges applicable to specific investments which are incurred pursuant to clauses 19 or 24 and any Taxation which is payable or may become payable in respect of specific investments shall not be allocated to the Income Account but to the particular Accumulation Account. The income and profits (less losses) arising from specific investments applicable to any particular Accumulation Account shall be credited directly to that Accumulation Account which shall also be debited directly with the appropriate proportion of any costs or charges applicable to specific investments which are incurred pursuant to clauses 19 or 24 and any Taxation which is payable or may become payable in respect of specific investments.

#### 13. VALUATION

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Commissioner shall require (including but without limitation at the time of the payment of a Benefit to a Member), the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

#### 14. FUND RECORDS, AUDIT AND REPORTING TO MEMBERS

14.1 The Trustee shall -

- (a) keep account of all monies received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into the bank account of the Fund, all monies from time to time due to the Fund;
- (c) keep a record of all decisions made by the Trustee in respect of matters affecting the Fund;
- (d) keep a record of changes of changes of the Trustee and of directors of the Trustee and of all consents given by the Trustee or a director of the Trustee;
- (e) keep copies of reports given to all Members of the Fund;
- (f) 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 as required by the Act;

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) the act or default of any co-Trustee or of any Member;
- (c) the neglect or default of any agent employed in good faith by the Trustee;
- (d) any act or acts done or omitted to be done in conformity with any decisions of the Trustee;
- (e) any mistake or determination or erroneous decision that exposes the Trustee to any claim action suit or demand at the instance of any Member or of any claimant or of any person having at any time an interest in the Fund.

#### 18. INDEMNITY OF TRUSTEE

Each of the Trustee and any directors of the Trustee shall be indemnified out of the Fund against all liabilities incurred by them or any of them as a result of any action taken or omitted in good faith in the administration of the fund including the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it under this Deed or at law and shall have a lien on and may use any part of the Fund for the purposes of this indemnity PROVIDED that this provision shall not exempt the Trustee from, or indemnify the Trustee against -

- (a) liability for breach of trust if the Trustee -
  - (1) fails to act honestly in a matter concerning the Fund; or
  - (2) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order under the Act,

AND this provision shall not indemnify a director of the Trustee against -

- (a) a liability that arises because the director -
  - (1) fails to act honestly in a matter concerning the Fund; or
  - (2) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligences that the director is required to exercise; or
- (b) the liability for a monetary penalty under a civil penalty order under the Act.

#### 19. PROCEEDINGS OF TRUSTEE

19.1 Any determination by the Trustee in exercise of any power conferred on the Trustee by this Deed may be made -

- (a) in writing signed by all the Trustees;
- (b) by a resolution duly passed at a meeting of the Trustee;
- (c) in the case of a sole corporate Trustee, in the manner set out in clause 19.2; or
- (d) by telephone or other similar means if each Trustee has been given written or verbal notice of the meeting and each Trustee takes part and each is able to hear each of the other Trustees.

19.2 A corporate Trustee may exercise or concur in exercising any power conferred on the Trustee by a resolution of the company or of its directors.

19.3 The Trustee if at any time they are more than one shall act jointly.

#### 20. APPOINTMENT OF AUDITOR AND OTHER OFFICERS

20.1 The Trustee shall appoint an auditor who shall be an approved auditor under the Act as the Auditor of the Fund.

20.2 The Trustee may if necessary appoint a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia as the Actuary. The Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or act upon the advice so provided.

20.3 The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more firms (individually called "the Manager") to act on behalf of the Trustee in regard to the purchase, sale, management, administration or retention of and the dealing in any or all of the investments of the Fund whether in the name of that Manager or otherwise.

20.4 The Trustee from time to time may appoint such other officers as it considers desirable for the proper management of the Fund.

(j) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member, which Annuity shall be in the name of the Trustee or, if the Trustee so determines, in the name of the former Member;

(k) to act in accordance with the Act notwithstanding that this Deed may not otherwise expressly authorize the Trustee to do so;

(l) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, and preservation of the Fund and in the performance of its obligations under this Deed;

(m) subject to the Act, to delegate to any person such terms as the Trustee thinks fit any of the powers or duties conferred upon it by this Deed and may deliver to that person any assets comprised in the Fund and from time to time may revoke that delegation or vary its terms,

PROVIDED that nothing in this Deed is to be construed as allowing the exercise of the powers of the Trustee to be under the direction of any other person unless permitted by the Act or the exercise of a discretion of the Trustee to be made by any other person.

