

Facility Terms

(2012: Version 1)

RURAL BANK LIMITED
(ABN 74 083 938 416)

BEFORE YOU ACCEPT ANY LETTER OF OFFER (WHICH INCORPORATES THESE TERMS) YOU SHOULD CAREFULLY CONSIDER:

- **YOUR FINANCIAL POSITION;**
- **THE PROVISIONS OF THESE TERMS, THE LETTER OF OFFER AND THE SECURITIES; AND**
- **YOU SHOULD SEEK ADVICE FROM YOUR LAWYER AND ACCOUNTANT.**

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FACILITY TERMS (2012: Version 1)

These terms form part of the *letter of offer* from the *Bank* to the *borrower* and/or *guarantor* and, once the *letter of offer* is accepted, the *borrower* and/or *guarantor* are bound by these terms, as may be varied by the *Bank* from time to time under **clause 4**. These terms apply to all *facilities* described in each *letter of offer* between the *Bank* and the *borrower*.

This version of the terms replaces all previous versions.

For your assistance, defined expressions are shown in italics "*like this*" when used in these terms. Please refer to **clause 15** for the meaning of defined expressions.

Note 1:

Clause 1 sets out various steps that must be taken before the *borrower* may request a *drawing* under a *facility*. Other requirements are set out in these terms and may also be included in the *letter of offer*.

1. CONDITIONS PRECEDENT

1.1 General Conditions Precedent

The *Bank* is not obliged to provide a *drawing* under a *facility* unless:

- (a) it receives, in a form and substance satisfactory to it, the *letter of offer* duly accepted, the *securities* and any other documents the *Bank* or its solicitors reasonably consider necessary or desirable;
- (b) it receives any other documents it or its solicitors reasonably requires to evidence that all necessary action was taken to authorise the execution and delivery of each *relevant document* and each *material document*;
- (c) the relevant *account* for that *facility* has been established in accordance with the *Bank's* standard procedures and the requirements of all relevant *government bodies*;
- (d) the *securities* are stamped and registered in such jurisdictions and with such *government bodies* as are required for the *securities* to be valid, fully enforceable and to confer the priority

specified in the *letter of offer* or, if not specified, as required by the *Bank*;

- (e) any other requirement separately notified by the *Bank* to the *borrower* and/or the *guarantor* or contained in the *letter of offer* is satisfied;
- (f) if any of the *secured property* includes plant, equipment, crops, livestock or improvements, the *Bank* receives proof of insurance of those items (for their full insurable value) and with an insurer approved by the *Bank* with the interest of the *Bank* noted on that insurance;
- (g) it receives satisfactory results to its searches and enquiries in connection with the *borrower*, the *guarantor*, the *trust* and the *secured property*;
- (h) it is satisfied that each of the representations and warranties contained in each *relevant document* and each *material document* is correct;
- (i) it is satisfied that since the date of the relevant *letter of offer* there has been no material adverse change to the financial position of the *borrower* or any *guarantor* or to the *secured property*;
- (j) it is satisfied that there is no subsisting *event of default* or *potential event of default*; and
- (k) in the case of a *drawing* relating to an *external obligation*, the *Bank*:
 - (i) approves the form, and the beneficiary, of the *external obligation* which must, unless otherwise agreed by the *Bank*, have an expiry date before the *repayment date* for the *facility*; and
 - (ii) receives a request and indemnity (in form and substance acceptable to the *Bank*) from the *borrower*.

1.2 Conditions Precedent for First Drawing for Development Purposes

If any *drawing* under a *facility* is to be used to assist in completion of a *development* the following must be received by the *Bank* before the **first** *drawing* for that purpose is made:

- (a) evidence acceptable to the *Bank* or the *Bank's consultant* that all *development consents* required in connection with that *development* have been obtained and are satisfactory;
- (b) evidence acceptable to the *Bank* or the *Bank's consultant* that the *builder* is qualified, appropriately licensed and competent to complete the *development* in accordance with the *development consents*, the *plans and specifications* and the *building contract*;
- (c) evidence acceptable to the *Bank* that contractor's all risks insurance is in place, that the *Bank's* interest is noted on the policy and the policy is satisfactory in all respects;
- (d) evidence satisfactory to the *Bank* or the *Bank's consultant* that the *plans and specifications* are in accordance with the *development consents*;
- (e) evidence acceptable to the *Bank* that each *material document* has been executed and is satisfactory in all respects; and
- (f) evidence acceptable to the *Bank* that all other *pre development conditions* have been met.

