

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL COURT

List B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS  
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN  
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST  
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

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Date of document: 21 March 2014

Filed on behalf of: The plaintiff

Prepared by:

**Allens**

Lawyers

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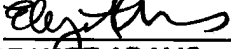
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

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This is the **Exhibit** marked '**CCH-6**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 21 March 2014.

Before me   
**ELYSE KATE ADAMS**  
of 101 Collins Street, Melbourne  
Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**'CCH-6': a true copy of the  
Timbercorp Orchard Trust  
Debenture Trust Deed dated 17  
October 2003**

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**Timbercorp Orchard Trust  
Debenture Trust Deed**

between

**Orchard Investments Management  
Limited,**

**Permanent Nominees (Aust.) Limited**

**[EXECUTION COPY]**

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# Details of this Timbercorp Orchard Trust Debenture Trust Deed

## Date of the Deed:

This Deed is made on

17 October

2003.  
COMMISSIONER OF STATE TAXATION

## Parties to the Deed:

### 1. Orchard Investments Management Limited

ACN 105 684 231

in its capacity as the responsible entity of the Timbercorp Orchard Trust

ARSN 106 557 297

Level 2, 613 St Kilda Road

MELBOURNE VIC 3004

(OIM)

### 2. Permanent Nominees (Aust.) Limited

ACN 000 154 441

Level 3, 151 Rathdowne Street

CARLTON VIC 3053

(Trustee)

S.A. STAMP DUTY PAID 457692.20  
ORIGINAL STAMPED (Copy 2 of 2)  
10/02/2004 15:03:44 00654135.1  
Total security (\$37553000.00)  
SA Proportion \$12824380.20  
SECTION 81B MORTGAGE

Counterpart Mortgage  
Stamped with: \$90,977.60  
VIC Assets: 60.59%  
Trn: 1749391 05-APR-2004  
Amount Secured: \$37,553,000.00  
SRA Victoria Debt. CTND

NEW SOUTH WALES DUTY  
29-04-2004 0001928691-001  
MULTI STATE DUPLICATE  
TOTAL SECURED \$ \*\*\*\*\*37,553,000.00  
DUTY \$ \*\*\*\*\*2.00

## Background to the Deed

- A. OIM is, or will become, the holder of an Australian Financial Services Licence issued by ASIC authorising it to operate the Scheme known as the "Timbercorp Orchard Trust".
- B. OIM will hold the Scheme Assets in its capacity as responsible entity of the Timbercorp Orchard Trust on trust for the Scheme Members in accordance with section 601FC(2) of the Corporations Act.
- C. OIM is empowered by clause 17 of the Constitution to borrow money from time to time for the purposes of the Scheme.
- D. OIM proposes to issue the Prospectus which will invite several persons to apply to purchase Debentures issued by it, as responsible entity of the Scheme.
- E. The Trustee has agreed on the terms and conditions contained in this Deed to act as trustee of this Deed for the benefit of holders for the time being and from time to time of Debentures issued under this Deed.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, the Schedules and all documents issued under this Deed, unless the context or subject matter otherwise indicates or requires, the following words have the meanings set out opposite them:

<b>A\$, \$, dollars or Australian dollars:</b>	the lawful currency of Australia;
<b>ADI:</b>	has the same meaning as "Australian ADI" in section 9 of the <i>Corporations Act</i> ;
<b>Administrator:</b>	has the same meaning as "administrator" in section 9 of the <i>Corporations Act</i> ;
<b>Annuity Bonds:</b>	the unsecured annuity bonds issued under the Annuity Bond Debenture Trust Deed with a face value of \$1.00 each;
<b>Annuity Bond Trust Deed:</b>	annuity bond trust deed to be entered into between OIM and Sandhurst Trustees Limited (ACN 004 030 737) on or about the date of this Deed;
<b>Assets:</b>	has the same meaning as in the Constitution;
<b>ASIC:</b>	Australian Securities and Investments Commission;
<b>ASX:</b>	Australian Stock Exchange Limited;
<b>Attorney:</b>	any attorney appointed under clause 4.14 and any person who derives a right directly or indirectly from an Attorney;
<b>Auditors:</b>	the auditors of OIM from time to time;
<b>Australia:</b>	all States and Territories in Australia;
<b>Authorised Investment:</b>	<p>any of the following denominated in Australian dollars:</p> <p>(a) bonds, notes or other securities issued or guaranteed by the Commonwealth or a State or Territory of Australia with, at the relevant time, a term to maturity of not later than the next Payment Date;</p> <p>(b) deposits with, or loans to, or secured or guaranteed by the Commonwealth or a State or Territory of Australia or an ADI authorised under the <i>Banking Act 1959 (Cth)</i> and which have a rating of not less than "A-1" by S&amp;P and a short term credit rating of not less than "P-1" by Moody's or a long term rating of "AA" and "Aa2" by S&amp;P and Moody's respectively, with, at the relevant time, a term to maturity of not later</p>



	<p>than the next Payment Date;</p> <p>(c) certificates of deposit or bonds, notes or securities issued by an ADI authorised under the <i>Banking Act 1959 (Cth)</i> and which have a rating of not less than "A-1" by S&amp;P and a short term credit rating of not less than "P-1" by Moody's or a long term rating of "AA" and "Aa2" by S&amp;P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the next Payment Date;</p> <p>(d) bills of exchange, promissory notes, debentures or other negotiable instruments issued or accepted by the Commonwealth or a State or Territory of Australia or an ADI authorised under the <i>Banking Act 1959 (Cth)</i> and which have a rating of not less than "A-1" by S&amp;P and a short term credit rating of not less than "P-1" by Moody's or a long term rating of "AA" and "Aa2" by S&amp;P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the date moneys will be required for the purchase of Land or the construction of Improvements or otherwise for the purposes of this Deed ("the End Date");</p> <p>(e) any other investment approved by the Trustee with, at the relevant time, a term to maturity of not later than the End Date and, which, except in the case of paragraph (d) must be issued or guaranteed by or drawn, issued, accepted or endorsed by a person which has a short term credit rating of not less than "A-1" by S&amp;P and "P-1" by Moody's or a long term rating of "AA" and "Aa2" by S&amp;P and Moody's respectively;</p>
<b>Authorised Representative:</b>	<p>(a) a company secretary or director of the party or an employee of the party whose title includes the word "manager" or "director";</p> <p>(b) a person who is acting temporarily in one of those positions; or</p> <p>(c) a person, or a person holding a position, nominated by a party to the other party;</p>
<b>Bondholders:</b>	a person who is registered as a holder of an Annuity Bond issued under the Annuity Bond Trust Deed;
<b>Books</b>	has the same meaning as "books" in section 9 of the <i>Corporations Act</i> ;
<b>Business Day:</b>	Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is



	not a business day;
<b>Cash:</b>	at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all cash and cash equivalents of the Scheme, including: (a) deposits at call; and (b) short-term money market securities;
<b>Citrus Crop:</b>	the products, rights, benefits or credits derived from citrus trees on the Land;
<b>Citrus Projects:</b>	any citrus projects conducted on the Land, interests in which have been or will be, offered by the Timbercorp Group or other responsible entities or managers under a Disclosure Document, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
<b>Closing Date:</b>	(a) in relation to the first issue of Debentures, 4 December 2003 or such earlier date determined by the Directors of OIM; (b) in relation to any further issue of Debentures such date as determined by the Directors of OIM;
<b>Conditions:</b>	the terms and conditions applicable to the Debentures set out in Schedule 2 and, where the context requires, in this Deed, as any of them may from time to time be modified in accordance with this Deed and any reference in this Deed to a particular condition is to be construed as a reference to that condition as set out in Schedule 2;
<b>Constitution:</b>	the deed executed by OIM constituting the Scheme;
<b>Controller:</b>	has the meaning given to "controller" in section 9 of the <i>Corporations Act</i> ;
<b>corporation:</b>	any body corporate wherever incorporated or domiciled;
<b>Corporations Act:</b>	the <i>Corporations Act 2001 (Cth)</i> and the <i>Corporations Regulations</i> ;
<b>Cost:</b>	for the purposes of Condition 6.3, means the aggregate of: (a) purchase price of the Land; (b) all costs, fees and duties associated with the acquisition of the Land; and (c) all capital expenditure incurred or to be incurred in the development of a citrus orchard, vineyard (table and wine grapes) and any other Horticultural and Viticultural Assets, including any other infrastructure on the Land, where applicable;

<b>CPI</b>	<p>(a) the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics;</p> <p>(b) If the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" is discontinued, suspended or ceases to be calculated in a manner in which it is calculated as at the date of this Deed, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is determined by the Auditor;</p>
<b>Debentures:</b>	debt obligations of the OIM as responsible entity of the Scheme from time to time arising under the Global Debenture;
<b>Debenture Gearing Ratio:</b>	<p>at any time as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, the ratio calculated in accordance with the following formula:</p> $A = [B - C] / [D - C]$ <p>where:</p> <p>A = the Debenture Gearing Ratio;</p> <p>B = Debenture Liabilities (expressed as a positive);</p> <p>C = Cash;</p> <p>D = at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Assets of the Scheme;</p>
<b>Debenture Holder:</b>	in relation to any of the Debentures at any time a person who is for the time being registered as the holder of those Debentures;
<b>Debenture Liability:</b>	at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all liabilities to Debenture Holders, in that capacity, under this Deed;
<b>Debt:</b>	<p>at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Liabilities of the Scheme, excluding:</p> <p>(a) all Liabilities which are non-interest bearing;</p> <p>(b) the amount of all hybrid Units and instruments convertible to ordinary Units;</p>

	(c) all Subordinated Member Loans;
<b>Deed or Trust Deed:</b>	this trust deed (including Schedules) as originally executed and as it may from time to time be amended in accordance with its terms;
<b>Director:</b>	a director of OIM;
<b>Disclosure Document:</b>	includes: <ul style="list-style-type: none"> <li>(a) a "disclosure document" as defined in section 9 of the Corporations Act;</li> <li>(b) a "Product Disclosure Statement" as defined in section 9 of the Corporations Act;</li> <li>(c) a document, including an information memorandum under which offers to participate in a Project are made;</li> </ul>
<b>Encumbrance:</b>	any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);
<b>Event of Default:</b>	an event set out in clause 12.1 of this Deed;
<b>Financial Statements:</b>	<ul style="list-style-type: none"> <li>(a) a statement of financial performance;</li> <li>(b) a statement of financial position;</li> <li>(c) a statement of cashflows;</li> <li>(d) if required by the accounting standards a consolidated statement of financial performance, statement of financial position and statement of cashflows; and</li> <li>(e) any other information required to give a true and fair view of the financial position of the Scheme or OIM, as the case requires;</li> </ul>
<b>Fixed and Floating Charge:</b>	the fixed and floating charge created under this Deed and granted by OIM in favour of the Trustee over the Scheme Assets;
<b>Gearing Ratio:</b>	<p>at any time as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, the ratio calculated in accordance with the following formula:</p> $A = [B - C] / [D - C]$ <p>where:</p> <ul style="list-style-type: none"> <li>A = the Gearing Ratio;</li> <li>B = Debt (expressed as a positive);</li> <li>C = Cash;</li> <li>D = at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Assets of the Scheme;</li> </ul>

<b>Global Debenture:</b>	one or more global debenture executed or to be executed by OIM substantially in the form set out in Schedule 1;
<b>Government Body:</b>	<p>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</p> <p>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</p> <p>(c) any person deriving a right directly or indirectly from any other Government Body;</p>
<b>Grape Crops:</b>	the products, rights, benefits or credits derived from the grapevines developed under a Viticultural Project on the Land;
<b>GST:</b>	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
<b>GST Law</b>	the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
<b>GST Rate</b>	the rate of GST under the GST Law;
<b>Horticultural Assets:</b>	the Land used in the Citrus Projects and in such other projects undertaken by the Timbercorp Group or other responsible entities of a horticultural nature from time to time, together with Improvements on that Land;
<b>Improvements:</b>	all capital works, trees, Water Licences attributed to the Land and other improvements forming part of the Scheme Assets, including irrigation works;
<b>Interest Calculation Date:</b>	the last day of each Quarter;
<b>Interest Payment Date:</b>	<p>(a) in relation to the first Quarter, is the last day of the first Quarter;</p> <p>(b) in relation to each subsequent Quarter, is the day 3 Business Days after the last day of the relevant Quarter;</p>
<b>Issue Date:</b>	no later than the 7 <sup>th</sup> Business Day following the Closing Date;
<b>Land:</b>	the real property forming part of the Scheme Assets that becomes subject to a Mortgage or a lease Encumbered under the Mortgage of Contractual Rights, and this Deed;
<b>Last Statement of Financial</b>	(a) until the first occasion on which a consolidated statement of financial position

<b>Position:</b>	<p>of the Scheme is delivered to the Trustee under paragraphs 7.2(d) or 7.2(e), the pro-forma consolidated statement of financial position the Scheme as at 30 September 2003;</p> <p>(b) on that first occasion and any time after that first occasion, the consolidated statement of financial position of the Scheme then most recently delivered by OIM to the Trustee under paragraphs 7.2(d) or 7.2(e);</p>
<b>Liabilities:</b>	has the same meaning as in the Constitution;
<b>Liquidation:</b>	includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise of the creditors or bankruptcy;
<b>Listing Rules:</b>	the listing rules of the ASX;
<b>Market Value:</b>	the value of the Land and Improvements as determined in accordance with Condition 6.3;
<b>Maturity Date:</b>	15 December 2010;
<b>Member:</b>	a holder of a Unit;
<b>Moneys Owning:</b>	the principal moneys and interest from time to time payable in respect of the Debentures to the Trustee or to any Debenture Holder, any Redemption Amount which is payable as a result of the Debenture's redemption under or pursuant to this Deed or the terms of issue of any of the Debentures and all other moneys from time to time payable under or by virtue of this Deed;
<b>Month:</b>	calendar month;
<b>Mortgage of Contractual Rights:</b>	the mortgage granted by OIM in favour of Permanent over the lease of the Land known as "Bella Vista" and described in Lot 4378 Plan 767245 and Lot 1 in Deposited Plan 1046695;
<b>Mortgages:</b>	the registered first and second mortgages to be given by OIM in favour of the Trustee over the Land and Improvements in the usual form in accordance with good conveyancing practice;
<b>Occupancy Agreements:</b>	any lease, licence or other occupancy agreement entered into by OIM in respect of the Land and Improvements;
<b>OIM:</b>	Orchard Investments Management Limited (ACN 105 684 231), or the responsible entity for the time being of the Scheme;
<b>Ordinary Resolution:</b>	subject to Rule 24, has the meaning given in Rule 22(a);



<b>Other Crops:</b>	crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land;
<b>Outstanding Debentures:</b>	<p>in relation to the Debentures, all the Debentures on issue at a particular date, other than:</p> <p>(a) those which have been redeemed in accordance with this Deed or the Conditions; and</p> <p>(b) that in respect of which the date for redemption in accordance with the Conditions has occurred and for which the Redemption Amounts have been duly paid to the Trustee and remain available for payment to Debenture Holders holding such Debentures;</p>
<b>Payment Date:</b>	an Interest Payment Date or Maturity Date, as the case requires;
<b>Potential Event of Default:</b>	any thing which with the giving of notice, lapse of time, determination of materiality or fulfilment of any condition will constitute an Event of Default;
<b>Price:</b>	in clause 28 of this Deed, has the same meaning as in the GST Law;
<b>Projects:</b>	Citrus Projects, Viticultural Projects and such other projects undertaken on the Land from time to time by the Timbercorp Group or other responsible entities or managers of a horticultural or viticultural nature, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
<b>Prospectus:</b>	the prospectus inviting applications or offers to subscribe for Debentures or offering those Debentures for subscription, and lodged by OIM for the purposes of section 718 of the Corporations Act;
<b>Quarter:</b>	<p>the three month period ending on the last day of March, June, September or December with the exception of:</p> <p>(a) the first Quarter which commences on the date the application moneys are received as cleared funds in accordance with Condition 5.1 and ends on the day the Debentures are listed for quotation on the ASX;</p> <p>(b) the second Quarter which commences on the day following the last day of the first Quarter and ends on 31 March 2004;</p> <p>(c) the last Quarter which commences on the day following the last day of the immediately preceding Quarter and ends on</p>

