

DEED

Establishing

Madcap Superannuation Fund

MADE BY

**Paul Kevin Mantell and Margret Ann Mantell
("Trustee")**

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THIS DEED is executed on the date of execution referred to in Item 1 of the Schedule.

1. TRUSTEE

The person or persons named in Item 2 of the Schedule (the "**Trustee**").

2. BACKGROUND INFORMATION

- 2.1 The Trustee desires to establish a superannuation fund to provide superannuation benefits for certain persons and their Dependants and for such incidental and ancillary purposes as the Commissioner of Taxation, the Australian Prudential Regulation Authority ("**APRA**") or the Australian Securities & Investments Commission may from time to time approve.
- 2.2 It is intended by this Deed to establish a superannuation fund to be known by the name referred to in Item 3 of the Schedule.
- 2.3 The Trustee has agreed to act as the first trustee of the Fund upon the trusts and with and subject to the powers and provisions in this Deed.

3. INTERPRETATION

3.1 Definitions

Unless the context otherwise requires, in this Deed:

- (a) "**Act**" means the *Income Tax Assessment Act 1997* (Cth) or the *Income Tax Assessment Act 1936* (Cth) (as the context requires);
- (b) "**Actuary**" means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia or another suitably qualified person recognised as an actuary pursuant to the Relevant Law or a firm of such persons which may be appointed by the Trustee to advise in relation to the Fund;
- (c) "**Auditor**" means the auditor for the time being appointed by the Trustee;
- (d) "**Beneficiary**" means a person presently entitled to receive a Benefit;
- (e) "**Benefit**" means any amount paid or payable to or in respect of a Member by the Trustee under this Deed;
- (f) "**Binding Nomination**" means a nomination governing the distribution of a death Benefit made under Clause 12.4(c);
- (g) "**Clause**" means a clause in this Deed;
- (h) "**Condition of Release**" means a condition of release within the meaning of the Relevant Law;

- (i) **“Constitutional Corporation”** means a constitutional corporation within the meaning of the Relevant Law;
- (j) **“Contributions”** means payments, allotments, allocations and/or transfers of funds or property to or within the Fund in respect of a Member;
- (k) **“Deed”** means this Deed (including any schedules) as amended;
- (l) **“Dependant”** means a dependant within the meaning of the Relevant Law;
- (m) **“Eligible Person”** means any person who is eligible to become a member of a Regulated Superannuation Fund under the Relevant Law;
- (n) **“Employer”** means a person or entity in relation to whom a Member is an employee;
- (o) **“Family Law Act”** means the *Family Law Act 1975* (Cth);
- (p) **“Fund”** means the superannuation fund constituted by this Deed;
- (q) **“Fund Year”** means the period of twelve months ending on the thirtieth day of June in each year or such other annual period as the Trustee may determine from time to time to be applicable;
- (r) **“Gainfully Employed”** means gainfully employed within the meaning of the Relevant Law, and “Gainful Employment” has a similar meaning;
- (s) **“Guarantee Act”** means the *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (t) **“Member”** means a person who has been admitted to membership under Clause 10 who has not ceased to be a Member;
- (u) **“Member’s Account”** means an account in the Fund in the name of a Member established and maintained under Clause 8.2, and “Member Account” and “Members’ Accounts” have a corresponding meaning;
- (v) **“Payment Split”** has the same meaning as the definition of “Payment Split” in section 90MD of the Family Law Act;
- (w) **“Pension”** means a pension within the meaning of the Relevant Law;
- (x) **“Permanent Incapacity or Invalidity”** in relation to a Member means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;
- (y) **“Preservation Age”** means preservation age within the meaning of the Relevant Law;
- (z) **“Regulated Superannuation Fund”** means a superannuation fund which is a regulated superannuation fund within the meaning of the Relevant Law including

any account or fund which may receive contributions pursuant to the Relevant Law;

- (aa) **“Relevant Law”** means the *Superannuation Industry (Supervision) Act 1993* (Cth) (“SIS”), the *Superannuation Industry (Supervision) Regulations 1994* (Cth) and any other statute, regulation or law relating to self managed superannuation funds within the meaning of SIS;
- (bb) **“Reserve Account”** means the account (if any) established and maintained pursuant to Clause 8.6(d);
- (cc) **“Responsible Authority”** means any one or more of the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Australian Taxation Office or any other governmental authority responsible for administering the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds;
- (dd) **“Retirement”** means retirement within the meaning of the Relevant Law;
- (ee) **“Sub-Account”** means an account (if any) established and maintained pursuant to Clause 8.3;
- (ff) **“Tax”** includes income tax, land tax, stamp duty, the Goods and Services Tax and any other tax, impost or duty;
- (gg) **“Temporary Incapacity”** in relation to a Member who has ceased to be Gainfully Employed, means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;
- (hh) **“TFN”** means a tax file number issued by the Australian Taxation Office pursuant to section 202A of the Act; and
- (ii) **“Trustee”** means the trustee for the time being of the Fund whether original or substituted.

3.2 Deed Governed by Law of State or Territory

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory where the Trustee resides.

3.3 Severance and Reading Down

- (a) To the extent that any provision in this Deed is void, prohibited or unenforceable in a jurisdiction it is ineffective in that jurisdiction.
- (b) Each and every provision of this Deed and each and every part thereof shall unless the context otherwise necessarily requires be read and construed as a separate and severable provision and as separate and severable parts thereof.

3.4 Overriding Compliance with the Relevant Law

- (a) Nothing in this Deed requires the Trustee or any other person to do something that is contrary to the Relevant Law or prevents the Trustee or any other person from doing anything that is required to be done to comply with the Relevant Law.
- (b) Except where specifically present by a term of this Deed, the Trustee has the power to do anything required or permitted by the Relevant Law.

