

**THIS DEED** is made on the day mentioned in Part 1 of the Schedule.

**BETWEEN**

The person described as the Security Trustee in Part 2 of the Schedule  
("the Security Trustee")

**AND**

The person described as the RSF Trustee in Part 3 of the Schedule  
("the RSF Trustee")

**INTRODUCTION**

- A. This introduction relies upon the definitions in **Clause 1**.
- B. The RSF Trustee, as Trustee for the Fund described in **Part 4** of the Schedule, a Regulated Superannuation Fund, wishes to invest in the Original Asset, pursuant to the Contract, which is yet to be executed.
- C. The Security Trustee is to execute the Contract as nominee for the RSF Trustee and hold the Original Asset as bare trustee for the RSF Trustee on the terms of this Deed.
- D. The RSF Trustee is entitled to call for the transfer of the Original Asset from the Security Trustee to the RSF Trustee at any time.
- E. The Security Trustee holds the Original Asset as nominee and bare trustee for the RSF Trustee.
- F. This Deed shall be constituted by the Security Trustee signing the Contract to acquire the Original Asset upon the terms of this Deed.
- G. The Trust established pursuant to this Deed shall be known by the name specified in **Part 5** of the Schedule.
- H. It is intended that the RSF Trustee's investment fits within the exemption to the borrowing prohibition contained in **Section 67(4A)** of the SIS Act and will be exempt from being an investment in an in-house asset pursuant to **Sections 71(8) and 71(9)** of the SIS Act.

**1. THE PARTIES DECLARE THAT:**

**1.1. DEFINITIONS**

In this Deed and in the Schedules to it the following expressions have the following respective meanings:

1.1.1. "**Applicable Law**" means the law of that country, state, territory or place which is specified in the Schedule provided that if such specifications may not lawfully be made or will not be given effect to by any Court before which this Deed shall come in question the applicable law shall be the law which such Court determines.

1.1.2. "**Asset**" means the Original Asset and any Replacement Asset.



- 1.1.3. **"Beneficiary"** means the RSF Trustee as Trustee for the Fund.
- 1.1.4. **"Charge"** has the meaning given to it under the SIS Regulations.
- 1.1.5. **"Contract"** means the contract to purchase the Original Asset, which, at the date of this Deed, is yet to be signed.
- 1.1.6. **"Corporate Law"** means the *Corporations Act 2001*.
- 1.1.7. **"Deed"** means this Deed and the Schedule.
- 1.1.8. **"External Lender"** means the Lender which lends the RSF Trustee money to fund the purchase of the Asset.
- 1.1.9. **"External Loan"** means any loan or loans whereby the Security Trustee has borrowed money to acquire the Asset and includes any refinance, variation or renewal of same.
- 1.1.10. **"External Loan Agreement"** means any agreement which evidences the External Loan.
- 1.1.11. **"Fund"** means the Regulated Superannuation Fund described in **Part 4** of the Schedule.
- 1.1.12. **"Fund's Investment Strategy"** means the investment strategy required to be maintained by the RSF Trustee under **Sub-Section 52(2)(f)** of the SIS Act.
- 1.1.13. **"GST"** means the goods and services tax payable pursuant to the *GST Legislation*.
- 1.1.14. **"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* and related Acts introduced by the Federal Government.
- 1.1.15. **"Initial Outlay"** means the money contributed by the RSF Trustee, including the amount of the External Loan used to purchase the Asset.
- 1.1.16. **"Order of Payment"** means the payment of the proceeds of sale of the Asset in the following order:
  - 1.1.16.1. first, all costs charges, liabilities and expenses of the Security Trustee which have been incurred in, or are incidental to, the exercise or performance, or attempted exercise or performance, of a power or duty under the terms of this Deed or in respect to the sale of the Asset, including taxes payable;
  - 1.1.16.2. second, the amount owing under the External Loan to the External Lender;
  - 1.1.16.3. thirdly, any balance, to the Beneficiary.
- 1.1.17. **"Original Asset"** means the asset to be acquired under the Contract, more particularly described in Part 7 of the Schedule.
- 1.1.18. **"person"** includes natural persons and bodies corporate whether or not the same act in the capacity of trustee of any trust or settlement.



