

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012
Filed on behalf of: The First and Second Defendants
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
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Ref: 5885053.001
Attention: Philip Jones
Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-4" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:


Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-4"
Copy of Bond Trust Deed



Bond Trust Deed

Orchard Investments Management Limited

Permanent Trustee Company Limited

Timbercorp Agribusiness Trust

BAKER & MCKENZIE

Solicitors
Level 39, Rialto
525 Collins Street
MELBOURNE VIC 3000
Tel: (03) 9617-4200
Fax: (03) 9614-2103
Email: Bruce.Taylor@BAKERNET.com



Ref: 66300-v3\BT3\HW1\LA3

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Date 30 September 2005

Parties Orchard Investments Management Limited (ACN 105 684 231) of Level 8, 461 Bourke Street, Melbourne Vic 3000 in its capacity as responsible entity of the Timbercorp Agribusiness Trust (*OIML*)

Permanent Trustee Company Limited ACN 000 000 993 of Level 3, 151 Rathdowne Street, Carlton, Vic 3053 (*Trustee*)

Recitals

- A OIML is the holder of an Australian Financial Services Licence issued by ASIC authorising it to operate the Scheme known as the *Timbercorp Agribusiness Trust*.
- B OIML will hold the Scheme Assets in its capacity as responsible entity of the Timbercorp Agribusiness Trust in accordance with section 601FC(2) of the Corporations Act.
- C OIML is empowered by clause 18 of the Constitution to borrow money from time to time for the purposes of the Scheme.
- D 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 Bonds issued under this Deed.

Operative provisions

1 Definitions and Interpretation

Definitions

- 1.1 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:

A\$, \$, dollars or Australian dollars means the lawful currency of Australia;

ADI has the same meaning as *Australian ADI* in section 9 of the *Corporations Act*;

Administrator has the same meaning as *administrator* in section 9 of the *Corporations Act*;

Almond Crop means the products, rights, benefits or credits derived from almond trees on the Land;

Almond Projects means any almond 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;

Assets has the same meaning as in the Constitution;

ASIC means Australian Securities and Investments Commission;

Attorney means any attorney appointed under clause 4.28 and any person who derives a right directly or indirectly from an Attorney;

Auditors means the auditors of OIML from time to time;

Australia means all States and Territories in Australia;

Authorised Investment means any of the following denominated in Australian dollars:

- (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;
- (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 *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&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&P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the next Payment Date;
- (c) certificates of deposit or bonds, notes or securities issued by an ADI authorised under the *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&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&P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the next Payment Date;
- (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 *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&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&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*);
- (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&P and *P-1* by Moody's or a long term rating of *AA* and *Aa2* by S&P and Moody's respectively;

Authorised Representative means:

- (a) a company secretary or director of the party or an employee of the party whose title includes the word "manager" or "director";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by a party to the other party;

Bond Holder means in relation to any of the Bonds at any time a person who is for the time being registered as the holder of those Bonds;

Bonds means debt obligations of OIML as responsible entity of the Scheme from time to time arising under this Deed;

Books has the same meaning as *books* in section 9 of the *Corporations Act*;

Business Day means a day the banks are open for general banking business in Melbourne, other than a Saturday, Sunday or a public holiday;

Cash means 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;

Citrus Crop means the products, rights, benefits or credits derived from citrus trees on the Land;

Citrus Projects means 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*;

Constitution means the deed executed by OIML constituting the Scheme;

control or controlled has the meaning given in section 50AA of the *Corporations Act*;

Controlled Entity means an entity, including a body corporate or trust, directly or indirectly controlled by OIML in its capacity as responsible entity of the Scheme;

Controller has the meaning given to *controller* in section 9 of the *Corporations Act*;

corporation means any body corporate wherever incorporated or domiciled;

Corporations Act means the *Corporations Act 2001 (Cth)* and the *Corporations Regulations*;

CPI means the *Weighted Average of Eight Capital Cities All Groups Consumer Price Index* as currently maintained and published by the Australian Bureau of Statistics;

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;

Debt means 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 Group, excluding:

- (a) all Liabilities which are non-interest bearing;
- (b) the amount of all hybrid Units and instruments convertible to ordinary Units;
- (c) all Subordinated Member Loans;
- (d) contingent Liabilities;

Deed or Trust Deed means this trust deed (including Schedules) as originally executed and as it may from time to time be amended in accordance with its terms;

Director means a director of OIML;

Disclosure Document includes:

- (a) a **disclosure document** as defined in section 9 of the Corporations Act;
- (b) a **product disclosure statement** as defined in section 9 of the Corporations Act;
- (c) a document, including an information memorandum under which offers to participate in a Project are made;

Encumbrance means any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);

Event of Default means an event set out in clause 12.1 of this Deed;

Financial Statements means:

- (a) a statement of financial performance;
- (b) a statement of financial position;
- (c) a statement of cash flows;
- (d) if required by the accounting standards a consolidated statement of financial performance, statement of financial position and statement of cash flows; and
- (e) other information required to give a true and fair view of the financial position of the Scheme or OIML, as the case requires;

First Issue means the issue of 10,100,000 Bonds with a face value of \$1.00 at Financial Close (as that expression is defined in the First PDS);

First Issue Date means the date of Financial Close, as that expression is referred to in the First PDS;

First PDS means the first product disclosure statement issued by Scheme dated 14 September 2005 annexed as Schedule 3;

Fixed and Floating Charge means the fixed and floating charge created under this Deed and granted by OIML in favour of the Trustee over the Scheme Assets;

Gearing Ratio means 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:

$$A = [B - C] / [D - C]$$

where:

A = the Gearing Ratio;

B = Debt (expressed as a positive);

C = Cash;

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 Group Assets;

Government Body means:

- (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;
- (b) any public authority constituted by or under a law of any country or political sub-division of any country; and
- (c) any person deriving a right directly or indirectly from any other Government Body;

Grape Crops means the products, rights, benefits or credits derived from the grapevines developed under a Viticultural Project on the Land;

Group means:

- (a) the Scheme; and
- (b) the Scheme's Controlled Entities, including OIM #2, TOT #2 and TOT #3;

Group Assets means:

- (a) the Scheme Assets; and
- (b) the assets of any Controlled Entity, including the assets of TOT #2 (as defined in the constitution for TOT #2) and the assets of TOT #3 (as defined in the constitution for TOT #3),

calculated on a consolidated basis with the effects of all transactions between the Scheme and the Scheme's Controlled Entities being eliminated in full;

GST means 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;

GST Law has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

GST Rate means the rate of GST under the GST Law;

Improvements means all capital works, trees, Water Licences attributed to the Land and other improvements forming part of the Group Assets, including irrigation works;

Interest Calculation Date means the last day of each Quarter;

Interest Payment Date means, in respect of a Quarter, the day 3 Business Days after the end of that Quarter;

Issue Conditions means the conditions set out in Schedule 1 applicable to the First Issue, and all subsequent issues unless otherwise expressly stated in this Deed, as determined by the directors under clause 3.3 or agreed between OIML and the Trustee;

Issue Date means the date of issue of any Bonds as determined by OIML, and in the case of the First Issue means the First Issue Date;

Land means the real property forming part of the Group Assets;

Last Statement of Financial Position means:

- (a) until the first occasion on which a consolidated statement of financial position of the Group is delivered to the Trustee under clauses 7.2(d) or 7.2(e), the pro-forma consolidated statement of financial position of the Scheme as at 30 June 2005;

- (b) on that first occasion and any time after that first occasion, the consolidated statement of financial position of the Group then most recently delivered by OIML to the Trustee under clauses 7.2(d) or 7.2(e);

Liabilities has the same meaning as in the Constitution;

Liparoo means the land described as Hattah-Robinvale Road, Liparoo in the State of Victoria and comprising:

- (a) Crown Allotment 6 and being all of the land more particularly described in Certificate of Title Volume 9861 Folio 747; and
- (b) Lot 2 on Plan of Subdivision 442837A, being all of the land described in Certificate of Title Volume 10789 Folio 309

Liquidation includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise of the creditors or bankruptcy;

Maturity Date means 30 September 2012;

Member means a holder of a Unit;

Moneys Owning means the principal moneys and interest from time to time payable in respect of the Bonds to the Trustee or to any Bond Holder, any Redemption Amount which is payable as a result of the Bond's redemption under or pursuant to this Deed or the terms of issue of any of the Bonds and all other moneys from time to time payable under or by virtue of this Deed;

Month means calendar month;