1.3 Further Conditions Precedent for Drawings for Development Purposes

The obligation of the *Bank* to make available any *drawing* to assist in completion of a *development* is subject to the further conditions precedent that:

- (a) the *Bank* receives a certificate from the *Bank's consultant* that the works in relation to the *development* for which the *drawing* is required have been satisfactorily completed and the *cost to complete* is less than the aggregate balance then remaining under all *facilities* available to assist in completion of the relevant *development* after the proposed *drawing*;
- (b) the *Bank* receives a certificate from the *builder* confirming that all payments due to the *builder* under the *building contract* have been made other than those the subject matter of the proposed *drawing*;
- (c) the *Bank* receives a certificate or statutory declaration from the *builder* confirming that all its subcontractors have been paid or will be paid from the proceeds of the proposed *drawing*; and

- (d) evidence that the *Bank's consultant* has been paid all of its costs and expenses.

1.4 Conditions Precedent for *Bank's* Benefit

These conditions precedent are for the benefit of the *Bank* only. The *Bank* may waive or defer (with such requirements or conditions as it sees fit) the satisfaction of any of them at any time.

1.5 Conditions Subsequent

The *borrower* and/or each *guarantor* must comply with any conditions subsequent specified in the *letter of offer* within the time permitted by the *letter of offer*. Failure to do so will constitute an *event of default*.

Note 2:

Clause 2 sets out various requirements that apply to the use of a *facility*. Others may be specified in the *letter of offer*.

2. USE OF FACILITY

2.1 General

The *borrower* and each *guarantor*:

- (a) agrees that at no time may the debit balance of an *account* or the *external exposure* under all *outstanding external obligations* exceed the *facility limit* applicable to the relevant *facility*;
- (b) agrees that the *facility* may only be used for an *approved purpose* and that any *drawing* used for any purpose other than an *approved purpose* must be immediately repaid; and
- (c) authorises the *Bank* to debit each *advance* under a *facility* to the *account* for that *facility* or to the *account* nominated for that purpose in the *letter of offer* on the date that it is provided to the *borrower* or at its request.

2.2 Usage and Access

The *Banking Account Terms and Conditions* regulate the way in which a *facility* can be accessed by the *borrower* and, to the extent they apply to usage of a *facility*, the *Banking Account Terms and Conditions* are

incorporated in, and form part of, these terms.

In addition, but subject to the other provisions of these terms and the relevant *letter of offer*, the *borrower* may by notice in writing to the *Bank* request a *drawing*.

The *Bank* may, at any time after the occurrence of an *event of default*, cancel or restrict access to an *account* via any card, internet or telephone access arrangements, cheque or other arrangements set out in the *Banking Account Terms and Conditions*.

2.3 Term Loans

If the *facility* is expressed to be a term loan (other than one for *development* purposes), the *Bank* may, after the first *advance* and by providing prior written notice to the *borrower*, cancel any unutilised portion of the *facility limit*.

2.4 Cancellation by Bank and Reinstatement

The *borrower* and each *guarantor* acknowledge that the *Bank* may at any time unconditionally cancel that part of the *facility limit* that has not been utilised. At the *Bank's* discretion and provided there is no subsisting *event of default* or *potential event of default*, the *Bank* may reinstate the cancelled portion of the *facility limit* at the *borrower's* request. If there has been deterioration in the *borrower's* creditworthiness, whether in the *Bank's* sole opinion or otherwise, that part of the *facility limit* that has not been utilised will be automatically cancelled.

2.5 Non Usage

If no *drawing* under a *facility* has been made within 90 days of the date of acceptance of the *letter of offer*, the *Bank* may, by notice to the *borrower*, cancel that *facility* and the *Bank's* obligation to provide that *facility* ceases on the date of that notice.

2.6 Prepayment

The *borrower* may where the *facility*:

- (a) has been provided at a variable *interest rate*, at any time repay all or any part of the debit balance of any *account* without any additional cost; and
- (b) relates to the issue of an *external obligation* discharge its obligations under that *facility* by returning the

original of that *external obligation* and paying to the *Bank* any amount paid by the *Bank* under that *external obligation* which has not been reimbursed by the *borrower* together with interest on that amount.