21.3 Subject to the Act, no Trustee or a director of a Trustee (in this clause called "director") shall be disqualified by his office from contracting with the Trustee on behalf of the Fund, nor shall that contract or any contract entered into by or on behalf of the Fund in which any Trustee or director shall be in any way interested be avoided, nor shall any Trustee or director so contracting or being so interested be liable to account to the Fund for any profit realised by that contract by reason only of the Trustee or a director holding that office or of the fiduciary relationship thereby established.

21.4 Subject to the Act, a Trustee or a Director may vote in respect of any contract or arrangement in which he is interested, and may be counted for the purpose of any resolution regarding that contract or arrangement in the quorum present at the meeting and may participate in the execution of any instrument by or on behalf of the Trustee.

## 22. POLICIES OF ASSURANCE

22.1 The Trustee exercising its power contained in clause 21 may effect separate Policies and may secure a Member's Benefits by means of an individual Policy or Policies or a group Policy or Policies or by means of life cover providing benefits payable to the Trustee on the death or disablement of the relevant Member (and the term "Policy" includes a Policy for or including such life cover) or partly in one way and partly in another. The Trustee shall not be responsible or liable to the Member, the Member's legal personal representative or his Dependants should the Trustee determine not to exercise that power and effect such insurance PROVIDED that the Member may direct the Trustee to effect separate Policies or separate life cover and may further specify the type of Policy to be effected.

22.2 Any monies received by the Trustee being the proceeds of any Policy (whether or not the event giving rise to the payment occurs after the Member has retired from Gainful Employment) shall be paid or applied by the Trustee as if it were part of the Member's Benefit derived from the Contributions to the Member's Accumulation Account from which the premiums were paid and shall be dealt with as provided in this Deed.

22.3 If in connection with any Policy effected by the Trustee against death or disablement, an insurance company refuses to insure or seeks to impose any limitations or special conditions in respect of a Member, notwithstanding the Benefits payable pursuant to this Deed in respect of any of these contingencies, the Trustee after obtaining the advice of the Actuary (if any) may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member as it shall determine.

## 23. CONTRIBUTIONS TO FUND

23.1 Each Member may contribute to the Fund such amounts as the Member with the approval of the Trustee may agree from time to time.

23.2 Each Employer may contribute to the Fund in respect of a Member in its employment such amount as the Employer may from time to time agree with the Trustee.

23.3 No contribution shall be payable by a Member or in respect of a Member by his Employer after the Member's termination of employment or after the date on which a benefit becomes payable from the Fund to or in respect of him.

23.4 No contribution shall be accepted by the Trustee where the acceptance of the contribution may prejudice the concessional tax treatment of the Fund or breaches the Act.

of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect of that amount and, except as provided in clause 27.2, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

27.4 Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund to the extent of his Accumulation Account he shall make a request to the Trustee in writing nominating the institution to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification together with such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner.

27.5 Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund, the Trustee shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Benefit must be preserved in accordance with the requirements of the Act.

## 28. BENEFITS PAYABLE ON RETIREMENT

28.1 Where a Member :-

- (a) retires from Gainful Employment at or after the age of 55 years;
- (b) retires from his employment with an Employer at or after the Normal Retirement Age;
- (c) reaches the age of 65 years; or
- (d) fulfils the criteria of the Commissioner for the payment of Benefits notwithstanding that the Member continues in employment,

the Member shall be entitled to be paid an old-age pension determined pursuant to the provisions of clauses 34 and 39.

28.2 Where a Member is eligible for payment of a Benefit in accordance with the preceding sub-clause and wishes to have the whole or any part of his Benefit payable as a lump sum Benefit, the Member shall be paid in accordance with clause 40.

## 29. RETIREMENT PRIOR TO NORMAL RETIREMENT AGE

29.1 Subject to clause 30, where a Member ceases to be Gainfully Employed prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Trustee shall pay to the Member the amount standing to the credit of the Member's Accumulation Account as at the date of payment.

29.2 Where a Member is eligible for payment of a Benefit in accordance with the above sub-clauses and wishes to have the whole or any part of the Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 38 and 39.

## 30. PRESERVED PAYMENT BENEFITS

Notwithstanding the provisions of this Deed, no Preserved Payment Benefit shall be paid to a Member or his Dependants until retirement of the Member from Gainful Employment or the attaining of the age of 55 years whichever is the later, his earlier death or in other circumstances and in a form allowed under the Act.

