

**DEBENTURE AND
SECURITY TRUST DEED**

BETWEEN

TURNER SECURITIES LIMITED
("Issuer")

AND

AUSTRALIAN EXECUTOR TRUSTEES LIMITED
("Trustee")

Adelaide
Melbourne
Sydney



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THIS DEED is made on

7 SEPTEMBER

2007

BETWEEN TURNER SECURITIES LIMITED ABN 85 122 088 617 ("Issuer")

AND AUSTRALIAN EXECUTOR TRUSTEES LIMITED ABN 84 007 869 794
("Trustee")

RECITALS

- A. The Issuer has settled the sum of AUD\$10.00 on the Trustee, to be held on trust for the Debentureholders in accordance with this Deed.
- B. The Trustee will hold the Trust Fund as trustee for the Debtureholders in accordance with this Deed.
- C. The Issuer is or will be under a liability to repay money received or to be received by it in respect of the Debentures.
- D. The Issuer executes this Deed to protect the interests of the Debentureholders.

NOW IT IS COVENANTED AND AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

- 1.1.1 "**Accounts**" means the balance sheet, profit and loss accounts and cash flow statements but, where this Deed requires Accounts to be delivered to the Trustee, includes directors' reports required under the Corporations Act;
- 1.1.2 "**Amount of the Loan**" means at any time in respect of a Loan the maximum principal sum advanced by the Issuer under each Loan at that time but for the avoidance of doubt excluding any amount added to the Loan as a consequence of or in connection with default by the borrower;
- 1.1.3 "**Applicable Accounting Standards**" means:
 - (a) the statements of accounting standards issued by or on behalf of the Australian Society of Accountants and the Institute of Chartered Accountants in Australia; or
 - (b) if there are no applicable accounting practices or statements of the types described in this definition, accounting standards and practices generally accepted in Australia; and
 - (c) if there is an inconsistency between the accounting standards referred to in paragraphs (a) and (b) of this definition, those referred to in paragraph (a) will prevail;
- 1.1.4 "**Attorney**" means any attorney of the Issuer appointed under a Security;

- 1.1.5 **"Australian Dollars"**, **"AUD"** and **"AUD\$"** means the lawful currency of the Commonwealth of Australia;
- 1.1.6 **"Bankrupt"** means in relation to the Issuer being under administration, official management or in provisional liquidation or liquidation, on the grounds of its insolvency or anything analogous to or having a similar effect under the law of any relevant jurisdiction;
- 1.1.7 **"Business Day"** means:
- (a) whilst an Event of Default does not subsist, a day which is not a Saturday, Sunday or public holiday in Adelaide, South Australia; or
 - (b) following the occurrence an Event of Default (which is subsisting), a day on which banks are open for general banking business, and the Trustee is open for business, in Sydney, New South Wales;
- 1.1.8 **"Collateral Security"** means any Security Interest given to the Issuer in support of the Prime Security;
- 1.1.9 **"Corporations Act"** means the Corporations Act 2001 (Cth);
- 1.1.10 **"Debenture"** means each debenture issued or (where the context requires) to be issued under this Deed in the form and upon the terms and conditions set out in Annexure A hereto;
- 1.1.11 **"Debentureholder"** means, at any time, any person who at that time is entered on the Register as holding a Debenture;
- 1.1.12 **"Debenture Proceeds"** means the amount raised by the Issuer under the Debentures;
- 1.1.13 **"Deed"** means this Debenture and Security Trust Deed as amended or varied from time to time;
- 1.1.14 **"Eligible Investment"** means an investment of the Debenture Proceeds made in an investment having a rating from S&P of A-1 or better;
- 1.1.15 **"Encumbrance"** in relation to any property means:
- (a) any interest in or right over the property; and
 - (b) anything which prevents, restricts or delays the registration of any interest in or right over the property,
- and includes, without limitation, a Security Interest;
- 1.1.16 **"Event of Default"** means any event described in clause 6;
- 1.1.17 **"Expenses"** has the meaning ascribed to that expression in clause 7.1;
- 1.1.18 **"Extraordinary Resolution"** has the meaning ascribed to that expression in clause 10.4;
- 1.1.19 **"Fee Letter"** means the most recent fee letter between the Trustee and the Issuer;

- 1.1.20 **"Financial Year"** means a period of 12 calendar months ending on 30 June in each year;
- 1.1.21 **"Government Body"** means:
- (a) any person, body politic or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
 - (b) any public authority constituted under a law of any country or political subdivision of any country; and
 - (c) any person deriving by delegation a right directly or indirectly from any other Government Body;
- 1.1.22 **"GST"** has the same meaning as it does in section 195-1 of A Tax System (Goods & Services Tax) Act 1999;
- 1.1.23 **"Guarantee"** means any guarantee, indemnity, undertaking, letter of credit, Security, acceptance or endorsement of a negotiable instrument or other obligation given by any person to secure compliance with an obligation by another person;
- 1.1.24 **"Insolvency Event"** means in relation to a person any of the following occurs:
- (a) an order is made, or the person passes a resolution or takes any other steps, for its winding up;
 - (b) an application is made for its winding up and, if the application is capable of being set aside is not set aside within 5 Business Days of being made;
 - (c) any of the following occurs:
 - (i) an External Administrator is appointed or any steps are taken to appoint an External Administrator; or
 - (ii) a resolution is passed to appoint an External Administrator,
 - (iii) to the person or any asset of the person unless, in the case of an appointment, the Trustee is satisfied that the appointment of the External Administrator is capable of being set aside, and is set aside within 5 Business Days;
 - (d) a Security Interest is enforced, or becomes capable of being enforced against an asset of the person;
 - (e) a distress, execution, attachment or other process is levied, issued against or enforced upon an asset of the person which is not set aside or satisfied within 5 Business Days;
 - (f) a judgement is obtained against the person which is not set aside or satisfied within 5 Business Days;
 - (g) the person:

- (i) suspends payment of its debts generally;
 - (ii) is unable, or states that it is unable, to pay its debt when they fall due;
 - (iii) takes any action seeking protection from creditors or bankruptcy; or
 - (iv) is presumed by applicable law to be insolvent;
- (h) the person enters into or takes any step to enter into any compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (i) the person implements a merger, demerger or scheme of arrangement with any person;
- (j) if a registered corporation under the Corporations Act, the person is deregistered, or any steps are taken to deregister the person under the Corporations Act;
- (k) any analogous event, circumstance, matter or thing;
- 1.1.25 "**Land**" means land and every estate and interest in it (freehold or crown leasehold) and any improvements to the Land;
- 1.1.26 "**Latest Valuation**" means in respect of a Loan at any time the amount equal to the aggregate of the most current valuation of the Land provided as security for that Loan (the valuation shall be completed on the assumption that the Works have been completed) and provided to the Issuer by valuers;
- 1.1.27 "**Law**" means any requirement of the Corporations Act, ASIC policy statements or ASIC guidance that the parties must comply with in order to satisfy their obligations under this Deed as well as common law, principles of equity, and other laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- 1.1.28 "**Loan**" means any loan made or to be made by the Issuer in accordance with this Deed;
- 1.1.29 "**Loan File**" means, in respect of a Loan, all Security Interests given to secure repayment of that Loan (including the Prime Security and each Collateral Security), credit contracts, title documents, other documents, receipts, copies of Insurance policies, files, including without limitation, insurance claim files, insurance premium receipts, ledger sheets, payment records, tax receipts (if any), correspondence, photographs, current and historical computerised data files and other papers, valuations and records of whatever kind or description in connection with that Loan held by or under the control of the Issuer;