Occupancy Agreements means any lease, licence or other occupancy agreement entered into by the Group in respect of the Land and Improvements;

OIML means Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Scheme, or the responsible entity for the time being of the Scheme;

OIM #2 means OIM #2 Pty Ltd (ACN 112 691 997);

Ordinary Resolution has the meaning given in Rule 22(a), subject to Rule 24;

Other Crops means crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land;

Outstanding Bonds means in relation to the Bonds, all the Bonds on issue at a particular date, other than:

- (a) those which have been redeemed in accordance with this Deed or the Issue Conditions; and
- (b) those in respect of which the date for redemption in accordance with the Issue Conditions has occurred and for which the Redemption Amounts have been duly paid to the Trustee and remain available for payment to Bond Holders holding such Bonds;

Payment Date means an Interest Payment Date or Maturity Date, as the case requires;

Potential Event of Default means any thing which with the giving of notice or lapse of time will constitute an Event of Default;

Price has the meaning, in clause 28 of this Deed, as in the GST Law;

Projects means the Almond Projects, 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;

Quarter means the three month period ending on the last day of March, June, September or December with the exception of:

- (a) the first Quarter which commences on the First Issue Date and ends on the day before the first day of the next Quarter;
- (b) the last Quarter which commences on the day following the last day of the immediately preceding Quarter and ends on the Maturity Date;

Receiver means a receiver or receiver and manager appointed under this Deed and any person who derives a right directly or indirectly from any Receiver;

Record Date means 7 Business Days before the relevant Interest Calculation Date;

Redemption Amount means the principal moneys and interest from time to time payable in respect of the Bonds to the Trustee or to any Bond Holder on the Redemption Date;

Redemption Calculation Date means the day which is 7 Business Days before the relevant Redemption Date;

Redemption Date means the Maturity Date or the date on which Bonds are redeemed in accordance with Issue Conditions 5.5 to 5.8;

Register means any register in respect of the Bond Holders kept pursuant to this Deed;

Registrar means the person who from time to time is appointed by OIML to act as registrar in respect of the Bonds and in the absence of such appointment, OIML;

Related Corporation means:

- (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
- (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 OIML solely in its capacity as responsible entity of the Scheme;

Repay includes *redeem* and vice versa and *repaid*, *repayable* and *repayment*, and *redeemed*, *redeemable* and *redemption* are to be construed accordingly;

Rules means the rules for meetings of Bond Holders set out in Schedule 3;

Schedules means the schedules to this Deed;

Scheme means the trust constituted under the Constitution and known as *Timbercorp Agribusiness Trust* registered as a managed investment scheme under Chapter 5C of the Corporations Act with ARSN 116 024 830 and of which OIML is the responsible entity;

Scheme Assets means all Assets of the Scheme;

Secured Property means the Scheme Assets;

Security Interest means an interest or right:

- (a) reserved over property; or
- (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,

by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding:

- (i) 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
- (ii) any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;

Solara South means the land described as Certificates of Title Vol. 5945, Folio 418, Vol. 5945 Folio 419, Vol. 5945 Folio 421, Vol. 5945 Folio 422 and Underlease No. 4983702 of Crown Lease Perpetual No. 5345, all located at Bookparnong, South Australia;

Special Resolution, subject to Rule 24, has the meaning given in Rule 21(a);

Specified Office means the registered office of OIML or such other office advised by OIML to the Trustee from time to time;

Subordinated Member Loans means the aggregate of all moneys advanced to the Group:

- (a) by persons who at the time of their advance are Members of the Scheme or any of such Member's Related Corporations, the repayment of which is postponed until all of the interest bearing Liabilities of the Group (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 the Group going into Liquidation until those interest bearing Liabilities of the Group (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) have been paid, redeemed or satisfied in full; or
- (b) by Timbercorp pursuant to the Timbercorp Facility (as defined in the First PDS);

Tax Event means the receipt by OIML 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:

- (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;
- (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) (*Administrative Action*); or
- (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,

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 OIML 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 governmental charges or civil liabilities.

Taxes means 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;

Timbercorp means Timbercorp Limited (ACN 055 185 067);

Timbercorp Group means Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";

TOT #2 means the trust known as the *Timbercorp Orchard Trust #2* established pursuant to the trust deed made on 25 February 2005;

TOT #3 means the trust known as the *Timbercorp Orchard Trust #3* established pursuant to the trust deed made on 8 September 2005;

Transaction Documents means:

- (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); and
- (b) any other documents agreed by OIML and the Trustee to be Transaction Documents;

Units means a fully paid unit in the Scheme issued on terms and conditions set out in the Constitution;

Valuer means a person:

- (a) who has at least five year's experience in assessment of rural properties in such area where the Land and Improvements are situated;
- (b) being a member or members of Australian Property Institute Incorporated or its successor; and
- (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;

Viticultural Projects means any wine or 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;

Water Licences means the temporary and permanent water licences forming part of the Group Assets;

writing includes printing, typing, lithography and other modes of reproducing words in a visible form and *written* has a corresponding meaning; and

Written Resolution has the meaning given in Rule 23(a).

Interpretation

1.2 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;
- (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, clause or Schedule is a reference to a paragraph to, or clause of or schedule of, this Deed;
- (f) a reference to a statement of financial position and statement of financial performance of OIML 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.

Rights of Bond Holders

1.3 The issue of Bonds confers on the relevant Bond Holder in respect of such Bonds the benefit of:

- (a) the covenants and warranties given in its favour as set out in this Deed; and
- (b) the conditions set out in the Issue Conditions.

1.4 Each Bond Holder and any person claiming under that Bond Holder is bound by the terms and conditions of this Deed.

Bond Holder Obligations

1.5 The rights and obligations of each Bond Holder under this Deed are several and:

- (a) failure by any Bond Holder to carry out its obligations will not relieve any other Bond Holder or OIML of any of its obligations; and

- (b) no Bond Holder is responsible for the obligations of any other Bond Holder.

2 Trust and Trustee

Appointment of Trustee

- 2.1 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 Bond Holders on the terms contained in this Deed. The Trustee's duties and obligations to Bond Holders are owed to Bond Holders only in their capacity as Bond Holders.

Trust

- 2.2 The Trustee will hold the following on trust for the benefit of the Bond Holders:
- (a) a right to enforce OIML's obligations to repay Bonds under this Deed and the Issue Conditions;
 - (b) the Fixed and Floating Charge or any other Encumbrance granted under the terms of this Deed; or
 - (c) the right to enforce any other duties of OIML (and any guarantor) under this Deed and the trust created by it, the Fixed and Floating Charge, any other Encumbrance granted for the benefit of the Bond Holders, a Bond, the Issue Conditions and the Corporations Act.

Term

- 2.3 The trust created by this Deed starts on the date of this Deed and, unless terminated earlier, ends on the day before the 80th anniversary of the date of this Deed.

Name of the Trust

- 2.4 The trust created by this Deed is known as the TAT Debenture Trust.

3 Creation and Issue of Bonds

Issue of Bonds

- 3.1 OIML will issue 10,100,000 Bonds with a face value of \$1.00 each on the First Issue Date. The Issue Conditions set out in Schedule 1 will apply to the First Issue.

Further Issues

- 3.2 Subject to clauses 3.4 and 7.1 of this Deed, OIML may at any time and from time to time issue further Bonds pursuant to this Deed to such persons, in such amounts and bearing such respective tenors and rates of interest (if any) and for such consideration and generally on such other terms and conditions as the directors of OIML may from time to time determine.
- 3.3 Subject to clause 3.4, the Bonds issued pursuant to clause 3.1 and any other Bonds issued thereafter pursuant to clause 3.2 will be issued with the benefit of and subject to the provisions of this Deed. Any new issue of Bonds (other than the Bonds 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 OIML on behalf of all directors will constitute sufficient evidence on which the

Trustee or any Bond 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 OIML and the Bond Holders.