2.7 Redraw

If the *facility* is a term loan *facility* the *Bank* may, subject to the terms of the *letter of offer*, permit any prepaid amount to be redrawn by the *borrower* provided not less than \$5,000 or such other amount as may be agreed by the *Bank*.

2.8 Priority

Without prejudice to its rights under any *relevant document*, if the *Bank* becomes aware that:

- (a) any other person holds a *security interest* or *encumbrance* over any *secured property*; or
- (b) the *securities* are not registered with the priority required by the *Bank*,

then the *Bank* is not obliged to continue to provide the *facility* until it has entered into a priority agreement with all relevant parties on terms satisfactory to the *Bank*.

2.9 Payment on Account of Outstanding Sum

If the *Bank* receives a prepayment from the *borrower* on account of the *Bank's* obligations under any *outstanding external obligation*, that prepayment will be held by the *Bank* to cover the *borrower's* obligations under **clauses 12 and 14**. Nothing in this clause affects the *Bank's* rights under **clause 13.11**.

2.10 Gross Up

If any law requires the *borrower* to deduct or withhold an amount in respect of *tax* from any payment required under a *relevant document*, the *borrower* must:

- (a) advise the *Bank* in writing of that obligation;
- (b) pay the relevant *tax* and provide evidence of payment; and
- (c) increase the amount payable to the *Bank* so that the *Bank* receives the full amount payable had no deductions or

withholdings (including in relation to amounts payable under this **clause 2.10**) been required.

Note 3:

Clause 3 sets out various requirements relating to the payments required to be made including, when those payments are required, how they are calculated and where, and how, they must be made.

3. PAYMENT OBLIGATIONS

3.1 General

All payments required to be made under or in connection with a *relevant document* must be made:

- (a) in cleared funds free of any set-off, counterclaim or deduction;
- (b) by 4 pm on a *business day*;
- (c) in *Australian dollars*; and
- (d) to the *Bank* at its address shown in the *letter of offer* or as subsequently advised to the *borrower* in writing.

3.2 Interest

The *borrower* must pay interest on the debit balance of each *account*.

Subject to **clause 3.8**, interest is payable on the debit balance of an *account* calculated at the *interest rate* applicable to the relevant *facility* and will be debited to that *account* (or to such other *account* specified in the *letter of offer*) on the dates specified in the *letter of offer*.

The *interest rate* (unless otherwise specified in the *letter of offer*) consists of a base rate and a margin. The base rate applicable to the relevant *facility* can be obtained by telephoning the *Bank* on 1300 660 115. **Any indicative base rate set out in the letter of offer may not apply during the term of the facility and may change even before the first advance is made.**

3.3 Conversion of Interest Rate

Subject to the *Bank's* consent (which will not be unreasonably withheld), the *borrower* may at its option convert all or part of a variable *interest rate advance* to a fixed *interest rate*

advance or vice versa during the term of any *facility*.

The terms applicable to the converted *advance* will be agreed between the *Bank* and the *borrower* and the *Bank* will issue a revised letter of offer for the converted *advance*.

The *borrower* acknowledges that in converting a fixed *interest rate* to a variable *interest rate* prior to the end of any fixed *interest rate* period, break costs may be incurred and that the provisions of **clause 7** will apply.

3.4 Fees

The *borrower* must pay all fees in the amount and at the times specified in the *letter of offer*, the relevant *fees and charges schedule* and in each other *relevant document* and the *borrower* authorises and directs the *Bank* to debit those fees to the relevant *account*, to such other *account* nominated in the *letter of offer* or to any other account of the *borrower* with the *Bank* on the due date for payment.

3.5 Calculation

Interest and, where applicable, fees are calculated daily on the basis of a 365 day year or, in the case of a leap year, a 366 day year.

3.6 Repayments

The *borrower* must repay to the *Bank* the *outstanding sum* on or before the *repayment date* applicable to the relevant *facility* or, if no *repayment date* is specified, on demand and must, if required by the *letter of offer*, repay such other amounts on the due dates for payment specified in the *letter of offer*. The original of each *external obligation* must be returned to the *Bank* on the *repayment date* applicable to the *facility* relating to that *external obligation*.