- 1.1.30 **"Loan to Valuation Ratio"** means, at any time, the ratio (expressed as a percentage) between:
- (a) the Amount of the Loan; and
 - (b) the Latest Valuation referable to that Loan (and in respect of Land subject to any Collateral Security then the Latest Valuation of that Land less the amount secured under any Security Interest in priority to the Collateral Security);
- 1.1.31 **"Material Adverse Effect"** means a material adverse effect upon either:
- (a) the ability of the Issuer to comply with its obligations under any Transaction Document;
 - (b) the effectiveness, priority or enforceability of any Security; or
 - (c) the financial position, management or business operations of the Issuer;
- 1.1.32 **"Permitted Encumbrance"** means an Encumbrance which is a Security Interest arising by operation of law or statute to secure the payment of Taxes or moneys for services performed in relation to property while those Taxes or moneys are not due for payment;
- 1.1.33 **"Prime Security"** means a first ranking mortgage over land to secure repayment of a Loan;
- 1.1.34 **"Quarter"** means each period of three months commencing on the first days of January, April, July and October in each year;
- 1.1.35 **"Receiver"** means a receiver or receiver and manager appointed by the Trustee or any other person under any Security and any person who by delegation derives a right directly or indirectly from any Receiver;
- 1.1.36 **"Register"** means a register of Debentureholders maintained by the Issuer in connection with this Deed;
- 1.1.37 **"Related Entity"** means a "related entity" as that expression is defined in the Corporations Act, of the Issuer;
- 1.1.38 **"Secured Creditors"** means
- (a) the Trustee;
 - (b) each Debentureholder;
 - (c) any person for which the Trustee is presently or in the future acting as trustee under or in connection with this Deed;
 - (d) any other person which the Issuer and the Trustee now or hereafter agree in writing is to be a Secured Creditor for the purposes of the Security; or
 - (e) any successor or assign of any of the above,

(f) and a reference to "Secured Creditor" is a reference to each of them severally;

1.1.39 **"Secured Money"** means all money and amounts (in any currency) that the Issuer is or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of any Secured Creditor (whether alone or not and in any capacity) under or in connection with a Transaction Document. It includes money and amounts:

(a) in the nature of principal, interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages;

(b) whether arising or contemplated before or after the date of this deed or as a result of the assignment (with or without the Issuer's consent) of any debt, liability or Transaction Document;

(c) which a person would be liable to pay but for an Insolvency Event in respect of that person.

1.1.40 **"Security"** means any Security Interest granted to the Trustee in that capacity, as security for any Secured Moneys including, without limitation, a first fixed and floating charge over all the assets and undertakings of the Issuer;

1.1.41 **"Security Interest"** means any interest in or right over property, including, without limitation:

(a) any retention of title to property; or

(b) any right to set-off or withhold payment or any deposit or other moneys,

which secures the payment of a debt or other monetary obligation or the compliance with any other obligation;

1.1.42 **"Security Trust"** means the trust established by this Deed;

1.1.43 **"S&P"** means Standard & Poor's (Australia) Pty Ltd trading as Standard & Poor's Rating Group;

1.1.44 **"Taxes"** means any present or future GST, taxes, rates, levies, imposts, deductions, withholdings, charges and duties (other than a tax on the net overall income of the Trustee) which may be incurred in any jurisdiction and any interest, penalty, fine or expense relating to any of them;

1.1.45 **"Transaction Documents"** means:

(a) this Deed;

(b) each Debenture;

(c) each Security;

(d) any document or agreement which the Issuer and Trustee (acting on the instructions of an ordinary resolution of Debentureholders, provided that the Trustee is satisfied that the interests of all

Debentureholders will not be materially prejudiced) agree is to be a Transaction Document for the purposes of this Deed; and

- (e) any document or agreement entered into under or in connection with, or for the purpose of amending or novating, any of them;

1.1.46 **"Trust Fund"** means:

- (a) the sum of AUD\$10.00 referred to in clause 2.1.1;
- (b) each Security;
- (c) the proceeds of any insurance claim to which the Trustee is entitled in relation to any Security;
- (d) the proceeds of enforcement (including, without limitation, by exercise of a power of sale) of any Security; and
- (e) any other property which the Trustee acquires in its capacity as trustee of the Security Trust; and

1.1.47 **"Works"** means the construction of improvements to any Land.

1.2 **Construction**

In this Deed, unless the context otherwise requires:

1.2.1 words importing:

- (a) the singular include the plural and vice versa; and
- (b) any gender includes the other genders;

1.2.2 an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

1.2.3 if a word or phrase is defined cognate words and phrases have corresponding definitions;

1.2.4 a reference to:

- (a) a person includes a firm, unincorporated association, corporation and Government Body;
- (b) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons substituted by novation) of that person;
- (c) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) this or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;

- (e) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- (f) time is to local time in Adelaide, or following the occurrence of an Event of Default, the local time in Sydney;
- (g) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (h) a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next calendar month but if a corresponding day does not occur in the next calendar month the period shall end on the last day of that next calendar month;
- (i) a right includes a benefit, remedy, authority, discretion and power;
- (j) an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
- (k) the provisions of this Deed or any other document, agreement, understanding or arrangement includes a reference to both express and implied provisions.

1.3 Headings

Headings do not affect the interpretation of this Deed.

1.4 Inconsistency

If there is any inconsistency between the wording of this Deed and the wording of any Security, then the wording of this Deed shall, to the extent of any inconsistency, prevail.

1.5 Business Day

If the day on which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, that act, matter or thing:

- 1.5.1 if it involves a payment other than a payment which is due on demand, shall be done on the preceding Business Day; and
- 1.5.2 in all other cases, shall be done by no later than the next Business Day.

1.6 Capacity of the Trustee

- 1.6.1 The Trustee is not liable to the Issuer, the Debentureholders or any other person in any capacity other than as trustee of the Security Trust.
- 1.6.2 A liability to the Issuer, the Debentureholders or any other person arising under or in connection with the Transaction Documents is limited to and can be enforced by those persons against the Trustee only to the extent to which it can be satisfied out of any property held by the Trustee under the Security Trust out of which the Trustee is actually indemnified for the

liability. This limitation of the Trustee's liability applies despite any other provision of the Transaction Documents and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Transaction Documents.

- 1.6.3 Neither the Issuer, the Debentureholders nor any other person may sue the Trustee in any capacity other than as trustee of the Security Trust, including seeking the appointment of a receiver (except in relation to property of the Security Trust), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Security Trust).
- 1.6.4 The Issuer, the Debentureholders and other persons waive their rights and release the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under the Transaction Documents, which cannot be paid or satisfied out of any property held by the Trustee under the Security Trust.
- 1.6.5 The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, gross negligence or breach of trust.
- 1.6.6 The Issuer, the Debentureholders and other persons acknowledge that they are responsible under the Transaction Documents for performing a variety of obligations under the Transaction Documents. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under the Transaction Documents) will be considered fraud, gross negligence or breach of trust of the Trustee for the purposes of clause 1.6.5 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, the Debentureholders or any other person to fulfil its obligations relating to the Security Trust or by any other act or omission of the Issuer, the Debentureholders or any other person.
- 1.6.7 No attorney, agent or delegate appointed in accordance with the Transaction Documents has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or breach of trust of the Trustee for the purpose of clause 1.6.5.

2. ESTABLISHMENT AND TERMS OF THE SECURITY TRUST

2.1 Establishment of Security Trust

- 2.1.1 The Issuer has settled the sum of AUD\$10.00 on the Trustee.
- 2.1.2 The Trustee declares that it will hold the Trust Fund and:
- (a) the right to enforce the Issuer's duty to repay the Secured Money; and
 - (b) the right to enforce any other duties that the Issuer has under the terms of the Debentures or the provisions of this Deed or Chapter 2L of the Corporations Act,

on the terms set out in this Deed on trust for the Debentureholders ratably in proportion to the amount of Secured Money owing to each of them.

2.2 Name of Security Trust

The Security Trust is to be known as the "TS Security Trust".

2.3 Duration of Security Trust

The Security Trust commences on the date of this Deed and ends (unless determined earlier) on the day before the 80th anniversary of the date of this Deed.

2.4 Debentureholders Bound by this Deed

Each Debentureholder, and each person claiming under or through a Debentureholder, is bound by the terms of this Deed.

2.5 Nature of Interest of Debentureholders

2.5.1 Insofar as the Trust Fund includes any estate or interest in real property the Debentureholders (in that capacity) will not be entitled to any equitable or proprietary interest in the Trust Fund (to the extent it includes an estate or interest in real property) except in the moneys received by a Receiver, an Attorney or any Debentureholder under or by virtue of the Securities (in relation to that estate or interest in real property).