3.5 General

In this Deed, unless something else is clearly intended:

- (a) a reference to any legislation or any provision of any legislation includes:
 - (i) all regulations, orders or instruments issued under the legislation or provision; and
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- (b) words or expressions:
 - (i) importing the singular include the plural and vice versa;
 - (ii) denoting individuals includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (c) a reference to person in this Deed includes that person's executors, administrators, successors and permitted assigns;
- (d) any heading or table of contents is for convenience only and does not affect the interpretation of this Deed; and
- (e) wherever used in this Deed the expressions "including" and "such as" and similar expressions shall not imply any limitation.

4. CONSTITUTION OF THE FUND

4.1 Name of Fund

The name of the Fund shall be the name referred to in Item 3 of the Schedule.

4.2 Establishment of Fund

The Fund is established with effect on the date of commencement described in Item 1 of the Schedule and the Fund shall be managed, administered and applied in accordance with this Deed and the Relevant Law.

4.3 Purpose of Fund

Either:

- (a) the Trustee shall be a sole trustee which is a Constitutional Corporation; or
- (b) where the Trustee is not so constituted the primary purpose of the Fund shall be to provide old age pensions for the Members of the Fund upon their Retirement from Gainful Employment and for any other purposes which may be permitted under the Relevant Law from time to time.

5. TRUSTEE

5.1 Number of Trustees

- (a) There may be any number of Trustees of the Fund whether natural persons or corporations subject at all times to the Relevant Law.
- (b) A majority of Members may make rules (subject to the Relevant Law) regarding all matters concerning the Trustees PROVIDED THAT any such rule shall be recorded in writing and signed by the Members and may be varied or rescinded by the Members at any time AND PROVIDED FURTHER that any such rule which shall be in conflict with the provisions of this Deed shall be void and of no effect.
- (c) In instances where there shall be more than one Trustee, the expression "Trustee" where it appears in this Deed shall mean:
 - (i) all the trustees;
 - (ii) a single trustee; or
 - (iii) such trustees as are necessary to pass an effective resolution of Trustees, in accordance with the rules made by the Members pursuant to Clause 5.1(b);

as the case requires.

5.2 Appointment and Removal

- (a) The Members by a majority shall have the right from time to time to appoint and remove the Trustee subject at all times to the Relevant Law. A person shall only be eligible for appointment as a Trustee or as a director of a corporate Trustee if the person has consented in writing to the appointment.
- (b) A Trustee shall cease to be a Trustee if the Trustee:
 - (i) resigns the office by notice in writing to the Members; or
 - (ii) being a natural person, dies; or

- (iii) being a natural person, becomes incapable of performing his or her duties hereunder; or
 - (iv) being a corporation enters into liquidation or a receiver or receiver and manager of the property of the Trustee is appointed; or
 - (v) is removed from office by the Members pursuant to the provisions of Clause 5.2(a) above; or
 - (vi) otherwise becomes a disqualified person within the meaning of the Relevant Law.
- (c) If a Trustee ("**Former Trustee**") ceases to be a Trustee by operation of Clause 5.2(b)(ii) or 5.2(b)(iii) of this Deed, then the legal personal representative of the Former Trustee (if any) ("**Replacement Trustee**") will act as a Trustee of the Fund in place of the Former Trustee in accordance with the terms of this Deed and Section 17A(3) of the SIS and for that purpose the Replacement Trustee is by operation of this Clause 5.2(c) hereby appointed as a Trustee of the Fund.
- (d) In the event of a vacancy in the office of Trustee occurring and not being filled within a period of sixty days, a new appointment may be made by a resolution of a majority of the Members.

5.3 Fund Vested in Trustee for the Benefit of Members

The Fund shall be vested in the Trustee upon the terms and conditions and subject to the trusts, powers and authorities contained in this Deed and shall be managed, administered and applied by the Trustee in accordance with the provisions of this Deed.

5.4 Powers of Trustee

In addition to the powers which the Trustee might by law have and which are otherwise granted to the Trustee by this Deed the Trustee shall have the following powers:

- (a) to enter into and execute all contracts, deeds and documents and do all acts, matters or things which the Trustee may deem expedient for the purposes of securing the benefits to be provided by or from the Fund and for otherwise effectuating and carrying out the Trust's authorities, powers and discretions conferred on the Trustee by this Deed;
- (b) to purchase or otherwise acquire and to sell or otherwise dispose of property rights or privileges of the Fund and to take property on lease for the purposes of the Fund and to lease out any property of the Fund which the Trustee is authorised to acquire or to dispose of on such terms and conditions as it shall think fit;
- (c) to appoint and at its discretion remove or suspend the Actuary, Auditor, any medical practitioner, investment manager, investment advisers, solicitors, custodian trustees, administrators, secretaries, clerks, agents and other service providers 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 and require security and such

insurances and to such amount as it may think fit and any person so employed or engaged shall be deemed for the purposes of this Deed to be employed or engaged by the Trustee;