Where the *letter of offer*:

- (a) specifies that repayments of principal and interest are required to be made; and
- (b) the *interest rate* for that *facility* is changed,

the *Bank* may by notice in writing to the *borrower* require the *borrower* to pay the increased amount set out in the notice to ensure that the *outstanding sum* for that

facility is paid by the *repayment date* for that *facility*.

3.7 Other costs and expenses

The *borrower* must pay on demand all other costs, charges, duties and expenses including reasonable legal costs (on a full indemnity basis), registration costs, discharge costs, stamp duty, government charges, court fees and valuation costs specified in any *relevant document* or which are incurred by the *Bank* in connection with:

- (a) the preparation, negotiation and execution of each *relevant document* and *external obligation*;
- (b) the stamping and, where necessary, registration of each *relevant document* and *external obligation*;
- (c) the conduct of any searches and enquiries including obtaining any valuation or other report required by the *Bank* and obtaining advice on any *trust deed*;
- (d) any valuations or revaluations undertaken by the *Bank* in accordance with the *relevant documents*;
- (e) the enforcement and attempted enforcement or preservation by the *Bank* of its rights under any *relevant document* or any *material document*, including any legal recovery costs (such as mediation costs) and any costs associated with restructuring or amending the *facilities*;
- (f) any request for amendment, consent, approval or waiver in connection with any *relevant document*, any *material document* or any *external obligation*;
- (g) any advice obtained, or assessment undertaken, in connection with the *relevant documents*, the *material documents*, any *external obligation* or the *Bank's* rights and duties under them including all costs and expenses of the *Bank's consultant*.

The *borrower* authorises the *Bank* to debit those costs and expenses to the relevant *account* and acknowledges that it is liable for these costs and expenses even if no *drawing* is ever made under the *facility*.

3.8 Default Interest

The *borrower* and the *guarantor* must pay interest on any moneys due but unpaid under

the *relevant documents* including, without limitation, on any debit balance of an *account* in excess of the *facility limit* applicable to that *account*, at the *overdue rate*. Interest on unpaid amounts is calculated from but excluding the date the payment was due to and including the date the payment is made. Interest not paid when due will be capitalised monthly and will be debited to the relevant *account* on the first day of each month in arrears.

3.9 Merger

If the liability of the *borrower* or a *guarantor* to pay to the *Bank* any moneys payable under a *relevant document* becomes merged in any deed, judgement, order or other thing, then the *borrower* or the *guarantor* (as the case may be) must pay interest on the amount owing from time to time under that deed, judgement, order or other thing at the higher of the rate payable under the applicable *relevant document* and the rate fixed by, or payable under, that deed, judgement, order or other thing.

3.10 Appropriation

The *Bank* may appropriate any payment it receives in any way it sees fit towards satisfaction of moneys owing by the *borrower* and/or the *guarantor*. To the extent permissible, any law, and any direction from the *borrower* and/or a *guarantor*, as to appropriation does not apply.

Note 4:

Clause 4 contains provisions dealing with reviews of the *facilities* and variations which may be effected.

4. REVIEW AND VARIATION

4.1 Review

The *Bank* may review the *facilities* and/or the financial position and performance of the *borrower* and/or a *guarantor* at any time. The *borrower* and each *guarantor* must provide such information as the *Bank* requests to enable each such review to take place.

4.2 Rights following Review

If following any review conducted by the *Bank* in accordance with **clause 4.1**, the *Bank* considers in its absolute discretion that there has been an adverse change in the *borrower's* and/or a *guarantor's* financial position, in the value or enforceability of the *security* held by the *Bank* or in relevant market or industry conditions generally, the *Bank* may require that the *borrower* and/or each *guarantor* accept amended terms and conditions or provide additional *security*.

If the *borrower* and/or each *guarantor* have not, within 10 *business days* of being requested by the *Bank*, accepted the revised terms and conditions or provided additional *security*, each *facility* will terminate and the *borrower* will be required to pay the *outstanding sum* within 30 days of the *Bank's* original request.