2.5.2 No Debentureholder (in that capacity) is entitled to enforce the Securities except through the Trustee.

3. REPRESENTATIONS AND WARRANTIES

3.1 Nature

The Issuer represents and warrants that:

3.1.1 it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;

3.1.2 each Transaction Document to which it is a party constitutes its legal, valid and binding obligations, is enforceable in accordance with its terms and is not void or voidable;

3.1.3 it has capacity unconditionally to execute and deliver and comply with its obligations under the Transaction Documents;

3.1.4 it has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under the Transaction Documents;

- 3.1.5 each authorisation from and filing and registration with a Government Body necessary to enable:
- (a) it to unconditionally execute and deliver and comply with its obligations under the Transaction Documents; or
 - (b) the Trustee to exercise its rights under the Transaction Documents, has been obtained, effected and complied with;
- 3.1.6 the unconditional execution and delivery of and compliance with its obligations by it under the Transaction Documents does not contravene:
- (a) a law or directive from a Government Body;
 - (b) its constitution;
 - (c) an agreement or instrument to which it is a party; or
 - (d) an obligation to any other person;
- 3.1.7 the accounting records of the Issuer have been kept and maintained in accordance with the Corporations Act;
- 3.1.8 the information provided by it (or any adviser or agent on its behalf) to the Trustee (or its advisers) at any time in connection with the Transaction Documents ("**Information**"):
- (a) was to the best of the Issuer's knowledge and belief after making due enquiry true and accurate in all material respects and not misleading in any material respect as at the date on which it was provided; and
 - (b) provided all material facts in relation to its ability to enter into, perform and comply with its obligations under each Transaction Document to which it is a party, and it is not aware of any material facts or circumstances that have not been disclosed;
- 3.1.9 other than as notified in writing to the Trustee, no material adverse change has to the best of the Issuer's knowledge and belief after making due enquiry occurred since the date as at which the Information was provided which renders such information misleading in any material respect;
- 3.1.10 all Information was prepared with due care and skill and was based upon all the information which it reasonably believes to be relevant and no facts are known to it the omission of which would render that information misleading;
- 3.1.11 no litigation, arbitration or administrative proceeding is now current, pending or, to its knowledge, threatened against the Issuer which has or is likely to have a Material Adverse Effect;
- 3.1.12 there are no Encumbrances other than Permitted Encumbrances over the property of the Issuer other than those constituted or permitted by the Transaction Documents;
- 3.1.13 the Issuer is the owner of the property it purports to own;

- 3.1.14 no unremedied or unwaived Event of Default has occurred;
- 3.1.15 each Security Interest which each Transaction Document purports to create, exists and has first ranking priority (subject to any Permitted Encumbrances);
- 3.1.16 the obligations of the Issuer under the Transaction Documents rank at least pari passu with all other unsecured and unsubordinated obligations of the Issuer except obligations mandatorily preferred by law;
- 3.1.17 the Issuer and its property are free of any right of immunity from set-off, proceedings or execution in respect of its obligations under the Transaction Documents;
- 3.1.18 the representations and warranties given by the Issuer in any Transaction Document are correct and not misleading or will be when given;
- 3.1.19 the Issuer is solvent (as defined in the Corporations Act) and no event or circumstance has occurred or arisen which would deem it or them to be insolvent;
- 3.1.20 no Receiver has been or is proposed or threatened to be appointed over the Issuer;
- 3.1.21 the Issuer has obtained and relied on such independent legal, accounting and other advice and information as is necessary or desirable to understand the Transaction Documents to which it is a party and to assess the nature and extent of its obligations under those documents and it has not relied on any representation from or information supplied by the Trustee in assessing the nature and extent of those obligations;
- 3.1.22 it is in the Issuer's and its creditors and, as applicable, beneficiaries' best interests for it to enter into and comply with its obligations under the Transaction Documents to which it is a party and that those transactions are not uncommercial and that it has or will obtain a real corporate benefit from entering into and performing its obligations under the Transaction Documents to which it is a party; and
- 3.1.23 no person has contravened or will contravene any provision of the Corporations Act by entering into or participating in any Transaction Document or any transaction contemplated by any Transaction Document;
- 3.1.24 it has not done any act or thing (or omitted to do any act or thing) that would directly or indirectly result in the Trustee being in breach of its obligations under this Deed or its obligations under the Corporations Act (including, without limitation, Chapter 2L of the Corporations Act); and
- 3.1.25 it has taken all steps necessary to ensure that the Trustee complies with its duties under the Corporation Act (including, without limitation, Chapter 2L of the Corporations Act).

3.2 Repetition

The representations and warranties contained in clause 3.1 shall be deemed to be repeated by the Issuer on the first day of each month during the term of this Deed

and on each day on which any Debenture is issued by reference to the facts and circumstances then existing.

3.3 General

- 3.3.1 The interpretation of any statement contained in any representation or warranty shall not be restricted by reference to or inference from any other statement contained in any other representation or warranty.
- 3.3.2 The Issuer acknowledges that the Trustee has entered into the Transaction Documents in reliance upon these representations and warranties.

4. POSITIVE UNDERTAKINGS

4.1 Records

The Issuer shall:

- 4.1.1 prepare and keep books, Accounts, consolidated Accounts and accounting and other records in accordance with Applicable Accounting Standards consistently applied; and
- 4.1.2 on demand make available for inspection and copying by the Trustee or any person authorised by the Trustee the books, Accounts, accounting and other records and trading results of the Issuer.

4.2 Financial Information to be Given

The Issuer shall give or cause to be given to the Trustee as soon as practicable and in any event:

- 4.2.1 within 120 days after the close of each Financial Year, Accounts of the Issuer for that Financial Year;
- 4.2.2 within 60 days after the end of each financial half year financial statement of the Issuer for that financial half year; and
- 4.2.3 within 30 days after the end of each month, monthly cash flow statements and arrears reports in respect of the Loans for that month.

4.3 Information to be Given

The Issuer shall give or cause to be given to the Trustee:

- 4.3.1 full particulars of any litigation, arbitration or administrative proceeding affecting it as soon as it is commenced or to its knowledge threatened where the amount claimed is in excess of AUD\$100,000 or, irrespective of the amount claimed, which has or is likely to have a Material Adverse Effect;
- 4.3.2 written notice of the disposal, winding up, dissolution, reconstruction, amalgamation or any change in its shareholding;
- 4.3.3 written notice of its intention to enter into, dissolve, retire from or change the structure or composition of any joint venture or partnership in which it is involved;

- 4.3.4 written notice of the occurrence of any event which may have a Material Adverse Effect;
- 4.3.5 upon demand any other information in its possession or under its control which in the Trustee's reasonable opinion is relevant to the Transaction Documents;
- 4.3.6 notice to the Trustee as soon as it becomes aware of any Default Event occurring and a description of the nature of the Default Event; and
- 4.3.7 full details of any Encumbrance or Security Interest over the Trust Fund or any other interest of the Issuer or the Trustee under or in connection with the Transaction Documents;

The Issuer shall ensure that all information provided to the Trustee is true and correct in all material respects and is not (by omission or otherwise) misleading in any material respect.

4.4 Maintenance of Status

The Issuer shall:

- 4.4.1 do everything necessary to maintain its corporate existence in good standing;
- 4.4.2 ensure that it has the right and is duly qualified to conduct its business as it is presently conducted in all relevant jurisdictions and to obtain and maintain all licences and rights necessary for the conduct of its business;
- 4.4.3 conduct its business in a proper and efficient manner and will procure that each of its subsidiaries will carry on their businesses in a proper and efficient manner;
- 4.4.4 if requested by a Debentureholder or the Trustee, provide a copy of any Transaction Document to that Debentureholder or Trustee;
- 4.4.5 at all times fully comply with, observe and perform all its obligations under each Transaction Document;
- 4.4.6 not transfer the jurisdiction of registration of the Issuer;
- 4.4.7 not making any application or pass any resolution for winding up; and
- 4.4.8 not enter into or effect any other scheme under which it ceases to exist or under which the assets and liabilities of the Issuer are vested in or assumed by any other person.