- 1.1.19. "**Property**" means real, personal, movable or immovable property of any description and wheresoever situate including (without limiting the generality hereof) policies of assurance or endowment, chooses in action but for the purposes of this Deed, does not include money.
- 1.1.20. "**Regulated Super Fund**" means a superannuation fund which fits the definition of Section 19 of the SIS Act.
- 1.1.21. "**Related Party**" has the same meaning given to it in Section 10 of the SIS Act.
- 1.1.22. "**Relevant Requirements**" means the Act and any other laws or legislation, or the requirements of the Responsible Authority or any other competent authority which must be satisfied so that:
- 1.1.22.1. the Fund obtains concessional tax treatment;
  - 1.1.22.2. the Fund remains a regulated Superannuation Fund; and
  - 1.1.22.3. no penalty is imposed on the RSF Trustee or directors of the RSF Trustee.
- 1.1.23. "**Replacement Asset**" means an Asset replacing the Original Asset.
- 1.1.24. "**RSF Trustee**" means the party named in **Part 3** of the Schedule, which is Trustee of the Fund.
- 1.1.25. "**Security Interest**" means the interest of the External Lender secured by mortgage over the Asset.
- 1.1.26. "**Security Trustee**" means the party named in **Part 2** of the Schedule.
- 1.1.27. "**SIS Act**" means the *Superannuation Industry (Supervision) Act 1993* as amended.
- 1.1.28. "**Sole Purpose Test**" means the requirement contained in **Section 62** of the SIS Act.
- 1.1.29. "**Supply**" and other terms used in **Clause 18** which have meanings under the *GST Legislation* have the meanings proposed and implemented pursuant to the *GST Legislation*.
- 1.1.30. "**Term**" means from the date the Contract is signed until the Final Instalment Date of such extended Term pursuant to a rollover.
- 1.1.31. "**Trust**" means:
- 1.1.31.1. the Asset;
  - 1.1.31.2. any income from the Asset.
- 1.1.32. "**Trust Name**" means the name this Trust is to be referred to as recorded in **Part 5** of the Schedule.
- 1.1.33. "**Vesting Day**" means the date that is 80 calendar days from the date of this Deed.

1.1.34. "year" means each period of twelve (12) months ending on the 30 June. The period from the date of execution of this Deed until the next succeeding 30 June and the period from the first day of July immediately prior to the termination of the Trust and ending on that termination date shall for the purposes of this Deed each be deemed to be a year.

1.2. In this Deed except where otherwise required or unless the Security Trustee in any year otherwise determines:

1.2.1. reference to the Income of the Trust derived by the Security Trustee shall include not only income of the kind to which that expression ordinarily applies but also to profits and gains of a capital nature and which are derived or realised by the Trustee in respect of the Trust and which are profits or gains of the kind to which Part IIIA of the *Income Tax Assessment Act* 1936 and shall extend to provisions in the *Income Tax Assessment Act* 1997 that amend, modify, re-enact or replace provisions in the former Act;

1.2.2. reference to losses and outgoings shall include loss or outgoings of a capital nature of the kind referred to in Part IIIA of the *Income Tax Assessment Act* 1936 and shall extend to provisions in the *Income Tax Assessment Act* 1997 that amend, modify, re-enact or replace provisions in the former Act;

1.2.3. references to any statutory enactment shall mean and be construed as references to the said enactment as amended, modified or re-enacted from time to time;

1.2.4. the singular shall include the plural and vice versa;

1.2.5. words importing persons include corporations;

1.2.6. a reference to a person includes that person's personal representative, successors in title, trustees and assigns;

1.2.7. words importing the masculine, feminine or neuter gender shall be read as importing such gender as the case may require;

1.2.8. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

## 2. **DECLARATION OF TRUST**

2.1. The Security Trustee will use the Initial Outlay to purchase the Asset as bare trustee for the sole benefit of the Beneficiary and subject to the Security Interest on the terms of this Deed and for the benefit and at the direction of the Beneficiary.

2.2. The Trust created by this Deed will arise upon execution by the Trustee of the Contract.

2.3. The Trust created by this Deed will be known by the Trust Name.

## 3. **DECLARATIONS AND UNDERTAKINGS BY SECURITY TRUSTEE**

3.1. The Security Trustee declares and directs that no part of the Trust or the income shall ever revert to or be held for the Security Trustee or its estate, it being the

intention of the Security Trustee that the Beneficiary shall be absolutely entitled to the corpus and income of the Trust.