4.3 Saving Provision

Nothing in this **clause 4** affects the *Bank's* rights should an *event of default* occur and the *Bank* may exercise its rights as a result of an *event of default* even if negotiations under **clause 4** are in progress.

4.4 Change to Terms

In addition to its rights under this **clause 4**, the *Bank* may vary these terms, introduce new fees or charges at any time without the consent of the *borrower* or a *guarantor*. Any change will take effect from the date specified in the *Bank's* notification to the *borrower*. The *Bank's* notification may be in writing to the *borrower* or by advertisement in the national media. Any changes will also be available on the *Bank's* website.

4.5 Acceptance

The *borrower* and/or each *guarantor* acknowledge that any usage by the *borrower* of the relevant *facility* after the date that revised terms and conditions are notified to the *borrower* and/or each *guarantor* (whether under **clause 4.2** or **4.4**) constitutes acceptance of those revised terms and conditions.

Note 5:

Clause 5 contains various representations and warranties given by the *borrower* and each *guarantor*. The *Bank* relies on these representations and warranties when entering into the *facility* and when each *drawing* is made. Other warranties are included in **clause 10**, the *securities* and may also be set out in the *letter of offer*.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The *borrower* and each *guarantor* represent and warrant that:

- (a) all information provided to the *Bank* including in the *finance application*, is true and correct and is not false or misleading;
- (b) if a corporation, it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue and be sued in its own name and to own its property and conduct its business as it is being conducted;
- (c) unless it has disclosed the contrary to the *Bank* in writing prior to the date of acceptance of the *letter of offer*, it is not the trustee of any *trust*;
- (d) it has taken all necessary steps, and has all requisite power, to properly accept the *letter of offer* and execute, and enter into the transactions evidenced by, each *relevant document* and each *material document*;
- (e) each *relevant document* and *material document* to which it is a party is its valid and binding obligation, enforceable in accordance with its terms subject to laws relating to *insolvency* and creditor's rights generally and to the discretionary nature of equitable remedies;
- (f) acceptance of the *letter of offer* and execution of each other *relevant document* and each *material document* and entering into the transactions evidenced by them does not cause a breach of any existing law, its constitution (if applicable) or any other agreement to which it is a party;
- (g) other than as disclosed in writing to the *Bank* prior to the date of acceptance of the *letter of offer*, it has not granted any

encumbrance (other than a *permitted security interest*) over all or any part of the *secured property*;

- (h) it has obtained all necessary consents, licences, approvals and other authorisations from all relevant persons and *government bodies* in connection with acceptance of the *letter of offer* and execution of each *relevant document* and each *material document* and entry into the transactions evidenced by them;
- (i) no *insolvency event* has occurred or is threatened;
- (j) it has paid all rates, taxes and other outgoings which are due and payable by it;
- (k) it has not failed to disclose to the *Bank* any material information which a reasonable person would consider relevant to the assessment by the *Bank* of the *finance application* and to the *Bank's* decision to provide the *facility*;
- (l) the *drawings* provided, or to be provided, under each *facility* have been, or will be, applied wholly or predominantly for business or investment purposes;
- (m) it has obtained and relied on such independent legal, accounting and other advice and information as is necessary or desirable to understand the *relevant documents* and its obligations under them;
- (n) it is in its, and its creditors, best interests for it to enter into and comply with its obligations under the *relevant documents*, that the transactions evidenced by the *relevant documents* to which it is a party are not uncommercial and that it has, or will, obtain a real commercial benefit from entering into, and performing its obligations under, the *relevant documents*;
- (o) no *event of default* or *potential event of default* has occurred;
- (p) it has complied with all *environmental legislation* including in relation to the *development* (where relevant);
- (q) where relevant, it has obtained all necessary *development consents*;
- (r) its obligations under each *relevant document* rank at least equally with all its other unsecured and unsubordinated obligations except obligations mandatorily preferred by law;

- (s) it and its property are free of any right of immunity from set-off, proceedings or execution in respect of its obligations under the *relevant documents*;
- (t) no litigation or other proceedings are current or threatened against it and it is not aware of any *environmental liability* affecting it; and
- (u) no representation, warranty, promise, assurance or other statement has been made to it by any person (including, the *Bank* and its past or present servants and agents) concerning or relating to any *relevant document* or any *material document* other than those contained in the *relevant documents* or the *material documents*.