	Maturity Date;
<b>Receiver:</b>	a receiver or receiver and manager appointed under this Deed and any person who derives a right directly or indirectly from any Receiver;
<b>Record Date:</b>	7 clear days before the relevant Interest Calculation Date;
<b>Redemption Amount:</b>	the principal moneys and interest from time to time payable in respect of the Debentures to the Trustee or to any Debenture Holder on the Redemption Date;
<b>Redemption Calculation Date:</b>	the day which is 7 Business Days before the relevant Redemption Date;
<b>Redemption Date:</b>	the Maturity Date or the date on which Debentures are redeemed in accordance with Condition 5.3 or Condition 5.4;
<b>Register:</b>	any register in respect of the Debenture Holders kept pursuant to this Deed;
<b>Registrar:</b>	the person who from time to time is appointed by OIM to act as registrar in respect of the Debentures and in the absence of such appointment, OIM;
<b>Related Corporation:</b>	<p>(a) a "related body corporate" as that expression is defined in the Corporations Act and includes a body corporate which is at any time after the date of this Deed a "related body corporate" but ceases to be a "related body corporate" because of an amendment, consolidation or replacement of the Corporations Act; but</p> <p>(b) with any necessary modifications to reflect that any reference to a "related body corporate" in the context of the Scheme is a reference to a "related body corporate" of OIM solely in its capacity as responsible entity of the Scheme;</p>
<b>Repay:</b>	includes "redeem" and vice versa and "repaid", "repayable" and "repayment", and "redeemed", "redeemable" and "redemption" are to be construed accordingly;
<b>Rules:</b>	the rules for meetings of Debenture Holders set out in Schedule 3;
<b>SCH Business Rules:</b>	the operating rules of ASX Settlement and Transfer Corporation Pty Limited;
<b>Schedules:</b>	the schedules to this Deed;
<b>Scheme:</b>	the trust constituted under the Constitution and known as "Timbercorp Orchard Trust" registered as a managed investment scheme under Chapter 5C of



	the Corporations Act with ARSN 106 557 297 and of which OIM is the responsible entity;
<b>Scheme Assets:</b>	all Assets of the Scheme;
<b>Secured Property:</b>	the Scheme Assets;
<b>Security Interest:</b>	<p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding:</p> <p>(c) any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge; and</p> <p>(d) any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p>
<b>Special Resolution:</b>	subject to Rule 24, has the meaning given in Rule 21(a);
<b>Specified Office:</b>	the registered office of OIM or such other office advised by OIM to the Trustee from time to time;
<b>Subordinated Member Loans:</b>	<p>the aggregate of all moneys advanced to OIM as responsible entity of the Scheme and the Scheme's Related Corporations:</p> <p>(a) by persons who at the time of their advance are Members of the Scheme or any of the Scheme's Related Corporations the repayment of which is postponed until all of the interest bearing Liabilities of OIM as responsible entity of the Scheme and the Scheme's Related Corporations (other than Liabilities in respect of other debts which are Subordinated Member Loans or in respect of debts to which a condition similar in substance to this definition applies) are paid, redeemed or satisfied in full and in respect of which the relevant creditor is not entitled to prove in Liquidation in the event of any one or more of OIM as responsible entity of the Scheme and the Scheme's Related Corporations going into Liquidation until those interest bearing Liabilities of OIM as responsible entity of the Scheme and the Scheme's Related Corporations (other than Liabilities in respect of other debts which are Subordinated Member Loans or in</p>

	<p>respect of debts to which a condition similar in substance to this definition applies) have been paid, redeemed or satisfied in full;</p> <p>(b) by Timbercorp Limited pursuant to the Third Facility Agreement the repayment of which is postponed until all of the Debentures and Annuity Bonds have been paid, redeemed or satisfied in full;</p>
<b>Subsidiary:</b>	<p>(a) has the meaning given to it in the <i>Corporations Act</i>, but</p> <p>(b) with any necessary modifications to reflect that any reference to a "subsidiary" in the context of the Scheme is a reference to a "subsidiary" of OIM solely in its capacity as responsible entity of the Scheme;</p>
<b>Tax Event:</b>	<p>the receipt by OIM of an opinion from a reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of:</p> <p>(a) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties (or any regulations thereunder) of Australia or any political subdivision or taxing authority thereof or therein affecting taxation;</p> <p>(b) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) ("<b>Administrative Action</b>"); or</p> <p>(c) any amendment to, clarification of, or change in, the pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known,</p> <p>which amendment, clarification, change or Administrative Action is effective, or which pronouncement or decision is announced, on or after the Issue Date (and which does not relate to GST), there is more than an insubstantial risk that OIM or the Scheme would be exposed to more than a de minimus increase in its costs or tax liabilities as a result of changes to taxes, duties, imposts or other</p>

	governmental charges or civil liabilities.
<b>Taxes:</b>	taxes, including GST, levies, imposts, deductions, charges, withholdings and duties imposed by any authority of or in Australia or any other jurisdiction from or through which payment is made, or any political subdivision of any of them including, without limitation, stamp and transaction duties, together with any related interest, penalties, fines and expenses in connection with them, except if imposed on the overall net income of the person to whom such taxes apply;
<b>Third Facility Agreement:</b>	the Third Facility Agreement - Working Capital Requirements entered into by OIM as responsible entity of the Scheme and Timbercorp;
<b>Timbercorp:</b>	Timbercorp Limited (ACN 055 185 067);
<b>Timbercorp Group:</b>	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
<b>Title Document:</b>	<p>in relation to any property includes a document:</p> <ul style="list-style-type: none"> <li>(a) that is or evidences title to that property;</li> <li>(b) used in the ordinary course of business as proof of possession or control of that property;</li> <li>(c) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive that property,</li> </ul> <p>and in relation to land relating to the title, use, disposition, devolution or acquisition of the land, includes, without limitation, any certificate of title, grant, conveyance or other dealing, map, plan, survey, will, probate, abstract of title, report or valuation relating to the land;</p>
<b>Transaction Documents:</b>	<ul style="list-style-type: none"> <li>(a) this Deed, any deed subsequently amending or replacing this Deed, any other document or documents which are used in or assist in the carrying out of any act or obligation under this Deed (including the Fixed and Floating Charge);</li> <li>(b) the Mortgages; and</li> <li>(c) the Mortgage of Contractual Rights; and</li> <li>(d) any other documents agreed by OIM and the Trustee to be Transaction Documents;</li> </ul>
<b>Trustee Company:</b>	a body corporate which would be entitled to act as a trustee for the holders of debentures (as defined in section 9 of the Corporations Act) under section 283AC(1) of the Corporations Act;

<b>Units:</b>	a fully paid unit in the Scheme issued on terms and conditions set out in the Constitution;
<b>Unremedied Event of Default:</b>	an Event of Default, the occurrence of which is not waived by the Trustee or has not been waived by a Special Resolution of Debenture Holders within 10 Business Days of it occurring;
<b>Valuer:</b>	a person: <ul style="list-style-type: none"> <li>(a) who has at least five year's experience in assessment of rural properties in such area where the Land and Improvements are situated;</li> <li>(b) being a member or members of Australian Property Institute Incorporated or its successor; and</li> <li>(c) who has no pecuniary interest that could reasonably be regarded as being capable of affecting his or her ability to give an unbiased opinion;</li> </ul>
<b>Viticultural Assets:</b>	the Land used in the Viticultural Projects and in such other projects undertaken by the Timbercorp Group or other responsible entities of a viticultural nature from time to time, together with Improvements on that Land;
<b>Viticultural Projects:</b>	any wine and table grape project conducted on the Land, interests in which have been or will be offered by the Timbercorp Group or other responsible entities or managers under a Disclosure Document, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
<b>Water Licences:</b>	the temporary and permanent water licences forming part of the Scheme Assets;
<b>writing:</b>	includes printing, typing, lithography and other modes of reproducing words in a visible form and "written" has a corresponding meaning;
<b>Written Resolution:</b>	has the meaning given in Rule 23(a).

## 1.2 Interpretation

In this Deed and the Schedules unless the context otherwise requires:

- (a) reference to any Act, code, regulation or ordinance or to any provision of any Act, code, regulation or ordinance includes any modification or re-enactment of the Act, code, regulation or ordinance or any provisions substituted for Act, code, regulation or ordinance and all statutory instruments issued under such Act, code, regulation or ordinance;
- (b) a word denoting the singular number includes the plural and vice versa;

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- (c) a reference to a person includes individuals, corporations, partnerships, limited partnerships, joint ventures, associations, companies, trusts or other organisations, whether or not legal entities;
  - (d) a heading and a cross reference to a heading is for convenience only and does not affect interpretation;
  - (e) a reference to a paragraph or Schedule is a reference to a paragraph to, or schedule of, this Deed;
  - (f) a reference to a statement of financial position and statement of financial performance of OIM and the Scheme includes a reference to all notes thereto;
  - (g) a reference to any document, deed or agreement including this Deed includes a reference to such a document, deed or agreement as amended, novated, supplemented, varied or replaced from time to time;
  - (h) a word denoting any gender includes all genders; and
  - (i) the words "includes", "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not.
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## **2. TRUST AND TRUSTEE**

### **2.1 Appointment of Trustee**

The Trustee is hereby appointed as trustee and agrees for the consideration expressed in this Deed to act in the interests, and for the benefit, of the Debenture Holders on the terms contained in this Deed. The Trustee's duties and obligations to Debenture Holders are owed to Debenture Holders only in their capacity as Debenture Holders.

### **2.2 Trust**

The Trustee will hold the following on trust for the benefit of the Debenture Holders:

- (a) a right to enforce OIM's obligations to repay Debentures under this Deed and the Conditions;
  - (b) each Mortgage, the Mortgage of Contractual Rights, the Fixed and Floating Charge or other Security Interest granted under the terms of this Deed; or
  - (c) the right to enforce any other duties of OIM under this Deed, each Mortgage, the Mortgage of Contractual Rights, the Fixed and Floating Charge, any other Security Interest, a Debenture, the Conditions or the Corporations Act.
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## **3. CREATION AND ISSUE OF DEBENTURES**

### **3.1 Issue of Global Debenture**

- (a) On or about the date of this Deed OIM will issue the Global



Debenture by executing it and delivering it to the Trustee in Victoria for safekeeping.

- (b) Subject to clauses 7.1 and 3.3(b), OIM may in the first instance on or before 15 December 2003, or such later date as agreed between the Trustee and OIM, issue Debentures up to an aggregate face value of \$37,553,000 on the terms and conditions contained in this Deed.
- (c) Subject to clauses 7.1 and 3.3(b), OIM may execute further Global Debentures and deliver them to the Trustee in Victoria for safekeeping and issue further Debentures in accordance with paragraph 3.3(a).

### **3.2 Issue of Debentures**

OIM will issue Debentures with a face value of \$100 each to successful applicants on the Issue Date.

### **3.3 Further Issues**

- (a) Subject to clauses 3.4 and 7.1 of this Deed, OIM may at any time and from time to time issue Debentures pursuant to this Deed to such persons, in such amounts and bearing such respective rates of interest (if any) and for such consideration and generally on such other terms and conditions as the directors of OIM may from time to time determine.
- (b) Subject to clause 3.4, the Debentures issued pursuant to paragraphs 3.1(a) and (b) and any other Debentures issued thereafter pursuant to paragraphs 3.1(c) and 3.3(a) will be issued with the benefit of and subject to the provisions of this Deed. Any new issue of Debentures (other than the Debentures issued under clause 3.1) will be issued on the terms and conditions prescribed for that issue (as to which a certificate signed by 2 directors of OIM on behalf of all directors will constitute sufficient evidence on which the Trustee or any Debenture Holder may rely), and those prescribed terms and conditions and the provisions of this Deed (or such of them as are applicable to the issue) is binding on OIM and the Debenture Holders.

### **3.4 Auditor's Report and Notification to Trustee**

Subject to clause 7.1 of this Deed:

- (a) whenever OIM desires to issue any Debentures it must forthwith notify the Trustee in writing of the amount of the Debentures which it proposes to issue. OIM must at the same time furnish to the Trustee a report by the Auditor stating as at a date no more than 2 months before the furnishing of such report that the amount of the Debentures proposed to be issued could be issued without contravention of clause 7.1 as at the date of such report;
- (b) the Trustee may accept the report furnished under paragraph 3.4(a) or, if the Trustee reasonably thinks that in the circumstances it should require a check report it may within 7 days after the receipt of the report furnished under paragraph 3.4(a) give notice to OIM that a check report is required, whereupon a check report must be obtained by OIM with all reasonable expedition at OIM's expense from a registered company auditor acceptable to it and chosen by

the Trustee. Any accountant appointed by the Trustee to prepare a check report may make every adjustment to the Last Statement of Financial Position which in his opinion is an adjustment necessary to make a proper determination made by the Auditor for the purpose of any statement of financial position or in respect of any definition or other provision contained in this Deed and any reference in any such definition or other provision to a statement or report by, or to the opinion of, the Auditor must for the purposes of the check report or other report or determination be read as a reference to a statement or report by, or to the opinion of, the author of that check report;

(c) the Trustee must within 14 days after the receipt of the report furnished under paragraph 3.4(a) or, if it requires a check report, within 7 days after the receipt of the check report, notify OIM in writing that OIM may issue:

- (i) the amount of Debentures proposed to be issued; or
- (ii) the amount specified in the report furnished under paragraph 3.4(a) as the amount of Debentures which could be issued without contravention of clause 7.1; or
- (iii) the amount shown in the check report (if any) as the amount of the Debentures which could be issued without contravention of clause 7.1;

whichever is the least amount and OIM may, subject always to clause 7.1, at any time within 6 months after notice in writing is given by the Trustee under this paragraph 3.4 (c) issue Debentures to an amount not exceeding the amount so notified by the Trustee.

### **3.5 Issue of Debentures by Inscribing Register**

OIM will issue Debentures by registering or causing the Registrar to register the Debenture Holder as the holder of the Debentures. Each Debenture will be issued when the Debenture Holder is inscribed in the Register as the holder of those Debentures. When Debentures are issued to a Debenture Holder OIM will include, or cause the Registrar to include in the Register, the particulars required by clause 20.1.

### **3.6 All Debenture Holders Rank Equally**

All Debenture Holders will rank equally.

### **3.7 Debenture Holders are Beneficial Owners of Debentures**

The Debenture Holders are deemed to be the beneficial owners of the Debentures registered in their respective names.

### **3.8 Payment of Commissions**

OIM may pay commission, brokerage or procuration or other fees in relation to the issue of Debentures (including, without limitation, for underwriting the issue of Debentures) to any person.

### **3.9 Debentures Valid Despite Contravention of Clause 3**

- (a) Debentures will be deemed to have been validly issued notwithstanding that their issue results in the contravention of this clause 3 or that at the time of the issue OIM was in contravention of clause 3.



- (b) OIM must take all action possible to remedy any contravention of this clause 3 within 7 days of becoming aware of the contravention.
  - (c) OIM must not proceed with any issue of Debentures, if such issue would cause OIM to contravene this clause 3.
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## **4. CHARGE**

### **4.1 Creation**

OIM as responsible entity of the Scheme charges to the Trustee its respective right, title and interest in, and to, the Scheme Assets.

### **4.2 Nature**

The charge, subject to the provisions of this Deed, constitutes:

- (a) a floating charge over any interest of OIM in any of the following present or future Scheme Assets comprising:
  - (i) Cash;
  - (ii) negotiable instrument given to OIM towards payment of any indebtedness to it;
  - (iii) the Scheme's stock in trade; and
  - (iv) any debt or other monetary obligation forming part of the Scheme Assets; and
- (b) a fixed charge over the balance of the Scheme Assets.