Auditor's Report and Notification to Trustee

3.4 Subject to clause 7.1 of this Deed:

- (a) whenever OIML desires to issue any further Bonds it must:
 - (i) notify the Trustee in writing of the amount of the Bonds which it proposes to issue; and
 - (ii) indicate to the Trustee whether the issue is for retail or wholesale issue; and
 - (iii) at the same time provide to the Trustee a report by the Auditor stating as at a date no more than 2 months before providing such report that, based on the Last Statement of Financial Position, the amount of the Bonds proposed to be issued could be issued without contravention of clause 7.1;
- (b) the Trustee may accept the report provided under clause 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 clause 3.4(a) give notice to OIML that a check report is required, whereupon a check report must be obtained by OIML with all reasonable expedition at OIML'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 clause 3.4(a) or, if it requires a check report, within 7 days after the receipt of the check report, notify OIML in writing that OIML may issue:
 - (i) the amount of Bonds proposed to be issued; or
 - (ii) the amount specified in the report furnished under clause 3.4(a) as the amount of Bonds 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 Bonds which could be issued without contravention of clause 7.1,

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

Issue of Bonds by Inscribing Register

3.5 OIML will issue Bonds by registering or causing the Registrar to register the Bond Holder as the holder of the Bonds. Each Bond will be issued when the Bond Holder is inscribed in the Register as the holder of those Bonds. When Bonds are issued to a Bond Holder OIML will

include, or cause the Registrar to include in the Register, the particulars required by clause 20.1.

All Bond Holders Rank Equally

3.6 All Bond Holders will rank equally.

Bond Holders are Beneficial Owners of Bonds

3.7 The Bond Holders are deemed to be the beneficial owners of the Bonds registered in their respective names.

Payment of Commissions

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

Bonds Valid Despite Contravention of Clause 3

- 3.9 Bonds 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 OIML was in contravention of clause 3.
- 3.10 OIML must take all action possible to remedy any contravention of this clause 3 within 7 days of becoming aware of the contravention.
- 3.11 OIML must not proceed with any issue of Bonds, if such issue would cause OIML to contravene this clause 3.

Chapters 2L and 6D of the Corporations Act, and Minimum Subscription

3.12 Until such time (*Retail Date*) as OIML gives notice to the Trustee as contemplated by clause 9.15 and the Trust Deed complies with section 283AB of the Corporations Act as contemplated by clauses 9.15 and 18.1(a)(iii), OIML must ensure that all offers to issue Bonds in accordance with this Deed that are made or to be made do not need disclosure to investors under Chapter 6D of the Corporations Act and are not made to any person who is a *retail client* as that term is defined in section 761A of the Corporations Act when they were or are made. After the Retail Date, no Bonds will be issued to a Bond Holder unless that holder subscribes for a minimum of \$10,000 worth of Bonds.

4 Charge

Creation

4.1 OIML as responsible entity of the Scheme charges to the Trustee its respective right, title and interest in, and to, the Scheme Assets to secure the Moneys Owing.

Nature

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

- (a) a floating charge over any interest of OIML in any of the following present or future Scheme Assets comprising:
- (i) Cash;

- (ii) negotiable instruments given to OIML 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.

Acknowledgement

4.3 The Trustee and OIML acknowledge that:

- (a) the obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, OIML under or in respect of this Deed (*Obligations*) are incurred by OIML solely in its capacity as responsible entity of the Scheme and that OIML will cease to have any Obligations under this Deed if OIML ceases for any reason to be the responsible entity of the Scheme;
- (b) OIML 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;
- (c) the Trustee may enforce its rights against OIML arising from non-performance or breach of the Obligations only to the extent that OIML is entitled to be indemnified out of the Scheme Assets;
- (d) 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:
 - (i) bringing proceedings against OIML in its personal capacity, except as permitted by clause 4.3(c) or (f); or
 - (ii) applying to have OIML wound up or proving in the winding up of OIML;
- (e) clause 4.3(d) does not in any way restrict the rights of the Trustee under section 601ND of the Corporations Act;
- (f) this clause does not limit OIML'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 OIML, in the case of fraud, gross negligence, breach of trust or breach of duty by OIML, and the Trustee may bring proceedings against OIML in its personal capacity in the case of fraud, gross negligence, breach of trust or breach of duty by OIML.

4.4 OIML must not cease to be responsible entity of the Scheme unless:

- (a) it is removed as responsible entity of the Scheme by Members;
- (b) a court orders that OIML be removed as responsible entity of the Scheme; or
- (c) OIML 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.

4.5 It is acknowledged by the Trustee that the Fixed and Floating Charge given by OIML under clause 4.1 does not include the Almond Crops, Citrus Crops, Grape Crops and crops derived from any other Projects as they remain the property of:

- (a) the participants in the Projects;
- (b) the responsible entities and managers of the Projects and their nominees;
- (c) any lessee or licensee of a person specified in clause 4.5(b); or
- (d) any other person who derives title to the Almond Crops, Citrus Crops, Grape Crops or crops derived from the Projects through any of the persons described in clauses 4.5(a) to (c).

Chattel Securities Act

- 4.6 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.

Crystallisation

- 4.7 The Trustee may serve a written notice upon OIML if an Event of Default has occurred and is subsisting 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.

Automatic Crystallisation

- 4.8 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 clause 4.7;
 - (ii) upon the Liquidation of OIML while it is responsible entity of the Scheme or any action being taken to put OIML as responsible entity of the Scheme into Liquidation;
 - (iii) upon OIML 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 OIML 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 OIML 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, voluntary administrator, receiver or receiver and manager of that part of the Scheme Assets.

Reinstatement of Floating Charge

- 4.9 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 OIML 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.

Fixed Charge over Debt Proceeds

- 4.10 OIML 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.

Authority to deal with Floating Charge property

- 4.11 Subject to clauses 4.7 and 4.8, the Trustee authorises OIML to dispose of or otherwise deal with Scheme Assets subject to the floating charge in the ordinary course of its ordinary business.

Prohibited Dealings

- 4.12 OIML must not:
- (a) create, attempt to create or permit to exist any Encumbrance in relation to the Scheme Assets subject to the fixed charge (whether ranking ahead of, or equally with, the fixed charge) 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 and has been fully disclosed to and approved in writing by the Trustee;
 - (iii) has otherwise been fully disclosed to and approved in writing by the Trustee; or
 - (iv) is acknowledged by the Trustee under clause 4.13.
 - (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 4.13.

Acknowledgements

- 4.13 The Trustee provides its acknowledgment that the Group:
- (a) has entered into or may enter into Occupancy Agreements on terms and conditions consistent with those set out in the First PDS in relation to the Land and Improvements which will form part of Group Assets on or about 30 September 2005;
 - (b) may grant first-ranking mortgages to Australia and New Zealand Banking Group Limited over:
 - (i) Solara South;

(ii) Liparoo;

- (c) may provide the other securities expressly referred to in the First PDS and undertake the actions expressly referred to in the First PDS,

and acknowledges that the Transaction Documents are granted subject to the rights and interests described in clauses 4.13(a) to (c), whether those rights and interests exist at the date of this Deed or the Fixed and Floating Charge or arise subsequently.

- 4.14 The parties intend that the charge created by clause 4.1 takes priority over all other Encumbrances granted by OIIML over the Scheme Assets.

Default Powers

- 4.15 The Trustee may only if an Event of Default has occurred and is subsisting exercise any or all of the rights set out in clauses 4.17 to 4.23 or Issue Condition 5.5 in any manner that it thinks fit and notwithstanding that a Receiver has been appointed.
- 4.16 The interpretation of any right set out in this clauses 4.17 to 4.23 will not be restricted by reference to or inference from any other right.

Statutory and Implied Powers

- 4.17 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 OIIML 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.

Sale

- 4.18 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:
 - (i) 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;

(ii) relating to the title of the property;

and the Trustee may:

(iii) buy in at any auction;

(iv) disclose or not disclose any reserve price;

(v) rescind any contract of sale and resell the property without being liable for any loss;

(vi) advertise or not advertise the sale of the Secured Property; and

(vii) make any agreements or arrangements relating to the sale.

General Dealings

4.19 The Trustee may:

(a) take control of and get in the Secured Property;

(b) manage and otherwise deal with the Secured Property;

(c) exercise the rights of OIML 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;

(d) vary, replace or release any right or interest of OIML or any other person;

(e) 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

(f) grant options and rights of first refusal to acquire the Secured Property.

Raise and Lend Money

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

(a) 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

(b) 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

(c) 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.

Investment of Moneys

4.21 Any moneys received by the Trustee which are not required to be immediately applied in the exercise of any right or pursuant to clauses 4.17 to 4.22 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.

Receivers

4.22 The Trustee may:

- (a) either before or after it has taken control of the Secured Property:
 - (i) 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
 - (ii) appoint a different receiver or receiver and manager for different parts of the Secured Property;
- (b) if more than one person is appointed as Receiver of any property, the Trustee may empower them to act jointly or jointly and severally;
- (c) 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
- (d) fix the remuneration of the Receiver.