- (d) to insure or reinsure any risks, contingencies or liabilities of the Fund, the Trustee and/or the Members or persons entitled to benefit under the Fund;
- (e) to institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
- (f) to make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (g) to open bank accounts and to retain on current or deposit account at any bank, building society or other financial institution, such money 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;
- (h) to determine who shall be entitled to sign on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents;
- (i) to pay Benefits out of the Fund to persons entitled thereto;
- (j) in the case of the mental or physical ill-health or incapacity of Members, to pay or apply their benefit or entitlement or any part thereof at the Trustees discretion to or for the benefit of such person and the dependants of such person as the case may be without being responsible for seeing to the application of payments under this paragraph or payments made in exercise of any other power vested in the Trustee by this Deed;
- (k) to take and act upon the advice and opinion of any legal practitioner whether in relation to interpretation of this Deed or any other document or statute or as to the administration of the Trust hereof or upon the advice or opinion of any medical practitioner or any investment or financial adviser or any other professional person and whether obtained by them or not without being liable to any Members or dependants or legal personal representative in respect of any act done by them in accordance with such advice or opinion; and
- (l) to make an election that the Fund is to become a regulated superannuation fund under the Relevant Law;
- (m) to request a Member to provide a TFN in respect of the Member in accordance with the Relevant Law;

PROVIDED HOWEVER that the Trustee in the exercise of any power hereby granted shall have regard to and conform with any standard prescribed by the Relevant Law.

5.5 Appointment of Custodian Trustee or Investment Trustee

The Trustee shall have power to appoint from time to time such one or more persons, firms or companies as the Trustee may think fit to act as a custodian trustee or nominee subject to such conditions as the Trustee may from time to time determine and may delegate to and confer upon each such custodian trustee or nominee such powers, discretions and authorities relating to the custody, investment and valuation of that part of the Fund entrusted to it for custody or investment as the Trustee may think fit. The Trustee shall also have power as an expense of the Fund to pay any such custodian trustee or nominee such remuneration for services as the Trustee considers proper. The Trustee shall have the power to remove any custodian trustee or nominee at any time.

5.6 Liability of Trustee

- (a) Subject to Clause 5.6(b), a Trustee shall not incur any personal liability for anything done or omitted to be done in its capacity as Trustee.
- (b) The Trustee is not exempt from liability under Clause 5.6(a) to the extent that the exemption would be inconsistent with the Relevant Law.

5.7 Indemnity

- (a) The Trustee is indemnified out of the assets for the time being comprising the Fund against any costs, expenses, losses and other liabilities incurred by the Trustee in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions under this Deed in its capacity as Trustee.
- (b) The Trustee is not indemnified under Clause 5.7(a) to the extent that the indemnity would be inconsistent with the Relevant Law.

5.8 Remuneration of Trustee

The Trustee is entitled to such remuneration (if any) as agreed with a majority of the Members however, only as permitted by the Relevant Law.

5.9 Conflicts

Unless the Trustee is an approved trustee (within the meaning of the Relevant Law) the Trustee may enter into a contract or other arrangement in which the Trustee has a direct or indirect pecuniary interest and the Trustee does not have to account for profit arising from such a contract or arrangement.

5.10 Corporate Trustee

If the Trustee is a Constitutional Corporation, a reference to "Trustee" in Clause 5.6, 5.7, 5.8 and 5.9 is to be treated as also being a reference to a director of the Trustee.

6. APPOINTMENT OF AUDITOR/ACTUARY

6.1 Auditor/Actuary

The Trustee may from time to time appoint at the expense of the Fund the following persons as and when required whether by any standard prescribed by the Relevant Law or otherwise at such remuneration and on such other terms and conditions as the Trustee may determine:

- (a) an auditor;
- (b) an Actuary; and/or
- (c) any other persons the Trustee considers desirable for the proper management of the Fund.

6.2 Lodgement of Returns

The Trustee must lodge with the relevant Responsible Authority all returns, certificates, statements, audit report and other information which may be required from time to time under the Relevant Law.

7. RECORDS AND FINANCIAL STATEMENTS

7.1 Receipt and Payment of Money

Money of the Fund may be banked upon receipt to the credit of an account established and maintained for the Fund kept with any branch of any bank or building society or similar financial institution determined from time to time by the Trustee or may be applied by the Trustee in such other manner as may from time to time appear appropriate. All payments out of the Fund shall be made electronically or by cheque or order signed in such manner as shall be determined by the Trustee.

7.2 Records and Accounts to be Kept

The Trustee, or a relevant accountant or administrator who may be employed by the Trustee, shall:

- (a) keep account of all money received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) keep appropriate records and accounts, in proper order, and make suitable arrangements for their custody and for custody of documents relating to Fund investments;
- (c) prepare as soon as is practicable after the end of each Fund Year such accounts and statements as required by the Relevant Law and any additional accounts and statements determined by the Trustee to be relevant and appropriate as at the end of that Fund Year;

- (d) procure the Fund accounts to be audited as and when required by the Relevant Law; and
- (e) prepare and lodge such income tax and other returns, documents, certificates and information as and when required by the Relevant Law and any other applicable law.

7.3 Information for Members

The Trustee shall supply such information and reports and provide copies of any documents and records to the Members in the manner and at such times as may be required by the Relevant Law which may include information reports documents and records:

- (a) for new or prospective Members of the Fund;
- (b) concerning any event in relation to the Fund that the Trustee reasonably believes the Members would reasonably be required to be informed of;
- (c) on termination of a Member's membership of the Fund;
- (d) relating to the Fund generally in respect of each Fund Year; and
- (e) to Members relating to each Member's benefits and entitlements and the Fund generally in respect of each Fund Year.

8. ACCOUNTS

8.1 General

- (a) The Trustee shall establish a Member's Account in respect of each Member.
- (b) At the absolute discretion of the Trustee, the Trustee may establish the following accounts:
 - (i) a Sub-Account or Sub-Accounts for each Member;
 - (ii) a Foregone Benefits Account; and/or
 - (iii) a Reserve Account.