### **4.3 Acknowledgement**

- (a) The Trustee and OIM acknowledge that:
  - (i) that the obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, OIM under or in respect of this Deed ("**Obligations**") are incurred by OIM solely in its capacity as responsible entity of the Scheme and that OIM will cease to have any Obligations under this Deed if OIM ceases for any reason to be the responsible entity of the Scheme;
  - (ii) OIM will not be liable to pay or satisfy any Obligations except out of the Scheme Assets against which it is entitled to be indemnified in respect of any Obligation incurred by it as responsible entity of the Scheme;
  - (iii) the Trustee may enforce its rights against OIM arising from non-performance or breach of the Obligations only to the extent that OIM is entitled to be indemnified out of the Assets of the Scheme;
  - (iv) if the Trustee does not recover all money owing to it arising from non-performance or breach of the Obligations it may not seek to recover the shortfall by:
    - (A) bringing proceedings against OIM in its personal capacity, except as permitted by paragraph 4.3(a)(iii) or (vi); or

- (B) applying to have OIM wound up or proving in the winding up of OIM;
  - (v) paragraph 4.3(a)(iv) does not in any way restrict the rights of the Trustee under section 601ND of the Corporations Act;
  - (vi) this clause does not limit OIM's personal liability (including liability for Obligations arising at any time whilst it is or has been the responsible entity of the Scheme) or the Trustee's rights against OIM, in the case of fraud, gross negligence, breach of trust or breach of duty by OIM, and the Trustee may bring proceedings against OIM in its personal capacity in the case of fraud, gross negligence, breach of trust or breach of duty by OIM.
- (b) OIM must not cease to be responsible entity of the Scheme unless:
- (i) it is removed as responsible entity of the Scheme by Members;
  - (ii) a court orders that OIM be removed as responsible entity of the Scheme; or
  - (iii) OIM retires and is replaced as responsible entity of the Scheme with the approval of the Trustee, such approval not to be unreasonably withheld by the Trustee, and the approval of the Members, if required.
- (c) It is acknowledged by the Trustee that the Fixed and Floating Charge given by OIM under clause 4.1 does not include the Citrus Crops, Grape Crops and crops derived from any other Projects as they remain the property of:
- (i) the participants in the Projects;
  - (ii) the responsible entities and managers of the Projects and their nominees;
  - (iii) any lessee or licensee of a person specified in paragraphs 4.3(c)(ii); or
  - (iv) any other person who derives title to the Citrus Crops, Grape Crops or crops derived from the Projects through any of the persons described in paragraphs 4.3(c)(i) to (iii).

#### 4.4 Chattel Securities Act

To the extent that the Fixed and Floating Charge is a charge over Scheme Assets to which the *Chattel Securities Act 1987* of Victoria or any corresponding legislation of any other jurisdiction applies, it will be a legal interest over that part of the Scheme Assets for the purposes of that legislation.

#### 4.5 Crystallisation

The Trustee may serve a written notice upon OIM after an Event of Default has occurred stating that the floating charge is to convert into a fixed charge and describing the property affected by the notice, whereupon the floating charge will convert into a fixed charge in respect to the property described in that notice.

#### **4.6 Automatic Crystallisation**

The floating charge will automatically convert into a fixed charge over:

- (a) the whole of the Scheme Assets:
  - (i) upon any notice being given by the Trustee under paragraph 4.5;
  - (ii) upon the Liquidation of OIM while it is responsible entity of the Scheme or any action being taken to put OIM as responsible entity of the Scheme into Liquidation;
  - (iii) upon OIM ceasing or threatening to cease to carry on business or a substantial part of its business except as permitted under a Transaction Document;
- (b) any proceeds of any debt or other monetary obligation, upon any creditor of OIM as responsible entity of the Scheme proposing to take any action to have these proceeds paid to the creditor pursuant to any statute or other law;
- (c) any part of the Scheme Assets:
  - (i) upon any breach or action being taken by OIM to breach its obligations under any Transaction Documents in relation to that part of the Scheme Assets;
  - (ii) upon any action being taken by any person to distrain, attach or execute against that part of the Scheme Assets;
  - (iii) which is subject to a Security Interest in favour of any other person upon that person taking any action to exercise any right against that part of the Scheme Assets; and
  - (iv) upon the appointment by any person of an official or other manager, receiver or receiver and manager of that part of the Scheme Assets.

#### **4.7 Reinstatement of Floating Charge**

If the floating charge has converted into a fixed charge over any part of the Scheme Assets the Trustee may serve a written notice upon OIM stating that the fixed charge is to convert into a floating charge and describing the property affected by the notice, whereupon the fixed charge will convert into a floating charge over the property described in that notice.

#### **4.8 Fixed Charge over Debt Proceeds**

OIM must upon receipt of the proceeds of any debt or other monetary obligation which are subject to a fixed charge pay those moneys into an account nominated by the Trustee either with the Trustee or another person and of which the Trustee is the sole or a joint signatory.

#### **4.9 Authority to deal with Floating Charge property**

Subject to clauses 4.5 and 4.6, the Trustee authorises OIM to dispose of or otherwise deal with Scheme Assets subject to the floating charge in the ordinary course of its ordinary business.

#### 4.10 Prohibited Dealings

OIM must not:

- (a) create, attempt to create or permit to exist any Encumbrance in relation to the Scheme Assets subject to the fixed charge, the Mortgages and the Mortgage of Contractual Rights (whether ranking ahead of, equally with the fixed charge, the Mortgages and the Mortgage of Contractual Rights) unless the Encumbrance;
  - (i) arises by operation of law to secure the payment of moneys which have been due and owing for less than 30 days;
  - (ii) ranks in priority below the fixed charge, the Mortgages and the Mortgage of Contractual Rights;
  - (iii) has been fully disclosed to and approved in writing by the Trustee; or
  - (iv) is acknowledged by the Trustee under clause 4.11.
- (b) dispose of, declare a trust over or otherwise create or permit the creation or existence of any interest in, or part with possession of, any Scheme Assets subject to the fixed charge without the Trustee's consent, which must not be unreasonably withheld, unless the dealing in respect of the Scheme Asset has been disclosed in clause 4.11.

#### 4.11 Acknowledgements

- (a) The Trustee provides its acknowledgment that OIM as responsible entity of the Scheme:
  - (i) will enter into Occupancy Agreements on terms and conditions consistent with those set out in the Prospectus with Timbercorp in relation to the Land and Improvements which will form part of Scheme Assets on or about 31 December 2003;
  - (ii) will grant a first-ranking mortgage to Kangara Foods Pty Limited (ACN 093 583 049) (**Kangara**) in relation to the Land being purchased from Kangara described in Allotment 9/ FP 106444 on Certificate of Title 5171/743 to secure the payment of the purchase price deferred under the contract of sale in relation to that Land;
  - (iii) will enter into a 99-year lease agreement with Kangara in relation to approximately 2 hectares of the Land which is part of the Land described in Certificate of Title Register Book Volume 5097 Folio 567,and acknowledges that the Transaction Documents are granted subject to the rights and interests described in paragraphs 4.11(a)(i) to (iii), whether those rights and interests exist at the date of this Deed, the Fixed and Floating Charge, the Mortgage of Contractual Rights or the Mortgages or arise subsequently.
- (b) The Trustee acknowledges that:
  - (i) OIM must not at any time following the purchase of the

Land from Kangara described in Certificate of Title Register Book Volume 5171 Folio 743 and Certificates of Title Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66 (**Kangara Property**), sell the Kangara Property to a third party without first offering to Kangara the Kangara Property at the same price and on the same terms and conditions as those upon which OIM proposes to sell the Kangara Property to a third party;

- (ii) OIM will be required to transfer that part of the Land described in Lot 4378 Plan 767245 and Lot 1 in Deposited Plan 1046695 (**Bella Vista Property**), other than that Land of approximately 131 hectares described in Lot 1 of the unregistered plan should the subdivision in relation the Bella Vista Land occur after the expiry of the 30-month lease agreement between OIM and Carmel and Paul Costa in relation to the Bella Vista Property.

#### 4.12 Default Powers

(a) General

- (i) The Trustee may at any time after an Event of Default has occurred exercise any or all of the rights set out in this clause 4.12 in any manner and at any time that it thinks fit and notwithstanding that a Receiver has been appointed.
- (ii) The interpretation of any right set out in this clause 4.12 will not be restricted by reference to or inference from any other right.

(b) Statutory and Implied Powers

The Trustee may exercise all rights capable of being conferred by the legislation, regulations and other laws of any relevant jurisdiction upon chargees under mortgage, deeds or otherwise and such rights will be in augmentation of the powers expressly conferred upon the Trustee under this Deed and may be exercised by the Trustee immediately upon or at any time after any default by OIM without any notice or expiration of time under those laws being necessary and all other provisions of those laws will be deemed to be negated or varied only so far as they are inconsistent with the terms and provisions of this Deed.

(c) Sale

- (i) The Trustee may sell the Secured Property and, without limitation, any sale may be:
  - (A) by private treaty, public auction, tender or otherwise;
  - (B) together with the sale of any other property by any other person;
  - (C) upon terms and conditions that the Trustee thinks fit, including, without limitation, any terms and conditions:
    - (1) whereby:



- a. the purchaser is allowed time to pay the whole or any part of the purchase price either with or without interest and either with or without security;
- b. any rights over the Secured Property are reserved or granted;
- c. the consideration is expressed in any currency or consists of something other than money;
- d. the purchase price or other consideration is payable by instalments; and
- e. if the sale is by auction or tender, a reserve price determined by the Trustee is set;

(2) relating to the title of the property;

and the Trustee may:

- (D) buy in at any auction;
- (E) disclose or not disclose any reserve price;
- (F) rescind any contract of sale and resell the property without being liable for any loss;
- (G) advertise or not advertise the sale of the Secured Property; and
- (H) make any agreements or arrangements relating to the sale.

(d) General Dealings

The Trustee may:

- (i) take control of and get in the Secured Property;
- (ii) manage and otherwise deal with the Secured Property;
- (iii) exercise the rights of OIM and observe and perform its obligations in respect of the Secured Property and cause and permit any other person to observe or perform their obligations in respect of the Secured Property;
- (iv) vary, replace or release any right or interest of OIM or any other person;
- (v) exchange any part of the Secured Property for any other property and, if there is a difference in value between the property exchanged, give or receive, as the case may be, any moneys or other consideration equal to the difference in value in order to give or receive equal value for the exchange; and
- (vi) grant options and rights of first refusal to acquire the Secured Property.

(e) Raise and Lend Money

The Trustee may upon any terms and conditions that the Trustee thinks fit:

- (i) borrow or otherwise raise moneys or obtain financial accommodation on the security of the Secured Property, including, without limitation, any moneys required in relation to the exercise of any right by the Trustee or a Receiver or an Attorney; and
- (ii) lend or otherwise grant financial accommodation to a Receiver or an Attorney on the security of the Secured Property, including, without limitation, any moneys required in relation to the exercise of any right by the Trustee or a Receiver or an Attorney; and
- (iii) deal with any mortgage granted by it over the Secured Property and enter into any agreement relating to the priority of that mortgage and discharge it.

(f) Investment of Moneys

Any moneys received by the Trustee which are not required to be immediately applied in the exercise of any right or pursuant to clause 4.12 may be invested in the name or under the control of the Trustee in any Authorised Investment that the Trustee may, in its absolute discretion, think fit and the Trustee may at any time or times vary any such investments for or into other Authorised Investments and shall not be responsible for any loss occasioned thereby, whether by depreciation in value or otherwise.

(g) Ancillary Powers

The Trustee may:

- (i) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings;
- (ii) give receipts and release, discharge or compromise any debt or other obligation owed to or by OIM;
- (iii) enter into and execute and deliver documents and agreements in respect of the exercise of its other rights under this clause 4.12;
- (iv) delegate to any person any other right (including this right of delegation) under this clause 4.12; and
- (v) do anything incidental or conducive to the exercise of any of its other rights under this clause 4.12.

(h) Receivers

The Trustee may:

- (i) either before or after it has taken control of the Secured Property:
  - (A) appoint in writing any one or more persons to be a receiver or receiver and manager of the Secured Property or a part of it; and



- (B) appoint a different receiver or receiver and manager for different parts of the Secured Property;
- (ii) if more than one person is appointed as Receiver of any property, the Trustee may empower them to act jointly or jointly and severally;
- (iii) remove the Receiver, appoint another in his or her place if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and
- (iv) fix the remuneration of the Receiver.

#### 4.13 Receivers

(a) Agent

- (i) A Receiver, subject to paragraph 4.13(a)(ii), will be the agent of OIM who alone will be responsible for the Receiver's acts and omissions and remuneration.
- (ii) The Trustee may appoint a Receiver as the agent of the Trustee and delegate to a Receiver any of the Trustee's rights under this document.

(b) Powers

- (i) A Receiver will have the right in relation to any property of which the Receiver is appointed to do everything that OIM may lawfully authorise an agent to do on behalf of OIM in relation to that property and, without limitation, a Receiver may in relation to that property exercise:
  - (A) the rights capable of being conferred upon receivers and receivers and managers by the Corporations Act and statutes and laws of any relevant jurisdiction;
  - (B) the rights set out in paragraphs 4.12(c) to 4.12(g) inclusive;
  - (C) the rights of OIM and the directors of OIM; and
  - (D) any other rights the Trustee may by written notice to a Receiver give to a Receiver.
- (ii) The Trustee may by written notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that the Trustee thinks fit.

#### 4.14 Attorneys

(a) Appointment and Powers

OIM irrevocably appoints the Trustee its attorney with the right after any Event of Default has occurred to do everything that OIM may lawfully authorise an agent to do in respect of this Deed and the Secured Property including, without limitation, anything described in clauses paragraphs 4.12(c) to 4.12(g).

(b) General

- (i) Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- (ii) Any Attorney may appoint substitutes and otherwise delegate its rights (including this right of delegation).
- (iii) OIM must ratify any exercise of a right by an Attorney.
- (iv) The power of attorney is granted to secure the performance of the obligations of OIM to the Trustee under this Deed, the Mortgages and the Mortgage of Contractual Rights, the proprietary interests of the Trustee under this Deed and such Mortgages, and the payment of the Moneys Owings to the Trustee.

**4.15 Exercise of Default Rights**

(a) No Hindrance

OIM must not cause or permit the Trustee, a Receiver or an Attorney to be prevented or hindered from exercising its rights under this Deed or any other Transaction Document.

(b) Trustee in Possession

- (i) If the Trustee has taken control of the Secured Property it may give up control of the Secured Property at any time.
- (ii) The obligations of OIM under this document relating to the Secured Property will not be affected by the Trustee, any Receiver or any Attorney taking control of the Secured Property.

(c) Exclusion of Legislation

- (i) The provisions implied in mortgages by the legislation and regulations of any relevant jurisdiction will for the purposes of this Deed be negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this Deed.
- (ii) Any statutory restrictions (other than mandatory restrictions) upon any right of the Trustee, Receiver or Attorney to deal with the Secured Property will not apply to the rights of those persons under this Deed.
- (iii) The provisions of any existing or future moratorium, financial emergency or other like legislation or regulations whether Commonwealth, State or Territory will not apply to this Deed or the Moneys Owings and to the extent legally able any such legislation and regulations are hereby expressly excluded.

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**5. DEBENTURE CONDITIONS**

The Debentures are to be held subject to and with the benefit of this Deed

and the Conditions. This Deed and the Conditions are binding on OIM and the Trustee and the Debenture Holders and all persons claiming through or under them respectively.

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## **6. ACKNOWLEDGEMENT OF INDEBTEDNESS AND PAYMENT OF PRINCIPAL MONEYS AND INTEREST**

### **6.1 Acknowledgement**

Subject to the proviso to clause 6.2, OIM acknowledges its indebtedness to the Trustee in respect of the Moneys Owning.

### **6.2 Payment of Principal Moneys and Interest**

OIM must pay to the Trustee the principal moneys represented by the Debentures or, as the case may be, such part of the Debentures as ought to be redeemed on the date due for repayment in accordance with the Conditions and subject to clause 6.3 will, in the meantime and until the whole of the Debentures have been redeemed in accordance with the Conditions pay to the Trustee interest on the principal moneys represented by the Debentures in accordance with the Conditions, provided always that, until an Event of Default has occurred, payment of such principal moneys and interest must, unless the Trustee otherwise directs, be made to the Debenture Holders (net of any withholding or other Taxes required to be deducted) and every such payment operates pro tanto in satisfaction of OIM's obligations under this clause 6.2.