Ancillary Powers

4.23 The Trustee may:

- (a) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings;
- (b) give receipts and release, discharge or compromise any debt or other obligation owed to or by OIML;
- (c) enter into and execute and deliver documents and agreements in respect of the exercise of its other rights under clauses 4.17 to 4.22;
- (d) delegate to any person any other right (including this right of delegation) under clauses 4.17 to 4.22; and
- (e) do anything incidental or conducive to the exercise of any of its other rights clauses 4.17 to 4.22.

Receivers as agents

4.24 A Receiver, subject to clause 4.25, will be the agent of OIML who alone will be responsible for the Receiver's acts and omissions and remuneration.

4.25 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.

Powers of Receivers

4.26 A Receiver will have the right in relation to any property of which the Receiver is appointed to do everything that OIML may lawfully authorise an agent to do on behalf of OIML 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 clauses 4.18 to 4.21 and clause 4.23 inclusive;
- (c) the rights of OIML and the directors of OIML; and

(d) any other rights the Trustee may by written notice to a Receiver give to a Receiver.

- 4.27 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.

Attorneys

- 4.28 If an Event of Default has occurred, OIML irrevocably appoints the Trustee its attorney with the right for so long as an Event of Default has occurred and is subsisting to do everything that OIML may lawfully authorise an agent to do in respect of this Deed and the Secured Property including, without limitation, anything described in clauses 4.18 to 4.21 and clause 4.23.
- 4.29 Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- 4.30 Any Attorney may appoint substitutes and otherwise delegate its rights (including this right of delegation).
- 4.31 OIML must ratify any exercise of a right by an Attorney.
- 4.32 The power of attorney is granted to secure the performance of the obligations of OIML to the Trustee under this Deed, the proprietary interests of the Trustee under this Deed and the payment of the Moneys Owings to the Trustee.

Exercise of Default Rights

- 4.33 OIML 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.
- 4.34 If the Trustee has taken control of the Secured Property it may give up control of the Secured Property at any time.
- 4.35 The obligations of OIML 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.

Exclusion of Legislation

- 4.36 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.
- 4.37 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.
- 4.38 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.

5 Bond Conditions

- 5.1 The Bonds are to be held subject to and with the benefit of this Deed and the Issue Conditions. This Deed and the Issue Conditions are binding on OIML in its own right and in its capacity as

the responsible entity for the time being of the Scheme, and the Trustee and the Bond Holders and all persons claiming through or under them respectively.

6 Acknowledgement Of Indebtedness And Payment Of Principal Moneys And Interest

Acknowledgement

- 6.1 Subject to clause 6.2, OIML acknowledges its indebtedness to the Trustee in respect of the Moneys Owning.

Payment of Principal Moneys and Interest

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

Amount is Unable to be Distributed

- 6.3 If any amount to be distributed to a Bond Holder under clause 6.2 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:
- (a) if it has been paid by OIML to the Trustee for distribution to the Bond Holder, returned by the Trustee to OIML, provided no Event of Default or Potential Event of Default subsists at the relevant time; or
 - (b) retained by OIML, unless an Event of Default or Potential Event of Default subsists at the relevant time in which case OIML must pay the amount to the Trustee,
- as the case may be.
- 6.4 To the extent that OIML receives or retains any moneys under clause 6.3, OIML must pay the relevant amount to a Bond Holder entitled to it on demand by that Bond 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 OIML to the Bond Holder under clause 6.2.

7 OIML's Representations, Warranties And Covenants

Limitation on Issue of Bonds

- 7.1 OIML hereby covenants with the Trustee that OIML will not permit the Gearing Ratio set out in clause 7.2(a) to be exceeded while there are any Outstanding Bonds.

Covenants by OIML

- 7.2 OIML covenants with the Trustee that:

- (a) it will not suffer or permit the Gearing Ratio to exceed 80% whilst there are any Outstanding Bonds;
- (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 Bond 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 OIML 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 consolidated half year Financial Statements, Directors' report and Auditor's report for the Scheme and OIML 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 clauses 7.2(d) or (e), which certificate must set out the Gearing Ratio as at the date of the relevant statement of financial position and the relevant calculations used in determining 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 OIML 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 OIML;
- (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 Bonds, by giving notice to each of the Bond Holders at the Bond Holder's address as specified in the Register, it will convene a meeting of Bond 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 Bond Holders present at the meeting. If OIML is required to call a meeting under this clause 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 Issue Conditions and the Corporations Act (including, Chapter 2L if applicable) 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:

- (i) as soon as reasonably practical and in any event within 45 calendar days from the First Issue Date, procure the provisional registration of the Fixed and Floating Charge with ASIC; and
- (ii) as soon as reasonably practical, cause the stamping of the Transaction Documents and the final registration of the Fixed and Floating Charge with ASIC;
- (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 entity becoming a Controlled Entity or upon any application, order, proceeding or resolution to which clause 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 OIML to remedy it;
- (o) it will furnish to the Trustee within 21 days after each due date for payment of interest on the Bonds a report signed by not less than 2 of the directors of OIML on behalf of the Board of Directors stating:
 - (i) whether or not the interest due on the Bonds 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 Bonds outstanding at such date;
- (p) it will provide a copy of this Deed to a Bond Holder or the Trustee if they request a copy; and
- (q) after receiving from the Auditor or any auditor of any Controlled Entity 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, it will immediately provide the Trustee with a copy of such report.

Representations by OIML

7.3 OIML represents and warrants to the Trustee that:

- (a) OIML has entered into this Deed in its capacity as responsible entity of the Scheme under the Constitution;
- (b) OIML 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 and the Fixed and Floating Charge;

- (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 OIML;
 - (iii) an agreement or instrument to which OIML is a party; or
 - (iv) an obligation of OIML to any other person;
- (i) no Event of Default has occurred;
- (j) no Potential Event of Default has occurred which has not been notified to the Trustee in accordance with clause 7.2(n);
- (k) there is no material litigation commenced or threatened which has not been disclosed to the Trustee;
- (l) 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.

Trustee's Role in Respect of Events of Default or Potential Events of Default

- 7.4 Notwithstanding anything else contained in this Deed other than clause 7.5, 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 clause 7.2 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 clause 7.2 and the representations contained in clause 7.3 have not been breached and are true and correct at all times.
- 7.5 Clause 7.4 does not relieve the Trustee from any obligation to monitor OIML's compliance with clauses 7.2(d), 7.2(e) and 7.2(f).

8 Reports, etc. by OIML

Maintenance of Register

- 8.1 OIML 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 OIML or its agents have duly maintained the Register; and
- (b) whether or not to the best of OIML'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.

Report by OIML

8.2 OIML must, within one month after the end of each Quarter provide to the Trustee, and ASIC (if required by law) 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 Bond Holders and, without limiting the generality of the foregoing, stating:

- (a) 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:
 - (i) the limitations on the amount of Bonds 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;
 - (ii) OIML has complied with all the covenants and provisions binding upon them under the Bonds, this Deed, the Fixed and Floating Charge and the Issue Conditions, including clause 7.2(a);
 - (iii) any event has happened that has caused or could cause the Bonds or any provision of this Deed to become immediately enforceable and if so particulars of that event;
 - (iv) there has been any substantial change in the nature of the business of the Group since the issue of the Bonds that has not previously been reported and, if so, particulars of that change;
 - (v) any circumstances have occurred that materially prejudice OIML and any of the Controlled Entities or any security or charge included in or created by the Bonds, this Deed and the Fixed and Floating Charge and if so, particulars of those circumstances;
 - (vi) where OIML has deposited money with, lent money to, or assumed any liability of, a company which is a Related Corporation of OIML, particulars of:
 - (A) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report, and
 - (B) the total amounts owing to OIML 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 Bonds issued pursuant to this Deed and has secured the guarantee by a charge over its property in favour of the Trustee for the Bond Holders;

- (vii) the net amount outstanding on any advances at the end of the Quarter if it has created a charge other than the Fixed and Floating Charge where:
- (A) the total amount to be advanced on the security of the charge is indeterminate; and
 - (B) the advances are merged in a current account with bankers, trade creditors or anyone else; and
- (viii) any other matters that may materially prejudice any security or the interests of the Bond Holders.

8.3 Subject to clause 4.12, if OIML creates a charge over the Scheme Assets, other than the Fixed and Floating Charge, it must:

- (a) give the Trustee written details of the charge within 21 days after it is created; and
- (b) 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.

