

SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)

**AMENDMENT SUPERANNUATION
DEED**

for the

**PETER MCGAVIN REAL ESTATE PTY LTD
PROVIDENT FUND**

Prepared By:

Trisley Kilmurray O'Sullivan
484 Hunter Street
Newcastle NSW 2300

AMENDING DEED FOR

PETER MCGAVIN REAL ESTATE PTY LTD PROVIDENT FUND

The deed for the abovenamed fund has been amended to comply
with the provisions of
THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)
and
THE REGULATIONS MADE THEREUNDER

THIS DEED made at NEWCASTLE

on 16 NOVEMBER 1994

by: Mactin Pty Ltd A.C.N. 063 503 051

of: 40 Rowan Crescent
Merewether NSW 2291

in their/its capacity as TRUSTEE (herein called "The Trustee")

AND Peter McGavin Real Estate Pty Ltd A.C.N. 001 519 679

of: 23 Kenrick Street
The Junction NSW 2291

in their/its capacity as PRINCIPAL EMPLOYER (herein called "Principal Employer")

WHEREAS:-

- A. The Trustee is the Trustee of the Peter McGavin Real Estate Pty Ltd Provident Fund (herein referred to as "The Fund") constituted by a deed dated 23rd May 1978.

(which Deed and any deed or document or variation thereto and the Rules, if any, made thereunder, are herein referred to as the "Original Deed")

- B. The Trustee in that capacity and the Principal Employer in that capacity are desirous of amending the Original Deed so as to comply with the provisions of the Superannuation Industry (Supervision) Act (1993) and the regulations made pursuant thereto.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

- I. This deed is made by the Trustee and the Principal Employer in pursuance of the power contained in the Original Deed.
- II. The operative terms and provisions of the Original Deed are hereby replaced, altered and varied as provided herein.
- III. Save as is specifically provided in the terms and provisions set out in this Deed, this Deed shall take effect from the date of its execution and without affecting the generality of the foregoing shall not operate so as to reduce any benefits that have accrued to any member, or affect the basis for calculating the amount of retirement benefits of any member in a way that reduces that amount with respect to the period of membership before the date of execution hereof.
- IV. Nothing in this deed shall convey, or have the effect of conveying, or be capable of so doing, any property the subject of the Fund to any person who is a Trustee of the Fund or to any person who is not a member of the Fund otherwise than in the manner (if any) provided by the Original Deed as constituted immediately prior to the execution of this deed and which will not cause the fund to satisfy the requirements of the Superannuation Industry (Supervision) Act (1993), nor shall anything in this Deed permit:-
 - (a) The reversion or repayment of any contribution; and
 - (b) The making of any amendment to the Original Deed as constituted prior to the execution of this Deed.
- V. For the purpose of a convenient administration of the Fund the within document (save as expressly or by implication herein) comprises a consolidation of the terms and conditions applying to the fund at the date of the execution of this Deed.
- VI. The interpretation provisions set forth in Clause 4 of this Deed shall apply in the interpretation hereof.
- VII. As witness by its execution hereof the Principal Employer joins in and consents to this Deed.

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1. **THE FUND**

- 1.1 The trust fund constituted by this Trust Deed ("the Fund") shall be called by and known as the name set forth in the Schedule hereto beside the words "Name of this Superannuation Fund"
- 1.2 The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who shall hold the same on trust for the objects and the purposes of this Deed.

2. **PROPER LAW**

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State or Territory set forth in the Schedule hereto beside the words "Law of this Fund".

3. **THE TRUSTEE**

The expression "the Trustee" shall include such other new or additional trustees as are appointed hereunder Provided that the Trustee may only be a Constitutional Corporation or Constitutional Corporations.

4. **INTERPRETATION**

- 4.1 This Trust Deed shall be read and construed on the basis that the provisions of the Act, as defined herein, are to the extent that they impose obligations on the Trustee in order for the Fund to gain income tax concessions, incorporated in the Trust Deed, provided that this Trust Deed shall not be so read or construed and no such provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by clause 29 to vary, add to or rescind the provisions of this Trust Deed. Where there is any inconsistency between a provision in this Trust Deed and a provision in the said Act or regulations which is so incorporated, the latter shall prevail over the former.
- 4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.
- 4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-

"Act" means the Income Tax Assessment Act, 1936 (Cth) the Occupational Superannuation Standards Act, 1987 (Cth) the Superannuation Industry (Supervision) Act 1993 (as the case may be) and any regulations issued under those Acts and any replacement or additional legislation in respect of superannuation and any reference to the provisions or requirements of the Act means the provisions or requirement of such legislation and regulations which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation;

"Commissioner" means either the Commissioner of Taxation or the Insurance and Superannuation Commissioner or any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Constitutional Corporation" means a trading corporation or a financial corporation within the meaning of paragraph 51(xx) of the Australian Constitution.