### **6.3 First Payment of Interest**

Despite clause 6.2, payment of interest on the principal moneys represented by the Debentures in respect of the first Quarter must be made directly to the initial Debenture Holders.

### **6.4 Amount is Unable to be Distributed**

(a) If any amount to be distributed to a Debenture Holder under clauses 6.2 and 6.3, is unable to be distributed, for any reason, within six months of the date on which the amount was first sought to be distributed, the relevant amount will, at the end of such period, be:

(i) if it has been paid by OIM to the Trustee for distribution to the Debenture Holder, returned by the Trustee to OIM, provided no Event of Default or Potential Event of Default subsists at the relevant time; or

(ii) retained by OIM, unless an Event of Default or Potential Event of Default subsists at the relevant time in which case OIM must pay the amount to the Trustee,

as the case may be.

(b) To the extent that OIM receives or retains any moneys under paragraph 6.4(a), OIM must pay the relevant amount to a Debenture Holder entitled to it on demand by that Debenture Holder at any time before the end of six years following the date on which the relevant amount was first sought to be distributed by OIM to the

## **7. OIM'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **7.1 Limitation on Issue of Debentures**

OIM hereby covenants with the Trustee that OIM will not permit the Debenture Gearing Ratio or the Gearing Ratio set out in paragraph 7.2(a) to be exceeded while there is any Debenture issued and outstanding.

### **7.2 Covenants by OIM**

OIM covenants with the Trustee that:

- (a) it will not suffer or permit the Debenture Gearing Ratio to exceed 66.667% or the Gearing Ratio to exceed 80% whilst there are any Debentures on issue;
- (b) it will execute and do all such assurances and things as are reasonably required to give effect to this Deed and confer the full benefit of this Deed upon Debenture Holders;
- (c) it will strive to carry on and conduct its business in a proper and efficient manner;
- (d) it will provide to the Trustee by the earlier of 21 days before the next annual general meeting after the end of the financial year, or 4 months after the end of the financial year a copy of the audited consolidated Financial Statements, Directors' report and Auditor's report for the Scheme and OIM as at the end of the financial year;
- (e) it will provide to the Trustee within 75 days after the end of each first half year of each financial year a copy of the audited consolidated half year Financial Statements, Directors' report and Auditor's report for the Scheme and OIM as at the end of that first half year;
- (f) it will provide to the Trustee a certificate signed by two of its directors at the same time that it provides the Financial Statements under paragraph 7.2(d) or (e), which certificate must set out the Debenture Gearing Ratio and the Gearing Ratio as at the date of the relevant statement of financial position and the relevant calculations used in determining the Debenture Gearing Ratio and the Gearing Ratio;
- (g) it will make available for inspection by the Trustee or any authorised officer or employee of the Trustee or any registered company auditor appointed by the Trustee the whole of the Financial Statements or other records of the Scheme and OIM and give to the Trustee or any authorised officer or employee of the Trustee any information, explanations or other assistance that it reasonably requires with respect to all matters relating to the Financial Statements or other records of the Scheme and OIM;
- (h) it will duly comply with all statutory requirements with respect to the filing of reports, accounts and statements and the furnishing of reports, accounts and statements to the Trustee, the keeping open

of registers for inspection and all other like matters;

- (i) on the delivery to its Specified Office of an application by persons holding not less than one-tenth of the amount of Outstanding Debentures, by giving notice to each of the Debenture Holders at the Debenture Holder's address as specified in the Register, it will convene a meeting of Debenture Holders to give to the Trustee directions in relation to the exercise of its powers or consider the most recent Financial Statements, such meeting to be held at a time and place specified in the notice and presided over by a person nominated by the Trustee or failing such nomination such other person as is appointed for that purpose by the Debenture Holders present at the meeting. If OIM is required to call a meeting under this paragraph 7.2(i), it must give notice of the time and place of the meeting to the Trustee and its Auditors;
- (j) it will duly and punctually observe, fulfil, perform and comply with all the covenants, terms, conditions and obligations imposed upon it or under this Deed or the Conditions and notify the Trustee in writing immediately on becoming aware that any of such covenants, terms, conditions and obligations cannot or are reasonably unlikely to be able to be fulfilled or performed;
- (k) it will within 45 calendar days from the Issue Date cause the stamping of the Transaction Documents and the registration of the Fixed and Floating Charge with ASIC and the Mortgages with the relevant land titles office;
- (l) it will use its best endeavours to ensure that all authorisations required for the validity, enforceability and performance of its obligations under this Deed and the effectiveness of the Transaction Documents are obtained and promptly renewed and remain in full force and effect;
- (m) it will notify the Trustee upon any corporation becoming a Subsidiary of the Scheme or OIM or upon any application, order, proceeding or resolution to which paragraph 12.1(d) applies being made, commenced or passed;
- (n) it will upon the happening of an Event of Default or a Potential Event of Default, give the Trustee a certificate signed by 2 Directors giving full written particulars of it and of the action taken or proposed to be taken by OIM to remedy it;
- (o) it will furnish to the Trustee within 21 days after each due date for payment of interest on the Debentures a report signed by not less than 2 of the directors of OIM on behalf of the Board of Directors stating:
  - (i) whether or not the interest due on the Debentures as at the due date for payment of interest last preceding the date of the report has been paid; and
  - (ii) the principal amount of the Debentures outstanding at such date;
- (p) [omitted];
- (q) it will immediately after receiving from the Auditor or any auditor of any Subsidiary of the Scheme or OIM any report of any description



relevant to the exercise and performance by the Trustee of its powers and duties under this Deed or under any legislation furnish the Trustee with a copy hereof;

- (r) it will take all reasonable steps to replace the Trustee under section 283AE of the Corporations Act as soon as practicable after it becomes aware that the Trustee:
  - (i) has ceased to exist; or
  - (ii) has not been validly appointed; or
  - (iii) cannot be a trustee under section 283AC of the Corporations Act; or
  - (iv) has failed or refused to act as a trustee;
- (s) it will ensure that any report given in accordance with this clause 7.2 and section 283BF of the Corporations Act is made in accordance with a resolution of its Directors and specified the date on which the report is made;
- (t) it will provide a copy of this Deed to a Debenture Holder or the Trustee if they request a copy;
- (u) it will lodge with ASIC a notice of the name of the Trustee within 14 days after it is appointed.

### **7.3 Representations by OIM**

OIM represents and warrants to the Trustee that:

- (a) OIM has entered into this Deed in its capacity as responsible entity of the Scheme under the Constitution;
- (b) OIM has full, complete and valid authority and power to enter into this Deed under the terms of the Constitution in the capacity of responsible entity under the Scheme;
- (c) it is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, 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;
- (d) this Deed is enforceable in accordance with its terms and is not void or voidable;
- (e) it has capacity unconditionally to execute and deliver and perform its obligations under this Deed, the Fixed and Floating Charge, the Mortgages and the Mortgage of Contractual Rights;
- (f) it has taken all necessary action to authorise its unconditional execution and delivery of and the performance and observance of its obligations under this Deed;
- (g) each authorisation from and filing and registration with a Government Body necessary to enable it to unconditionally execute and deliver and perform and observe its obligations under this Deed and carry on its principal business or activity has been obtained, effected and complied with;
- (h) the unconditional execution and delivery of and performance and observance by it of its obligations under this Deed does not contravene:

- (i) a law or directive from a Government Body;
  - (ii) the constitution or other constituent documents of OIM;
  - (iii) an agreement or instrument to which OIM is a party; or
  - (iv) an obligation of OIM to any other person;
- (i) no Event of Default or Potential Event of Default has occurred;
  - (j) there is no material litigation commenced or threatened which has not been disclosed to the Trustee;
  - (k) its payment obligations under each Transaction Document rank ahead of all its unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;

Each warranty and representation under this clause 7.3 will survive the execution of this Deed and be deemed to be repeated with reference to the facts and circumstances then existing on each Interest Calculation Date and the Maturity Date.

#### 7.4 Additional Covenants by OIM

In addition to the covenants in clause 7.2, OIM also covenants with the Trustee that:

- (a) it will not sell, dispose, permit to subsist any interest over or encumber the Land, Improvements, Horticultural Assets or Viticultural Assets (or agree or attempt to do so) as security (**Encumbrance**) for the payment of any borrowings unless:
  - (i) such Encumbrance ranks in priority below the relevant Mortgages, the Fixed & Floating Charge and Mortgage of Contractual Rights; and
  - (ii) the Encumbrance is subject to such terms and conditions the Trustee considers reasonably necessary or desirable to protect the interests of the Debenture Holders under the relevant Mortgages, the Fixed & Floating Charge, the Mortgage of Contractual Rights and the other Transaction Documents,

while any Debentures are Outstanding and not redeemed, unless interest has been disclosed in clause 4.11;

- (b) insure and cause to be insured and cause to be kept insured to the satisfaction of the Trustee with a reputable insurer on a replacement and/or reinstatement basis all of the Land and Improvements against fire and any other risks properly insurable against and effect such public risk and other insurances as should be effected by a prudent company engaged in a similar business and at all times pay or cause to be paid the premiums and other sums of money payable for all the above purposes and produce to the Trustee annually within 21 days of the end of each financial year evidence of compliance with this covenant and not do or permit or suffer to be done any act or thing which may prejudice any such insurance or vitiate any such insurance. Nothing in this paragraph requires OIM to effect crop insurance;
- (c) cause any insurance to be taken out in the names of OIM and the



Trustee and to insure their respective insurable interests in the Land and Improvements and the Trustee may, but OIM may not without the prior written consent of the Trustee, enforce, conduct, settle or compromise claims under any insurances in relation to the Land and Improvements for any amount exceeding \$1,000,000 or its equivalent, irrespective of whether the insurance also relates to other property;

- (d) subject to the provisions of the insurance, apply any moneys paid by an insurer under any insurance as follows:
  - (i) any money received or recovered under a claim involving the Land and Improvements, or any other claim for which the loss funds are payable to OIM must be held in a separate account for the Trustee and applied, at the option of OIM, but subject to OIM's obligations under any Occupancy Agreement:
    - (A) towards satisfaction of the Moneys Owning; or
    - (B) to the extent necessary, to repair, replace or reinstate the Land and Improvements or otherwise for the purpose for which the relevant insurance policy was maintained;
  - (ii) if required under the terms of a reinstatement policy or the terms of any Occupancy Agreement, OIM must apply all proceeds payable under the reinstatement policy to the reinstatement of its Land and Improvements;
  - (iii) OIM must ensure that any money received or recovered under a reinstatement policy is paid, if required under the terms of the policy, to the person entitled to payment under the contract for reinstatement of the Land and Improvements;
- (e) immediately deliver to the Trustee the Title Documents to that part of the Land which is from time to time subject to a Mortgage, it being acknowledged that the Trustee may have possession and control of those Title Documents until the Trustee is obliged to discharge the Mortgage and the rights of the Trustee under this paragraph 7.4(e) are subject to the right of the holder of any other Security Interest over the Land which ranks in priority before this document to have possession of those Title Documents;
- (f) keep so much of the Land and Improvements as are owned by it in good repair and in good working order, and promptly carry out any direction of the Trustee to remedy any defect in the condition of that Land and Improvements;
- (g) promptly pay when they become due for payment all Taxes relating to the Land and Improvements;
- (h) not cause any caveat to be lodged in respect of the Land and Improvements which would hinder the exercise of any right of the Trustee under a Mortgage, the Mortgage of Contractual Rights or the Fixed and Floating Charge;
- (i) duly comply with their obligations in relation to the Land and Improvements, including, without limitation, under any

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Encumbrance over the Land and Improvements, any law applicable to the Land and Improvements and any lawful direction from any Government Body;

- (j) it will apply for admission of the Debentures to quotation on the official list of the ASX within 7 days after the date of any Disclosure Document issued by it in respect of the Debentures;
- (k) to repay all Moneys Owing to Debenture Holders as soon as practicable if the Debentures are not admitted to quotation on the official list of the ASX Limited within 3 months after the date of the first Disclosure Document issued in respect of the Debentures.

#### **7.5 Trustee's Role in Respect of Events of Default or Potential Events of Default**

- (a) Notwithstanding anything else contained in this Deed other than paragraph 7.5(b), but always subject to its obligations under the Corporations Act, the Trustee is under no obligation at any time to consider whether any of the covenants contained in clauses 7.2 and 7.4 or the representations contained in clause 7.3 have been breached or whether there is any matter or thing that has occurred or is likely to occur that may give rise to an Event of Default or Potential Event of Default and, in the absence of express notice to the contrary, the Trustee is entitled to assume at all times that the covenants contained in clauses 7.2 and 7.4 and the representations contained in clause 7.3 have not been breached and are true and correct at all times.
- (b) Paragraph 7.5(a) does not relieve the Trustee from any obligation to monitor OIM's compliance with paragraphs 7.2(d), (e) and (f).

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### **8. REPORTS ETC. BY OIM**

#### **8.1 Maintenance of Register**

OIM hereby covenants with the Trustee that, within 90 days of the close of each financial year, it will cause a report certified by 2 Directors to be lodged with the Trustee stating:

- (a) whether or not OIM or its agents have duly maintained the Register; and
- (b) whether or not to the best of OIM's knowledge, information and belief it has become aware of any matter which is in its opinion relevant to the exercise and performance of the powers and duties imposed by this Deed upon the Trustee.

#### **8.2 Report by OIM**

- (a) OIM must, within one month after the end of each Quarter provide to the Trustee and ASIC a report signed by at least two Directors on behalf of all the Directors which sets out in detail any matters relating to that period adversely affecting the interests of Debenture Holders and, without limiting the generality of the foregoing, stating:
  - (i) whether or not since the end of the preceding period of three months (or, in the case of the first such report

furnished, since the date of this Deed) in the opinion of the Directors:

- (A) the limitations on the amount of Debentures which may be Outstanding at any one time under this Deed have been exceeded and, if they have been exceeded, particulars of issues exceeding those limitations;
- (B) OIM has complied with all the covenants and provisions binding upon them under the Global Debenture, the Debentures, this Deed, Mortgages, the Mortgage of Contractual Rights, the Fixed and Floating Charge, Chapter 2L of the Corporations Act and the Conditions, including paragraph 7.2(a);
- (C) any event has happened that has caused or could cause the Debentures or any provision of this Deed to become immediately enforceable and if so particulars of that event;
- (D) any circumstances have occurred that materially prejudice OIM and any of the Subsidiaries of OIM or any security or charge included in or created by the Global Debenture, Debentures, this Deed, Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge and if so, particulars of those circumstances;
- (E) there has been any substantial change in the nature of the business of OIM or its Subsidiaries since the issue of the Debentures that has not previously been reported and, if so, particulars of that change; and
- (F) where OIM has deposited money with, lent money to, or assumed any liability of, a company which is a Related Corporation of OIM, particulars of:
  - (1) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report, and
  - (2) the total amounts owing to OIM in respect of money so deposited or lent, and the extent of any liability so assumed as at the end of the period covered by the report;

distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but not including any deposit with, loan to, or liability assumed on behalf of, a company if that company has guaranteed the repayment of the Debentures issued pursuant to this Deed and has secured the guarantee by a charge over its property in favour of the Trustee

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for the Debenture Holders;

(G) any of the following events that happened in the Quarter:

- (1) the appointment of a guarantor;
- (2) the cessation of liability of a guarantor for the payment of the whole or part of the money for which it was liable under the guarantee;
- (3) a change of name of a guarantor; and

(H) the net amount outstanding on any advances at the end of the Quarter if it has created a charge where:

- (1) the total amount to be advanced on the security of the charge is indeterminate; and
- (2) the advances are merged in a current account with bankers, trade creditors or anyone else; and

(I) any other matters that may materially prejudice any security or the interests of the Debenture Holders.