## 31. TEMPORARY TOTAL DISABLEMENT

31.1 Where a Member becomes in the opinion of the Trustee totally disabled as defined in this clause and a Policy has been effected by the Trustee in respect of the Member which covers total disablement, the following provisions of this clause shall take effect.

31.2 A Member will be recognised as having become totally disabled (but not Totally and Permanently Disabled) if -

- (a) he is disabled as a result of illness, accident or injury which commences at or prior to his attaining the age of 65 years or his Normal Retirement Age (whichever is the earlier); and
- (b) as a result of the illness, accident or injury the Member has been continuously absent from his business, trade, profession, vocation, calling, occupation or employment for the eligibility period contained in any Policy effected in respect of the Member; and

34.3 On the death of a former Member who is at the time of his death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may unless specifically requested to the contrary by the Spouse of the former Member pay a Pension not exceeding 85% of the Pension that was being paid to the former Member as at the date of his death or such other amount as shall be acceptable under the Act to the Spouse. If the former Member and all the Beneficiaries to whom the Pension is payable die whilst there is still an amount standing to the credit of the Accumulation Account, the balance of the Accumulation Account shall be dealt with in accordance with the provisions of clause 43.

### 35. PERSONS TO WHOM BENEFITS ARE PAYABLE

35.1 Subject to the provisions of this Deed, the Trustee shall pay the Benefits referred to in this Deed as follows -  
 (a) Where the Benefit or balance of the Benefit is payable following the death of the Member or former Member, the payment shall, subject to paragraph (d), be made in accordance with the provisions of clause 33.

(b) Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund he shall make a request to the Trustee in writing nominating the institution to which the payment is to be made, and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification or such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner PROVIDED that in circumstances acceptable under the Act the Trustee may effect a Roll Over Payment without the consent of the Member or former Member.

(c) Where the Benefit or balance of the Benefit is payable following the disablement of a Member, it shall be paid to the Member or alternatively, in the event of the death of the Member, to the Dependants of the Member.

(d) Where the Benefit or balance of the Benefit is payable as a reversionary Pension, it shall be paid in accordance with the provisions of clause 34.3.

(e) When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

(f) In all other cases the Benefit shall be paid to the Member.

35.2 Notwithstanding any provision of this Deed which may be construed to the contrary -

(a) no Member or his Dependants shall be entitled to receive any Benefit under this Deed prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances acceptable under the Act;

(b) any Pension or Annuity that a Member or the Dependants of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or his Dependants have a right to receive from the Fund are to be paid, not later than the 65th birthday of the Member or at such other time as is acceptable under the Act.

### 36. RETENTION OF BENEFIT IN FUND

At the request of a Member or Beneficiary, the Trustee may at its absolute discretion retain all or part of any Benefit payable under this Deed until -

(a) the former Member or Beneficiary entitled requests that it be paid to him;

(b) the Member dies in which event it will be paid pursuant to clause 35;

(c) the Member attains the age of 65 years or his Normal Retirement Age whichever is earlier; or

(d) the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of the Accumulation Account of that Member or Beneficiary as at the date of payment PROVIDED that all Benefits must be paid in accordance with the Act.

### 37. LIMITATION OF BENEFITS

Notwithstanding any other provision of this Deed, the Trustee shall not pay any Benefits to Members, their Dependants or Beneficiaries where the payment would breach the Act or prevent the Fund from qualifying for concessional taxation status.

41.3 Notwithstanding any other provision of this Deed, no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst the asset or assets remain subject to the provisions of this Deed.

#### 42. PAYMENT OF TAX ON BENEFITS AND CONTRIBUTIONS

42.1 The Trustee or with the agreement of the Trustee, an insurance company or other appropriate organisation, shall deduct from any Benefit payable to any Member pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it and shall pay the deduction to the relevant authorities. A Member or Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation.

42.2 The Trustee or with the agreement of the Trustee, an insurance company or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution. Where the Taxation has been deducted from a Contribution, a reference to the crediting of a Contribution to an Accumulation Account means the crediting of the Contribution after the deduction of such Taxation.