"Dependant" means the spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustee was dependent on the Member at the relevant date;

"Employer" means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the Employer of that person at the relevant time;

"Employer's Contribution Account" has the meaning given to it in clause 11 hereof,

"Excluded Superannuation Fund" has the same meaning as defined in the Superannuation Industry (Supervision) Act 1993;

"Full-Time Basis" means a Member who is employed or self-employed on a full-time basis within the meaning of the Act;

"Highest Average Salary" has the same meaning as that attributed to that expression or the expression "HAS" in the Regulations proclaimed under the Occupational Superannuation Standards Act, 1987;

"Member" means a person whom the Trustee has admitted as a Member of the Fund and includes a person who at the relevant time is receiving or is entitled to receive benefits from the Fund;

"Member's Benefit" in respect of a Member is the net amount then standing to his credit in the Employer's Contribution Account (if any) plus the amount standing to his credit in the Member's Contribution Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Employer's Contribution Account or Member's Contribution Account;

"Member's Contribution Account" has the meaning given to it in clause 11 hereof-;

"Part-Time Basis" refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Act;

"Permanently and Totally Disabled" means -

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or
- (ii) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance,

PROVIDED THAT, the Trustee shall only regard a Member as being permanently and totally disabled if the Trustee has received a certificate signed by two registered medical practitioners certifying that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;

"Revenue Account" has the meaning given to it in clause 11 hereof;

"Rules" means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

"self employed" refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

"Superannuation Industry (Supervision) Act 1993" refers to the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder and any amendment thereof or law passed in substitution therefor.

"Taxation Reserve Account" has the meaning given to it in clause 11 hereof;

"Trust Deed" means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time;

5. DATE OF COMMENCEMENT

The Fund was constituted on the date hereinbefore mentioned.

6. ADMISSION OF MEMBERS

- 6.1 Persons who are engaged on a Full Time Basis or a Part Time Basis in a business, trade, profession, vocation, calling, occupation or employment who wish to become Members shall apply for membership by completing the form of application in Appendix A or such other form of application as the Trustee decides upon. Upon acceptance of the application by the Trustee the person making the application shall be bound by this Trust Deed in all respects as if he were an original party to this Deed.
- 6.2 All applicants for membership of the Fund shall provide the Trustee with such information that the Trustee may require, including proof of their correct age.
- 6.3 A Member shall inform the Trustee, as soon as practicable, after he ceases:
 - (a) to be employed or self employed on a Part-Time Basis after attaining age 65; and
 - (b) to be employed or self employed on a Full-Time Basis after attaining age 65.

7. **CONTRIBUTIONS BY AN EMPLOYER**

- 7.1 An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it in its absolute and uncontrolled discretion shall determine PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act, to enable the Fund to obtain the maximum income tax concessions.
- 7.2 At the time of making such contribution, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member.
- 7.3 Any payment of contributions by the Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
- 7.4 The Trustee shall refuse to accept contributions to the Fund from persons other than:-
- (a) the Member;
 - (b) the Member's Employer;
 - (c) a company in which the Member's Employer has a controlling interest;
 - (d) if the Member's Employer is a company - a person who is associated with that company within the meaning of the Act; and
 - (e) any other person authorised by the Act to make contributions to the Fund.
- 7.5 The Trustee shall refuse to commence to accept contributions to the Fund by or in respect of a Member if the Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment on a Full-Time Basis or a Part Time Basis.
- 7.6 The Trustee shall refuse to accept contributions, in respect of a Member:-
- (a) if the Member
 - (i) has ceased for a continuous period of 2 years to work on a Full Time Basis or a Part Time Basis, but
 - (ii) has not retired from the workforce.
 - (b) if the Member has retired from the Workforce.
- 7.7 The Trustee shall refuse to accept a contribution by or in respect of a Member who has attained age 65 if to do so would result in the Fund not being entitled to the maximum income tax concessions.