9 Discretion, Duties And Liability Of Trustee

Liability

- 9.1 The Trustee enters into this Deed and each Transaction Document to which it is a party only in its capacity as trustee of the Bond 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.
- 9.2 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.
- 9.3 The provisions of clauses 9.1 to 9.7 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 fraud, gross negligence, breach of duty or breach of trust.
- 9.4 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 fraud, gross negligence, breach of duty or breach of trust by the Trustee for the purpose of clauses 9.1 to 9.7.
- 9.5 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.

9.6 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 fraud, gross negligence, breach of duty or breach of trust by the Trustee if the relevant failure or breach:

- (a) 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;
- (b) was in accordance with a lawful court order or direction or otherwise required by law; or
- (c) was in accordance with an instruction or direction of the Bond Holders given at a meeting of Bond Holders duly convened and held in accordance with this Deed or the written consent or authority of Bond Holders given in accordance with this Deed.

9.7 All of the terms, clauses and conditions of this Deed and any other Transaction Document are subject to clauses 9.1 to 9.6.

Information

9.8 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 OIML and its Controlled Entities and may not be disclosed to any person other than as set out in clauses 9.9 or 9.10.

9.9 Information which is in the public domain is not required to be kept confidential.

9.10 Information that would otherwise be required to be kept confidential may be disclosed:

- (a) 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;
- (b) 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
- (c) to a person approved of in writing by OIML.

Application of Funds

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

Directions from Bond Holders

9.12 Where any matter is authorised or directed by:

- (a) a resolution of Bond Holders passed at a meeting of Bond Holders duly convened and held in accordance with this Deed; or
- (b) the written consent or authority of Bond Holders given in accordance with this Deed,

the Trustee is bound to act in accordance with the authority, agreement or direction of the Bond Holders (unless the Trustee is of the opinion that the direction is inconsistent with the terms of the Bonds or the provisions of the Trust Deed or is otherwise objectionable) 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 Bond Holders' resolution, direction or authority.

- 9.13 The Trustee is continuously indemnified by the Bond 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 Bond Holders.

Scheme Assets

- 9.14 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 OIML or forming part of the Scheme Assets subject to the Fixed and Floating Charge, or in which any goods that form part of the Scheme Assets subject to the Fixed and Floating Charge are located to:
- (a) inspect their state and condition; and
 - (b) inspect and take copies of or extracts from any Books that in any way relate to Scheme Assets subject to the Fixed and Floating Charge.

Duties for public offering

- 9.15 If OIML notifies the Trustee that OIML is required under section 283AA of the Corporations Act to have entered into a trust deed that complies with section 283AB of the Corporations Act or that it proposes to make a retail offering, and the Trust Deed complies with section 283AB of the Corporations Act (including as a result of any modification, alteration, amendment or addition contemplated by clause 18.1(a)(iii)), then the Trustee must perform and comply with all duties and obligations imposed on it under Chapter 2L of the Corporations Act.

10 Application Of Moneys Received By Trustee

- 10.1 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, the Issue Conditions, such amounts must be held by the Trustee upon trust to apply them (subject to Issue 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 Owning in respect of all Outstanding Bonds; and
 - (c) thirdly, in payment of the balance (if any) to OIML without prejudice to the provisions of this clause 10.1.

11 Authorised Investments

- 11.1 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.

12 Events And Evidence Of Default

Events of Default

12.1 Each of the following is an Event of Default:

- (a) if OIML does not repay or otherwise redeem any Bond within 14 days after the day upon which such repayment or redemption becomes due in accordance with the Issue Conditions of such Bond;
- (b) if OIML does not pay any interest or other moneys (except principal moneys) which become due and payable by OIML 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 OIML;
- (c) if OIML is in breach of clause 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 OIML; or
 - (B) OIML 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) OIML 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 or the Land or Improvements:
 - (i) a receiver, receiver and manager, Administrator or Controller is appointed; or
 - (ii) any distress, attachment or execution is levied or enforced;
- (f) if OIML is unable to pay its debts generally;
- (g) if financial accommodation provided to OIML in excess of \$100,000 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 OIML to pay it before its maturity;
- (h) if OIML fails to pay when due and owing any financial accommodation provided to it in excess of \$100,000 or its equivalent;
- (i) this Deed is terminated;

- (j) if a representation, warranty or statement made or deemed to be made by OIML 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 is void, voidable or otherwise unenforceable by the Trustee or is claimed to be so by OIML, as the case requires;
- (l) if an Encumbrance which the Fixed and Floating Charge purports to constitute ceases to have the priority which it purports to have under the Fixed and Floating Charge or under any agreement between OIML 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) OIML 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 and the cessation is not rectified within 21 days of it first occurring;
- (n) if it becomes unlawful for OIML to perform or observe any of its material obligations under a Transaction Document and the illegality is not rectified within 21 days of it first occurring;
- (o) if any person who holds a Security Interest over the Land or Improvements exercises 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 OIML breaches any covenant contained in clauses 7.2(d), (e), (f) or (g) and fails to rectify the breach within 21 days of receiving notice from the Trustee requiring it to remedy such breach;
- (q) 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 reasonable opinion, detrimentally affect the Bond Holder's position under this Deed; and
- (r) if an investigation is instituted under the Corporations Act or other legislation into, or an inspector is appointed to investigate, the affairs of OIML 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.

Only the Trustee May Enforce the Provisions of this Deed

- 12.2 Only the Trustee may enforce the provisions of this Deed, the Bonds and the other Transaction Documents (including without limitation applying for liquidation, lodging a proof or claim or seeking damages) on behalf of Bond Holders, except that a Bond Holder, subject to clause 12.5, may proceed directly against OIML to enforce the performance of any of the provisions of this Deed, the Bonds or any of the other Transaction Documents, if the Trustee has failed to do so after being directed to do so by Special Resolution passed at a meeting of Bond Holders and at least 21 days have elapsed since that direction was given to the Trustee.

Evidence of Default

- 12.3 Should the Trustee in accordance with this Deed, the Issue Conditions or any of the other Transaction Documents take any proceedings, proof that default has been made in paying any

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Moneys Owning to the Bond Holders of any Bonds will (unless the contrary be proved) be sufficient evidence that default has been made as regards all other Bonds in respect of which a corresponding payment is then due.

Judgment to be Held in the Name of the Trustee

- 12.4 Any judgment or amount obtained by or on behalf of Bond Holders in respect of Moneys Owning on any Bonds 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 Issue Conditions.

Circumstances in Which Bond Holders May Take Action

- 12.5 No Bond Holder may take action or institute proceedings against OIML for the enforcement of any provision of this Deed, the Bonds or any of the other Transaction Documents (including in particular recovery of Moneys Owning 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.

Trustee to be Indemnified

- 12.6 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.

13 Payment To Bond Holders

- 13.1 Any payment to be made in respect of the Bonds by OIML or the Trustee may be made in the manner provided in the Issue Conditions and any payment so made will be a good discharge to OIML or the Trustee, as the case may be.

14 Provisions Supplemental To Trustee Act 1958

- 14.1 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 OIML 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 OIML 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 OIML 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 Bond Holder under clause 9.13 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 Bonds or is directed to do so by a resolution of Bond 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 Bond Holders to do so waive on such terms and conditions as it deems expedient any breach by OIML of any of the covenants obligations conditions or agreements contained in this Deed.

15 Delegation By Trustee And Applications To The Court

15.1 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 or oppose any application to the Court made by or at the instance of any Bond 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.

16 Trustee's Remuneration

16.1 OIML covenants with the Trustee:

- (a) that OIML must pay to the Trustee by way of remuneration for its services as Trustee an annual fee of \$20,000 (*CPI Adjusted*) unless a second issue of Bonds has occurred or the Bonds issued on the First Issue Date are transferred to a person other than a Related Corporation or affiliate of the first Bond Holder under this Deed, in which case, \$30,000 (*CPI Adjusted*), payable in arrears by six-monthly payments (except for the first and last payments pursuant to this Deed which are proportionate to the number of days in the relevant period) for the six months ended December and June respectively in each year, with payments to be made within one month of the end of each such six monthly period;
- (b) that without limiting the generality of the other provisions of this Deed, OIML 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 Issue Conditions or law conferred on the Trustee;
 - (iii) in or in connection with any breach or default in the observance or performance by OIML of the covenants and obligations of the Transaction Documents or the Issue 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 Bond 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 OIML, including without limitation, maintaining or causing to be maintained the Register;
- (c) that the remuneration and payments pursuant to clauses 16.1(a) and (b) and any indemnities granted to the Trustee under this Deed, including clause 14.1(d), must be paid in priority to any claim by any Bond 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 16.1, the Trustee may, in any case where it is entitled under clause 14.1(d) or this clause 16.1 to be indemnified or paid by OIML if it incurs a cost, charge, liability or expense (including all Taxes), require OIML 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 clause 16.1 will, in the absence of manifest error, be conclusive and binding on the parties to this Deed.