5.2 Reliance

The *borrower* and each *guarantor* acknowledge that the *Bank* relies on the representations, warranties, covenants and acknowledgements set out in these terms and in the other *relevant documents* in agreeing to provide the *facility* and that the *Bank* would not have agreed to provide the *facility* but for those representations, warranties, covenants and acknowledgements.

5.3 Survival and Repetition

Each representation and warranty set out in these terms survives the acceptance of the *letter of offer* and is deemed to be repeated with reference to the facts and circumstances then existing on the date each *drawing* is provided and on the first *business day* of each month.

Note 6:

Clause 6 contains various obligations by the *borrower* and each *guarantor*. Others are contained in these terms, the *letter of offer* and in the *securities*.

6. COVENANTS

6.1 Positive covenants

The *borrower* and each *guarantor* must:

- (a) if a corporation, provide to the *Bank* as soon as available (but in any case within 4 months after the end of each financial

- year) a copy of its *financial statements* for that year unless as otherwise stipulated in the *letter of offer*;
- (b) if a natural person or a partnership, provide to the *Bank* as soon as possible (but in any case within 4 months after the end of each financial year) a copy of the balance sheet and profit and loss account of each of its businesses for that year;
 - (c) ensure that all *financial statements* and other accounts provided to the *Bank* are prepared in accordance with the *Corporations Act* (if applicable) and accounting principles and practices generally accepted in Australia and consistently applied;
 - (d) if the *Bank* reasonably suspects there has been an adverse alteration in the *borrower's* or the *guarantor's* financial position, provide to the *Bank* within 14 days of request by the *Bank*, copies of its most recently prepared trading statements, cash flow statements, budgets and balance sheets;
 - (e) keep and maintain proper books of account (in accordance with the *Corporations Act*, if applicable), make true and correct entries of all its dealings and make its accounts and financial records available for inspection by the *Bank*;
 - (f) maintain its assets in a good state of repair and condition;
 - (g) provide any information the *Bank* may reasonably request in relation to its financial condition and its business operations including any information specified in the *letter of offer*;
 - (h) promptly provide to the *Bank* details of all information in the possession of the *borrower* and each *guarantor* relating to any additional financial indebtedness incurred by the *borrower* or a *guarantor* since the latest financial information provided to the *Bank* including but not limited to indebtedness under all financial leases or other similar obligations;
 - (i) take all action necessary to obtain and promptly renew all authorisations, approvals, consents, licences and exemptions required under any applicable law to conduct its business operations and to perform its obligations under, or required on its part for the validity and enforceability of, all *relevant documents* and each *material document* including make all payments when due under any lease, licence or other arrangement for the use of any property;
- (j) notify the *Bank* in writing as soon as it becomes aware of:
 - (i) an *event of default* or a *potential event of default*;
 - (ii) any actual or threatened litigation, arbitration or mediation proceeding relating to it or any of the *secured property* where the amount involved is greater than the *threshold amount* or, irrespective of the amount claimed, which may have a *material adverse effect*;
 - (iii) any notification to it of a proposal to compulsorily acquire, resume or confiscate any of its property; and
 - (iv) any other thing which has, or may have, a *material adverse effect*;
 - (k) comply with the provisions of the *Corporations Act* (if applicable) and all existing laws;
 - (l) punctually comply with all requirements of any *government body*;
 - (m) punctually pay all rents, instalments of purchase money, interest, rates, taxes and other money payable by it and, at the request of the *Bank*, deliver evidence of its payment;
 - (n) punctually perform all of its obligations under each *relevant document* and each *material document*;
 - (o) promptly on receipt provide to the *Bank* copies of all material correspondence, advices and notices, including notices of any default under, or in connection with, all *material documents*;
 - (p) carry on and conduct its businesses in a proper and efficient manner;
 - (q) keep the *Bank* fully informed of all relevant information regarding it, including providing not less than 14 days prior written notice of any proposed change in name, business structure or contact details and must immediately notify the *Bank* of any material changes in business activities;
 - (r) insure and keep insured all its property able to be insured against loss or damage by fire and such other risks against which a prudent owner would insure for its full insurable value and

maintain workers' compensation, public risk, employees' liability, business interruption and other insurances which are necessary or appropriate having regard to its business and property and other insurances specified by the *Bank* or required under any *relevant document*, in all cases, with a solvent and respectable insurer approved by the *Bank* and provide copies of the relevant policies and evidence of the currency of all insurances to the *Bank* upon request; and