8. **CONTRIBUTIONS BY MEMBERS**

- 8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act, to enable the Fund to obtain the maximum income tax concessions. Unless otherwise allowed by the Act, the Trustee shall refuse to accept any such contribution during any period that a Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment. The Employer may if authorised by the Member, deduct such contribution from the Member's Salary and remit it to the Trustee within fourteen days of the end of the calendar month in which it was deducted.
- 8.2 At the time of paying the Member's contribution to the Trustee, the Employer or the Member shall advise the Trustee of the contribution in respect of the Member.
- 8.3 Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the insurance company or investment manager.
- 8.4 The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to clause 8.1 hereof from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

9. INVESTMENTS

9.1 The Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee in exercising its absolute discretion thinks fit and without limiting the generality of the foregoing either directly or indirectly:-

- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion, determines **PROVIDED THAT** the Trustee may not loan any part of the moneys or assets of the Fund to Members;
- (d) in shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
- (e) in units or sub-units of any unit trust; and
- (f) in bills of exchange and other negotiable instruments,

PROVIDED THAT the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Act in order for the Fund to obtain the maximum income tax concessions and **PROVIDED FURTHER THAT** the investments made by the Trustee shall be of such nature that they can be readily realised to enable benefits to be paid in money as they fall due and **PROVIDED FURTHER THAT** the Trustee shall not invest in "in-house assets" within the meaning of the Act if to do so would result in the Fund not being entitled to the maximum income tax concessions.

9.2 The Trustee may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as it, in its absolute discretion, thinks fit, without being responsible for loss occasioned by so varying, transposing or replacing.

9.3 The Trustee may, in its absolute discretion, hold particular investments for particular Members. The earnings on such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and income tax payable in respect of such investments shall be debited to the relevant Member's accounts.

10. POLICIES OF INSURANCE AND ANNUITIES

10.1 The Trustee may, in its absolute discretion, invest the whole or any part of the amount standing to the credit of a Member in the Books of the Fund in the payment of premiums on a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.

10.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee thinks fit. The Trustee shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of an annuity on such terms as the Trustee, in its absolute discretion, determines.

10.3 The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the Member's credit in the Employer's Contribution Account and/or the Member's Contribution Account in such proportion as is agreed upon by the Trustee and the Member and in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall be credited to the Employer's Contribution Account and/or the Member's Contribution Account in the same proportion as premiums for such policies were paid from those accounts.

10.4 The Trustee shall have power to continue such policies or annuities for such periods as the Trustee thinks fit and to discontinue or surrender such policies or annuities.

11. RECORDS, ACCOUNTS AND AUDITING

11.1 The Trustee shall keep a complete record of all matters essential to the administration of the Fund including:-

- (a) A Minute Book in which proceedings and resolutions of the Trustee are recorded.

- (b) An Employer's Contribution Account for each Member in which is recorded:-
- (i) contributions to the Fund by the Employer in respect of that Member pursuant to clause 7 of this Trust Deed;
 - (ii) amounts credited to such account pursuant to clause 30 of this Trust Deed;
 - (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
 - (iv) forfeited benefits credited to such account pursuant to clause 15 of this Trust Deed;
 - (v) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
 - (vi) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
 - (vii) amounts debited to such account to pay income tax;
 - (viii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.
- (c) A Member's Contribution Account for each Member in which is recorded:-
- (i) contributions by that Member pursuant to clause 8 of this Trust Deed;
 - (ii) amounts credited to such account pursuant to clause 30 of this Trust Deed;
 - (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
 - (iv) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
 - (v) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
 - (vi) amounts debited to such account to pay income tax;
 - (vii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.
- (d) A Revenue Account to which shall be credited all income from investments, profits earned and capital gains realised during each financial year and to which shall be debited all expenses (other than premiums on policies of insurance), outgoings and losses incurred during each financial year.
- (e) A Taxation Reserve Account to which shall be credited amounts set aside by the Trustee to pay income tax payable in respect of contributions to the Fund and earnings of the Fund and to which shall be debited income tax paid and amounts which the Trustee determines from time to time to transfer to the Members' Accounts in proportion to the amounts standing to the credit of those accounts at that time or on such other basis as the Trustee considers to be equitable. The balance in the Taxation Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up or on crystallisation of the Fund.
- (f) A Forfeited Benefits Reserve Account to be credited with amounts in accordance with clause 15 and to which shall be debited any amounts which are applied in accordance with clause 15 hereof.
- 11.2 The Trustee shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the standards imposed under the Act.
- 11.3 The Trustee shall comply with the standards imposed under the Act and shall maintain such records as are required under the Act.

12. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES

- 12.1 (a) After the thirtieth day of June each year, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities during the preceding financial year, or
- (b) on the winding up of the Fund or whenever the Trustee thinks it necessary, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities) during the current financial year,
- less such provision for depreciation, liabilities, losses and taxation as the Trustee in its absolute discretion deems prudent shall be credited or debited by the Trustee to the Employer's Contribution Accounts and Members' Contribution Accounts in proportion to the amounts standing to the credit of such accounts on the thirtieth day of June of the preceding financial year or on such other basis as the Trustee considers to be equitable.
- 12.2 The Trustee may whenever it thinks it necessary make a valuation of the assets of the Fund (other than policies of life insurance and annuities) in such manner as the Trustee may determine and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for taxation as the Trustee in its absolute discretion deems prudent and if the net value of the assets of the Fund determined in accordance with this clause exceeds or is less than the aggregate of the net amounts standing to the credit of all of the Employer's Contribution Accounts and the Members' Contribution Accounts at that date, the Trustee shall credit the surplus or debit the deficit to the Members' Contribution Accounts, and the Employer's Contribution Accounts in proportion to the amounts standing to their respective credits or on such other basis as the Trustee considers to be equitable.
- 12.3 The Trustee may allocate to the Member's accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under clause 12.1 or 12.2 to the date on which the benefit is being paid.

13. EXCESSIVE BENEFITS

If at any time, in the opinion of the Trustee, a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustee may take such of the following actions which it, in its absolute discretion, determines:-

- (a) decline to accept any further contributions for the benefit of that Member,
- (b) establish a separate excessive benefits fund of which the Trustee shall be the trustee and which is subject to the same trusts and powers contained in this Trust Deed;
- (c) transfer to the separate fund established under paragraph (b) of this clause, the amount which the Trustee determines represents the excess over the maximum reasonable benefit for the purposes of the Act.

The Trustee may accept a transfer from the separate fund referred to in paragraph (b) of this clause 13.

14. FORFEITURE OF BENEFITS

- 14.1 A Member or former Member shall cease to be presently or presumptively entitled to the Member's Benefit at the discretion of the Trustee if in its opinion:-
- (a) he has become insolvent or has attempted to assign, alienate, charge or encumber all or a part of his Member's Benefit;
- (b) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (c) his whereabouts cannot be traced by the Trustee for a period of five years, after making reasonable enquiries.
- 14.2 In any such event the Trustee shall apply the amount so forfeited that stood to the credit of the Member's Contribution Account for the benefit of the Member or such of the Member's Dependents as the Trustee, in its absolute discretion, determines and the Trustee may, in its absolute discretion, in order to relieve hardship only, apply the amount so forfeited that stood to the credit of the Member's Employer's Contribution Account for the maintenance or support of the Member or such of his Dependents as the Trustee in its absolute discretion determines or in a manner provided for in the Act. Such application of the Member's Benefit shall be a discharge to the Trustee for the payment thereof.

- 14.3 Notwithstanding the provisions of sub-clause 14.1(a), a Member or former Member shall not cease to be presently entitled or presumptively entitled to the Member's Benefit at the Discretion of the Trustee by reason of the Member or former Member becoming bankrupt or committing an act of bankruptcy.

15. **ALLOCATION OF FORFEITED BENEFITS**

The amount of any forfeited benefit in the Fund by reason of the operation of clause 14 hereof and the Rules annexed hereto which is not applied in accordance with clause 14.2 hereof shall be credited to the Forfeited Benefits Reserve Account established in accordance with the provisions of clause 11.1 (f) and shall be applied within six months of the end of each financial year (or such other period provided for in the Act):-

- (i) to the provision of the benefits that other Members or their Dependents have rights to receive from the Fund; or
- (ii) to the provision for other Members or their Dependents who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all of the circumstances; or
- (iii) for any purpose approved in writing by the Commissioner; or
- (iv) in such other manner that is permitted or required under the Act, in order for the Fund to obtain income tax concessions.

16. **COMMON LAW RIGHTS OF MEMBERS**

The provisions of this Deed and the Rules annexed hereto shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law, in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

17. **LOANS TO MEMBERS**

The Trustee shall not make any loans or advances to a Member.

18. **MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS**

- 18.1 A Member shall have no right to or interest in his Member's Benefit except as provided herein and in the Rules annexed hereto and in the Act.
- 18.2 The rights of the Members and their Dependents to receive benefits from the Fund shall be those set out in this Trust Deed.
- 18.3 The rights of the Members and their Dependents to receive the benefits payable under the Rules shall be fully secured within the meaning of the Act.
- 18.4 The Members shall be provided with statements and information in relation to the administration of the Fund in accordance with the requirements of the Act.

19. **EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT**

- 19.1 Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise determine the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a Director.
- 19.2 The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

20. **TRUSTEE - APPOINTMENT AND REMOVAL**

- 20.1 The Trustee shall have the power by deed or by an oral or written resolution to appoint a new or additional Trustee or Trustees provided that such new or additional trustee or trustees is a constitutional corporation or are constitutional corporations.