8.2 Member's Account

The following amount shall be either debited or credited as appropriate to the Member's Account in accordance with the Relevant Law:

- (a) Contributions to or within the Fund in respect of the Member;
- (b) amounts transferred between the Fund and any other Regulated Superannuation Fund;

- (c) any amounts appropriated in accordance with Clause 8.6;
- (d) amounts paid by way of Benefit from this account in respect of the Member or transferred to another Regulated Superannuation Fund in respect of the Member;
- (e) amounts payable to the Fund or an Employer pursuant to Clause 12.11;
- (f) amounts transferred to or from the Foregone Benefits Account;
- (g) premiums on any policy of life assurance effected to provide benefits in the event of the death or disability of a Member;
- (h) amounts arising from the proceeds of any policy of life assurance;
- (i) any tax duty or impost paid out of the Fund including tax paid in accordance with Clause 8.8;
- (j) amounts paid to satisfy the expenses of the Fund pursuant to Clause 11.2;
- (k) amounts transferred from the Reserve Account;
- (l) subject to the Relevant Law, amounts transferred to or from the Member's Account in accordance with Part VIIIB of the Family Law Act; and
- (m) such other amounts as the Trustee determines to be appropriate to debit or credit to the account.

8.3 Sub-Accounts

The Trustee may establish and maintain Sub-Accounts within each Member's Account on such basis as it may consider appropriate including for the purposes of differentiating between benefits funded by the Member and other persons, differentiating between preserved and non-preserved benefits, identifying minimum benefits within the meaning of the Relevant Law, identifying those assets or amounts which are funding current pension liabilities in respect of the Member and for enabling more than one Pension to be arranged in respect of the Member.

8.4 Foregone Benefits Account

The Trustee shall maintain an account, called the Foregone Benefits Account, to which shall be credited any amount forfeited pursuant to Clause 12.12. The amount standing to the credit of the Foregone Benefits Account shall be applied by the Trustee within the period prescribed by the Relevant Law (if any) or otherwise as and when the Trustee may determine, for:

- (a) the provision of Benefits for other Members or their Dependants;
- (b) the provision for other Members or their Dependants who have rights to receive Benefits from the Fund of additional benefits on a basis that the Responsible Authority is satisfied is reasonable having regard to all the circumstances; or

- (c) any other purpose that may be permitted by the Relevant Law or by the Responsible Authority from time to time.

8.5 Separate Accounts

The Trustee may establish and maintain such additional accounts as the Trustee determines to be appropriate for the purpose of managing and administering the Fund.

8.6 Application of Income/Loss and Unrealised Gains/Losses

- (a) In the event that a Benefit becomes payable to a Member the Trustee shall determine, after account has been taken of any Tax paid or payable, an amount comprising income or losses of the Fund and an amount representing unrealised profits or losses in the event of a revaluation pursuant to Clause 8.7 in respect of the period since the end of the most recent Fund Year. The Trustee shall determine the Member's share of such amount and shall apportion and credit that amount between the Member's Account and any Sub-Accounts, if appropriate.
- (b) As at the end of each Fund Year the Trustee shall distribute a whole or any portion of the income or losses of the Fund together with any amount representing unrealised profits or losses on a revaluation pursuant to Clause 8.7 as the Trustee determines to be appropriate to the Member's Account and Sub-Accounts (if any) maintained in respect of each Member. Any income, loss, unrealised profit or unrealised loss not applied to Member's Accounts shall be applied to the Reserve Account maintained under Clause 8.6(d).
- (c) If the Trustee has created sub-funds for the purpose of adopting more than one investment strategy for the Fund under Clause 9.2(b), the Trustee must determine the amount of income or losses (as the case may be) to be apportioned to Members' Accounts separately for each sub-fund.
- (d) The Trustee may maintain an account called a Reserve Account in accordance with the Relevant Law, to which the Trustee may:
 - (i) credit any earnings of the Fund which the Trustee determines not to credit to Members' Accounts under Clause 8.6(b) or (c);
 - (ii) credit any other amount which the Trustee determines to be appropriate to credit to this account;
 - (iii) debit amounts which the Trustee may in its absolute discretion determine to credit to Members' Accounts from the Reserve Account on such basis as the Trustee determines to be appropriate; and
 - (iv) debit amounts which the Trustee determines to apply for any other purpose which the Trustee determines to be appropriate.

8.7 Assets of Fund may be Valued Annually

The assets of the Fund may if the Trustee so determines be revalued as at the end of each Fund Year and at such other times as the Trustee may consider appropriate on such a basis as the Trustee shall determine.

8.8 Tax

Subject to the Relevant Law, if the Trustee or Member becomes liable for Tax in respect of Contributions to or within the Fund or any earnings of the Fund the Trustee may deduct such amount of Tax assessed out of the income of the Fund and if the income of the Fund from time to time is insufficient to make payment of the amount assessed the Trustee may debit each Member's Account and Sub-Accounts (if any) on whatever basis the Trustee considers to be fair and reasonable so as to satisfy in full all the Tax assessed in accordance with the Relevant Law.

8.9 Payment Splitting

If a Member's Benefit becomes subject to a Payment Split in respect of the marriage breakdown of the Member, then:

- (a) the Trustee shall issue a Payment Split notice to the Member and the Member's spouse and provide the Member's spouse with any additional information as required by the Relevant Law;
- (b) the Trustee shall determine the amount of the Member's Benefit subject to the Payment Split ("**Payment Split Amount**") by reference to the relevant superannuation agreement or court order;
- (c) the Trustee shall preserve the Payment Split Amount for the benefit of the Member's spouse in accordance with the Relevant Law;
- (d) the Member's spouse may request that the Trustee credit the Payment Split Amount to its Member Account (where the Member's spouse is already a Member of the Fund) or may request that the Trustee admit it as a Member of the Fund in accordance with Clause 10.1 and credit the Payment Split Amount to the Member Account thereby created;
- (e) if either the Member or the Member's spouse requests the Trustee to rollover or transfer the Payment Split Amount to another Regulated Superannuation Fund, the Trustee shall rollover or transfer the Payment Split Amount in respect of the Member's spouse to another Regulated Superannuation Fund in accordance with the requirements of the Relevant Law; and
- (f) irrespective of whether the Member's spouse has been admitted as a Member of the Fund in accordance with Clause 10.1, if the Member's spouse has satisfied a Condition of Release then the Member's spouse may request that the Trustee pay the Payment Split Amount to it as a lump sum and the Trustee shall pay the Payment Split Amount to the Member's spouse in accordance with that request and the Relevant Law.