- 3.2. The Security Trustee shall hold the Asset as bare trustee for the Beneficiary solely.
- 3.3. The Security Trustee declares and acknowledges that the Security Trustee has no beneficial interest in the Asset and holds the Asset subject to the Security Interest for the absolute benefit of the Beneficiary.
- 3.4. The Security Trustee must notify the RSF Trustee of all notices, assessments, claims or demands which the Security Trustee receives pertaining to the Asset and promptly pay, to the extent available from the Trust, all outgoings including rates, taxes and charges in relation to the Asset and External Loan.
- 3.5. The Security Trustee, will not acquire property nor borrow nor allow any commitment or liability which is not provided for in this Deed.
- 3.6. No part of the Asset will ever revert to or be held in trust for any person other than the Beneficiary.
- 3.7. Notwithstanding the Relevant Requirements, the Security Trustee must, subject to the Security Interest, transfer, deal with or otherwise dispose of the Asset as the Beneficiary may direct.

#### 4. **DECLARATION BY RSF TRUSTEE**

- 4.1. The RSF Trustee:
  - 4.1.1. is an Australian resident for taxation purposes;
  - 4.1.2. is not a trader in real estate and will not be treated for income tax purposes as either trading in the Asset or carrying on a business of investing in the Asset or holding the Asset as a revenue Asset;
  - 4.1.3. is satisfied the Fund is a Regulated Superannuation Fund; and
  - 4.1.4. warrants that this investment fits within the Fund's Investment Strategy and satisfies the Sole Purpose Test.

#### 5. **MANAGEMENT OF ASSET**

- 5.1. The Security Trustee shall manage the Asset, subject to any lawful direction of the Beneficiary, including, if required by the Beneficiary:
  - 5.1.1. holding title to the Asset;
  - 5.1.2. collecting rents and paying any outgoings;
  - 5.1.3. leasing the Asset;
  - 5.1.4. enforcing leases;
  - 5.1.5. issuing tax invoices;
  - 5.1.6. maintaining accounts;
  - 5.1.7. negotiating rental (providing it is at market rates);



- 5.1.8. paying all amounts due in respect of the Asset to the relevant authorities;
- 5.1.9. applying all amounts due under the External Loan to the External Lender;
- 5.1.10. commencing and defending litigation;
- 5.1.11. to open and operate bank accounts in the name of the Security Trustee (or a nominee) with any bank or financial institution);
- 5.1.12. maintaining the Asset;
- 5.1.13. insuring the Asset;
- 5.1.14. any other action thought reasonable to prudently manage and maintain the Asset; and
- 5.1.15. to, at the direction of the Beneficiary, exercise all rights and privileges and perform all duties and do all such acts, matters and things which the Beneficiary could lawfully do.

5.2. The Security Trustee may not be remunerated for its management role in **Clause 5.1** but may be reimbursed for necessarily incurred expenses.

## 6. BREACH OF LOAN

6.1. If the RSF Trustee:

- 6.1.1. is in breach of its External Loan and the RSF Trustee is unable or unwilling to rectify such breach within 21 days of notice from the External Lender; or
- 6.1.2. directs the Security Trustee to sell the Asset;

then the Security Trustee must sell (and the Beneficiary authorises the Security Trustee to sell) the Asset for the best available price in a reasonable time, having regard to market conditions and the requirements of the External Lender. Any surplus from the net proceeds of sale of the Asset after repayment of the External Loan and costs will be the absolute entitlement of the RSF Trustee. The proceeds of such sale must be applied in accordance with the Order of Payment, unless the Beneficiary, with the consent of the External Lender, directs the Security Trustee to acquire a Replacement Asset, in which case, subject to the direction of the Beneficiary the proceeds of sale need not be applied to reduce the amount owing under the External Loan or to the Beneficiary.

## 7. RSF TRUSTEE DIRECTION

- 7.1. Notwithstanding any other provision in this Deed or any of the Relevant Requirements, the RSF Trustee may call upon the Security Trustee to transfer legal ownership of the Asset to the RSF Trustee whereupon the Security Trustee shall transfer legal ownership of the Asset to the RSF Trustee.
- 7.2. Despite Clause 7.1, the RSF Trustee warrants that in order to comply with the Relevant Requirements (unless there is good justification) it will not call for a transfer of legal title to the Asset until it has repaid the External Loan and the Security Interest is discharged.



8. **RELATIONSHIP BETWEEN THE PARTIES**

The relationship between the parties does not constitute a partnership nor will any party have authority to act as agent or otherwise for, or assume any obligations of the other except as provided in this Deed.

9. **EXTERNAL LOAN**

The Security Trustee may subject the Asset to any encumbrance to secure the External Loan.

10. **VARIATION**

The Security Trustee may, with the consent of the RSF Trustee revoke, add to, release, delete or vary all or any of the power in this Deed. The provisions of this Deed shall not be amended for any purpose contrary to the Relevant Requirements or which effects the Beneficiary's entitlement to the Asset.