4.5 Corporations Act

The Issuer must, at all times:

- 4.5.1 duly and punctually fulfil, perform and comply with all the covenants, terms, conditions and obligations imposed upon it by or under the Transaction Documents, the Corporations Act (including Chapter 2L of the Corporations Act), any other Law or the Debentures and notify the Trustee in writing immediately on becoming aware that any of those

covenants terms conditions and obligations cannot be fulfilled or performed;

4.5.2 not without the prior consent in writing of the Trustee make an application under section 411 of the Corporations Act; and

4.5.3 take all reasonable steps to replace the Trustee if required by the Corporations Act to do so.

4.6 **No Default**

The Issuer shall comply with each of its obligations under each Transaction Document and shall not cause or permit any Event of Default to occur.

4.7 **Taxes**

The Issuer shall pay or cause to be paid when they become due for payment all Taxes payable by it from time to time in its own right or on behalf of any person.

4.8 **Fees**

4.8.1 The Issuer shall pay to the Trustee (as remuneration for Trustee's services under and in connection with the Transaction Documents) amounts specified in the Fee Letter, which are payable at the times specified in the Fee Letter.

4.8.2 The Issuer and each Debentureholder agrees and acknowledges that all fees paid to the Trustee under or in connection with the Transaction Documents are fully earned and non-refundable.

4.9 **Payments**

4.9.1 The Issuer acknowledges its indebtedness to the Trustee in respect of the amounts owing under the Debentures from time to time, provided however that unless the Trustee otherwise directs, the payment of such moneys shall occur by means of payment directly to each Debentureholder and any such payment shall operate as a payment to the Trustee in satisfaction of the Issuer's obligations under this clause.

4.9.2 Subject to clause 4.9.1, the Issuer must make payment of the Secured Money to Debentureholders directly as and when due in accordance with the Debentures.

4.10 **Directors Certificate**

The Issuer shall, within one (1) months after the end of each Quarter, give to the Trustee a directors certificate which:

4.10.1 at any time of giving each report to the Trustee under section 283BF of the Corporations Act which shows the total amount of the Debentures at the end of the Quarter for the purpose of the reports to be given under section 283BF of the Corporations Act;

4.10.2 certifies that no event or circumstance has occurred during the previous Quarter which has or is likely to result in a material adverse change in the business or financial condition of the Issuer or setting out such

information and details required by the Trustee where such event or circumstance has occurred;

4.10.3 where there exists any recurring obligation on the Issuer or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, sets out such information as is required by the Trustee:

(a) to properly complete any return required to be lodged under the provisions of any stamp duty legislation which is applicable to this Deed or any of the Debenture; or

(b) to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation,

such information to be furnished to the Trustee not less than fourteen (14) days prior to the time when such information is required to be lodged;

4.10.4 certifies that the financial covenants set out in clause 4.15 have been complied with at all times.

4.11 Further Information

The Issuer shall:

4.11.1 provide all information and explanations reasonably requested by the Trustee to enable the Trustee and any auditor appointed by the Trustee to exercise their rights and to discharge their duties under each Transaction Document, the Corporations Act, ASIC Policy or any obligations of a trustee imposed by Law;

4.11.2 promptly give the Trustee notice of any appointment, retirement, resignation or removal of an auditor of the Issuer;

4.11.3 at reasonable times and upon reasonable notice, make all financial and other records of the Issuer available for inspection by:

(a) the Trustee

(b) any registered company auditor appointed by the Trustee for that purpose;

(c) any officer, employee or auditor of the Trustee authorised by the Trustee to carry out the inspection,

and give them any information, explanations or other assistance that they require about matters relating to those records; and

4.11.4 as required by section 318(1) of the Corporations Act, provide to the Trustee the documentation required thereunder within the time thereby required;

4.11.5 as required by section 318(2) and (3) of the Corporations Act, also send to Debentureholders the documentation required by those subsections;

- 4.11.6 take all steps necessary to ensure that the Trustee complies with its duties under the Corporation Act (including, without limitation, Chapter 2L of the Corporations Act) and
- 4.11.7 comply with all other material obligations imposed on its under the Corporations Act and any other Law including, without limitation, all legal requirements relating to the filing of reports and statements, the registration of encumbrances and the keeping open of registers for inspection.

4.12 Further Assurances

The Issuer shall promptly execute all documents and do all things that the Trustee from time to time reasonably requires to:

- 4.12.1 ensure that the Transaction Documents are enforceable by the Trustee in accordance with their terms and are not void or voidable;
- 4.12.2 establish the priority of or reserve or create any Security Interest contemplated by or purported to be reserved or created by any Transaction Document;
- 4.12.3 stamp and register any Transaction Document in any relevant jurisdiction and by any person that the Trustee thinks fit; and
- 4.12.4 give effect to any of the provisions of this Deed.

4.13 Advisors

The Issuer:

- 4.13.1 authorises the Trustee to discuss with its auditors (if any) and its external accountants all matters relating to its financial condition;
- 4.13.2 will provide all necessary assistance and access to records and personnel as may be required by the Trustee to assess and investigate its financial condition; and
- 4.13.3 will indemnify and keep indemnified the Trustee against all costs and expenses incurred as a result of any action taken by the Trustee under this clause 4.13.

4.14 Independent Experts

The Issuer:

- 4.14.1 acknowledges that, upon the occurrence of an event or series of events which in the Trustee's reasonable opinion may have a Material Adverse Effect, the Trustee may appoint independent experts including, without limitation, investigating accountants, auditors, solicitors and valuers, to review any matter relating to the Issuer and its property including, without limitation, to review its financial position, value its property, conduct stocktakes and perform any other tasks considered by the Trustee to be relevant to the assessment of its current position and compliance with its obligations under and the enforceability of the Transaction Documents;

- 4.14.2 will provide or cause to be provided all necessary assistance and access to records, information, personnel and property of the Issuer as may reasonably be required by the Trustee and any independent expert appointed by the Trustee; and
- 4.14.3 will indemnify and keep indemnified the Trustee against all costs and expenses incurred as a result of any action taken by the Trustee under this clause 4.14.

4.15 Loans

- 4.15.1 The Issuer shall only make Loans which are primarily secured by a first ranking Security Interest (including a registered mortgage) over Land.
- 4.15.2 The Issuer shall only invest the Debenture Proceeds in:
- (a) Loans permitted under this Deed; or
 - (b) an Eligible Investment.
- 4.15.3 The Issuer shall invest not less than 7% of Debenture Proceeds in an Eligible Investment comprising an "at call" account of the Issuer with an Australian Trading bank.
- 4.15.4 Loans shall only be made available for:
- (a) residential purposes where the Loan to Valuation Ratio is 80% or less;
 - (b) commercial purposes where the Loan to Valuation Ratio is 70% or less;
 - (c) construction purposes where the Loan to Valuation Ratio (based on an on-completion value) is 70% or less;
 - (d) the acquisition of vacant Land where the Loan to Valuation Ratio is 60% or less; and
 - (e) rural purposes where the Loan to Valuation Ratio is 50% or less.
- 4.15.5 Where a Collateral Security is not a first ranking Security Interest then the Issuer must enter into a priority agreement with each holder of a Security Interest in priority to that Collateral Security for the purpose of fixing the priority of the respective priority interests.

5. NEGATIVE UNDERTAKINGS

5.1 Negative Pledge

Unless otherwise permitted under this Deed, the Issuer shall not cause or permit:

- 5.1.1 to exist any Encumbrances other than Permitted Encumbrances on its property;
- 5.1.2 either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntary, to dispose of all or a substantial part of its property except disposals:

- (a) made with the express written consent of the Trustee; or
 - (b) made for market value in the ordinary course of the ordinary trading business of the disposing person;
- 5.1.3 any change in the nature of its business; or
- 5.1.4 it to carry on any other business which is substantial in relation to its present business as now conducted;
- 5.1.5 it to:
- (a) advance any money or grant any other accommodation to any Related Entity;
 - (b) permit money to remain owing to it by any person, other than in the ordinary course of its business; or
- 5.1.6 it to deposit money with a person if the money is not repayable unless it pays or discharges any other indebtedness or complies with another obligation owed to that person or another person or permit a set-off or combination of accounts in respect of any right to the payment of money other than for bank charges and fees.