- 16.2 For the purposes of clause 16.1 *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 2005 quarter.

17 Notices

- 17.1 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:

(a) The Trustee

Level 3, 151 Rathdowne Street
Carlton Victoria 3053
Facsimile: 03 9639 0286
Email: ssilavecky@trust.com.au
Attention: Stenick Silavecky

(b) Orchard Investments Management Limited

Level 8, 461 Bourke Street
Melbourne Victoria 3000
Facsimile: 03 9670 4271
Email: OIMLenquiries@Timbercorp.com.au
Attention: Company Secretary

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 clause 17.1.

- 17.2 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.
- 17.3 Any notice given by the Trustee or by OIML to a Bond Holder must be given in accordance with Issue Condition 9.
- 17.4 In this clause 17:
- (a) notice includes a demand, consent, request or other communication under or pursuant to a provision of this Deed and the Fixed and Floating Charge;
 - (b) given, in relation to a demand, means made; and
 - (c) cognate expressions have cognate meanings.
- 17.5 A notice, demand or other communication that complies with this clause is regarded as given and received:
- (a) 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;

- (b) 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;
- (c) if it is sent by electronic mail – it is deemed received:
- (i) if the electronic message travels directly to the addressee, at the time when it enters the addressee's system; or
 - (ii) in all other cases, at the time when the electronic message enters the first system outside the control of the sender.
- 17.6 If a communication to a party is received by it:
- (a) after 5:00pm (local time in the place of receipt); or
 - (b) on a day which is not a Business Day,
- it is deemed to have been received at the commencement of the next Business Day.
- 17.7 OIML 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 Bond Holders.
- 17.8 The Trustee may rely on the notice, demand or other communication received from OIML which it believes to be genuine and correct without further verification from OIML.

18 Alteration And Assignment

Alteration by OIML and the Trustee

- 18.1 At any time and from time to time OIML and the Trustee may jointly modify, alter, amend or add to this Deed and the Issue 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) necessary or desirable for the purpose of enabling the Bonds to be offered to retail investors in accordance with Chapter 2L of the Corporations Act or 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 Bond Holders;
 - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority; or
 - (v) expressly permitted by this Deed; or
 - (b) if such modification, alteration, amendment or addition is authorised by a Special Resolution passed at a meeting of Bond Holders held pursuant to the provisions of the Rules.

Changes to Trust Deed

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

- (a) the rates of remuneration of the Trustee prescribed by this Deed;
- (b) any of the immunities or indemnities of the Trustee under this Deed; or
- (c) would impose an additional duty or liability on the Trustee except to the extent arising from the application of Chapter 2L of the Corporations Act to this Deed or from an increase in the number of Bond Holders.

The Trustee will be indemnified by OIML 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.

Assignment

18.3 Unless the Corporations Act requires, OIML 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.

18.4 The Trustee will not be liable for:

- (a) any increased costs and expenses;
- (b) any costs or expenses incurred by OIML; or
- (c) 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 clause 18.3.

18.5 In addition to its rights under clause 18.3, and subject to clause 18.6, 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 OIML, 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.

18.6 OIML will not be liable for:

- (a) any increased costs and expenses;
- (b) any costs or expenses incurred by the Trustee; or
- (c) 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 clause 18.5.

19 Resignation And Removal And Appointment Of Trustee

Resignation of Trustee

- 19.1 The Trustee may resign at any time upon giving OIML not less than 4 months' prior written notice, 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 clause 19.

Removal of Trustee

- 19.2 OIML may remove the Trustee from office by notice in writing addressed to the Trustee only if:
- (a) the Trustee ceases to exist;
 - (b) a Special Resolution of Bond Holders determines that the Trustee should be removed;
 - (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; or
 - (d) the Trustee defaults in the observance or performance of any of its material obligations under this Deed, and if that default is capable of rectification, it is not rectified within 21 Business Days of its occurrence.

Appointment of New Trustee

- 19.3 Subject to clause 19.5, the power of appointing a new Trustee is vested in OIML.
- 19.4 OIML must exercise its power of appointment promptly upon receiving notice of the resignation the Trustee under clause 19.1.
- 19.5 Upon the service of a notice of retirement by the Trustee pursuant to clause 19.1, or a notice of removal of the Trustee pursuant to clause 19.2, OIML must use all reasonable endeavours to exercise the power of appointment conferred by clause 19.3 by appointing a person who is approved by an Ordinary Resolution of Bond Holders within 1 month of the notice, failing which the retiring or removed Trustee has the power to appoint the new Trustee.

Acceptance of Appointment by Successor

- 19.6 Every successor Trustee appointed in accordance with the above must (at the cost of OIML) execute and deliver to OIML and the retiring or removed Trustee an instrument accepting such appointment and must do all other things reasonably within its power to assume the obligations, duties and powers of the retiring or removed Trustee under this Deed.
- 19.7 Upon the resignation or removal of the Trustee, the successor Trustee becomes vested with all the powers, trusts and duties of the retiring or removed Trustee (who thereafter has no more such powers, trusts or duties).

Co-operation of Retiring or Removed Trustee

19.8 The retiring or removed Trustee must:

- (a) execute and deliver any documents and do any other thing reasonably within its power which is necessary or desirable to effect the appointment of the successor Trustee; and
- (b) deliver to the successor Trustee all documents (paper or electronic) relating to the Bonds and which are in the possession of or under the control of the retiring or removed Trustee, to the extent that such documents are necessary or desirable to carry out the functions and to exercise the rights of the successor Trustee.

Release and Discharge of Retiring or Removed Trustee

19.9 Upon the resignation or removal of the Trustee, the retiring or removed Trustee is absolved, released and discharged by OIML, the successor Trustee and the Bond Holders from all further obligations, duties and Powers under this Deed. However, this release and discharge so provided for and given in accordance with this clause 19.9 does not affect the rights and obligations of the retiring or removed Trustee arising during its term as Trustee.

19.10 If the retiring or removed Trustee exercises its power to appoint the successor Trustee pursuant to clause 19.5, the retiring or removed Trustee will not be responsible for or liable to OIML or any Bond Holder or any other person for loss caused by exercise of its power to appoint the successor Trustee.

20 Register Of Bonds

Establish Register of Bonds

20.1 OIML must establish a register of the Bonds, and if required, in accordance with the Corporations Act. There must be recorded in the Register the names and addresses of the Bond Holders and the date of issue or transfer of such Bonds and the amount of Bonds held by each such Bond Holder and the face value of these Bonds and as regards Bonds no longer Outstanding particulars of their redemption and such other details as required, if applicable, by the Corporations Act.

Register conclusive

20.2 Subject to the Corporations Act, to the extent it applies:

- (a) the Register will, in the absence of manifest error, be conclusive as to the identity of Bond Holders and the face value of Bonds they hold from time to time. If there is any inconsistency with any register kept by OIML, the Register will prevail;
- (b) a person whose name is entered on the Register as a Bond Holder will remain a Bond Holder for the purposes of this Deed until that name is removed from the Register by the Trustee with the consent of the Bond Holder. This applies whether or not:
 - (i) the Bond is or proves to have been void, invalid or improperly issued; or
 - (ii) the Bond has been redeemed, repaid or cancelled; and
- (c) Bond Holders whose names appear for the time being in the Register will be regarded as the beneficial owners of the Bond registered against their respective names. Except as required by law neither the Trustee nor OIML will recognise any other interest in any Bond (even if either of them has notice of any such interest).

Inspection of the Register of Bonds

- 20.3 Subject to the Corporations Act the Register must be open at all reasonable times during business hours for the inspection of the Trustee and of any Bond Holder or Bond 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, OIML must provide to such person an extract from the Register, or a document which sets out the relevant Bond 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.

Copy of the Register of Bonds to be Provided to Trustee on Request

- 20.4 OIML 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.

Delegation by OIML in Respect of the Register of Bonds

- 20.5 OIML may delegate any of its powers and obligations in respect of the Register provided that OIML will be and will remain liable for all acts and omissions of any delegate under this clause 20.5 as if those acts or omissions were its own.
- 20.6 If OIML delegates any of its powers and obligations in relation to the Register to the Trustee, the Trustee will perform those obligations only as OIML's agent and not in its capacity as Trustee.
- 20.7 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 OIML's agent to act as Registrar.