20.2 The office of a Trustee shall become vacant if:-

- (a) the Trustee resigns its office;
- (b) a resolution is passed or a petition is represented for its winding up or liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or a receiver of its assets is appointed.

20.3 Subject to the requirements of the Superannuation Industry (Supervision) Act 1993, a majority of the Members may by resolution or in writing remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or additional Trustee provided that such new or additional trustee or trustees is a constitutional corporation or are constitutional corporations.

20.4 If a company is at the time of being placed in receivership or liquidation the sole Trustee of the Fund the receiver or liquidator shall have the power to appoint a new Trustee or Trustees.

21. POWERS OF TRUSTEE

The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:-

- (a) to pay out of the Trust Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Trust Fund expenses incurred in:-
 - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
 - (ii) having the accounts of the Fund audited;
 - (iii) having taxation returns and returns to Government authorities prepared; and
 - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (d) Subject to the provisions of the Superannuation Industry (Supervision) Act 1993, to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee (except for the power to vary the or amend this Trust Deed) on such terms and conditions as the Trustee in its absolute discretion thinks fit and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act upon the advice of a barrister, solicitor, accountant, actuary or superannuation consultant in relation to the administration of the Fund and pay out of the Trust Fund the fees payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustee in its absolute discretion thinks necessary for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee thinks fit;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee sees fit;
- (i) to borrow any sum of money for the purposes of obtaining temporary finance (as defined in the Act) and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee thinks fit and in particular by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) generally to do all such things and perform such acts as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed and the Rules annexed hereto.

22. **TRUSTEE - EXERCISING DISCRETIONS AND DISCRIMINATION**

In administering the Fund and in exercising the trusts, powers and authorities vested in the Trustee herein and pursuant to the Rules annexed hereto, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities **PROVIDED HOWEVER** that the Trustee shall not discriminate against any person on the grounds of that person's race, sex or marital status in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

23. **LIABILITY OF TRUSTEE**

Except as otherwise provided in the Act, a Trustee shall not be liable for any loss that is:-

- (a) not attributable to his own dishonesty;
- (b) attributable to actions or defaults of a co-trustee;
- (c) attributable to any action taken in conformity with the decisions of the Trustee hereunder; or
- (d) attributable to the neglect or default of an agent employed in good faith by the Trustee.

24. **TRUSTEE'S AND DIRECTORS' INDEMNITY**

The Trustee and the directors of the Trustee shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund for such indemnity **PROVIDED THAT** the right of indemnity shall not extend (in relation to the Trustee or any particular director) to:

- (a) any liability arising out of the Trustee or any particular director failing to act honestly in a matter concerning the Trust Fund or intentionally or recklessly failing to exercise, in relation to a matter affecting the Trust Fund, the degree of care and diligence required to be exercised; or
- (b) liability for a monetary penalty under a civil penalty order within the meaning of the Act.

25. **REMUNERATION OF TRUSTEE**

The Trustee shall be entitled to be paid and retain out of the Trust Fund such remuneration as it considers reasonable.

26. **REMUNERATION OF PROFESSIONAL PERSONS**

Any person who is an accountant, actuary, solicitor, barrister or other professional person and is a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he would make had he not been a director of a company acting as Trustee hereof.

27. **TRUSTEE AS MEMBER'S ATTORNEY**

Each Member hereby irrevocably appoints the Trustee his attorney to execute and sign all such deeds and instruments and do all such things the Trustee considers necessary or desirable in administering the Fund.

28. **TRUST DEED AVAILABLE FOR INSPECTION**

A copy of this Trust Deed and the Rules annexed hereto shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.

29. **VARIATION OF TRUST DEED**

- 29.1 The Trustee may at any time and from time to time either by deed executed by the Trustee or by oral resolution vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the Rules annexed hereto and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner **PROVIDED THAT** no such variation, addition or rescission shall have the effect of-

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable, before the variation, addition or rescission; or

- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this clause, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

and the benefits that have accrued, or become payable, to or in respect of a Member shall not otherwise be reduced, unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required only to enable the Fund to comply with the Act; or
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction.

29.2 No variation, addition or rescission of this Deed shall have the effect of changing the requirement that the Trustee must be a constitutional corporation unless:-

- (a) The provisions of this Deed as varied provide that the sole or primary purpose of this fund is the provision of old age pensions as required by the Superannuation Industry (Supervision) Act 1993 in the case of non-corporate trustees; and
- (b) Where applicable, the Trustee is satisfied that the requirements of the Superannuation Industry (Supervision) Act 1993 concerning equal representation of employer representatives and members will be satisfied.