5.2 Trusts

The Issuer shall not agree to become trustee of any trust, hold property on trust for any person or declare any trust.

6. EVENTS OF DEFAULT

6.1 Nature

Each of the following is an Event of Default (whether or not caused by anything outside the control of the Issuer):

- 6.1.1 the Issuer does not pay on the due date any money due for payment by it under any Transaction Document in accordance with the relevant Transaction Document and that default continues unremedied by the Issuer for a period of 5 Business Days;
- 6.1.2 the Issuer does not comply with another of its material obligations under any Transaction Document or any material undertaking given by it to the Trustee under or in relation to any Transaction Document and if that default is capable of rectification it is not rectified within 10 Business Days of its occurrence;
- 6.1.3 a representation, warranty or statement made or deemed to be made by the Issuer in any Transaction Document is untrue or misleading in any material respect;
- 6.1.4 a Transaction Document is void, voidable or otherwise unenforceable by the Trustee or is claimed to be so by the Issuer;
- 6.1.5 a Security Interest created by or purportedly created by any Security ceases to have the priority which it purports to have under the relevant Transaction Document or becomes ineffective as security for the payment

of the moneys or compliance with the obligations which it purports to secure, otherwise than by any act of the Trustee;

- 6.1.6 an authorisation from a Government Body necessary to enable:
- (a) the Issuer to comply with its obligations under a Transaction Document or carry on its principal business or activity; or
 - (b) the Trustee to exercise its rights under a Transaction Document,
- ceases to be in full force and effect (where such authorisation is not reinstated within 10 Business Days);
- 6.1.7 it is unlawful for the Issuer to comply with any of its obligations under any Transaction Document or it is claimed to be so by the Issuer;
- 6.1.8 the Bankruptcy of the Issuer;
- 6.1.9 the Issuer enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- 6.1.10 the Issuer being or stating that it is unable to pay from its own money its debts when they fall due for payment;
- 6.1.11 the appointment of a Receiver in respect of the Issuer or its property;
- 6.1.12 an event of default, as defined in any Transaction Document between the Issuer and the Trustee by or in relation to the Issuer; and
- 6.1.13 a person who holds a Security over property of the Issuer becomes entitled to exercise a right under that Security against the property to recover any moneys the payment of which is secured by that Security or enforce any other obligation the compliance with which is secured by it.

6.2 Trustee must have knowledge

The Trustee must not take any action (including issuing of any notice under this Deed) in relation to any breach or default by the issuer under any Transaction Document unless it has knowledge (referred to in clause 10.5) of the breach or default and until such time, the Trustee can assume that no such breach or default by the Issuer has occurred.

6.3 Enforcement of Transaction Documents

Subject to clause 6.4, the Trustee may, despite knowledge of any breach or default under a Transaction Document or the occurrence of an Event of Default:

- 6.3.1 decide whether or not to take action to enforce any provisions of any of the Transaction Documents as it sees fit in its absolute discretion including without limitation:
- (a) demanding and requiring immediate payment of the Secured Money and to commence legal proceedings against the Issuer to recover same;

(b) exercising any powers, rights or privileges conferred by law or equity under any Transaction Document or any other collateral deed or security; and

(c) taking such other action as the Debentureholders deem appropriate to recover the Secured Money;

6.3.2 may in its absolute discretion not inform the Debentureholders of any breach or default;

6.3.3 may in its absolute discretion, despite the knowledge of the Trustee of any breach or default, not take any action or proceeding against the Issuer to enforce the observance or performance of any such covenant, obligation, condition or provision (including enforcement of the payment of the recovery of any other Secured Money under this Deed), unless in any such case, the Trustee is indemnified to its satisfaction against all liabilities, proceedings, claims and demands to which the Trustee may become liable as a result of such direction and all costs, charges and expenses (including rights of remuneration under this Deed) which may be incurred by the Trustee in connection with such direction, action or proceedings; and

6.3.4 must not take any action in relation to any breach or default by the Issuer (including the issuing of any notice under this Deed) unless it has knowledge of the breach or default or is advised by another person of the breach or default, and until such a time the Trustee can assume that no such breach or default by the Issuer has occurred.

6.4 Enforcement at the request of Debentureholders

The Trustee must take action to enforce the Transaction Documents where all of the following conditions are satisfied:

6.4.1 it is directed as to the manner in which to take action by:

(a) Debentureholders representing at least 10% in value of the aggregate principal amount held by all holders of Debentures in the event of any action in regard to the payment of Secured Money; or

(b) An Extraordinary Resolution in the event of any other Event of Default not covered by clause 6.4.1(a);

6.4.2 its liability is limited in a manner consistent with clause 1.6; and

6.4.3 it is indemnified to its satisfaction against all actions, proceedings, claims and demand to which the Trustee may render itself liable and all costs, charges and expenses which the Trustee may thereby incur.

6.5 Enforcement by Noteholders

6.5.1 A Debentureholder, or Debentureholders, can only take action or proceedings against the Issuer or to enforce any provisions of a Transaction Document following the making of a request in accordance with clause 6.4.1(a) if 30 Business Days have lapsed since the date on which the Debentureholder, or Debentureholders, gave notice to the Trustee that it, or they, intended to commence such action or proceedings

(with such notice to specify the details of its claim and the basis of its claim) and the Trustee has not commenced such action or proceedings as a result of the request of the Debentureholder, or Debentureholders, made in accordance with clause 6.4.1(a).

- 6.5.2 The Debentureholder, or Debentureholders, shall provide to the Issuer a copy of the notice referred to in clause 6.5.1 as soon as reasonably practicable.

7. COSTS AND EXPENSES

7.1 Nature

The Issuer shall pay and if paid by the Trustee reimburse to the Trustee:

- 7.1.1 the Trustee's reasonable costs and expenses in relation to the Transaction Documents, including, without limitation, those which the Issuer is liable to pay under any applicable law and those relating to:
- (a) the negotiation, preparation, execution, stamping and registration of any Transaction Document or any document contemplated by any of them;
 - (b) the monitoring of compliance by the Issuer with their obligations under the Transaction Documents;
 - (c) any consent, request for consent, communication, the waiver of any right or the variation, replacement or discharge of any Transaction Document or document contemplated by them;
 - (d) the exercise or attempted exercise or the preservation of any rights of the Trustee under the Transaction Documents including, without limitation, those incurred in retaining any consultant or other person to evaluate any matter of concern to the Trustee;
 - (e) the transfer of Debentures;
 - (f) any breach or default in the observance or performance (or anticipated or threatened breach or default in the observance or performance) by the Issuer of any provision of the Transaction Documents;
 - (g) the convening, holding and carrying out of any directions or resolutions of any meeting of Debentureholders;
 - (h) any actual or contemplated legal proceedings (including without limitation any application for directions) brought by or against the Trustee, or in which the Trustee is otherwise involved or any advice sought by the Trustee in relation to any such legal proceedings from any legal, accounting or other professional advisors;
 - (i) the preservation of any of the Trustee's or the Debentureholder's rights under the Transaction Documents;
 - (j) any Event of Default; and

(k) to the extent not covered by the foregoing, any other matter, thing or proposal required to be considered by the Trustee in its role as trustee under this Deed, that arises; and

7.1.2 any Taxes and registration or other fees (including fines and penalties relating to them) which are payable or are assessed by a relevant Government Body or other person to be payable, in relation to the Transaction Documents or any document or transaction constituted by any of them,

(the "Expenses").

7.2 General

7.2.1 A reference to costs and expenses in this Deed includes, without limitation, legal costs and expenses on a full indemnity basis.

7.2.2 Anything which the Transaction Documents state is to be done by either the Trustee or the Issuer is to be done at the Issuer's expense.