21 Payments By OIML Or Trustee

- 21.1 Whenever in respect of any of the Bonds registered in the name of any Bond Holder in consequence of:
- (a) the death of such Bond Holder;
 - (b) the non-payment of any Taxes by such Bond Holder;
 - (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the legal representative of such Bond Holder by or out of the Bond 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 OIML or the Trustee to make any payments to any government or taxation authority, OIML or the Trustee, as the case may be, in respect of such liability is to be indemnified by such Bond Holder and the Bond Holder's executors and administrators and any moneys paid by OIML or the Trustee in respect of such liability may be recovered by action from such Bond Holder and the Bond Holder's executors and administrators as a debt due to OIML or the Trustee, as the case may be, and OIML or the Trustee, (as the case may be), is entitled to set off the amount of such liability against any amount due to the Bond Holder under this Deed or the Issue Conditions. Nothing in this Deed prejudices or affects the right or remedy which any such law

may confer or purport to confer on OIML or the Trustee and as between OIML or the Trustee and every Bond Holder and the Bond Holder's legal representatives and estate wheresoever constituted or situate. Any right or remedy which such law confers on OIML or the Trustee is enforceable by it.

22 Determination By Trustee

- 22.1 The Trustee may determine as between itself and the Bond 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 as against, and binds, all Bond Holders.

23 Release Of OIML

- 23.1 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 OIML execute a deed releasing OIML from the trusts, powers, authorities and provisions of the Transaction Documents.

24 Dealings By Trustee

Investments by Trustee

- 24.1 Subject to the Corporations Act, to the extent it applies, 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 Bond Holder or from acting in any representative capacity for a Bond 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 OIML as responsible entity of the Scheme or the Trustee and the Bond Holders hereby established or otherwise imposed or implied by law.

Transactions Entered into by the Trustee

- 24.2 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 OIML or its Controlled Entities (for the purposes of clauses 24.2 to 24.4 collectively called the *OIML 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 OIML Entities or for itself as Trustee.
- 24.3 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 OIML 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 OIML 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 OIML Entities.

- 24.4 The Trustee is not accountable either to the OIML Entities or the Bond Holders for any profits arising from any such contracts, transactions or offices.

25 Incorporation Of Schedules

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

26 Meetings Of Bond Holders

- 26.1 Meetings of the Bond Holders must be held and be regulated in accordance with the Rules.

27 Stamp Duty

- 27.1 OIML covenants with the Trustee that it will indemnify the Trustee and the Bond 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 Bonds and agrees that payment of any such duty by the Trustee or a Bond Holder is not a condition precedent to the enforcement of such indemnity.

28 Goods And Services Tax

- 28.1 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.
- 28.2 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.
- 28.3 GST payable under clause 28.2 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.
- 28.4 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.
- 28.5 Subject to clause 28.7, 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 clause 28.2.
- 28.6 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.

- 28.7 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.
- 28.8 This clause 28 takes precedence over any other term or condition of this Deed to the extent of any inconsistency.

29 Confidentiality


- 29.1 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.

30 Governing Law

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

31 Growers' Rights And Interests

- 31.1 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:

- 
- (a) the participants in the Projects;
 - (b) the responsible entities and managers of the Projects and their nominees;
 - (c) any lessee or licensee of a person specified in clause 31.1(b); or
 - (d) 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 clauses 31.1(a) to (c).

31.2 The Trustee acknowledges and agrees that all rights and interests of:

- (a) the responsible entities and managers of the Projects and their nominees;
- (b) the participants in a Project; and
- (c) anyone claiming through the persons specified in clauses 31.2(a) to (b),

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 or the Fixed and Floating Charge or arise subsequently, have priority over the rights of the Trustee and consents to the rights of the persons described in clauses 31.2(a) to (c) having such priority.

31.3 The Trustee acknowledges the grant of:


- (a) 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 clauses 31.2(a) to (c); and
- (b) 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 or the Fixed and Floating Charge or arise subsequently.

Execution

Executed as a deed.

Signed sealed and delivered
by **Orchard Investments Management
Limited as responsible entity of the
Timbercorp Agribusiness Trust**
by a director and secretary/director:



Signature of secretary/~~director~~

ANDREW ASHBOLT
Name of secretary/director (please print)



Signature of director

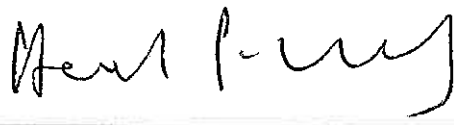
TREVOR MOTUK
Name of director (please print)

Signed sealed and delivered
for and on behalf of
Permanent Trustee Company Limited
its Attorney pursuant to a Power of Attorney
dated 30 SEPTEMBER 2005 and who
declares that he has not received any notice of
the revocation of such Power of Attorney.



Signature of witness

FIONA BATTEN
Name of witness (please print)



Signature of attorney

S. SILAVECKY
MANAGER
Permanent Trustee Co Ltd

Name of attorney (please print)

Schedule 1

Issue Conditions

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

1 FORM, DEFINITION AND TITLE

Constitution under Trust Deed

- 1.1 The Bonds are debt obligations of OIML as responsible entity of the Scheme to the Trustee as trustee for the Bond Holders.

Denomination

- 1.2 Each Bond entitles a Bond Holder to receive from OIML the principal and interest moneys in respect of such Bond. Each Bond is a separate promise of OIML. OIML issues Bonds by entering those Bonds on the Register in the name of the Bond Holder. The number of Bonds at any time is the number of Bonds then entered on the Register.
-

2 ISSUE

Face Value

- 2.1 The Bonds will be issued with a principal amount of \$1.00 each (or such other amount determined by the directors under clause 3.3 for any issue after the First Issue) and must be paid for in full by the subscriber on application.

Issue Date

- 2.2 Bonds will be issued on the Issue Date. The First Issue will be issued on the First Issue Date.
-

3 STATUS

- 3.1 The Bonds constitute direct obligations of OIML ranking pari passu amongst themselves and ahead of all unsecured creditors.
-

4 PAYMENTS GENERALLY

Payments to Bond Holders

- 4.1 All payments in respect of the principal money and interest and other amounts payable to Bond Holders:
- (a) will be made to Bond Holders according to the particulars recorded in the Register on the relevant Record Date or Redemption Calculation Date, as the case requires immediately 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 Bond Holder fails to provide its name, address and tax file number or any relevant tax exemption.

Particulars of Bond Holders

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

5 PAYMENT OF PRINCIPAL MONEYS AND INTEREST

Payment of Interest

- 5.1 The Bonds will bear interest accruing daily as follows:
- (a) Subject to paragraphs (b) and (c), from the Issue Date, interest at a fixed rate of 9.5% per annum for the First Issue, and for any subsequent issue, the rate determined by the directors under clause 3.3, (*Interest Rate*), payable on the Interest Payment Date;
 - (b) if any payment under this Deed is overdue, interest will be payable on that overdue amount at the Interest Rate plus 2% (*Penalty Rate*), payable at the same times and in the same manner as all other interest is payable under this Deed; and
 - (c) upon the occurrence of an Event of Default, interest at the Penalty Rate will be payable on all Monies Owing from time to time from the date which is 21 days after the date a notice is served on OIML by the Trustee notifying it that an Event of Default has occurred, and for the period of time that such default is subsisting.
- 5.2 Interest on Outstanding Bonds 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 Issue Conditions.
- 5.3 OIML will have no obligation to make any payments of interest in respect of any Bond beyond the Redemption Date provided that all Moneys Owing in respect of that Bond have been paid on the Redemption Date.

Payment of Principal

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

Early Redemption by the Trustee

- 5.5 The Trustee may, if an Event of Default has occurred and is subsisting, require OIML:
- (a) to redeem the Bond Holders' Bonds; and
 - (b) immediately pay to the Bond Holders the Moneys Owing,
- on a day specified by the Trustee which allows adequate time for the calculation of the Moneys Owing on the Redemption Date of the Bonds.
- 5.6 OIML agrees to redeem the Bond Holders' Bonds immediately upon the request of the Trustee under Issue Condition 5.5.

Early Redemption by OIML

5.7 OIML may:

- (a) redeem the Bonds in whole or in part; and
- (b) immediately pay to the Bond Holders the Moneys Owing or part thereof (whichever applies);

where:

- (i) a Tax Event as set out in Issue Condition 5.8 occurs on giving the Trustee and the Bond Holders at least 20 Business Days' written notice of OIML's intention to redeem all the Bond Holder's Bonds; or
- (ii) at any time after 30 September 2010, subject to the provision of 30 days prior written notice to the Trustee, without any penalty or break cost being payable whatsoever.