- (s) ensure that the following payments are promptly credited to the relevant *account* upon receipt:
 - (i) an amount equal to the input tax credit to which it is entitled in relation to a *development* (irrespective of that credit being offset against other moneys owing to the Australian Tax Office) in connection with *GST* where the *Bank* has funded that *development*; and
 - (ii) full proceeds of settlement of *pre development agreements* relating to the sale of all or any part of the property included in the *development* (inclusive of *GST*).

6.2 Negative Covenants

The *borrower* and each *guarantor* must not until all moneys owing (actually and contingently) to the *Bank* in relation to all *facilities* have been repaid in full:

- (a) cause or permit to exist any *encumbrance* other than a *permitted security interest* on any *secured property*;
- (b) without the prior written consent of the *Bank*, advance any money or grant accommodation to any person, permit money to remain owing to it by any person or repay money now or in the future owing by it to any person, other than in the ordinary course of its ordinary business;
- (c) without the prior written consent of the *Bank*, cause or permit the *borrower* or any *guarantor* to enter into any merger, reconstruction or amalgamation or acquire any property or business or make any investment if the property, business or investment is substantial in

relation to the *borrower* or any *guarantor*;

- (d) without the prior written consent of the *Bank* vary, amend, terminate or otherwise deal with any *material document*;
- (e) in any financial year, declare any dividend or dividends or otherwise pay or distribute any amount to any of its shareholders if it makes an operating loss before tax in that financial year or exceeding the percentage (if any) set out in the *letter of offer* of its profit after tax in that financial year;
- (f) without the prior written consent of the *Bank*, cause or permit any change in the nature of its business as now conducted or to carry on any other business which is substantial in relation to its present business as now conducted; and
- (g) without the prior written consent of the *Bank*, enter into any derivative transaction except a *treasury agreement* or for the purpose of hedging any actual or projected interest rate, foreign exchange or other exposures arising in the ordinary course of trading and not for speculative purposes.

6.3 Financial Ratios

This **clause 6.3** applies where the *letter of offer* requires compliance with any *financial ratios*. The *borrower* and each *guarantor* must ensure that each of the *financial ratios* is satisfied at the times specified in the *letter of offer*. In each case, the *financial ratios* are:

- (a) to be determined in accordance with the relevant *letter of offer*;
- (b) calculated by reference to current accounting practices or as otherwise specified in the *letter of offer*; and
- (c) based on the *financial statements* and other financial information provided to the *Bank*.

6.4 Valuation Covenants

The *borrower* and each *guarantor* agree that the *Bank* may, at the *borrower's* expense, engage a valuer (selected by the *Bank* in its absolute discretion) to value or revalue all or part of the *secured property* at least once every three years or at any time the *Bank* reasonably considers necessary. Each valuation must:

- (a) be addressed to the *Bank* and be accompanied by confirmation from the valuer that the *Bank* has, in relying on the valuation, the benefit of the valuer's professional indemnity insurance; and
- (b) be in form and substance satisfactory to the *Bank*.

If following any valuation the *Bank* reasonably considers that any *financial ratio* has been breached the *Bank* may immediately require the *borrower* to remedy such breach by notice in writing. The *borrower* must remedy the breach within the time period specified by the *Bank* by:

- (a) repaying such portion of the *facility*; or
- (b) providing to the *Bank* such additional *security*,

as will, in the reasonable opinion of the *Bank*, remedy the breach.