9. INVESTMENTS

9.1 The Assets

The following property and the property for the time being representing the same and the income therefrom shall constitute the assets of the Fund, namely:

- (a) Contributions;
- (b) any assets transferred to the Trustee in its capacity as trustee of the Fund in accordance with Clause 10.3; and
- (c) any other monies or assets received or receivable by the Trustee for the purposes of the Fund.

9.2 Investment Strategy

- (a) Subject to the Relevant Law, the Trustee shall formulate and give effect to a written investment strategy having 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 returns of the Fund's investments having regard to its objectives and expected cash flow requirements;
 - (ii) the composition of the Fund's investments including the extent to which the investments 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 and prospective liabilities.
- (b) The Trustee may divide the Fund into sub-funds and, if the Trustee determines it to be appropriate, may formulate and adopt separate investment strategies for each sub-fund.

9.3 Derivatives

If the Trustee invests in what is known as derivative investments the Trustee shall:

- (a) regularly review the Fund's investment strategy and risk management policies; and
- (b) if required by the Relevant Law, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Relevant Law and any guidelines issued by the Responsible Authority from time to time.

9.4 Investments Authorised

- (a) So much of the monies forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall, subject to the conditions contained below, be invested as soon as practicable by and under the control and in the name of the Trustee (or nominee or custodian).
- (b) The Trustee may invest and re-invest the assets of the Fund in any investment that complies with the investment strategy for the Fund. Without limiting the Trustee's power to invest in any way, the Trustee may invest in the following investments:
 - (i) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
 - (ii) a deposit with any company, building society, trust, fund, person or partnership with or without security and at the rate of interest and upon terms which the Trustee may deem expedient PROVIDED HOWEVER that any such deposit made with the Trustee or any Employer shall only be made in accordance with the Relevant Law;
 - (iii) the purchase or acquisition in any way of shares and stock (of any class or description) and of all or any type of bonds, mortgages or debentures in or of any building society, trust or fund or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and of any notes, options or other like securities issued by any of those companies or societies and whether secured or unsecured, registered or unregistered;
 - (iv) any mortgage of or charge on any personal property;
 - (v) any policy of assurance whether for life or any form of disability or any annuity contract whether by proposal, purchase or otherwise, and any choses in action, interest for life or any lesser terms or in reversion and howsoever arising;
 - (vi) the purchase or acquisition of any real or personal property whether absolutely or an unencumbered share or interest and in effecting repairs, maintenance or improvements to such property;
 - (vii) any securities or bonds of any government semi-governmental body or public authority;
 - (viii) any bill of exchange, promissory notes or other negotiable instrument;
 - (ix) the purchase or acquisition of any interest either jointly or in partnership or in any unit of interest; and/or
 - (x) any other investments which the Trustee could make if acting personally and not as the Trustee;

PROVIDED THAT no monies or assets of the Fund shall be invested contrary to the Relevant Law.

9.5 Power to Sell and Vary Investments

The Trustee shall have power as the Trustee deems fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed PROVIDED THAT:

- (a) the Trustee shall not invest in loans to Members; and
- (b) no investment shall be encumbered or charged otherwise than in accordance with Clause 9.6.

9.6 Borrowing

The Trustee may borrow money up to such amount as the Trustee thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the assets of the Fund or in any such other manner as it shall think fit but only as the Relevant Law may permit.

9.7 Exclusion of State Laws

To the maximum extent possible, the duties and limitations under State laws relating to trustee investments do not apply to the Fund.

10. MEMBERSHIP

10.1 Admission of Members

The Trustee may admit an Eligible Person as a Member. The Trustee may require that a person complete an application before the person is admitted as a Member, in such form as may from time to time be acceptable to the Trustee. The Trustee may require the Member to complete a nomination of beneficiary form or some other like nomination which requires the Member to nominate the person or persons who shall benefit in the event of the Member's death.

10.2 Cessation of Membership

A person ceases to be a Member of the Fund when the Member dies or when no Benefits remain in the Fund in respect of the Member (whichever occurs first).

10.3 Transfer from Another Fund

The Trustee may make such arrangements as it thinks proper with any Member, the trustee of any Regulated Superannuation Fund of which the Member was or is a member, any life insurance company in respect of a deferred annuity policy owned by the Member or any of them for any transfer of any assets to the Fund and may make such arrangements about any other matter which in the opinion of the Trustee is incidental to

or consequent upon the admission of such Member to membership of the Fund PROVIDED THAT if a Regulated Superannuation Fund or life insurance company from which such assets are transferred is one in which the payment of Benefits is required by the Relevant Law to be deferred until the occurrence of a Condition of Release then the Member shall not be entitled to receive from the Fund any part of a Benefit that is attributable to those assets at a date earlier than the Relevant Law permits.