Redemption for Regulatory or Tax Reasons

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

No Early Redemption by Bond Holder or Trustee

5.9 Except as provided in Issue Conditions 5.5 and 5.6, the Trustee or a Bond Holder may not require OIML to redeem Bonds prior to its Maturity Date.

Cancellation of Bonds

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

6 REGISTRATION OF TRANSFERS

Transfers

6.1 Subject to Issue Condition 6.16 and the other Issue Conditions, a Bond Holder may transfer all or any of the Bonds that it holds by an instrument in writing in any usual form or in any other form that the directors of OIML approve.

Transfer Procedure

6.2 In relation to all transfers of Bonds, the transfer form must be:

- (a) lodged with the Registrar together with payment of any stamp duty, Taxes or other governmental charges payable on such a document; and
- (b) accompanied by such evidence as the Registrar may require to prove the title and identity of the transferor and the transferee, the right or entitlement of the transferee to receive a transfer of the relevant Bonds, 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.

- 6.3 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 Issue Conditions and such reasonable regulations as OIML 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 Bonds.

Registration

- 6.4 On the inscription being made in the Register, OIML and the Trustee will recognise the transferee as the registered owner of the relevant Bonds and as being entitled to the payment from then on of the interest, principal and other Moneys Owing in respect of that Bonds and to all other rights vested in Bond Holders under the Trust Deed. The transferor will for all purposes be and be deemed to be the registered owner of the relevant Bonds 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 OIML from time to time.

Administration

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

Transfer Forms

- 6.8 Transfer forms are available from the Registrar.

Directions

- 6.9 Subject to the Trust Deed, these Issue Conditions and any notations on the Register, OIML will comply with any payment or distribution direction made by the transferee:
- (a) in application for transfer of Bonds on and from the time of registration of that transfer; and
 - (b) at any subsequent time in such form as OIML from time to time determines.
- 6.10 A direction from any one or more joint holders of Bonds binds all the joint holders.

Transmission

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

No Registration Fee

- 6.12 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.

Non-registration of Third Party Interests

- 6.13 Bonds will be registered by name only without reference to any trusteeships or other beneficial interests in the Bonds. Any entry in the Register of the name and address of a Bond Holder and the amount owed to that Bond Holder is conclusive evidence of title subject to rectification for fraud or error.
- 6.14 The person registered in the Register as a Bond Holder of Bonds will be treated by OIML and the Registrar as the absolute owner of those Bonds. Neither OIML, 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 Bonds.

Suspension of Transfers

- 6.15 No transfer of Bonds will be registered, nor will any person be registered as a Bond 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.
- 6.16 Despite any other provision of these Issue Conditions, a Bond Holder must not transfer all or any of the Bonds that it holds if such transfer would amount to:
- (a) an indirect issue of Bonds which would require disclosure to investors under Chapter 6D of the Corporations Act; or
 - (b) an offer or sale to a *retail client* (as that term is defined in section 761A of the Corporations Act) before any *Retail Date* (as defined in clause 3.12).

7 LIQUIDATION OF OIML

Moneys Owing

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

Trustee may Wind Up OIML

- 7.2 The Trustee will be entitled if an Event of Default has occurred and is subsisting:
- (a) to commence proceedings for the winding up of the Scheme and, subject to clause 4.3 OIML as responsible entity of the Scheme, where Bond Holders that together hold not less than three-quarters of the amount of the Outstanding Bonds held by all the Bond Holders consent in writing;
 - (b) to take such other action relating to enforcement of payment of Moneys Owing (including without limitation requiring OIML to redeem the Bonds, 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 OIML as responsible entity of the Scheme (irrespective of when that Liquidation is commenced) subject to the Trust Deed, including clause 4.3(d); and
 - (d) to enforce the rights granted to the Trustee under the Fixed and Floating Charge.

8 PAYMENT TO BOND HOLDERS

Method of Payment

- 8.1 Any interest, principal and other Moneys Owning payable by OIML or, following an Event of Default, by the Trustee, on or in respect of any Bonds may be paid:
- (a) by non- negotiable cheque sent through the post to the registered address of the Bond Holder or in the case of joint Bond Holders to the registered address of that one of the joint Bond Holders who is first named in the Register in respect of such Bond. 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 Bond Holder by written notice to OIML or the Trustee may direct.

Payment to Joint Holders

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

9 NOTICES

Reports

- 9.1 OIML must send to Bond Holders and the Trustee copies of OIML's annual reports, accounts and other information which is sent to its members.

Notices Must Be In Writing

- 9.2 A notice given to a Bond Holder pursuant to a provision of these Issue Conditions and the Trust Deed must be in writing and may be given to a Bond 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 OIML in writing.

Notices By Post

- 9.3 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.
- 9.4 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.

Notices to Joint Holders

- 9.5 A notice given to any one of joint Bond Holders is sufficient notice to all of those joint Bond Holders.

What is a Notice?

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

Schedule 2

Rules of Meetings of Bond Holders

The following provisions apply to meetings of Bond Holders:

1. The Trustee or OIML may at any time convene a meeting of the Bond Holders. Whenever OIML 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 Bond Holder or Bond Holders holding not less than one-tenth of the amount of Outstanding Bonds. 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 Bond 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 OIML unless the meeting is convened by OIML. Any accidental omission to give notice to or the non-receipt of notice by any of the Bond 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 Bond 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 OIML and any other person authorised by OIML 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 Bond 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 Bond 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 Bond 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 Bond Holder.
6. The quorum for transaction of business comprises Bond Holders whether present in person or by proxy or corporate representative who together hold one-quarter of the amount of Outstanding Bonds. 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 Bond 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 Bond Holder or proxy or representative for a Bond 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 Bond 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 Bond Holder who is present in person or by proxy or corporate representative has one vote only; on a poll every Bond Holder whether voting in person or by proxy or be corporate representative has one vote for each dollar of the amount of Outstanding Bonds of which they are the holder.
13. On a poll any Bond 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 Bonds the vote of the senior Bond Holder who tenders a vote whether in person or by proxy will be accepted to the exclusion of the votes of the other Bond Holders and for this purpose seniority will be determined by the order in which the names stand in the Register of Bond 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) hidden text
- (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 Bond
Holder of [] hereby appoint of
..... or failing him/her of
..... to vote on my behalf at the meeting
of the Bond Holders of OIIML 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 Bond Holder.
17. The persons registered as Bond Holders in the Register and no other person or persons may be recognised and treated as legal and beneficial owners of the Bonds registered in their name whether such persons are or are not in fact the beneficial owners of such Bonds and such person accordingly is exclusively entitled to vote in person or by proxy or representative in respect of such Bonds. Subject to the Corporations Act, OIML may for voting purposes specify a time being not more than 48 hours before any meeting of Bond Holders by reference to which the entitlement of Bond 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 Bond 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 OIML and the Bond Holders;
 - (b) subject to any restrictions contained in the Deed or the Issue Conditions, power to sanction or assent to any modification of the provisions of the Deed, the Issue Conditions, the other Transaction Documents or the variation or abrogation of any rights conferred by the Deed, the Issue 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 OIML 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 Bond Holders duly convened and held in accordance with the provisions of this Schedule is binding upon all Bond Holders whether or not present at the meeting and each Bond 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 OIML. 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 Bond 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) hidden text
- (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 Bond Holders duly convened and held in accordance with the provisions of these Issue Conditions) by a majority:
- (i) of such Bond 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 Bond 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 Bond Holder is entitled in terms of Rule 12.
22. (a) hidden text
- (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 Bond Holders duly convened and held in accordance with the provisions of these Issue Conditions) by a majority:
- (i) of such Bond 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 Bond 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 the number of votes to which each Bond Holder is entitled in terms of Rule 12.
23. (a) hidden text
- (a) For the purposes of these Rules the expression *Written Resolution* means a resolution passed by the Bond Holders without a meeting of Bond Holders being held if all the Bond 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 Bond Holders if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Bond Holder signs.
24. Despite any provision to the contrary in this Deed, the Issue Conditions and these Rules, each reference to a matter that requires the direction, authority or agreement of, or waiver by, the Bond Holders by the passing of a Special Resolution or Ordinary Resolution, may at the sole discretion of the Bond Holders be directed, authorised or agreed upon or waived, as the case may be, by the passing of a Written Resolution.



Schedule 3

First PDS