(b) Where, during the period to which a report given under paragraph 8.2(a) relates:

- (i) a body corporate has become a guarantor of OIM's obligations under this Deed;
- (ii) any guarantor of OIM's obligations under this Deed has ceased to be liable for the payment of the whole or part of the money for which it is liable under any guarantee given by it; or
- (iii) any guarantor that has changed its name,

the report must so state and must give particulars of the matters so stated.

(c) If OIM creates a charge over the Scheme's Assets, other than the Fixed and Floating Charge, the Mortgages and the Mortgage of Contractual Rights, it must:

- (i) give the Trustee written details of the charge within 21 days after it is created; and
  - (ii) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else, give the Trustee written details of the amount of each advance within 7 days after it is made.
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## 9. DISCRETION, DUTIES AND LIABILITY OF TRUSTEE

### 9.1 Liability

- (a) The Trustee enters into this Deed only in its capacity as trustee of the Debenture Holders and in no other capacity. A liability arising under or in connection with this Deed or a Transaction Document is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed or any other Transaction Document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed or any other Transaction Document.
- (b) The parties other than the Trustee may not sue the Trustee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee.
- (c) The provisions of this clause 9.1 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets the subject of this Deed, as a result of the Trustee's failure to show the degree of care and diligence required of a trustee by the Corporations Act.
- (d) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed or any other Transaction Document or otherwise, has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person, other than a person appointed by the Trustee itself, will be considered failure to show the degree of care and diligence required of a trustee by the Corporations Act for the purpose of paragraph 9.1(d).
- (e) The Trustee is not obliged to do or refrain from doing anything under this Deed or any other Transaction Document (including incur any liability) unless the Trustee's liability is limited in a manner satisfactory to the Trustee in its absolute discretion.
- (f) A failure by the Trustee to comply with or a breach by the Trustee of any of its obligations under any Transaction Document will not be considered to be a failure to show the degree of care and diligence required of a trustee by the Corporations Act if the relevant failure or breach:
  - (i) arose as a result of a breach by a person other than the Trustee of a Transaction Document where the performance of the action by the other person, the non-performance of which gave rise to such breach, is a precondition to the Trustee performing the said obligation;
  - (ii) was in accordance with a lawful court order or direction or otherwise required by law; or



- (iii) was in accordance with an instruction or direction of the Debenture Holders given at a meeting of Debenture Holders duly convened and held in accordance with this Deed or the written consent or authority of Debenture Holders given in accordance with this Deed.
- (g) All of the terms, clauses and conditions of this Deed and any other Transaction Document are subject to this clause 9.1.

## 9.2 Information

- (a) All information and other matters provided to or obtained by the Trustee, a delegate or any officer, employee, professional adviser or other consultant of the Trustee under, in connection with or related to this Deed, the other Transaction Documents or any obligation, duty or power of the Trustee under this Deed (**the Information**) is confidential to OIM and its Related Corporations and may not be disclosed to any person other than as set out in paragraph 9.2(b) or (c).
- (b) Information which is in the public domain is not required to be kept confidential.
- (c) Information that would otherwise be required to be kept confidential may be disclosed:
  - (i) as (but only to the extent) required by this Deed or in connection with any obligation, duty or power of the Trustee under this Deed, a law or any judicial or regulatory body or authority;
  - (ii) to those officers, employees, delegates and professional advisers of the Trustee to whom the Trustee considers it is reasonably necessary to reveal the Information or any part of it; or
  - (iii) to a person approved of in writing by OIM.

## 9.3 Application of Funds

The Trustee will not incur any responsibility in respect of moneys subscribed by applicants for Debentures or be bound to see the due application of those moneys.

## 9.4 Directions from Debenture Holders

- (a) Where any matter is authorised or directed by:
    - (i) a resolution of Debenture Holders passed at a meeting of Debenture Holders duly convened and held in accordance with this Deed; or
    - (ii) the written consent or authority of Debenture Holders given in accordance with this Deed,
- the Trustee is bound to act in accordance with the authority, agreement or direction of the Debenture Holders and is released from any obligation or liability that would or might otherwise attach to the Trustee in relation to the subject matter of the Debenture Holders' resolution, direction or authority unless:
- (iii) the Trustee is of the opinion that the direction is inconsistent with the terms of the Debentures or the

provisions of the Trust Deed or the Corporations Act or is otherwise objectionable; and

- (iv) has either obtained, or is in the process of obtaining, an order from the Court under section 283HA of the Corporations Act setting aside or varying the direction.
- (b) The Trustee is continuously indemnified by the Debenture Holders in respect of all liabilities and expenses properly incurred or suffered by the Trustee by reason of acting in accordance with the authority or direction of the Debenture Holders.

## **9.5 Land & Improvements**

- (a) The Trustee will not be involved, or bear any responsibility to Debenture Holders, in relation to ensuring that OIM is entitled to become the owners of the Land and Improvements at the time the Trustee and OIM enter into a Mortgage or that the Mortgage is enforceable and at all times while the Trustee is trustee under this Deed it will be entitled to rely on the representation and warranty given by OIM in paragraph 7.3(c) of this Deed.
- (b) The Trustee or any of its Authorised Representatives may, upon giving 5 Business Days notice, enter at any reasonable time on any land or building occupied by OIM or forming part of the Scheme Assets subject to the Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge, or in which any goods that form part of the Scheme Assets subject to the Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge are located to:
  - (i) inspect their state and condition; and
  - (ii) inspect and take copies of or extracts from any Books that in any way relate to Scheme Assets subject to the Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge.

## **9.6 Duties**

The Trustee must:

- (a) exercise reasonable diligence to ascertain whether the Assets of the Scheme that are or should be available (whether by way of security or otherwise) will be sufficient to repay the Debentures when they become due;
- (b) exercise reasonable diligence to ascertain whether OIM has committed any breach of:
  - (i) the terms of the Global Debenture and the Debentures; or
  - (ii) the provisions of the Trust Deed; or
  - (iii) Chapter 2L of the Corporations Act;
- (c) do everything in its power to ensure that OIM remedies any breach known to the Trustee of:
  - (i) any terms of the Global Debenture, Debentures, Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge; or

- (ii) any provision of the Trust Deed; or
  - (iii) Chapter 2L of the Corporations Act;
- unless the Trustee is satisfied that the breach would not materially prejudice the Debenture Holders' interests or any security for the Debentures;
- (d) ensure that OIM complies with Part 2K of the Corporations Act to the extent that it applies to the Debentures;
- (e) notify ASIC as soon as practicable if:
  - (i) OIM has not complied with sections 283BE, 283BF or subsections 318(1) or (4) of the Corporations Act; or
  - (ii) the guarantors (if any) have not complied with section 283CC of the Corporations Act;
- (f) notify ASIC and OIM as soon as practicable if the Trustee discovers that it cannot be a trustee under section 283AC of the Corporations Act;
- (g) give the Debenture Holders a statement explaining the effect of any proposal that OIM submits to the Debenture Holders before any meeting that:
  - (i) the court calls in relation to a scheme under subsections 411(1) or (1A) of the Corporations Act; or
  - (ii) the Trustee calls under subsection 283EB(1) of the Corporations Act;
- (h) apply to the court for an order under section 283HB of the Corporations Act if OIM requests it to do so.

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## 10. APPLICATION OF MONEYS RECEIVED BY TRUSTEE

If an Event of Default occurs and the Trustee recovers any amount after taking such action as is permitted under this Deed, the Transaction Documents and the Conditions, such amounts must be held by the Trustee upon trust to apply them (subject to Condition 5):

- (a) first, in payment of all costs, charges and expenses incurred and payments made by the Trustee in or about the execution and administration or enforcement of the trusts of this Deed and the Transaction Documents (including all remuneration payable to the Trustee);
- (b) secondly, in or towards payment *pari passu* and rateably of the Moneys Owing in respect of all Outstanding Debentures; and
- (c) thirdly, in payment of the balance (if any) to OIM without prejudice to the provisions of this clause 10.

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## 11. AUTHORISED INVESTMENTS

Any moneys which under the trusts contained in this Deed ought to or may be invested by the Trustee may be invested in the name or under the control

of the Trustee in any Authorised Investment that the Trustee may, in its absolute discretion, think fit and the Trustee may at any time or times vary any such investments for or into other Authorised Investments and will not be responsible for any loss occasioned thereby, whether by depreciation in value or otherwise.

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## **12. EVENTS AND EVIDENCE OF DEFAULT**

### **12.1 Events of Default**

Each of the following is an Event of Default:

- (a) if OIM does not repay or otherwise redeem any Debenture within 14 days after the day upon which such repayment or redemption becomes due in accordance with the Conditions of such Debenture;
- (b) if OIM does not pay any interest or other moneys (except principal moneys) which become due and payable by OIM pursuant to this Deed, in the case of interest, within 14 days after it becomes due for payment and in the case of any such other moneys, within 14 days after demand therefore upon OIM;
- (c) if OIM is in breach of paragraph 7.2(a), as established by the Last Statement of Financial Position, and that breach has not been remedied within 30 days of receiving written notice of the breach from the Trustee requiring it to be remedied;
- (d) where, except for the purposes of a solvent reconstruction or amalgamation:
  - (i) an application to a Court (other than a frivolous or vexatious application or an application which is not withdrawn, stayed or otherwise rendered no longer applicable within 14 days or such longer period as the Trustee may allow) or an order is made, proceedings are commenced (other than proceedings which are not withdrawn, stayed or otherwise rendered no longer applicable within 14 days or such longer period as the Trustee may allow) or a resolution is passed for:
    - (A) the winding up (whether under section 461 of the Corporations Act or otherwise), dissolution, official management or administration of OIM; or
    - (B) OIM to enter into any arrangement, compromise or composition with or assignment for the benefit of any of their creditors or any class of them; or
  - (ii) OIM ceases or suspends the conduct of all of its business or disposes of all of its assets or it threatens to do so;
- (e) with respect to any substantial part of the Scheme Assets:
  - (i) a receiver, receiver and manager, Administrator or Controller is appointed; or
  - (ii) any distress, attachment or execution is levied or enforced;
- (f) if OIM is unable to pay its debts generally;

- (g) if financial accommodation provided to OIM in excess of \$5,000,000 or its equivalent becomes due and owing or capable of being declared due and owing before its stated maturity other than by the exercise of an option of OIM to pay it before its maturity;
- (h) if OIM fails to pay when due and owing any financial accommodation provided to it in excess of \$5,000,000 or its equivalent;
- (i) if any of the Transaction Documents are terminated;
- (j) if a representation, warranty or statement made or deemed to be made by OIM in a Transaction Document or any document contemplated by or relating to a Transaction Document is untrue or misleading in any material respect;
- (k) if the Fixed and Floating Charge, the Mortgage of Contractual Rights or a Mortgage is void, voidable or otherwise unenforceable by the Trustee or is claimed to be so by OIM, as the case requires;
- (l) if a Security Interest which a Mortgage, the Mortgage of Contractual Rights or Fixed and Floating Charge purports to constitute ceases to have the priority which it purports to have under the Mortgage, the Mortgage of Contractual Rights or Fixed and Floating Charge or under any agreement between OIM and the Trustee or becomes ineffective as security for the payment of the moneys or the performance or observance of the obligations which it purports to secure, otherwise than by any act of the Trustee;
- (m) if an authorisation from a Government Body necessary to enable:
  - (i) OIM to carry on its principal business or activity; or
  - (ii) the Trustee to exercise its rights under the Transaction Documents,
 ceases to be in full force and effect, other than the Trustee ceasing to be a Trustee Company;
- (n) if it becomes unlawful for OIM to perform or observe any of its material obligations under a Transaction Document;
- (o) if any person who holds a Security Interest over the Land or Improvements becomes entitled to exercise a right under that Security Interest to recover any moneys the payment of which is secured by that Security Interest or enforce any other obligation the performance or observance of which is secured by it;
- (p) if an investigation is instituted under the Corporations Act or other legislation into, or an inspector is appointed to investigate, the affairs of OIM other than an investigation, post-vet or surveillance visit by ASIC as part of its normal monitoring of responsible entities, issuers of securities and disclosure documents;
- (q) if OIM breaches any covenant contained in paragraph 7.2(d), (e), (f), (g) or (q) and fails to rectify the breach within 21 days of receiving notice from the Trustee requiring it to remedy such breach;
- (r) if the Debentures cease to be listed for quotation on the ASX as a direct consequence of the action of OIM; or



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- (s) if without the Trustee's prior written consent, any alteration is made to the terms and conditions of the Constitution which might, in the Trustee's opinion, detrimentally affect the Debenture Holder's position under this Deed.

**12.2 Only the Trustee May Enforce the Provisions of this Deed**

Only the Trustee may enforce the provisions of this Deed, the Global Debenture, the Debentures and the other Transaction Documents (including without limitation applying for liquidation, lodging a proof or claim or seeking damages) on behalf of Debenture Holders, except that a Debenture Holder, subject to clause 12.5, may proceed directly against OIM to enforce the performance of any of the provisions of this Deed, the Global Debenture, the Debentures or any of the other Transaction Documents, if the Trustee has failed to do so after being directed to do so by resolution passed at a meeting of Debenture Holders held under sections 283EA, 283EB or 283EC of the Corporations Act and at least 21 days have elapsed since that direction was given to the Trustee.

**12.3 Evidence of Default**

Should the Trustee in accordance with this Deed, the Conditions or any of the other Transaction Documents take any proceedings, proof that default has been made in paying any other Moneys Owing to the Debenture Holders of any Debentures will (unless the contrary be proved) be sufficient evidence that default has been made as regards all other Debentures in respect of which a corresponding payment is then due.

**12.4 Judgment to be Held in the Name of the Trustee**

Any judgment or amount obtained by or on behalf of Debenture Holders in respect of Moneys Owing on any Debentures as a result of proceedings instituted by, or to which the Trustee is a party, under this clause 12 must be entered or held in the name of the Trustee and will be held by or on behalf of the Trustee under and for application in accordance with this Deed and the Conditions.

**12.5 Circumstances in Which Debenture Holders May Take Action**

No Debenture Holder may take action or institute proceedings against OIM for the enforcement of any provision of this Deed, the Global Debenture, the Debentures or any of the other Transaction Documents (including in particular recovery of Moneys Owing and including without limitation applying for Liquidation or lodging a proof or claim or seeking damages) unless the Trustee would in similar circumstances be entitled to take such action or institute such proceedings under this Deed or any of the other Transaction Documents.

**12.6 Trustee to be Indemnified**

The Trustee need not take any proceedings under this Deed or any of the other Transaction Documents unless it is indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

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### 13. PAYMENT TO DEBENTURE HOLDERS

Any payment to be made in respect of the Debentures by OIM or the Trustee may be made in the manner provided in the Conditions and any payment so made will be a good discharge to OIM or the Trustee, as the case may be.

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### 14. PROVISIONS SUPPLEMENTAL TO TRUSTEE ACT 1958

It is hereby declared that, in addition to the powers conferred by the *Trustee Act 1958 (Vic)* or any other law that grants powers to or regulates the conduct of trustees, the following provisions apply:

- (a) the Trustee may in relation to this Deed act or decline to act on the opinion or advice of or any information obtained from any lawyer, valuer, accountant, surveyor, broker, auctioneer or other expert and whether obtained by OIM or its Related Corporations or the Trustee or otherwise and so that any such advice may be conveyed by any written or electronic form of communication, including facsimile or electronic mail and is not to be responsible for any loss occasioned by so acting or any error in such electronic mail or facsimile transmission or the same not be authentic;
- (b) the Trustee is at liberty to accept a certificate given or statement made by any barrister, solicitor, attorney, auditor or officer of OIM or its Related Corporations as the case may be and is not bound to call for further evidence or be responsible for any loss occasioned by failure to do so;
- (c) the Trustee is not under any liability whatsoever except for its wilful default, fraud, gross negligence or breach of trust or except for a default or breach of trust wilfully committed by its employee or employees acting as such;
- (d) without prejudice to the right of indemnity given by law to trustees, the Trustee is entitled to be indemnified by OIM in respect of all liabilities and expenses reasonably incurred in the execution or purported execution of the trusts hereof or the exercise or attempted exercise of any of the powers, authorities and discretions vested in it under this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done relating to this Deed, other than to the extent to which a claim arises out of the wilful default, fraud, gross negligence or breach of trust of the Trustee or the Trustee is entitled to be indemnified by the Debenture Holder under paragraph 9.4(b) and the Trustee may retain and pay out of any moneys in its hands all sums necessary to effectuate such indemnity;
- (e) the Trustee may unless it is directed in writing to the contrary by the holders for the time being of not less than three-quarters of the amount of Outstanding Debentures or is directed to do so by a resolution of Debenture Holders passed at a meeting held under sections 283EA, 283EB or 283EC of the Corporations Act and at any time whenever it thinks it expedient in the interests of the Debenture Holders to do so waive on such terms and conditions as it deems expedient any breach by OIM of any of the covenants

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obligations conditions or agreements contained in this Deed.