10.4 Members and Beneficiaries to Provide Information

- (a) Every Member and Beneficiary when requested by the Trustee shall furnish any information the Trustee shall deem necessary for the purposes of any investigation or otherwise in connection with the Fund and shall submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee. If a Member or Beneficiary fails to comply with the provisions of this Clause the Trustee may suspend the payment of any Benefit until the Member or Beneficiary has so complied.
- (b) Where the information furnished by or in respect of a Member or Beneficiary in any statement submitted to the Trustee is incorrect in any material particular the Benefits paid to or in respect of such person shall be adjusted to such amounts as shall be determined by the Trustee.

10.5 Member Bound by Deed

Notwithstanding that a Member may have failed to make any declaration contained in the application form referred to in Clause 10.1, a Member shall by virtue of becoming a Member be deemed to have agreed to be bound by this Deed.

10.6 Fund May be a Self Managed Superannuation Fund

- (a) Where a majority of the Members directs the Trustee that the Fund is to be a self managed superannuation fund (within the meaning of the Relevant Law), the Trustee shall do all such actions and do all such things as may be necessary to establish and maintain the Fund as a self managed superannuation fund.
- (b) Where a majority of the Members directs the Trustee that the Fund is to be a small APRA Fund (within the meaning of the Relevant Law), the Trustee shall do all such actions and do all such things as may be necessary to establish and maintain the Fund as a small APRA Fund and to ensure that the Fund is not a public offer fund (within the meaning of the Relevant Law).

11. CONTRIBUTIONS AND EXPENSES

11.1 Contributions

- (a) Subject to the consent of the Trustee, a Member may contribute such amount as the Member determines.
- (b) The Trustee may accept Contributions from any person in respect of a Member as permitted by the Relevant Law.

- (c) Notwithstanding any other provision of this Deed, the Trustee shall not accept Contributions if receipt of the Contributions would be inconsistent with the Relevant Law.
- (d) Subject to the Relevant Law, the Trustee, at the direction of a Member, may split a Contribution made in respect of that Member with or amongst one or more other Members or non-members.
- (e) If a Contribution is accepted in circumstances not permitted by the Relevant Law, the Trustee must refund the Contribution to the person who paid it. The Trustee may deduct the amount of any insurance charge and reasonable administration charges incurred in relation to the Contribution.

11.2 Expenses

All expenses incurred in the management of the Fund shall be paid by the Trustee by firstly debiting the income of the Fund and secondly, if there is insufficient income of the Fund, by making a debit pro rata to the balances of each of the Members' Accounts.

12. BENEFITS

12.1 Occurrence of Condition of Release

- (a) If a Member has satisfied a Condition of Release and the Member requests the payment of all or part of the Member's Benefit, subject to the limitations prescribed by the Relevant Law, the Trustee must pay to the Member the amount requested by the Member not exceeding the amount standing to the credit of the Member's Account and Sub-Accounts (if any).
- (b) Subject to the Relevant Law, the Trustee may pay the Member's Benefit in one or more of the following forms:
 - (i) Lump sum;
 - (ii) Pension; or
 - (iii) Any other form as permitted by the Relevant Law from time to time.

12.2 Retirement

In the event of the Retirement of a Member and the Member requests the payment of all or part of the Member's Benefit, the Trustee must pay to the Member the amount requested by the Member not exceeding the amount standing to the credit of the Member's Account and Sub-Accounts (if any).

12.3 Permanent Incapacity or Invalidity

If a Member ceases Gainful Employment due to Permanent Incapacity or Invalidity and the Member requests the payment of all or part of the Member's Benefit, the Trustee must pay to or in respect of the Member the amount requested by the Member not

exceeding the amount standing to the credit of the Member's Account and Sub-Accounts (if any).

12.4 Death

- (a) If a Member dies, the Trustee must pay a Benefit in respect of the Member equal to the amount standing to the credit of the Member's Account and Sub-Accounts (if any) in respect of the Member.
- (b) Unless a Member has provided a Binding Nomination, the Trustee may pay any death Benefit that becomes payable under this Clause to any one or more of:
 - (i) the Member's Dependants; and
 - (ii) the Member's legal personal representative.
- (c) Subject to the Relevant Law, a Member may make a Binding Nomination under which the Member nominates one or more of the Member's Dependants or legal personal representative to receive a death Benefit in respect of the Member, including the proportions to be paid to each of them. To the extent (if any) that the Trustee is prohibited by the Relevant Law from paying all or part of a death Benefit in accordance with a Binding Nomination, that part of the Benefit may be paid in accordance with Clause 12.4(b).
- (d) If a Beneficiary is under the age of 18 years and the Trustee considers it appropriate, the Trustee may pay the Benefit to another person for application on behalf of the Beneficiary.
- (e) The Trustee may in its absolute discretion increase the Benefit payable to either the Dependants or legal personal representatives of the deceased Member by any amount equivalent to such amount (if any) which is a taxation deduction to the Fund by reason of the application of Subdivision 295-485 of the Act.

12.5 Attaining Age 65

In the event of a Member attaining age 65 (or any other age prescribed by the Relevant Law for which there is a nil cashing restriction as defined in the Relevant Law) and the Member requests the payment of all or part of the Member's Benefit, the Trustee must pay to the Member the amount requested by the Member not exceeding the amount standing to the credit of the Member's Account and Sub-Accounts (if any).

12.6 Temporary Incapacity

If a Member ceases to be Gainfully Employed due to Temporary Incapacity and the Member requests the payment of part of the Member's Benefit, the Trustee must pay to or in respect of the Member the amount requested by the Member, subject to the limitations prescribed by the Relevant Law.

12.7 Attaining Preservation Age

In the event of a Member attaining Preservation Age (whilst Gainfully Employed) and the Member requests the payment of part of the Member's Benefit, the Trustee must pay to or in respect of the Member the amount requested by the Member, subject to the limitations prescribed by the Relevant Law.