8. INDEMNITIES

8.1 Nature

To the extent the Issuer is not precluded by the Corporations Act from doing so, the Issuer indemnifies and agrees to keep indemnified the Trustee against and in respect of all Expenses. This indemnity is in addition to any indemnity allowed by law.

8.2 Representatives

The Issuer shall indemnify each Receiver and Attorney and their respective Representatives and the Representatives of the Trustee against any liability, loss, cost and expense caused or contributed to by anything the Trustee is indemnified against under clause 8.1 and the Trustee holds the benefit of this clause 8.2 upon trust for those persons.

8.3 Additional remuneration

If the Trustee is required at any time to:

8.3.1 undertake duties which relate to the enforcement of the terms of any Transaction Document by the Trustee upon a default by any other party under the terms of that Transaction Document; or

8.3.2 undertake duties which are of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,

then the Trustee is entitled to such additional remuneration as may be agreed between the Trustee and the Issuer or, failing agreement, such amount as is determined by a merchant bank (acting as an expert and not as an arbitrator) selected by the Trustee. The determination of such merchant bank shall be conclusive and binding on the Trustee and the Issuer so far as allowed by Law.

8.4 Priority of Trustee entitlements

All remuneration and payments referred to in this clause 8 will be paid in priority to any claim by any Debentureholder and will continue to be payable until the trusts of this Deed are finally wound up and whether or not the trusts of this Deed are in the course of administration by or under the order of any court and the Trustee may retain and pay to itself in priority to any claim by any Debentureholder all such remuneration and payments out of any moneys for the time being in its hands on the trusts of this Deed.

8.5 Independence and Survival

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Issuer and survives the termination of this Deed.

9. POWERS OF TRUSTEE

9.1 Investment of Moneys

The Trustee may invest any moneys forming part of the Trust Fund in investments in which trustees are authorised to invest trust funds under the law of any State or Territory of Australia and otherwise as permitted under the Transaction Documents.

9.2 Trustee's Powers

Subject to this Deed, the Trustee has all the powers that is legally possible for a natural person or corporation to have in connection with the exercise of its powers under this Deed and the other Transaction Documents.

10. RELATIONSHIP OF DEBENTUREHOLDERS TO TRUSTEE

10.1 Instructions, Extent of Discretion

10.1.1 To the extent that the Trustee has a discretion vested in it by this Deed, it has an absolute and uncontrolled discretion as to its exercise and, in the absence of its fraud, negligence or breach of trust (or that of any attorney, officer, employee, agent or person appointed by it under this Deed), the Trustee will not be in anyway responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.

10.1.2 Except where a Transaction Document otherwise expressly provides, without limiting its rights, powers and discretions under this Deed, the Trustee is not required to take any action or exercise any right, power or discretion (including to require anything to be done, form any opinion or give any notice, consent or approval) under the Transaction Documents except where it is specifically instructed to do so by an Extraordinary Resolution passed in accordance with the Transaction Documents and the Trustee will have no liability to the Issuer, any Debentureholder or any other party to any Transaction Document in respect of any matter or thing done or omitted to be done at the direction, or with the approval, of an Extraordinary Resolution except to the extent that any such liability relates to the Trustee's fraud, gross negligence or breach of trust or that of any attorney, officer, employee, agent or person appointed by it under this Deed.

- 10.1.3 Any action taken by the Trustee under this Deed or any Security binds all the Debentureholders.
- 10.1.4 Except where a Transaction Document otherwise expressly provides, the Trustee shall not be obliged to consult with the Debentureholders before giving consent, approval or agreement or making any determination under the Transaction Documents.
- 10.1.5 Subject to any direction or request given by an Extraordinary Resolution, the Trustee may, at any time by notice in writing to the Issuer, waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Issuer of any provision expressed in a Transaction Document. Any such waiver shall not prejudice the rights of the Trustee or the Debentureholders in respect of any other breach.

10.2 Exoneration

Neither the Trustee nor any of its respective directors, officers, employees, agents, attorneys, related body corporate (as defined in the Corporations Act) or successors is responsible to the Debentureholders for or will be liable in respect of:

- 10.2.1 any conduct relating to, contained in or relying on, any Transaction Document or any document referred to in or received under any Transaction Document;
- 10.2.2 the validity, effectiveness or enforceability of any Transaction Document or any other document or agreement;
- 10.2.3 any failure by the Issuer or any Guarantor to perform its obligations; or
- 10.2.4 any action taken or omitted to be taken by it or them under this Deed, any Security or any other Transaction Document, except in the case of its or their own wilful misconduct or gross negligence.

10.3 Delegation

The Trustee may employ agents and attorneys.

10.4 Reliance on documents and experts

The Trustee may rely on:

- 10.4.1 any document (including any facsimile transmission) it believes to be genuine and correct; and
- 10.4.2 advice and statements of lawyers, independent accountants and other experts selected by it.

10.5 Notice of default

The Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Trustee having day to day responsibility for the administration or management of the Trustee's obligations under the Transaction Documents having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way). In addition, notice,

knowledge or awareness of a default (howsoever described) means notice, knowledge or awareness of the occurrence of the events or circumstances constituting that default (as the case may be).

10.6 Trustee as Debentureholder

10.6.1 The Trustee in its capacity as a Debentureholder has the same rights and powers under the Transaction Documents as any other Debentureholder. In that capacity it may exercise them as if it were not acting as the Trustee.

10.6.2 The Trustee may engage in any kind of business with the Issuer or the Guarantors as if it were not the Trustee. It may receive consideration for services in connection with any Transaction Document and otherwise without having to account to the Debentureholders.

10.7 Independent investigation

Each Debentureholder confirms that it has made and will continue to make, independently and without reliance on the Trustee or any other Debentureholder:

10.7.1 its own investigations into the affairs of the Issuer and the Guarantors; and

10.7.2 its own analyses and decisions whether to take or not take action under the Transaction Documents.

10.8 No monitoring

The Trustee is not required to keep itself informed as to the compliance by the Issuer and any Guarantor with any Transaction Document or any other document or agreement or to inspect any property or book of the Issuer or any Guarantor.

10.9 Information

10.9.1 The Issuer authorises the Trustee to provide the Debentureholders with any information concerning the affairs, financial condition or business of the Issuer or any Guarantor which may come into the possession of the Trustee. The Trustee need not do so.

10.9.2 The Trustee is not obliged to disclose any information relating to the Issuer or any Guarantor if in the opinion of the Trustee (on the basis of the advice of its legal advisers) disclosure would or might breach a law or a duty of secrecy or confidence.

10.10 Replacement of Trustee

10.10.1 Subject to any Transaction Document to which the Trustee is a party, and subject also to the appointment of a successor Trustee as provided in this clause:

(a) the Trustee may resign at any time by giving not less than 30 days notice to the Debentureholders and to the Issuer; and

(b) the Debentureholders, by Extraordinary Resolution, may remove the Trustee from office by giving not less than 30 days notice to the Issuer and the Trustee.

- 10.10.2 Upon notice of resignation or removal the Debentureholders have the right to appoint a successor Trustee and who accepts the appointment.
- 10.10.3 If no successor Trustee is appointed within 30 days after notice, the retiring Trustee may on behalf of the Debentureholders appoint a successor Trustee approved by the Issuer and who accepts the appointment.
- 10.10.4 On its appointment the successor Trustee will have all the rights, powers and obligations of the retiring Trustee. The retiring Trustee will be discharged from its rights, powers and obligations.
- 10.10.5 The retiring Trustee shall execute and deliver all documents or agreements which are necessary or desirable in its opinion to transfer to the successor Trustee this Deed and each Transaction Security or to effect the appointment of the successor Trustee.
- 10.10.6 After any retiring Trustee's resignation or removal, this clause will continue in effect in respect of anything done or omitted to be done by it while it was acting as Trustee.
- 10.10.7 The Issuer shall not unreasonably withhold its approval of any proposed successor Trustee. It shall respond as soon as practicable to any request for approval and shall take all actions necessary to effect such change in Trustee.