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## **15. DELEGATION BY TRUSTEE AND APPLICATIONS TO THE COURT**

In addition to the powers conferred on the Trustee by law or otherwise in this Deed, the Trustee may in its discretion:

- (a) delegate from time to time and at any time and to any person or persons any of the trusts, powers, authorities or discretions vested in the Trustee which cannot conveniently be exercised by it or through its employees upon such terms and conditions and under such regulations (including the giving of power to sub-delegate) as the Trustee may think fit;
- (b) instead of acting personally or in the case of a company through its permanent employees employed in the carrying out of any of the trusts under this Trust Deed or in the conduct of the business of the company as the case may be and at the expense of the company as the case may be appoint an agent to transact all business and do all acts required to be done under or pursuant to this Deed including the receipt and payment of money;
- (c) delegate from time to time and at any time to one or some of its officers any of the trusts, powers, authorities and discretions vested in the Trustee;
- (d) apply to the Court for directions in relation to any questions arising either before or after Moneys Owning have become payable and assent to and approve of or oppose any application to the Court made by or at the instance of any Debenture Holder;
- (e) at any time after Moneys Owning become payable apply to the Court for an order that the trusts hereof be carried into execution under the direction of the Court and for any other order or directions in relation to the administration of the trusts hereof as the Trustee may deem expedient.

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## **16. TRUSTEE'S REMUNERATION**

OIM covenants with the Trustee:

- (a) that OIM must pay to the Trustee by way of remuneration for its services as Trustee an annual fee of \$20,000 (CPI Adjusted) payable in arrears by six-monthly payments (except for the first and last payments pursuant to this Deed which is proportionate to the number of days in the relevant period) for the December and June six months in each year, with the payments to be made within one month of the end of each six months and;
- (b) that without limiting the generality of the other provisions of this Deed, OIM will pay to the Trustee on demand all costs, charges and expenses reasonably and properly incurred by or on behalf of the Trustee:
  - (i) in or about the preparation, execution and stamping of the

- Transaction Documents and any deed amending or supplementing the Transaction Documents;
- (ii) in or in connection with the carrying out by the Trustee of any right, power or privilege by the Transaction Documents, the Conditions or law conferred on the Trustee;
  - (iii) in or in connection with any breach or default in the observance or performance by OIM of the covenants and obligations of the Transaction Documents or the Conditions, including (without limiting the generality of the foregoing) the rights powers and privileges referred to in clause 9;
  - (iv) in or in connection with the convening and holding of any meeting of Debenture Holders or the carrying out of any directions or resolutions of any such meeting;
  - (v) in or in connection with or incidental to exercising its powers or carrying out its obligations under the Transaction Documents or under any statute of a special or unusual nature;
  - (vi) in relation to any act performed by the Trustee as agent of or on behalf of OIM, including without limitation, maintaining or causing to be maintained the Register;
- (c) that the remuneration and payments pursuant to paragraphs 16(a) and 16(b) and any indemnities granted to the Trustee under this Deed, including paragraph 14(d), must be paid in priority to any claim by any Debenture Holder and continue to be payable until the trusts are finally wound up and whether or not the trusts are in the course of administration by or under the order of the Court and the Trustee may retain and pay to itself all such remuneration and payments and any moneys for the time being in its hands upon the trusts of this Deed or any guarantee pursuant to this Deed;
- (d) without limiting the generality of this clause 16, the Trustee may, in any case where it is entitled under paragraph 14(d) or this clause 16 to be indemnified or paid by OIM if it incurs a cost, charge, liability or expense (including all Taxes), require OIM to advance to it before that cost, charge, liability or expense is incurred a sum sufficient to cover that cost, charge, liability or expense. A certificate signed by an authorised officer of the Trustee stating the amount of any advance required under this paragraph will, in the absence of manifest error, be conclusive and binding on the parties to this Deed.

For the purposes of this clause 16 "CPI Adjusted" on a specified day, means increased in the same proportion as the CPI published immediately before the specified day bears to the CPI published for the 31 December 2003 quarter.

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## 17. NOTICES

- (a) Any Notice given under or pursuant to this Deed or the other

Transaction Documents must be in writing and be deemed duly given or made if delivered or sent by post or facsimile transmission or electronic mail as follows:

(i) The Trustee

Permanent Nominees (Aust.) Limited  
Level 3, 151 Rathdowne Street  
Carlton Victoria 3053  
Facsimile: (03) 9639 0286  
Email: [ssilavecky@trust.com.au](mailto:ssilavecky@trust.com.au)  
Attention: Mr Stenick Silavecky

(ii) Orchard Investments Management Limited

Level 2, 613, St Kilda Road  
Melbourne Victoria 3004  
Facsimile: (03) 9533 2588  
Email: [michael.emery@first-state.com.au](mailto:michael.emery@first-state.com.au)  
Attention: Mr Michael Emery

Any party may change its address or facsimile numbers for the purposes of this Deed and the other Transaction Documents by giving notice or such change to the other parties pursuant to the provisions of this paragraph.

- (b) Any notice, demand or other communication is deemed, in the absence of proof to the contrary, to have been received by the person to whom it was sent.
- (c) Any notice given by the Trustee or by OIM to a Debenture Holder must be given in accordance with Condition 10.
- (d) In this paragraph:
  - (i) notice includes a demand, consent, request or other communication under or pursuant to a provision of this Deed, the Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge ;
  - (ii) given, in relation to a demand, means made; and
  - (iii) cognate expressions have cognate meanings.
- (e) A notice, demand or other communication that complies with this clause is regarded as given and received:
  - (i) if it is sent by post – it is deemed received if posted within Australia to an Australian address on the second Business Day after posting and in any other case, on the seventh Business Day after posting;
  - (ii) if it is sent by facsimile – it is deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number. A communication given by facsimile is deemed given in the form transmitted unless the message is not fully received in legible form and the addressee immediately notifies the sender of that fact;
  - (iii) if it is sent by electronic mail – it is deemed received:
    - (A) if the electronic message travels directly to the



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- addressee, at the time when it enters the addressee's system; or
- (B) in all other cases, at the time when the electronic message enters the first system outside the control of the sender.
- (f) If a communication to a party is received by it:
- (i) after 5:00pm (local time in the place of receipt); or
- (ii) on a day which is not a Business Day,
- it is deemed to have been received at the commencement of the next Business Day.
- (g) OIM may rely on the notice, demand or other communication received from the Trustee which it believes to be genuine and correct without further verification from the Debenture Holders.
- (h) The Trustee may rely on the notice, demand or other communication received from OIM which it believes to be genuine and correct without further verification from OIM.
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## **18. ALTERATION AND ASSIGNMENT**

### **18.1 Alteration by OIM and the Trustee**

At any time and from time to time OIM and the Trustee may jointly modify, alter, amend or add to this Deed and the Conditions:

- (a) if in their opinion such modification, alteration, amendment or addition is:
- (i) of a formal or technical nature;
- (ii) made to correct a manifest error;
- (iii) expedient for the purpose of enabling the Debentures to be listed for quotation on any stock exchange and is otherwise not considered by the Trustee to be materially prejudicial to the interests of Debenture Holders; or
- (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority; or
- (b) if such modification, alteration, amendment or addition is authorised by a Special Resolution passed at a meeting of Debenture Holders held pursuant to the provisions of the Rules.

### **18.2 Changes to Trust Deed**

The Trustee is bound to concur in any modification or alteration to, or amendment of, or addition to, this Deed or the Conditions which is proposed or agreed to by OIM and which is assented to, authorised, sanctioned or directed by a Special Resolution passed at a meeting of Debenture Holders held pursuant to the Rules except where the modification, alteration, amendment or addition would adversely affect:

- (a) the rate of remuneration of the Trustee prescribed by this Deed;
- (b) any of the immunities or indemnities of the Trustee under this Deed;

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or

- (c) would impose an additional duty or liability on the Trustee.

The Trustee will be indemnified by OIM for its reasonable costs and expenses of and incidental to any such modification, alteration, amendment or addition and in convening or holding any such meeting.

### **18.3 Assignment**

- (a) Unless the Corporations Act requires, OIM may only dispose of, declare a trust over or otherwise create an interest in its rights under any Transaction Document with the consent of the Trustee, which must not be unreasonably withheld.

- (b) The Trustee will not be liable for:

- (i) any increased costs and expenses;
- (ii) any costs or expenses incurred by OIM; or
- (iii) any increased liability arising from this Deed,

incurred as a result of any disposal, declaration of trust or creation of rights under the Transaction Documents in accordance with paragraph 18.3(a).

- (c) In addition to its rights under clause 19.1, and subject to paragraph 18.3(d), the Trustee may dispose of, declare a trust over or otherwise create an interest in its rights under any Transaction Document with the consent of OIM, which must not be unreasonably withheld, and may disclose to any potential holder of the right or interest any information relating to any Transaction Document or any party to any of them.

- (d) OIM will not be liable for:

- (i) any increased costs and expenses;
- (ii) any costs or expenses incurred by the Trustee; or
- (iii) any increased liability arising from this Deed,

incurred as a result of any disposal, declaration of trust or creation of rights under the Transaction Documents in accordance with paragraph 18.3(c).

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## **19. RESIGNATION AND REMOVAL AND APPOINTMENT OF TRUSTEE**

### **19.1 Resignation of Trustee**

Subject to the Corporations Act, the Trustee may resign at any time without assigning any reason. However, the resignation of the Trustee will not take effect until the appointment of a new Trustee is made and approved as provided in this paragraph.

### **19.2 Removal of Trustee**

Subject to clause 19.4, OIM may remove the Trustee from office by notice in writing addressed to the Trustee only if:

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- (a) the Trustee ceases to be a Trustee Company; or
  - (b) a Special Resolution of Debenture Holders determines that the Trustee should be removed; or
  - (c) the Trustee ceases to carry on business (other than its capacity as trustee of another trust), enters into a scheme of arrangement (other than for the purposes of or in connection with a solvent reconstruction or amalgamation) or goes into liquidation, provisional liquidation, official management or administration or has a receiver or receiver and manager or an Administrator or Controller appointed over any part of the assets or undertakings of the Trustee (not being assets or undertakings of the Trustee held in its capacity as trustee of another trust) which is not removed or withdrawn within 30 days after the date of the appointment.

### **19.3 Appointment of New Trustee**

- (a) The power of appointing a new Trustee is vested in OIM, but any Trustee so appointed must be a Trustee Company and must prior to appointment be approved by an Ordinary Resolution of Debenture Holders passed in the manner provided in Schedule 3.
- (b) OIM must promptly call a meeting of Debenture Holders for the purpose of approving an appointment of a new Trustee under clauses 19.1 or 19.2.
- (c) OIM must exercise its power of appointment promptly upon receiving notice of the resignation the Trustee under clause 19.1.

### **19.4 Trustee Will Not Cease to be Trustee Until New Trustee Has Been Appointed**

Despite anything contained in this clause 19, the Trustee covenants with the intent that the benefit of the covenant will enure for the Debenture Holders that it will not cease to be the Trustee unless:

- (a) it has given OIM at least 4 months prior written notice; and
- (b) a Trustee Company has been appointed in its place to act as the new Trustee.

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## **20. REGISTER OF DEBENTURES**

### **20.1 Establish Register of Debentures**

OIM must establish a register of the Debentures in accordance with the Corporations Act, the Listing Rules and the SCH Business Rules. There must be recorded in the Register the names and addresses of the Debenture Holders and the date of issue or transfer of such Debentures and the amount of Debentures held by each such Debenture Holder and the face value of these Debentures and as regards Debentures no longer Outstanding particulars of their redemption and such other details as required by the Corporations Act, Listing Rules or SCH Business Rules.

### **20.2 Register conclusive**

Subject to the Listing Rules, SCH Business Rules and the Corporations Act:

- (a) the Register will, in the absence of manifest error, be conclusive as

to the identity of Debenture Holders and the face value of Debentures they hold from time to time. If there is any inconsistency with any register kept by OIM, the Register will prevail;

- (b) a person whose name is entered on the Register as a Debenture Holder will remain a Debenture Holder for the purposes of this Deed until that name is removed from the Register by the Trustee with the consent of the Debenture Holder. 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) Debenture Holders 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 OIM will recognise any other interest in any Debenture (even if either of them has notice of any such interest).

### **20.3 Inspection of the Register of Debentures**

Subject to the Corporations Act, the Listing Rules and SCH Business Rules, the Register must be open at all reasonable times during business hours for the inspection of the Trustee and of any Debenture Holder or Debenture Holder's legal personal representatives or any person authorised in writing by it or them respectively and, upon the request of any such person and at the expense of such person, OIM must provide to such person an extract from the Register, or a document which sets out the relevant Debenture Holder's entry in the Register, as soon as practicable after the making of any such request. No notice of any trust whether expressed or implied or constructive will be entered in the Register.

### **20.4 Copy of the Register of Debentures to be Provided to Trustee on Request**

OIM must provide, or arrange for the Registrar to provide, a copy of the Register to the Trustee within 5 Business Days of receiving a written request from the Trustee.

### **20.5 Delegation by OIM in Respect of the Register of Debentures**

- (a) OIM may delegate any of its powers and obligations in respect of the Register provided that OIM will be and will remain liable for all acts and omissions of any delegate under this paragraph as if those acts or omissions were its own.
- (b) If OIM delegates any of its powers and obligations in relation to the Register to the Trustee, the Trustee will perform, and be liable for the performance of, those obligations only as OIM's agent and not in its capacity as Trustee.
- (c) The Trustee will not be considered, in the absence of express notice, to be aware of any matter which is relevant to the exercise and performance of its powers and duties under this Deed in its capacity as Trustee only by reason of it being appointed as OIM's

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agent to act as Registrar.

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## **21. PAYMENTS BY OIM OR TRUSTEE**

Whenever in respect of any of the Debentures registered in the name of any Debenture Holder in consequence of:

- (a) the death of such Debenture Holder;
- (b) the non-payment of any Taxes by such Debenture Holder;
- (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the legal representative of such Debenture Holder by or out of the Debenture Holder's estate;
- (d) any other act or thing,

any law for the time being of Australia or any State or Territory of Australia or any other country or place imposes or purports to impose any immediate or future or possible liability on OIM or the Trustee to make any payments to any government or taxation authority, OIM or the Trustee, as the case may be, in respect of such liability is to be indemnified by such Debenture Holder and the Debenture Holder's executors and administrators and any moneys paid by OIM or the Trustee in respect of such liability may be recovered by action from such Debenture Holder and the Debenture Holder's executors and administrators as a debt due to OIM or the Trustee, as the case may be, and OIM or the Trustee, (as the case may be, is entitled to set off the amount of such liability against any amount due to the Debenture Holder under this Deed or the Conditions. Nothing herein contained prejudices or affects the right or remedy which any such law may confer or purport to confer on OIM or the Trustee and as between OIM or the Trustee and every Debenture Holder and the Debenture Holder's legal representatives and estate wheresoever constituted or situate. Any right or remedy which such law confers on OIM or the Trustee is enforceable by it.

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## **22. DETERMINATION BY TRUSTEE**

The Trustee may determine as between itself and the Debenture Holders all questions and matters of doubt arising in relation to any of the provisions of this Deed and every such determination made in good faith whether upon a question actually raised or implied in the acts or proceedings of the Trustee is conclusive and binds all Debenture Holders.