12.8 Unrestricted Non-Preserved Benefits

In the event that any unrestricted non-preserved Benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member, such Benefits may be paid to the Member at the Member's request and payment shall be made in accordance with Clause 12.1(b).

12.9 Restricted Non-Preserved Benefits

In the event that any restricted non-preserved Benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member, such Benefits may be paid to the Member at the Member's request upon the Member's termination of employment with an Employer who had, or whose associates had, at any time, contributed to the Fund in respect of the Member and payment shall be made in accordance with Clause 12.1(b).

12.10 Preservation

Where the Relevant Law provides that payment of all or part of a Benefit shall not be made to a Member prior to the occurrence of a Condition of Release in respect of the Member then that portion of the Benefit shall be preserved in the Fund for as long as the Relevant Law requires unless it is transferred in accordance with Clause 15. No such transfer shall be made unless the same restrictions on payments to the Member as are imposed by this Deed are imposed by the fund to which the transfer is made by the Fund. A Benefit, the payment or transfer of which is deferred hereunder, shall continue to participate in earnings of the Fund as if constituted in the Member's Account.

12.11 Monies Owing to Fund or Employer

Subject to the Relevant Law, where a Member at the time of cessation of membership owes any monies to the Trustee or to an Employer (if any) including any Contributions paid in advance by an Employer on the Member's behalf to the Trustee and not recovered by the Employer by deduction from the Member's wages or salary, the Trustee may deduct from that portion (if any) of the Benefit payable to or in respect of the Member that has not vested in the Member, monies (including the costs of any prosecution or civil proceedings and interest on those monies and costs at the compound rate of interest of five per centum (5%) per annum) and pay such monies to the Fund or to the relevant Employer (if any) as the case may be, with priority to the Fund.

12.12 Forfeiture of Benefits

- (a) Subject to Clause 12.12(b), the Relevant Law and any other applicable law any Member or Beneficiary:
 - (i) who assigns or charges or attempts to charge any Benefit;
 - (ii) whose Benefit whether by voluntary act, operation of law (other than under the Bankruptcy Act) or otherwise becomes payable to or vested in any other person, company, government or other public authority; or
 - (iii) who (subject to reasonable enquiries having been made by the Trustee) cannot be located and whose Dependents cannot be located by the Trustee or who dies and no grant of Probate or Letters of Administration shall have been made in respect of the estate of such Member within twelve (12) months of the date of such Member's death;
 shall forfeit such Benefit.
- (b) Clause 12.12(a) shall not have the effect of forfeiting any Benefit or entitlement where the Member has already become presently entitled to that Benefit or entitlement as against the Trustee.
- (c) The Trustee shall credit all Benefits forfeited pursuant to Clause 12.12(a) to the Foregone Benefits Account and such Benefits shall be applied in accordance with Clause 8.4.

12.13 Deduction of Tax from Benefit

The Trustee may deduct from any Benefit or payment under this Deed any Tax or duty payable from or in respect of the same whether by the Beneficiary, the Fund or the Trustee in its capacity, and may pay the Tax or duty to the Responsible Authority. The Beneficiary shall be entitled to receive only the net Benefit or payment after Tax.

12.14 Benefits Payable by Account Based Pension

Subject to the Relevant Law and Clause 12.17, the payment of a Benefit under Clauses 12.1, 12.2, 12.3, 12.4 and 12.5 may be arranged as a Pension which shall have the following features:

- (a) the payment of the Pension shall be made at least annually, however if the commencement day of the Pension is on or after 1 June in a financial year, no payment is required in respect of that financial year; and
- (b) the total of payments in any year shall be at least the amount calculated in accordance with the Relevant Law.

12.15 Benefits Payable by Transition to Retirement Income Stream

Subject to the Relevant Law and Clause 12.17, the payment of a Benefit under Clause 12.7 may be arranged as a Pension which shall have the following features:

- (a) the payment of the Pension shall be made at least annually, however if the commencement day of the Pension is on or after 1 June in a financial year, no payment is required in respect of that financial year;
- (b) the total payments in any year shall be at least the amount calculated in accordance with the Relevant Law;
- (c) the total payments made in a financial year shall not amount to more than 10% (or such other amount as is prescribed by the Relevant Law) of the Pension account balance as at 1 July in the financial year in which the payment is made or, if that year is the year in which the Pension commences, on the commencement day of the Pension; and
- (d) the Pension shall only be commuted, and the resulting superannuation lump sum cashed, in accordance with the Relevant Law.

12.16 Benefits Payable by Non-Commutable Income Stream

Subject to the Relevant Law and Clause 12.17, the payment of a Benefit under Clause 12.6 may be arranged in the form of a non-commutable Pension which shall have the following features:

- (a) the payment of the Pension is made for the purpose of continuing (in whole or part) the gain or reward which the Member was receiving before the Temporary Incapacity;
- (b) the Pension is for a period not exceeding the period of incapacity from employment of the kind engaged in by the Member immediately before the Temporary Incapacity;
- (c) the Pension shall be paid at least monthly;
- (d) the Pension shall not have a residual capital value;
- (e) the total amount paid each month is fixed or varies only for the purposes of complying with the Relevant Law and by an amount not exceeding an amount prescribed by the Relevant Law; and
- (f) the Pension cannot be commuted.

12.17 Conditions Applicable to all Pensions

Any Pension payable in accordance with this Clause 12 shall be subject to the following conditions:

- (a) the Pension may not be transferred or assigned to another person unless such transfer or assignment is authorised by the Relevant Law; and
- (b) the capital value of the Pension and the income from it cannot be used as security for a borrowing.