10.11 Amendment of Transaction Documents

The Issuer and the Trustee are entitled without any authority or assent on the part of the Debentureholders to amend or add to this Deed if in the opinion of the Trustee such amendment or addition:

- 10.11.1 is of a formal, minor or technical nature;
- 10.11.2 is made to correct a manifest error;
- 10.11.3 is expedient or requisite to enable the Debentures to be listed or remain listed for quotation on any Stock Market or to be offered for subscription or sale under the laws for the time being in force in any place; or
- 10.11.4 in the opinion of the Trustee is not likely (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously therewith) to be materially prejudicial to the interests of the Debentureholders and two directors of the Issuer on behalf of the board of directors of the Issuer have so certified to the Trustee. The Trustee in determining whether or not such amendment or addition is materially prejudicial to the interests of the Debentureholders may act upon the advice or the opinion of or any information obtained from an expert (at the expense of the Issuer) and will not be responsible for any loss occasioned by its acting or declining to act on such advice, opinion or information.

10.12 Amendment with Extraordinary Resolution

The Issuer and the Trustee may with the authority of an Extraordinary Resolution make any amendment or addition to this Deed.

11. CREATION AND ISSUE OF DEBENTURE

11.1 Issue of Debenture

- 11.1.1 Subject to this clause the Issuer may create and issue a Debenture to any person at any time.
- 11.1.2 A Debenture may be issued to the Trustee in any capacity, even though it is a trustee under this Deed.
- 11.1.3 Each Debentureholder shall subscribe for its Debenture by delivering an application for the debenture and paying the subscription amount referred to in the Debenture.

11.2 Conditions of issue of Debenture

- 11.2.1 A Debenture may only be issued in Australian Dollars.
- 11.2.2 A Debentureholder may transfer Debenture without the consent of the Issuer.
- 11.2.3 The Issuer must provide a monthly report to the Trustee (in form and substance acceptable to the Trustee) which details all Debentures issued during that month and the names of the relevant Debentureholders.

12. REGISTERS AND CERTIFICATES

12.1 Register

The Issuer shall keep a Register of Debentures. It shall enter in that Register (to the extent that it has been notified of the relevant information):

- 12.1.1 the names and addresses of the persons to whom Debentures has been issued or transferred from time to time and a description of the Debentures held by them respectively;
- 12.1.2 the place where the person to whom a Debenture was initially issued subscribed for that Debenture;
- 12.1.3 the date at which the name of each person was entered in the Register as a Debentureholder;
- 12.1.4 the date at which any Debentureholder ceased to hold a Debenture;
- 12.1.5 the date of any issue of a Debenture to Debentureholders; and
- 12.1.6 a description of the Debenture.

12.2 Register conclusive

- 12.2.1 Subject to clause 12.2.2:
 - (a) the Register will be conclusive as to the identity of Debentureholders from time to time. If there is any inconsistency with any register kept by the Issuer, the Register will prevail;

- (b) a person whose name is entered on the Register as a Debentureholder will remain a Debentureholder for the purposes of this Deed and each Transaction Document until that name is removed from the Register by the Issuer with the consent of the Debentureholder. This applies whether or not:
 - (i) the Debenture is or proves to have been void, invalid, or improperly issued; or
 - (ii) the Debenture has been redeemed, repaid or cancelled; and
- (c) Debentureholders whose names appear for the time being in the Register will be regarded as the beneficial owners of the Debenture registered against their respective names. Except as required by law neither the Trustee nor the Issuer will recognise any other interest in any Debenture (even if either of them has notice of any such interest).

12.2.2 Any Debenture issued in contravention of this Deed or the Transaction Documents is of no force or effect. This applies whether or not its details are entered in the Register.

12.3 Register available for inspection

12.3.1 The Issuer shall ensure that the Register is open for inspection by any Debentureholder on reasonable notice during normal business hours. It shall inform the Debentureholders of any change in the location of the Register.

12.3.2 The Issuer shall provide a certified copy of the Register to the Trustee:

- (a) within two (2) Business Days of the creation of the Register; and
- (b) promptly upon the written request of the Trustee.

12.4 Extraordinary Resolution definition

The expression 'Extraordinary Resolution' when used in this Deed means a resolution passed at a meeting of the Debentureholders duly convened and held in accordance with this Deed and carried by a majority consisting of the holders of Debentures representing not less than 75% in value of the principal amount held by the holders of Debentures who are present at the meeting in person, by proxy, attorney or representative.

13. MEETINGS OF DEBENTUREHOLDERS

The Trustee or the Issuer may call a meeting of Debentureholders in the manner provided in this clause 13 and those meetings will be conducted and have the powers as are set out in this clause 13 provided however if there is any inconsistency between the provisions of this clause (so far as they relate to meetings called by the Issuer) and Section 283EA of the Corporations Act, the Corporations Act will prevail.

13.1 Convening Meetings

13.1.1 The Issuer may at any time summon a meeting of Debentureholders. The Issuer must summon a meeting of Debentureholders if requested in writing to do so by persons holding Debentures representing not less than

10% in value of the aggregate of all Debenture Proceeds. Meetings are to be held in Adelaide or at such other place as the Trustee may determine or approve.

- 13.1.2 The Trustee may convene a meeting with Debentureholders at such time and in such manner as it considers appropriate for the purpose of dealing with any matter arising under the Transaction Documents. In the event that the Trustee calls a meeting of the Debentureholders and the Trustee, the Issuer may not enquire as to whether any instructions have been given to the Trustee by the Debentureholders or as to the terms of those instructions.

13.2 Notice

Debentureholders must be given at least 10 Business Days' notice of a meeting but if the meeting is to consider an Extraordinary Resolution 15 Business Days' notice of the meeting shall be required. The period of notice is to be determined exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given.

13.3 Provision on Notices

Notices to Debentureholders must be given in the manner provided by the Deed. A notice of meeting must specify the place day and hour of meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed. A copy of the notice must be promptly sent by post to the Trustee unless the meeting has been convened by the Trustee and to the Issuer unless the meeting has been convened by the Issuer.

13.4 Failure to give notice does not invalidate

The accidental omission to give notice to or the non-receipt of notice by any of the Debentureholders does not invalidate the proceedings at any meeting but where notice of a meeting convened by the Issuer or Trustee is not received by the other of them all business transacted and all resolutions passed at the meeting shall be void and of no effect unless such notice is waived by such other of them.

13.5 Quorum

At any meeting a quorum for the transaction of business shall be formed by 2 or more Debentureholders present in person or by proxy or attorney or being a corporation by proxy, attorney or duly authorised representative holding Debentures in aggregate representing at least 10% in value of the aggregate of all Debenture Proceeds.

13.6 Adjournment in the absence of quorum

If within 30 minutes from the time appointed for the meeting a quorum is not present the meeting convened upon the requisition of Debentureholders shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than 10 Business Days thereafter or in the case of an adjourned meeting of Debentureholders at which an Extraordinary Resolution is to be submitted 15 Business Days thereafter and to such place as may be appointed by the Chairman. At such an adjourned meeting the Debentureholders present and entitled to vote whatever the value of the Debentures held by them will be a quorum for the

transaction of business including the passing of Extraordinary Resolutions. Notice of any adjourned meeting of Debentureholders at which an Extraordinary Resolution is to be submitted must be given in the same manner as of an original meeting and such notice must state that the Debentureholders present at the adjourned meeting whatever their number and the amount of Debentures held by them will form a quorum.

13.7 Chairman

The Trustee or some other person nominated in writing by the Trustee is entitled to be Chairman at every meeting but if no such person is nominated or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting the Debentureholders present may choose one of their number to be Chairman. The Chairman must be independent of and not related to or associated with the Issuer. The Trustee and the solicitors to the Trustee and any director or officer of a corporation being the Trustee and any director and the secretary and solicitors of the Issuer and any other person authorised by the Issuer may attend any meeting and be heard.

13.8 Adjournment by Chairman

The Chairman may with the consent of any meeting at which a quorum is present (such consent being obtained if the Trustee so requires on a poll) and must if directed by the meeting so resolving on a poll, adjourn the meeting from time to time and from place to place but no business may be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

13.9 Voting

13.9.1 At any meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman, the Trustee or the Issuer or in writing by one or more Debentureholders present in person or by proxy, attorney or duly authorised representative and holding or representing one-twentieth in value of the aggregate of all Debenture Proceeds. Unless a poll is so demanded a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

13.9.2 The determination of the number of proxies in respect of any meeting or resolution put to a vote will be made by the Auditor or an independent third party selected and agreed by the Issuer and the Trustee.