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## **23. RELEASE OF OIM**

Upon the Trustee receiving a certificate signed by the Auditor certifying that all the Moneys Owning have been paid or satisfied, and upon payment or retention of all costs, charges, moneys and expenses incurred by or payable to the Trustee, the Trustee, must at the request and cost of OIM execute a deed releasing OIM from the trusts, powers, authorities and provisions of the Transaction Documents.

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## **24. DEALINGS BY TRUSTEE**

### **24.1 Investments by Trustee**

Subject to the Corporations Act, nothing in this Deed is deemed to prohibit the Trustee or where the Trustee is a corporation any Related Corporation of the Trustee (all in this clause where the context permits being included in the expression Trustee) from being a member of the Scheme or the Scheme's Related Corporations or from being a Debenture Holder or from acting in any representative capacity for a Debenture Holder and in particular and without prejudice to the generality of the foregoing it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity; nor will the Trustee acting in any such capacity be deemed in breach of any of the obligations arising out of the fiduciary relationship between the Trustee and OIM as responsible entity of the Scheme or the Trustee and the Debenture Holders hereby established or otherwise imposed or implied by law.

### **24.2 Transactions Entered into by the Trustee**

- (a) The Trustee is not by reason of its fiduciary capacity in any way precluded from making any contracts or entering into any transactions with any person in OIM or its Subsidiaries (collectively in this paragraph called the "**OIM Entities**") or with itself as Trustee in the ordinary course of business of the Trustee or from undertaking any assurance, insurance, financial or agency services for the OIM Entities or for itself as Trustee.
- (b) Without prejudice to the generality of these provisions, it is expressly declared that such contracts and transactions include any contracts or transactions in relation to the subscription or placing of or any other dealing with any stocks, shares, debenture, stock debentures or other security of the OIM Entities or any contract or loan or deposit or other contract or transaction which any assurance or insurance company not being a trustee of this Deed could or might have entered into with the OIM Entities or with itself as trustee and the acceptance or holding of office of trustee for the holders of any debentures or debenture stock or other securities (whether secured or unsecured) issued by the OIM Entities.
- (c) The Trustee is not accountable either to the OIM Entities or the Debenture Holders for any profits arising from any such contracts, transactions or offices.

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## **25. INCORPORATION OF SCHEDULES**

The provisions contained in the Schedules have full effect in the like manner as if they had been incorporated in this Deed.

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## **26. MEETINGS OF DEBENTURE HOLDERS**

Meetings of the Debenture Holders must be held and be regulated in accordance with the Rules.

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## 27. STAMP DUTY

OIM covenants with the Trustee that it will indemnify the Trustee and the Debenture Holders against any stamp duty (including penalty) in respect of this Deed and Transaction Documents or the creation or issue of or the subscription for Debentures or the Global Debenture and agrees that payment of any such duty by the Trustee or a Debenture Holder is not a condition precedent to the enforcement of such indemnity.

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## 28. GOODS AND SERVICES TAX

- (a) If any supply made by a party (**Supplier**) to another party (**Recipient**) under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply is exclusive of GST (the **GST Exclusive Amount**) and not the Price for that taxable supply.
  - (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
  - (c) GST payable under paragraph 28(b) must be paid by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
  - (d) The right of a Supplier to payment under this clause 28 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
  - (e) Subject to paragraph 28(g), if a payment to satisfy a claim or a right to claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 28(b).
  - (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
  - (g) If a party has a claim for, or a right to recover, under or in connection with this Deed, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
  - (h) This clause 28 takes precedence over any other term or condition of this Deed to the extent of any inconsistency.
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## 29. CONFIDENTIALITY

A party must not disclose any information concerning the contents of, or the transactions contemplated by, this Deed or any Transaction Document to any person who is not a party, except to the extent that:

- (a) the disclosure is expressly permitted by a Transaction Document;
- (b) the other party consents to the disclosure;
- (c) the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
- (d) the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business;
- (e) the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
- (f) the disclosure is necessary to comply with a directive or request of any Government Body or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
- (g) the disclosure is necessary or desirable to obtain an authorisation from any Government Body or stock exchange; or
- (h) the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Body or stock exchange.

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## 30. GOVERNING LAW

This Deed is governed by and is to be construed in accordance with the laws of Victoria. OIM and the Trustee submit to the non-exclusive jurisdiction of the courts of Victoria and all courts of appeal from them.

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## 31. GROWERS' RIGHTS AND INTERESTS

- (a) The Trustee acknowledges that the Land and Improvements do not and will not include the Citrus Crops, Grape Crops or any Other Crops derived from the Projects as they remain the property of:
  - (i) the participants in the Projects;
  - (ii) the responsible entities and managers of the Projects and their nominees;
  - (iii) any lessee or licensee of a person specified in paragraphs 31(a)(ii); or
  - (iv) any other person who derives title to the Citrus Crops, Grape Crops or Other Crops derived from the Projects through any of the persons described in paragraphs 31(a)(i) to (iii).
- (b) The Trustee acknowledges and agrees that all rights and interests of:

- (i) the responsible entities and managers of the Projects and their nominees;
- (ii) the participants in a Project; and
- (iii) anyone claiming through the persons specified in paragraphs 31(b)(i) to (ii),

to use the Land and Improvements under the terms of any Occupancy Agreements, lease, sub-lease, licence and other rights of occupancy granted for the purpose of the Projects, whether those rights exist at the date of this Deed, the Fixed and Floating Charge, the Mortgage of Contractual Rights or the Mortgages or arise subsequently, have priority over the rights of the Trustee and consents to the rights of the persons described in paragraphs 31(b)(i) to (iii) having such priority.

(c) The Trustee acknowledges the grant of:

- (i) the leases, sub-leases, licences and other rights of occupancy for the purpose of the Projects, of any Land and Improvements or part thereof to the persons described in paragraphs 31(b)(i) to (iii); and
- (ii) the Occupancy Agreements for the purpose of the Projects,

whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of this Deed, the Fixed and Floating Charge, the Mortgage of Contractual Rights or the Mortgages or arise subsequently.

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## Executed in Melbourne as a Deed

Executed by ORCHARD  
INVESTMENTS MANAGEMENT  
LIMITED ACN 105 684 231 in  
accordance with section 127 of  
the Corporations Act:

  
\_\_\_\_\_  
Signature of Director

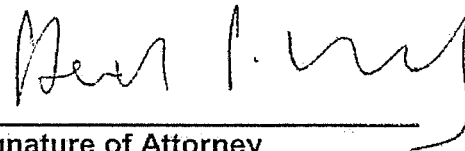
MICHAEL EMERY  
\_\_\_\_\_  
Full Name

  
\_\_\_\_\_  
Signature of Director

JOEL RABINOWICZ  
\_\_\_\_\_  
Full Name

SIGNED SEALED and DELIVERED for )  
and on behalf of PERMANENT )  
NOMINEES (AUST.) LIMITED ACN. )  
000 154 441 by its Attorney STENICK )  
SILAVECKY pursuant to a Power of )  
Attorney dated 17/10/2003 )  
and who declares that he has not )  
received any notice of the revocation )  
of such Power of Attorney in the )  
presence of:

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Signature of Attorney

  
\_\_\_\_\_  
Full Name



**SCHEDULE 1**  
**GLOBAL DEBENTURE**

Orchard Investments Management Limited (ACN 105 684 231) (OIM), the responsible entity of the Timbercorp Orchard Trust, covenants with each Debenture Holder for the time being and from time to time to pay to that Debenture Holder in accordance with and subject to the Conditions the Moneys Owing which may be payable to that Debenture Holder in respect of Debentures registered in the name of the Debenture Holder, on the dates and otherwise in accordance with the Conditions applicable to those Debentures.

This Global Debenture is issued on and subject to the Conditions and the Trust Deed.

Terms defined in the Trust Deed dated on or about 2003 made between OIM and the Trustee (as may be amended from time to time) have the same meanings when used in this Global Debenture.

Executed as a deed poll in Victoria by OIM on 2003

EXECUTED by ORCHARD )  
INVESTMENTS MANAGEMENT )  
LIMITED in accordance with )  
section 127 of the Corporations )  
Act:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Full Name

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## **SCHEDULE 2**

### **CONDITIONS OF ISSUE OF THE DEBENTURES WHICH CONSTITUTE THE ISSUE REFERRED TO IN CLAUSE 3 OF THE TRUST DEED**

Terms used in these Conditions have the same meaning as those defined in the Trust Deed.

#### **1. FORM, DEFINITION AND TITLE**

##### **1.1 Constitution under Trust Deed**

The Debentures are debt obligations of OIM as responsible entity of the Scheme to the Trustee as trustee for the Debenture Holders constituted under the Global Debenture.

##### **1.2 Denomination**

The obligations of OIM under the Global Debenture are divided into Debentures with each Debenture entitling a Debenture Holder to receive from OIM the principal and interest moneys in respect of such Debenture. Each Debenture is a separate promise of OIM. OIM issues Debentures by entering those Debentures on the Register in the name of the Debenture Holder. The number of Debentures at any time is the number of Debentures then entered on the Register.

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#### **2. ISSUE**

##### **2.1 Face Value**

The Debentures will be issued with a principal amount of \$100 each and must be paid for in full by the subscriber on application.

##### **2.2 Issue Date**

Debentures will be issued on the Issue Date.

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#### **3. STATUS**

The Debentures constitute direct obligations of OIM ranking *pari passu* amongst themselves and ahead of all unsecured creditors.

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#### **4. PAYMENTS GENERALLY**

##### **4.1 Payments to Debenture Holders**

All payments in respect of the principal money and interest and other amounts payable to Debenture Holders:

- (a) will be made to Debenture Holders according to the particulars recorded in the Register on the relevant Record Date or Redemption Calculation Date, as the case requires immediately

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before the day on which the payment is due;

- (b) are subject in all cases to the provisions of the Trust Deed and to any fiscal and all other applicable laws and regulations and normal banking practice; and
- (c) must be made free and clear of, and without deduction for, or by reference to, any present or future Taxes of Australia or any political subdivision or taxing authority of either of them, unless required by law, such as where a Debenture Holder fails to provide its name, address and tax file number or any relevant tax exemption.

#### **4.2 Particulars of Debenture Holders**

Changes in particulars of Debenture Holders must be given in writing and duly signed and received by the Registrar within 14 days after such changes.

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### **5. PAYMENT OF PRINCIPAL MONEYS AND INTEREST**

#### **5.1 Payment of Interest**

- (a) The Debentures will bear interest accruing daily as follows:
  - (i) from the date the application moneys are received as cleared funds from the applicants who become Debenture Holders until and including the day which is the fifth anniversary from the Issue Date ("**Fifth Anniversary Date**") - a fixed rate of 9% per annum; and
  - (ii) from the end of the fifth anniversary from the Issue Date until and including the Maturity Date – at the fixed rate of 3.5% per annum above the "2 Year Bank Bill Swap Rate".
- (b) For the purposes of this Condition 5.1, "2 Year Bank Bill Swap Rate" means:
  - (i) the average of the rates calculated for each of the 5 Business Days up to and including the Fifth Anniversary Date, unless the Fifth Anniversary Date is not Business Day, in which case it will be the average of the rates calculated for each of the 5 Business Days immediately preceding the Fifth Anniversary Date ("**the Relevant Dates**");
  - (ii) by taking the rates quoted on the Reuters Screen BBSW Page at approximately 10:00am, Sydney time, on each of the Relevant Dates expressed as a yield percentage per annum to maturity, on each of the Relevant Dates for each reference bank so quoting (but not fewer than five) as being the mean buying and selling rate for a bill having a tenor of 2 years, eliminating the highest and the lowest mean rates and taking the average of the remaining mean rates and then (if necessary) rounding the resultant figure upwards to 4 decimal places,

provided that:

- (iii) if in respect of any of the Relevant Dates fewer than 5 reference banks have quoted rates on the Reuters Screen BBSW Page, the rate for the Relevant Date must be calculated as above by taking the rates otherwise quoted by 5 of the reference banks on application by the parties for such a bill of the same tenor;
  - (iv) if in respect of any of the Relevant Dates the rate cannot be determined in accordance with the foregoing procedures then the rate for the Relevant Date will be such rate as is agreed between OIM and the Trustee having regard to comparable indices then available.
- (c) Interest on Outstanding Debentures will be calculated as at each Interest Calculation Date and paid on or before the relevant Interest Payment Date in accordance with and subject to these Conditions.
- (d) OIM will have no obligation to make any payments of Interest in respect of any Debenture beyond the Redemption Date provided that all Moneys Owing in respect of that Debenture have been paid on the Redemption Date.

## **5.2 Payment of Principal**

On a Redemption Date, OIM is obliged to redeem the relevant Debentures and pay to the relevant Debenture Holders the principal moneys and all other amounts then outstanding in respect of those Debentures on that date. OIM will make such notation in the Register that reflects the redemption and payment of the Moneys Owing in respect of the Debentures.

## **5.3 Early Redemption by the Trustee**

- (a) The Trustee may require OIM:
  - (i) to redeem the Debenture Holders' Debentures; and
  - (ii) immediately pay to the Debenture Holders the Moneys Owing,where an Event of Default occurs on a day specified by the Trustee which allows adequate time for the calculation of the Moneys Owing on the Redemption Date of the Debentures.
- (b) OIM agrees to redeem the Debenture Holders' Debentures immediately upon the request of the Trustee under Condition 5.3(a).

## **5.4 Early Redemption by OIM**

OIM may:

- (a) redeem the Debentures in whole but not in part; and
  - (b) immediately pay to the Debenture Holders the Moneys Owing,
- where a Tax Event as set out in Condition 5.5 occurs on giving the Trustee and the Debenture Holders at least 20 Business Days' written notice of OIM's intention to redeem all the Debenture Holder's Debentures.

## **5.5 Redemption for Regulatory or Tax Reasons**

If a Tax Event has occurred in respect of OIM and/or the Scheme, and such Tax Event cannot be avoided by OIM and/or the Scheme taking reasonable measures available to them, other than the payment of money, then the Debentures may be redeemed at the option of OIM, in whole, but not in part, on giving not less than 20 Business Days' notice to the Debenture Holders which notice is irrevocable, at the Redemption Amount.

## **5.6 No Early Redemption by Debenture Holder or Trustee**

Except as provided in Conditions 5.3(a), 5.4 and 5.5, the Trustee or a Debenture Holder may not require OIM to redeem Debentures prior to its Maturity Date.

## **5.7 Cancellation of Debentures**

All Debentures repaid in full, redeemed or satisfied will be cancelled and will not be re-issued.

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# **6. SPECIAL CONDITIONS**

## **6.1 Minimum Purchase**

A prospective Debenture Holder must apply for, and purchase, a minimum of 50 Debentures and thereafter in multiples of 10 unless the Trustee and OIM in their absolute discretion agree to a Debenture Holder applying for, and purchasing, a lesser number.

## **6.2 Conditions Precedent**

OIM may not issue Debentures under this Deed until:

- (a) the Trustee and OIM have executed, and OIM has delivered to the Trustee in registrable form (other than for the delivery of the Title Documents and pending registration of OIM as the registered proprietor), Mortgages over the Land and Improvements; and
- (b) OIM and the Trustee have executed this Deed (including the Fixed and Floating Charge) and the Mortgage of Contractual Rights.

## **6.3 Valuation of Land**

- (a) Other than under Condition 6.3(d), OIM will not, and in no event will the Trustee, be under any obligation to obtain valuations of the Land and Improvements during the term of the Debentures.
- (b) OIM may not issue any Debentures where:
  - (i) the Debenture Gearing Ratio would exceed 66.667%; or
  - (ii) the Gearing Ratio would exceed 80%,following the issue of the Debentures.
- (c) For the purposes of Condition 6.3(b), and in calculating the Debenture Gearing Ratio and the Gearing Ratio, the Cost of the



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Land and the Improvements will be deemed to be the value of the Land and the Improvements as at the Issue Date.