29.3 Where the Fund is not an "excluded superannuation fund", the circumstances specified in the Superannuation Industry (Supervision) Act 1993 for amendment of the governing rules must in addition be complied with for the purposes of amending or varying the provisions of this deed.

29.4 The Trustee shall as soon as practicable advise the Members in writing of the nature, purpose and effect of any such variation, addition or rescission.

30. TRANSFER OF BENEFIT FROM ANOTHER FUND

Where a Member requests that an amount standing to his credit or a policy of insurance in another superannuation or approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Contribution Account **PROVIDED THAT** if the said amount or policy is being transferred from a superannuation fund conducted by or contributed to by an Employer or an associate of an Employer, the said amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account (or the equivalent thereof) in the previous superannuation or provident fund or on such other basis as the Trustee and the Member agree upon.

31. TRANSFER OF BENEFIT TO ANOTHER FUND

The Trustee may, on receiving the written request of a Member, transfer the whole or a part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or provided termination of employment has occurred transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act, **PROVIDED THAT** such a transfer shall only be made if it is a condition of such transfer that the amount transferred shall not be paid from that fund prior to the Member retiring from the workforce and attaining age 55 except in the event of death or permanent incapacity for work or in such other circumstances as are permitted under the Act and it is a condition of such transfer that the benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions. The receipt by the trustees of such fund shall be a complete discharge to the Trustees in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred.

32. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

33. **ADMISSION OF EMPLOYERS TO FUND**

The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of Appendix B or such other form of application as the Trustee decides upon. An Employer so admitted shall be bound by the provisions of this Trust Deed and the Rules annexed hereto in the same way the Employer would be if it had been an original party to the Trust Deed.

34. **DISSOLUTION OF THE FUND**

- 34.1 When the last remaining Member ceases to be a Member the Fund shall be wound up and the Trustee shall, subject to the Rules annexed hereto, pay or transfer to the Members or former Members, benefits in accordance with the provisions of the Rules annexed hereto, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted by the Members and former Members in full discharge of all claims in respect of the Fund.
- 34.2 Notwithstanding anything contained in clause 34.1, the Trustee shall not pay or transfer the benefit to a Member except in accordance with the provisions of the Rules annexed hereto.
- 34.3 If any amount remains in the Fund, after all the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependents in such proportions as the Trustee considers to be equitable.
- 34.4 The trusts constituted by this Trust Deed shall, unless previously terminated in accordance with clause 34.1 hereof, endure during the life of the survivor of all the lineal descendants of His Late Majesty King George V living at the date of this Trust Deed and for twenty-one years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts hereby established provided that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provides that the Rule against Perpetuities shall not apply.

SCHEDULE

THE TRUSTEE:

Mactin Pty Ltd A.C.N. 063 503 051
of
40 Rowan Crescent
Merewether NSW 2291

THE NAME OF THE FUND:

Peter McGavin Real Estate Pty Ltd Provident Fund

LAW OF THIS FUND:

New South Wales

THE COMMON SEAL OF
Mactin Pty Ltd
A.C.N. 063 503 051
was hereto affixed by
authority of the Board of
Directors and in the
presence of:

SECRETARY

THE COMMON SEAL OF
Peter McGavin Real Estate Pty Ltd
A.C.N. 001 519 679
was hereto affixed by
authority of the Board of
Directors and in the
presence of:

McGavin Real Estate Co., Limited
A.C.N.
001 519 676
Director
Seal
Secretary

SCHEDULE OF RULES

1. BENEFIT PAYABLE ON RETIREMENT OR DEATH AFTER RETIREMENT

- 1.1 The amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to a Member upon his retirement from the workforce after attaining age 55, or such other age as may be allowed by the Superannuation Industry (Supervision) Act 1993 (hereinafter referred to as the "SIS Act"). In the event of the Member's death on or after attaining age 55, the Member's Benefit or the balance thereof shall, subject to Rules 1.4 and 1.5, be paid or applied by the Trustee in a lump sum in accordance with the provisions of Rule 2. The benefit payable under this Rule 1.1 on retirement shall, at the discretion of the Trustee, be paid in a lump sum or by way of pension (including an allocated pension) or annuity. A pension or annuity paid to a Member shall not exceed 75% (or such other amount permitted under the SIS Act) of Highest Average Salary and shall be paid on a basis that meets the requirements of the Act for the Fund to obtain the maximum income tax concessions. If a Member's Benefit that is being paid by pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum. The Trustee may, at the request of the Member and with the approval of the Commissioner pay benefits by transferring in specie assets of equivalent value to the benefit payable.
- 1.2 A benefit payable under Rule 1.1 shall commence to be paid no later than the Member's sixty-fifth birthday unless the Member is continually employed or self employed on a Part-Time Basis after attaining age 65 and elects to retain his benefit in the Fund in which case the benefit payable under Rule 1.1 shall commence to be paid no later than the Member's seventieth birthday.
- 1.3 Where a Member continues to be employed or self employed on a Full-Time Basis, after attaining age sixty five, his benefit may, if he so elects, remain in the Fund until he retires from the workforce **PROVIDED THAT** if the Member ceases to be employed or self employed on a Full-Time Basis, but immediately thereafter becomes continually employed or self employed on a Part-Time Basis, his benefit shall continue to be paid on his seventieth birthday or, if later, the date he ceases to be employed or self employed on a Full-Time Basis.
- 1.4 On the death of a Member to whom a pension is being paid pursuant to Rule 1.1 and who is survived by a spouse, a pension shall be paid to the deceased Member's spouse. Such a pension shall commence on the date of the Member's death and shall be equal to the annual pension payable to the deceased Member at the date of death or such other amount so as to comply with the requirements of the Superannuation Industry (Supervision) Act 1993 and the requirements, if any, so as to enable the Fund to obtain the maximum income tax concessions. In the case of an allocated pension or an annuity, the Trustee in addition, shall have full discretion for payment of the allocated pension or the annuity to the deceased member's spouse upon such terms and conditions agreed by the Trustee for the provision of the allocated pension or annuity.
- 1.5 In the event of the death of a retired Member who does not have a spouse or in the event of the death of a Member's spouse to whom a pension was payable under Rule 1.4, the balance of the Member's Benefit shall be paid in a lump sum to such of the Member's Dependents as the Trustee, in its absolute discretion determines. In the case of an allocated pension or an annuity, the Trustee shall have full discretion for payment of the allocated pension or the annuity to the deceased member's dependants upon such terms and conditions agreed by the Trustee for the provision of the allocated pension or annuity, in lieu of a lump sum payment. If the payment of part or all of such benefit does not comply with the requirements of the Act for the Fund to obtain the maximum income tax concessions the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustee is unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any Dependents, the benefit payable under this Rule 1.5 shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the provisions of clause 15 of the Trust Deed.

2. BENEFIT PAYABLE ON DEATH BEFORE RETIREMENT

- 2.1 In the event of the death of a Member the amount of the Member's Benefit shall be held by the Trustee upon trust for the benefit of such one or more of the Member's Dependents, to be paid in such form and in such shares and proportions as the Trustee, in its absolute discretion, determines.
- 2.2 If the Trustee is unable to establish within six months of the Member's death that there are any Dependents, the benefit payable under Rule 2.1 shall be paid to the Member's Legal Personal Representative but if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such other period as the Trustee determines), the benefit payable hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the provisions of clause 15 of the Trust Deed.

3. BENEFIT PAYABLE ON DISABLEMENT

- 3.1 If the event of a Member becoming in the opinion of the Trustee, Permanently and Totally Disabled, the amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to the Member or, if he is unable to manage his own affairs, to such of this Dependents and in such proportions as the Trustee, in its absolute discretion, determines. If, prior to the Trustee determining that a Member is Permanently and Totally Disabled, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his Dependents as aforesaid **PROVIDED THAT** the amount of such periodical benefit shall not exceed the maximum reasonable benefit that is allowed under the Act in order for the Fund to obtain the maximum income tax concessions.
- 3.2 The benefit payable under Rule 3.1 on the occurrence of Permanent and Total Disablement shall, at the discretion of the Trustee, be paid in a lump sum or by way of pension. A pension, allocated pension or annuity shall comply with the requirements of the Act for the Fund to obtain the maximum income tax concessions. If a Member's Benefit that is being paid by pension, allocated pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum. The Trustee may, at the request of the recipient of a benefit and with the approval of the Commissioner, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.
- 3.3 Where a benefit is payable under Rule 3.2 by way of pension (including an allocated pension or annuity), the Trustee shall, in its absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid **PROVIDED THAT** if, at the date that the payment of the pension commences, the Member's Benefit exceeds the maximum reasonable lump sum benefit for the purposes of the Act, the pension shall be paid on a basis that meets the requirements of the Act for the Fund to obtain the maximum income tax concessions **AND PROVIDED FURTHER THAT** where required, the amount of the pension from time to time shall not exceed the amount which a qualified Actuary consulted by the Trustee certifies in writing to be the maximum amount that can be paid to the Member.
- 3.4 In the event of the death of a Member or a Member's spouse to whom a pension was payable under Rule 3.2 the balance of the Member's Benefit shall be paid to such of the Member's Dependents as the Trustee, in its absolute discretion, determines provided such payment complies with the requirements of the Superannuation Industry (Supervision) Act 1993 and for the Fund to obtain the maximum income tax concessions. If the payment of part or all of such benefit does not so comply, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustee is unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any Dependents, the balance of the Member's Benefit shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the provisions of clause 15 of the Trust Deed.

4. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

4.1 Member Going Overseas

The benefit payable under these Rules shall be paid to the Member prior to the Member attaining age 55 if the Trustee is satisfied that the Member intends to live permanently overseas with no intention of returning to live in Australia.

4.2 Financial Hardship

The Trustee shall, in its absolute discretion, pay part or all of the benefit payable to a Member prior to the Member attaining age 55, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his benefit is not paid to him **PROVIDED THAT** any such payment must first be approved by the Commissioner in accordance with the Superannuation Industry (Supervision) Act 1993.

5. PAYMENT OF BENEFITS TO MINORS

Where a person, to whom benefits are payable hereunder, is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

6. DEDUCTION OF INCOME TAX

The Trustee may deduct from any benefit payable, the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

7. PENSION CONDITIONS

- 7.1 If a Member's Benefit that is being paid by a pension, allocated pension or annuity exceeds the maximum reasonable pension benefit for the purposes of the Act, the excessive amount shall be paid by way of a lump sum.

- 7.2 Notwithstanding any rule to the contrary herein contained, when the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.
- 7.3 The recipient of a pension under these Rules may commute to a lump sum payment, where possible, any amount (or such other percentage that is prescribed by the Superannuation Industry (Supervision) Act 1993 or so as to enable the Fund to gain maximum income tax concessions) of the pension on making written application to the Trustee **PROVIDED** the option to commute a pension to a lump sum payment is exercised within six months of the first day of the period to which the first pension payment paid by the Trustee relates (or such other time as the trustee in its absolute discretion may determine).
- 7.4 A pension payable under these Rules shall not be assigned by the person in receipt of it and it shall not be mortgaged or encumbered in any manner whatsoever.
- 7.5 A pension payable under these Rules may be increased annually by the Trustee by an amount not exceeding any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) or any replacement index **PROVIDED THAT** the minimum annual increase of the pension shall be the lesser of:-
- (i) 5% of the pension;
 - (ii) any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) published by the Australian Statistician for the March quarter in the preceding year or any replacement index; and
 - (iii) any other minimum increase permitted under the Act.
- 7.6 The Trustee may, in its absolute discretion, provide a pension payable under these Rules by way of an allocated pension or by applying a Member's Benefit to the purchase, in the ownership of either the Trustee or the Member, of an annuity that meets the requirements of the Act and enables the Fund to obtain the maximum income tax concessions.

8. PAYMENT OF SMALL DEATH BENEFITS

Notwithstanding any other provision of these Rules to the contrary where upon the death of a Member:

- (a) the benefits to be paid to that Member do not exceed the sum of \$5,000;
- (b) the Trustee after reasonable enquiry has not found any Dependant or Legal representative of the deceased Member; and
- (c) having regard to the quantum of the relevant benefits and the potential expense for the trust fund and Dependant associated with legitimate claimants or claimants subsequently coming forward to be paid the relevant benefits it would be unreasonable for the Trustee to insist that the Dependant incur the costs of seeking Letters of Administration;

the Trustee may pay the relevant benefits to the next of kin of the deceased Member or in the event that the Trustee cannot find such next of kin then the Trustee may pay the relevant benefits to such friend of the deceased Member as the Trustee in its absolute discretion decides.

9. COMPLIANCE WITH ACT

These rules shall not restrict the payment of benefits in any way allowed by the Superannuation Industry (Supervision) Act 1993 and the Trustee has full discretion to administer and pay benefits in accordance with the Supervision Industry (Supervision) Act 1993.

Furthermore, notwithstanding anything to the contrary contained in these Rules no member shall be entitled to payment of benefits contrary to the provisions and conditions imposed by the Superannuation Industry (Supervision) Act 1993 and the Trustee shall act in accordance with the provisions such Act and Regulations.

10. PAYMENT OF LUMP SUM BENEFITS IN SPECIE

Where the Trustee may pursuant to these Rules pay a benefit as a lump sum, the Trustee may at the request of the Member and with the approval of the Commissioner (where required) pay such benefits by transferring in specie assets of equivalent value to the benefit payable.