13.10 Poll

If a poll is duly demanded it must be taken in such manner as the Chairman may direct and the result of such a poll will be deemed to be the resolution of the meeting at which the poll was demanded.

13.11 No Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the

poll is demanded is not entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Debentureholder.

13.12 Poll Demands

13.12.1 A poll demanded on the election of a Chairman or on a question of adjournment is to be taken at the meeting without adjournment. A poll demanded on any other question is to be taken either immediately or at such time (not being more than 20 Business Days from the date of the meeting) and place as the Chairman may direct. No notice need be given of a poll not taken immediately.

13.12.2 The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

13.13 Voting Entitlements

On a show of hands every Debentureholder who being an individual is present in person or by attorney or being a corporation is present by attorney or by its authorised representative has one vote and on a poll every Debentureholder who is present in person or by proxy, attorney or authorised representative has one vote for every dollar (\$1.00) of the Debenture Proceeds to which the Issuer is indebted to the Debentureholder.

13.14 Joint Holders

In the case of joint registered holders of Debentures the vote of the senior who tenders a vote whether in person or by proxy is to be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority is determined by the order in which the names appear in the Register of Debentureholders in respect of the joint holding.

13.15 Debentureholder entitled to more than one vote

On a poll a Debentureholder entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

13.16 Proxy

The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either as referred to in Section 127 of the Corporations Act or under the hand of an officer or attorney so authorised. A person appointed to act as proxy need not be a Debentureholder.

13.17 Debentureholder which is a corporation

A Debentureholder which is a corporation may be represented at a meeting of Debentureholders or may vote at the meeting or on a poll or in relation to any resolution of Debentureholders by proxy or by attorney or by representative appointed in accordance with the provisions of Section 250D of the Corporations Act as if references to 'member' or 'members' in that section were references to 'Debentureholder' or 'Debentureholders'.

13.18 Deposit of Proxies

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of the power or authority must be deposited at such place as the Trustee or the Issuer with the approval of the Trustee may in the notice convening the meeting direct or if no such place is appointed then at the registered office of the Issuer not less than 24 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid. No instrument appointing a proxy is valid after the expiration of 12 months from the date specified in it as the date of its execution.

13.19 Proxy Instruments

An instrument of proxy may be in the usual common form or in such other form as the Issuer and the Trustee may approve and need not be witnessed. The proxy will be deemed to include the right to demand or join in demanding a poll. Unless the contrary is stated on the instrument of proxy, a proxy is valid for any adjournment of the meeting to which it relates.

13.20 Proxy Voting

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the Debentures in respect of which the proxy is given provided that no notice in writing of such death insanity revocation or transfer has been received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

13.21 Powers of Meeting of Debentureholders

Without limiting the rights of Debentureholders, the Issuer and the Trustee pursuant to the Trust Deed, a meeting of the Debentureholders has in addition to all other powers, the following powers exercisable by Extraordinary Resolution only:

- 13.21.1 power to sanction the release of the Issuer from all or any part of their liability to pay the aggregate of all Debenture Proceeds or interest owing upon the Debentures;
- 13.21.2 power to sanction any modification or compromise or any arrangement in respect of the rights of the Debentureholders against the Issuer whether such rights shall arise under the Trust Deed, the Conditions or otherwise;
- 13.21.3 power to assent to any modification of the provisions contained in this Deed or the Conditions and to authorise the Trustee to concur in and execute any supplemental deed embodying any such modification;
- 13.21.4 power to give any sanction, direction or request which under any of the provisions of this Deed is required to be given with the consent of Debentureholders;
- 13.21.5 power to give any release in respect of anything done or omitted to be done by the Trustee; and

13.21.6 power to remove a Trustee.

13.22 Resolution Binding

A resolution passed at a meeting of the Debentureholders duly convened and held in accordance with this Deed is binding upon all the Debentureholders whether or not present at the meeting and each Debentureholder is bound to give effect to it accordingly.

13.23 Minutes

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be from time to time provided for that purpose by the Issuer and any minute if purporting to be signed by the Chairman of the meeting at which a resolution was passed or proceedings were held or by the Chairman of the next succeeding meeting of Debentureholders is prima facie evidence of the matters stated in it.

14. LAW AND JURISDICTION

14.1 Governing Law

This Deed is governed by the law in force in the South Australia.

14.2 Submission to Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in South Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

15. NOTICES

15.1 Method of Giving Notices

A notice, consent, approval or other communication (each a "Notice") under this Deed shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- 15.1.1 delivered;
- 15.1.2 sent by pre-paid mail; or
- 15.1.3 transmitted by facsimile,

to that person's address.

15.2 Time of Receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

- 15.2.1 if delivered, on the day of delivery if delivered before 4:00 pm (local time in the place of receipt) on a Business Day, otherwise on the next Business Day;

- 15.2.2 if sent by pre-paid mail, on the day of actual delivery if delivered before 4:00 pm (local time in the place of receipt) on a Business Day, otherwise on the next Business Day; and
- 15.2.3 if transmitted by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4:00 pm (local time in the place of receipt) on a Business Day (or the equivalent in another time zone), otherwise on the next Business Day.

15.3 Address for Notices

For the purposes of this clause, a person (the "sender") may take the address and facsimile number of another person (the "recipient") to be:

- 15.3.1 the address and number set out below; or
- 15.3.2 where the recipient notifies the sender of another address or number, the last address or number so notified to it:

Trustee:

Attention: Company Secretary

Address: Level 12
Corporate Trust
207 Kent Street
SYDNEY NSW 2000

Facsimile: (02)-9028 5942

Issuer:

Attention: Company Secretary

Address: Level 1
5-7 King William Road
UNLEY SA 5061

15.4 Notices to Debentureholders

- 15.4.1 Notices to Debentureholders may also be given:
- (a) by the Issuer posting, at the request of the Trustee, the Notice on its internet website or by the Trustee posting such Notice on its internet website; or
 - (b) by any other means that the Issuer and the Trustee agree in writing and notify to the Debentureholder.
- 15.4.2 A Notice of meeting must specify the place, day and hour of the meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed.

- 15.4.3 A copy of the notice must be promptly sent by post to the Trustee unless the meeting has been convened by the Trustee and to the Issuer unless the meeting has been convened by the Issuer.

16. GENERAL

16.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

16.2 Rights Cumulative

The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

16.3 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

16.4 Assignment

16.4.1 The Issuer may not assign or transfer all or any part of its rights or obligations under this Deed without the prior consent of the Trustee.

16.4.2 The Trustee may assign or transfer all or any part of its rights or obligations under this Deed without the consent of the Issuer.

16.5 Trustee's Calculations

The determination by any Authorised Representative of the Trustee of any calculation for the purposes of this Deed (including, without limitation, the determination of amounts owing by the Issuer) is conclusive in the absence of manifest error.

16.6 Severability

Any provision in this Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

16.7 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

16.8 Attorneys

Each attorney who executes this Deed on behalf of a party declares that the attorney has no notice of any revocation, suspension or variation of the power of attorney under the authority of which the attorney executes this Deed.

EXECUTED as a Deed

EXECUTED as a DEED by
TURNER SECURITIES LTD
in accordance with Section 127 of the
Corporations Act 2001:

[Signature]
*Director/*Company Secretary

[Signature]
Director

KENNETH WIAK FLINT
Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Grant Robert Miles
Name of Director
(BLOCK LETTERS)

EXECUTED as a DEED by *AUSTRALIAN*
EXECUTOR TRUSTEES LIMITED
under Common Seal
in the presence of:



[Signature]
Authorised Officer

[Signature]
Authorised Officer

Philip John Walter Joseph
Full Name (print)

Stuart Alexander Howard
Full Name (print)

Authorised Officer
Office Held

Authorised Officer
Office Held