- (d) OIM must cause valuations of the Land and Improvements to be undertaken at the times and in the manner specified in the Constitution and the Corporations Act by valuers who must:
    - (i) have at least five year's experience in assessment of rural properties and associated assets in the area where the Land and Improvements are situated;
    - (ii) be a member or members of the Australian Property Institute Inc. or its successor; and
    - (iii) have no pecuniary interest that could reasonably be regarded as being capable of affecting their ability to give an unbiased opinion.
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## **7. REGISTRATION OF TRANSFERS**

### **7.1 Transfers**

- (a) Subject to these Conditions, a Debenture Holder may transfer all or any of the Debentures that it holds by an instrument in writing in any usual form or in any other form that the directors of OIM approve.
- (b) Upon quotation of the Debentures on the ASX, the registration, transfer, transmission, and all dealings in the Debentures are regulated by the Corporations Act, the Listing Rules and the SCH Business Rules.

### **7.2 Transfer Procedure**

- (a) In relation to all transfers of Debentures, the transfer form must be:
  - (i) lodged with the Registrar together with payment of any stamp duty, Taxes or other governmental charges payable on such a document; and
  - (ii) accompanied by such evidence as the Registrar may require to prove the title and identity of the transferor and the transferee, the right of entitlement of the transferee to receive a transfer of the relevant Debentures, the due execution of the transfer form and the due compliance and observance with all applicable laws and regulations of Australia and each State and Territory of Australia.
- (b) The Registrar must within 3 Business Days upon being satisfied with the transfer form, the information lodged with the transfer form, the identity of the transferor and the transferee and the due compliance with these Conditions and such reasonable regulations as OIM and Trustee may determine from time to time, accept the application contained in the transfer form by making an inscription in the Register recording the transfer of the relevant Debentures.

### **7.3 Registration**

On the inscription being made in the Register, OIM and the Trustee will recognise the transferee as the registered owner of the relevant Debentures and as being entitled to the payment from then on of the interest, principal and other moneys owing in respect of that Debentures and to all other rights vested in Debenture Holders under the Trust Deed. The transferor will for all purposes be and be deemed to be the registered owner of the relevant Debentures until an inscription is made in the Register recording the transfer, the name and address of the transferee and the other matters required to be entered into the Register by OIM from time to time.

#### **7.4 Administration**

- (a) OIM must register the transfer of Debentures notwithstanding that the transfer form to which the transfer relates has not been marked by OIM or the Registrar.
- (b) OIM must procure that all transfer forms which are registered are retained by OIM for a period of seven years after receipt but any transfer form which OIM declines to register must (except in the case of fraud or suspected fraud) be returned on demand to the person depositing it.
- (c) OIM may not register the transfer of Debentures on or after its Maturity Date.

#### **7.5 Transfer Forms**

Transfer forms are available from the Registrar.

#### **7.6 Directions**

Subject to the Trust Deed, these Conditions and any notations on the Register, OIM will comply with any payment or distribution direction made by the transferee:

- (a) in application for transfer of Debentures on and from the time of registration of that transfer; and
- (b) at any subsequent time in such form as OIM from time to time determines.

A direction from any one or more joint holders of Debentures binds all the joint holders.

#### **7.7 Transmission**

A person becoming entitled to Debentures as a consequence of the death or bankruptcy of a Debenture Holder or of a vesting order or a person administering the estate of a Debenture Holder may, upon producing such evidence as to that entitlement or status as the Registrar considers sufficient, transfer the Debentures of that Debenture Holder or, if so entitled, become registered as the holder of the Debentures.

#### **7.8 No Registration Fee**

Transfers will be inscribed in the Register without charge provided Taxes or other governmental charges (if any) imposed in relation to the transfer have been paid.

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## **7.9 Non-registration of Third Party Interests**

- (a) Debentures will be registered by name only without reference to any trusteeships or other beneficial interests in the Debentures. Any entry in the Register of the name and address of a Debenture Holder and the amount owed to that Debenture Holder is conclusive evidence of title subject to rectification for fraud or error.
- (b) The person registered in the Register as a Debenture Holder of Debentures will be treated by OIM and the Registrar as the absolute owner of those Debentures. Neither OIM, the Trustee nor the Registrar may, except as ordered by a Court or as required by statute, be obliged to take notice of any claim to Debentures.

## **7.10 Suspension of Transfers**

No transfer of Debentures will be registered, nor will any person be registered as a Debenture Holder who is entitled to be registered as such in any period beginning on the Redemption Calculation Date and ending on the relevant Redemption Date.

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# **8. LIQUIDATION OF OIM**

## **8.1 Moneys Owing**

All Moneys Owing to Debenture Holders rank *pari passu* amongst themselves and ahead of all unsecured creditors.

## **8.2 Trustee may Wind Up OIM**

The Trustee will be entitled where an Event of Default has occurred:

- (a) to commence proceedings for the winding up of the Scheme and, subject to paragraph 4.3(a) OIM as responsible entity of the Scheme, where Debenture Holders that together hold not less than three-quarters of the amount of the Outstanding Debentures held by all the Debenture Holders consent in writing;
  - (b) to take such other action relating to enforcement of payment of Moneys Owing (including without limitation requiring OIM to redeem the Debentures, requiring an immediate payment of all Moneys Owing and suing for or obtaining judgment for all Moneys Owing);
  - (c) to prove in any Liquidation of the Scheme and OIM as responsible entity of the Scheme (irrespective of when that Liquidation is commenced) subject to the Trust Deed, including paragraph 4.3(a)(iv); and
  - (d) to enforce the rights granted to the Trustee under the Mortgages, the Mortgage of Contractual Rights and the Fixed and Floating Charge.
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## **9. PAYMENT TO DEBENTURE HOLDERS**

### **9.1 Method of Payment**

Any interest, principal and Other Moneys owing payable by OIM or, following an Event of Default, by the Trustee, on or in respect of any Debentures may be paid:

- (a) by non- negotiable cheque sent through the post to the registered address of the Debenture Holder or in the case of joint Debenture Holders to the registered address of that one of the joint Debenture Holders who is first named in the Register in respect of such Debenture. Every such cheque will be sent at the risk of the person entitled to the moneys represented thereby; or
- (b) by deposit to such account with any bank, credit union or building society in Australia as the Debenture Holder by written notice to OIM or the Trustee may direct.

### **9.2 Payment to Joint Holders**

If several persons are entered in the Register as joint holders of any Debentures then without prejudice to the last preceding Condition the receipt of any one of such persons for any interest, principal or other moneys payable on or in respect of such Debentures be as effective a discharge to OIM or as the case may be the Trustee as if the person's signing such receipt were the sole registered holder of such Debentures.

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## **10. NOTICES**

### **10.1 Reports**

OIM must send to Debenture Holders and the Trustee copies of OIM's annual reports, accounts and other information which is sent to its members.

### **10.2 Notices Must Be In Writing**

A notice given to a Debenture Holder pursuant to a provision of these Conditions and the Trust Deed must be in writing and may be given to a Debenture Holder by being delivered to it or posted in a pre-paid envelope at a post office or post office letter box and addressed to its address appearing in the Register or to such other address as they have notified OIM in writing.

### **10.3 Notices By Post**

- (a) Where a notice is sent by post it is deemed to have been given on the third day following the day on which it was posted.
- (b) A post office receipt for the envelope containing a notice is to be taken as conclusive evidence of the date on which the notice was posted.

### **10.4 Notices to Joint Holders**

A notice given to any one of joint Debenture Holders is sufficient notice to all

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of those joint Debenture Holders.

#### 10.5 What is a Notice?

In this Condition "**notice**" includes any communication to be given by OIM or the Trustee under or pursuant to a provision of these Conditions or the Trust Deed.

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[end of Schedule 2]



## SCHEDULE 3

### RULES FOR MEETINGS OF DEBENTURE HOLDERS

The following provisions apply to meetings of Debenture Holders:

1. The Trustee or OIM may at any time convene a meeting of the Debenture Holders. Whenever OIM or the Trustee is about to convene a meeting it must give notice in writing to the other of the nature of the business to be transacted at the meeting. The Trustee must convene such a meeting upon a requisition in writing so to do of a Debenture Holder or Debenture Holders holding not less than one-tenth of the amount of Outstanding Debentures. The requisition must state the nature of the business proposed to be dealt with at the meeting.
2. Ten Business Days' notice at least of any meeting must be given to the Debenture Holders specifying the place day and hour of meeting and the general nature of the business. A copy of the notice must be sent by post to the Trustee unless the meeting is convened by the Trustee and to the Auditors and OIM unless the meeting is convened by OIM. Any accidental omission to give notice to or the non-receipt of notice by any of the Debenture Holders will not invalidate the proceedings of any meeting.
3. A person nominated by the Trustee is entitled to take the Chair at every such meeting and if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting the Debenture Holders present may choose one of their number to be Chairman. The solicitors to the Trustee and the Directors and officers of the Trustee and the Directors and officers, solicitors and Auditors of OIM and any other person authorised by OIM may attend any meeting and have the right of audience.
4. If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if summoned upon the requisition of Debenture Holders, will be dissolved. In any other case it will stand adjourned to such day and time not less than ten Business Days (and not more than twenty Business Days) after the appointed day and to such place as may be appointed by the Chairman. If at such adjourned meeting there is no quorum present the meeting will be dissolved.
5. A corporation which is a Debenture Holder and entitled to vote may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of Debenture Holders. A person so appointed (in these Rules referred to as a corporate representative) may act in accordance with their authority until their authority is revoked by the corporation appointing them as the corporation could exercise if it were an individual Debenture Holder.
6. The quorum for transaction of business comprises Debenture Holders whether present in person or by proxy or corporate representative who together hold one-quarter of the amount of Outstanding Debentures. No business may be transacted at any meeting unless the requisite quorum is present at the commencement of business.
7. The Chairman may with the consent of any meeting adjourn the meeting from time to time and from place to place.
8. Every question submitted to a meeting is to be decided by 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 or by the Trustee or by any representative of the Trustee or by one or

more Debenture Holders present in person or by proxy or corporate representative. 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 will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

9. 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, provided the Chairman is a Debenture Holder or proxy or representative for a Debenture Holder or the nominee of the Trustee, entitled to a casting vote in addition to the votes (if any) to which the Chairman may be entitled as a Debenture Holder proxy or representative.
10. A poll demanded on the election of a Chairman or on a question of adjournment must be taken immediately. A poll demanded on any other question must be taken either immediately or after an interval or adjournment as the Chairman directs. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
11. The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
12. On a show of hands every Debenture Holder who is present in person or by proxy or corporate representative has one vote only; on a poll every Debenture Holder whether voting in person or by proxy or be corporate representative has one vote for each dollar of the amount of Outstanding Debentures of which they are the holder.
13. On a poll any Debenture Holder, proxy or corporate representative entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.
14. In the case of joint registered holders of Debentures the vote of the senior Debenture Holder who tenders a vote whether in person or by proxy will be accepted to the exclusion of the votes of the other Debenture Holders and for this purpose seniority will be determined by the order in which the names stand in the Register of Debenture Holders in respect of the joint holding.
15. The instrument appointing a corporate representative or a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority must be deposited at such place as may be directed in the notice convening the meeting or adjourned meeting and in the absence of any such direction at the office of the Trustee not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy may not be treated as valid. The instrument appointing a proxy may be either special or general.
16. (a) Every instrument appointing a proxy must be in writing under the hand of the appointor or appointor's attorney duly authorised in writing. Unless the Directors otherwise approve every such instrument appointing a proxy or representative must be in the terms or to the effect following that is to say:

"I.....of ..... a  
Debenture Holder of [ ] hereby appoint  
..... of ..... or failing  
him/her ..... of ....."

..... to vote on my behalf at the meeting of the Debenture Holders of OIM which is to be held on the.....day of .....and at any adjournment thereof.

As witness my hand

.....  
Unless otherwise directed the proxy may vote or abstain from voting in their discretion."

- (b) A proxy appointed need not be a Debenture Holder.
17. The persons registered as Debenture Holders in the Register and no other person or persons may be recognised and treated as legal and beneficial owners of the Debentures registered in their name whether such persons are or are not in fact the beneficial owners of such Debentures and such person accordingly is exclusively entitled to vote in person or by proxy or representative in respect of such Debentures. Subject to the Corporations Act, OIM may for voting purposes specify a time being not more than 48 hours before any meeting of Debenture Holders by reference to which the entitlement of Debenture Holders to vote at that meeting is to be determined particulars of which must be sent with the notice of the meeting.
18. Without limiting the rights, authorities and discretions conferred on the Trustee by the Deed, a meeting of the Debenture Holders has the following powers exercisable by Special Resolution only, namely:
- (a) power to sanction any compromise or arrangement proposed to be made between any of OIM and the Debenture Holders;
  - (b) subject to any restrictions contained in the Deed or the Conditions, power to sanction or assent to any modification of the provisions of the Deed, the Conditions, the other Transaction Documents or the variation or abrogation of any rights conferred by the Deed, the Conditions or the other Transaction Documents;
  - (c) power to give any sanction, authority, approval, direction or request which under any of the provisions of the Deed is required to be given by Special Resolution;
  - (d) power to give any sanction, asset, release or waiver in respect of any breach or default by OIM under any of the provisions of the Deed;
  - (e) power to give any release in respect of anything done or omitted by the Trustee;
  - (f) power to authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any such sanction, assent, release, waiver, direction or request referred to in this Rule 18;
  - (g) power to remove the Trustee.
19. A Special Resolution or an Ordinary Resolution passed at a meeting of the Debenture Holders duly convened and held in accordance with the provisions of this Schedule is binding upon all Debenture Holders whether or not present at the meeting and each Debenture Holders is bound to give effect to such resolution accordingly. The passing of any such resolution is conclusive evidence that the circumstances justify the passing of the resolution, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

20. Minutes of all resolutions and proceedings at every meeting must be made by the Trustee and duly entered in books to be from time to time provided by OIM. Any such minutes if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings had or by the Chairman of the next succeeding meeting of Debenture Holders are conclusive evidence of the matters therein stated. Until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed.
21. (a) Without prejudice to Rule 24, for the purposes of these Rules the expression "Special Resolution" means a resolution voted for (at a meeting of the Debenture Holders duly convened and held in accordance with the provisions of these Conditions) by a majority:
- (i) of such Debenture Holders as being entitled so to vote in person or by proxy or by corporate representative at the meeting; and
  - (ii) that together hold not less than three-quarters of the votes held by all the Debenture Holders entitled to vote in person or by proxy or by corporate representative at the meeting.
- (b) For the purposes of the definition of "Special Resolution" in Rule 21(a) in computing the majority on a poll or on any question as to whether a Special Resolution has been passed reference is to the number of votes to which each Debenture Holder is entitled in terms of Rule 12.
22. (a) Without prejudice to Rule 24, for the purposes of these Rules the expression "Ordinary Resolution" means a resolution voted for (at a meeting of the Debenture Holders duly convened and held in accordance with the provisions of these Conditions) by a majority:
- (i) of such Debenture Holders as being entitled so to vote in person by proxy or by corporate representative at the meeting; and
  - (ii) that together hold more than one-half of the votes held by all the Debenture Holders entitled to vote in person or by proxy or by corporate representative at the meeting.
- (b) For the purposes of the definition of Ordinary Resolution in Rule 22(a) in computing the majority on a poll or on any question as to whether an Ordinary Resolution has been passed reference is to the number of votes to which each Debenture Holder is entitled in terms of Rule 12.
23. (a) For the purposes of these Rules the expression "Written Resolution" means a resolution passed by the Debenture Holders without a meeting of Debenture Holders being held if all the Debenture Holders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by the Debenture Holders if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Debenture Holder signs.
24. Despite any provision to the contrary in this Deed, the Conditions and these Rules, each reference to a matter that requires the direction, authority or agreement of, or waiver by, the Debenture Holders by the passing of a Special Resolution or Ordinary

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Resolution, may at the sole discretion of the Debenture Holders be directed, authorised or agreed upon or waived, as the case may be, by the passing of a Written Resolution.

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[end of Schedule 3]