#### 43. FORFEITURE OF BENEFITS

43.1 Subject to the Act, any Member, Former Member, Beneficiary or any of the Dependants or the legal personal representative of a deceased Member -

- (a) who assigns or charges or attempts to assign or charge any Benefit;
- (b) whose Benefits whether by his own act, operation of law, an order of any Court or otherwise become payable to or vested in any other person, government or other public authority;
- (c) who commits an act of bankruptcy;
- (d) who in the opinion of the Trustee is incapable of managing his affairs;
- (e) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits;
- (f) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee during a period of five years after a payment was last made to him by the Trustee,

shall forfeit entitlement to all his Benefits (other than a vested benefit) and, in the case of a Member, he shall cease to be a Member of the Fund.

43.2 The Trustee shall hold upon trust and pay or apply any Benefits which have been forfeited for the benefit of the Beneficiary, the former Member or his Nominated Dependants or if no nomination is made to any one or more of them in such proportions amongst them as the Trustee may from time to time in its absolute discretion determine.

43.3 If the former Member or Beneficiary has died and if after reasonable enquiries no Dependants can be located the Trustee may pay the Benefit to his legal personal representative or if there is no legal personal representative to such Relatives of the deceased Member as appear to the Trustee to be entitled to share in his estate.

43.4 Any Benefits or amounts remaining in relation to a Member or Beneficiary referred to in clause 43.1 after the application of monies pursuant to clause 43.2 shall be applied for all or any of the following purposes:-

- (a) the provision of Benefits for other Members of the Fund or their Dependants or such one or more of them to the exclusion of the other or others of them as the Trustee shall determine; or
- (b) the provision for other Members of the Fund who have rights to receive benefits from the Fund or for the Dependants of additional benefits on a basis that is reasonable having regard to all the circumstances; or
- (c) to a separate account to be called the Equalisation Account established pursuant to clause 11.4; or
- (d) to repay to any Employer amounts representing Contributions and accumulated earnings on those Contributions made in respect of a Member whose rights to receive Benefits under the Fund have ceased; or
- (e) for any other purposes approved from time to time by the Commissioner.

#### 44. TERMINATION OF EMPLOYER'S CONTRIBUTIONS

44.1 Where an Employer has been admitted to make Contributions to the Fund pursuant to clause 7, its contributions to the Fund shall terminate and the Employer shall cease to be an Employer for the purposes of the Fund on the date that -

- (a) the Employer enters into liquidation or is placed in receivership; or
- (b) the Employer terminates its Contributions by notice in writing to the Trustee.

ANNEXURE A

APPLICATION FOR MEMBERSHIP

To: The Trustee,

I hereby apply for admission to membership of the Fund.

I agree and undertake as follows:

- (a) I understand the terms and conditions of the Trust Deed and I acknowledge I have been informed of my rights and the rights of my Dependants pursuant to the Deed.
- (b) I will be bound by the provisions of the Deed governing the Fund.
- (c) I am not nor have been a member of any superannuation fund nor have an interest in any Approved Deposit Fund or Rollover Annuity other than as disclosed on the reverse of this Application.
- (d) I will make a full disclosure in writing of any benefits I have received, may receive or may be entitled to receive from any other superannuation fund, Approved Deposit Fund or Roll Over Annuity.
- (e) I will notify the Trustee if at any time I cease to be Gainfully Employed as defined in the Deed.
- (f) I consent to the Trustee acting as Trustee of the Fund.
- (g) In the event of my death, I nominate the following persons as my Nominated Dependants:-  
(Note - a nomination is not necessary and if made must be reviewed from time to time.)

---

NAME	ADDRESS	RELATIONSHIP	PERCENTAGE OF TOTAL BENEFIT OR FIXED AMOUNT
------	---------	--------------	---

---

Dated the ..... day of ..... 19.....

Name: .....

Address: .....

.....

Signature: .....

SCHEDULE

TRUSTEE:

DARREN JOHN CROFTS and JODIE LOUISE  
CROFTS both of 14 Impson Gardens South Lake  
Western Australia

NAME OF FUND:

D AND J CROFTS SUPERANNUATION FUND

DATE OF  
ESTABLISHMENT OF FUND:

The date of execution of this Deed

EXECUTED on the 15 day of APRIL 1999.

SIGNED by )  
DARREN JOHN CROFTS )  
in the presence of )

D. J. Crofts

[Signature]

Witness

SIGNED by )  
JODIE LOUISE CROFTS )  
in the presence of )

J. Crofts

[Signature]

Witness