12.18 Conversion of Allocated Pension to Account Based Pension

If an allocated Pension (within the meaning of the Relevant Law) is being paid in respect of a Member, then subject to the terms establishing the Pension, the Trustee may at the request of the Member determine to continue paying that Pension as an account based Pension in accordance with Clause 12.14 without effecting a commutation of the allocated Pension.

12.19 Commutation of Other Pensions

If a Pension is being paid by the Trustee in respect of a Member, then subject to the terms establishing the Pension and the Relevant Law, the trustee may commute such Pension in whole or in part to any other style of Pension as the Relevant Law may permit from time to time.

12.20 Other Features

Subject to the specific requirements of this Clause 12 as the case may be a Pension may be payable on such other basis or from such portion of the Member's Benefit or assets which have been segregated as representing the Member's Benefit as the Trustee may determine having regard to matters such as the level of Benefits, whether or not a residual capital value and commutation entitlement are to be paid or payable and whether there shall be a reversion of entitlement to a Dependant in the event of death of the Member and upon commencing the Pension in accordance with Clause 12 the Trustee may record in writing the contractual terms and conditions applicable to the Pension which it has determined to pay.

12.21 One or More Pensions

The Trustee may commence more than one Pension in respect of a Member whether at the same time or different times and each such Pension shall be arranged and paid just as if it were the only Pension to be paid from the Fund in respect of the Member.

12.22 Benefits Payable by Lump Sum

The payment of a Benefit as a lump sum shall be made by the Trustee as soon as reasonably practicable after the Benefit has become payable.

12.23 Benefits Other Than in Cash

The Trustee may with the agreement of a Member or Dependant to whom a Benefit is payable transfer or vest in the Member any of the property of the Fund where such property is equivalent in value to the Benefit payable and the Trustee in determining the value to be attributed to such property may take whatever steps may be necessary to determine the true, fair and reasonable market value for that property at the time of distribution PROVIDED THAT the payment of a Benefit by way of transfer is authorised by the Relevant Law.

12.24 Surrender of Benefits

- (a) Subject to the consent of the Trustee, a Member or Beneficiary may surrender all or part of a Benefit.
- (b) The Trustee may refuse to accept a surrender of a Benefit if the Trustee considers that the Relevant Law does not permit it.
- (c) A Benefit that is surrendered is to be treated as having been forfeited and may be credited to the Forgone Benefits Account or otherwise dealt with as the Trustee determines to be appropriate.

13. ALTERATION OF THE DEED

13.1 Power to Amend

The Trustee may from time to time alter, amend, add to, delete or modify any of the provisions of this Deed (including the provisions of this Clause) by deed.

13.2 Effective Date of Amendment

An amendment made under Clause 13.1 may be made with effect from any date including a date before or after the date on which the deed is executed.

13.3 Amendments Subject to Relevant Law

No amendment may be made to this Deed if the amendment would be inconsistent with the Relevant Law.

13.4 Exclusion of the Trustee Act

Section 35B of the *Trustee Act 1936* (SA) as amended from time to time shall not apply to this Deed.

14. WINDING UP OF FUND

If at any time there are no Members and no Beneficiaries then the Fund shall thereupon be wound up by the Trustee transferring the balance of investments remaining (if any) after allowance for any expenses expected to be incurred in winding up the Fund to the last person who was a Member or to the Dependants or estate of such Member in such proportion as the Trustee may in the absolute discretion of the Trustee determine and upon completion of such transfer and payment of all final expenses the Fund shall cease and determine PROVIDED THAT if any payment of Benefits provided for by this Clause 14 is otherwise required by the Relevant Law or under Clause 12.10 to be deferred until the occurrence of a Condition of Release then the Member shall not be entitled to receive from the Fund any part of such Benefit and the Trustee shall transfer the Benefits to another Regulated Superannuation Fund nominated by the Member PROVIDED THAT that fund does not permit the payment of the Benefit prior to the occurrence of a Condition of Release.


15. TRANSFER OF BENEFITS TO ANOTHER ARRANGEMENT

- 15.1 If a Member becomes eligible to join or hold an interest in another Regulated 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 or become entitled under this Deed transfer to the trustees of such Regulated Superannuation Fund such portion of the assets of the Fund as the Trustee in its discretion determines but in the event of a transfer of the whole entitlement of the Member not less than the amount that is vested for the benefit of the Member by this Deed.
- 15.2 If a Member is required or validly elects to transfer all or part of any amount held in the Member's Account to another Regulated Superannuation Fund pursuant to Part VIIIB of the Family Law Act, the Trustee shall do all things necessary to facilitate such a transfer.
- 15.3 Unless prohibited by the Relevant Law, the Trustee may transfer a Member or Beneficiary to another Regulated Superannuation Fund without the Member's consent.

EXECUTED as a Deed

Signed by Paul Kevin Mantell
in the presence of

)
)



Chris Bunnell
Witness

C. T. BURTON
Full Name of Witness

Signed by Margret Ann Mantell
in the presence of

) M. a. Mantell
)

Chris Burrell
Witness

C T BURRELL
Full Name of Witness

)
)

)
)

SCHEDULE

Item 1

Date of Execution The 12th day of August 2008
Day Month Year

Date of Commencement The 12th day of August, 2008
Day Month Year

Item 2

Name and Address(es) of Trustee Paul Kevin Mantell of 9 Kingston Drive, FLINDERS VIEW QLD 4305

Margret Ann Mantell of 9 Kingston Drive, FLINDERS VIEW QLD
4305

Item 3

Name of Fund Madcap Superannuation Fund