11. **POWERS AND DUTIES OF SECURITY TRUSTEE**

11.1. **Limitations**

The Security Trustee shall have no powers, duties, rights or discretions under this Trust except those set out in this Deed or any variation to this Deed.

12. **SEVERANCE**

To the extent that the inclusion or appointment of any Beneficiary hereunder or by any subsequent act or writing is invalid for any reason that inclusion or appointment shall be severed from any other inclusion or appointment.

13. **BENEFICIARIES NOT LIABLE**

The Security Trustee shall not have any power or authority to enter into any contract, arrangement or transaction that shall bind, affect or render personally liable the Beneficiary under this Deed nor to in any way pledge the credit of any Beneficiary nor to call upon any Beneficiary for any payment.

14. **LIABILITY FOR SECURITY TRUSTEE**

The Security Trustee shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the Beneficiary but if acting in good faith shall be entitled to be indemnified out of the Trust in respect of all liabilities incurred relating to the execution of any powers, duties, authorities or discretions vested in the Security Trustee under the provisions of this deed and in respect of all actions, proceedings, costs, claims and demands relating to any matter or thing done or omitted to be done concerning the Trust, limited to such amount recoverable from a sale of the Asset.

15. **PROHIBITION**

15.1. The Security Trustee may not acquire any Assets other than the Original Asset or a Replacement Asset.

15.2. The Security Trustee must not lease the Asset to a Related Party of the Fund unless it is Business Real Property of the Fund.

16. **TERMINATION OF TRUST**

This Trust will terminate on the earlier of the Perpetuity Date or when legal title to the Asset is transferred to the Beneficiary.

17. **GST**

17.1. Notwithstanding any other provision in this Deed, if the *GST Legislation* applies to any supply made or deemed to be made under or pursuant to this Deed ("**Affected Supply**"), then to the extent that any party to this Deed ("**Supplier**") is or become liable to pay GST in connection with the Affected Supply:

17.1.1. the Supplier may add an amount in respect of that GST to the agreed price of the Affected Supply;

17.1.2. any party paying consideration for the Affected Supply will pay the agreed price plus any amount charged in respect of GST (and any amount of GST payable with respect to such an increased amount); and

17.1.3. where required by the *GST Legislation*, the Supplier will issue a tax invoice which enables the person receiving the invoice, if permitted by the *GST Legislation*, to claim an input tax credit or refund of GST.



**SCHEDULE**

**PART 1: DATE 18/8/11**

**PART 2: SECURITY TRUSTEE**

**STEPHEN MARK FLECKNOE & DIANE LEONIE FLECKNOE**

**PART 3: RSF TRUSTEE**

**FLECKS FUTURE FUND PTY LTD A.C.N. 152 737 650**

**PART 4: FUND**

The **FLECKS FUTURE FUND** Superannuation Fund as amended from time to time, originally constituted by Deed dated **8/18/2011**

**PART 5: TRUST NAME**

**LOT 173 MCINNES FIELD, LAIDLEY QLD 4341 Trust**

**PART 6: APPLICABLE LAW**

Queensland

**PART 7: ORIGINAL ASSET**

Lot 173 McInnes Field, LAIDLEY QLD 4341



**EXECUTED AS A DEED:**

**EXECUTED** by Stephen Mark Flecknoe as  
Security ) Trustee in the presence of:-  
)

  
\_\_\_\_\_  
Stephen Mark Flecknoe


  
\_\_\_\_\_  
Witness

KELLIE MAYBELLE DUNNE  
\_\_\_\_\_  
Witness Full name

HR MANAGER  
\_\_\_\_\_  
Witness Occupation

**EXECUTED** by Diane Leonie Flecknoe as  
Security ) Trustee in the presence of:-  
)

  
\_\_\_\_\_  
Diane Leonie Flecknoe

  
\_\_\_\_\_  
Witness

KELLIE MAYBELLE DUNNE  
\_\_\_\_\_  
Witness Full name

HR MANAGER  
\_\_\_\_\_  
Witness Occupation

**SIGNED** by the authorised representatives of )  
**FLECKS FUTURE FUND PTY LTD A.C.N. 152 737 650** )  
as RSF Trustee in the presence of )

  
\_\_\_\_\_  
Stephen Mark Flecknoe – Director/Secretary  
  
\_\_\_\_\_  
Diane Leonie Flecknoe – Director/Secretary

  
..... )  
Signature of witness )

KELLIE MAYBELLE DUNNE )  
..... )  
Name of witness )

36 Lincoln Drive Cambridge Park )  
..... )  
Address of witness )

HR MANAGER )  
..... )  
Occupation of witness )