6.5 Development Covenants and Acknowledgements

Where the *approved purpose* of a *facility* is, or includes, funding of a *development*, the *borrower* and each *guarantor*:

- (a) acknowledge that any inspection of the *development* by the *Bank* or the *Bank's consultant* is for the *Bank's* purposes only;
- (b) acknowledge that neither the *Bank* nor the *Bank's consultant* are responsible for any part of the *development*, any defect or omission in the works relating to the *development* or any other thing in connection with the *plans and specifications*, the *building contract*, the *development* or the *development consents* even if approved by the *Bank*;
- (c) covenant to provide to the *Bank* upon request or procure the provision of:
 - (i) copies of all *plans and specifications*, *development consents* and the *building contract*;
 - (ii) copies of all bills of quantity, surveys, purchase orders, invoices, payment receipts and other information relating to the *development*;
 - (iii) copies of all progress reports and cash flow projections relating to the *development*; and
 - (iv) such other information concerning the *development* as requested by

the *Bank* and/or the *Bank's consultant* to enable inspections of the *development* to be undertaken and to be satisfied with any progress claim made by the *builder* under the *building contract*;

- (d) agree to give the *Bank* notice of each site meeting and to permit the *Bank's consultant* and any other person nominated by the *Bank* to attend each site meeting;
- (e) covenant to provide the *Bank* and the *Bank's consultant* access to any real or leasehold property relating to the *development* for the purpose of conducting inspections and to attend any site meetings;
- (f) covenant to take all necessary and reasonable steps to:
 - (i) ensure that each stage of the *development* is completed by the estimated completion date and in accordance with the *building contract*, *development consents* and *plans and specifications*;
 - (ii) procure the issue of any certificate of occupancy, certificate of completion or similar certificate from the relevant *government body* upon completion of the *development* or the relevant stage of the *development* and provide a copy to the *Bank* promptly after issue;
 - (iii) meet all *cost overruns* from its own resources on a monthly basis and provide evidence to the *Bank* of payment; and
 - (iv) deliver to the *Bank* any guarantee or security bond issued by the *builder* under, and in accordance with, the *building contract*;
- (g) acknowledge that the *Bank*, in determining the amount of a *drawing* requested to meet the costs of the *development*, will, unless otherwise agreed, exclude the value of materials claimed which are off-site or delivered on site but not incorporated in the *development*;
- (h) covenant not to amend the *building contract* or agree to any change to the *plans and specifications* without the *Bank's* prior written consent;
- (i) unless otherwise specified in the *letter of offer*, covenant not to agree to, or

request, any variation to the works as outlined in the *building contract* without the *Bank's* prior written consent; and

- (j) covenant to comply with all *environmental legislation* relating to, or affecting, the *development* and provide prompt notice to the *Bank* of any actual or alleged breach of any such *environmental legislation*.

6.6 PPSA Law

- (a) The *Bank* need not give any notice under the *PPSA Law* (including a notice of a verification statement) unless the notice is required by the *PPSA Law* and cannot be excluded.
- (b) If the *borrower* and/or any *guarantor* holds any *security interests* for the purposes of the *PPSA Law*, the relevant *borrower* or *guarantor* agrees to implement, maintain and comply in all material respects with procedures for the perfection of those *security interests*. These procedures must include procedures designed to ensure that the relevant *borrower* or *guarantor* takes all steps under the *PPSA Law* to continuously perfect any such *security interest* including all steps necessary:
 - (i) for the *borrower* or *guarantor* to obtain the highest ranking priority possible under the *PPSA Law* in respect of the *security interest* (such as perfecting a purchase money *security interest* or perfecting a *security interest* by control); and
 - (ii) to reduce the risk as far as possible of a third party acquiring an interest free of the *security interest* (such as including the serial number in a financing statement for personal property that may or must be described in the registration by serial number).
- (c) The *borrower* and each *guarantor* agree to arrange an audit of the above *PPSA Law* procedures, if requested by the *Bank*. Such costs of any audit are for the account of the *borrower*.

Note 7:

Clause 7 applies where a *facility* has been provided at a fixed *interest rate* and sets out the additional costs which may be payable in certain circumstances.

7. BREAK COSTS

7.1 Break costs

Where a *facility* is provided at a fixed *interest rate* and, for any reason (including, for the avoidance of any doubt, as a result of the occurrence of an *event of default* or a review under **clause 4**), the whole or part of the debit balance of the relevant *account* is repaid or received by the *Bank*, prior to the expiry of the period during which the *interest rate* is fixed, the *borrower* must, on demand, pay to the *Bank* (by way of indemnity) the amount determined by the *Bank* (in good faith and whether before or after payment or receipt) to be necessary to compensate the *Bank* for any loss, cost, expense or damage including any loss of bargain or expectation it has, or will, suffer as a result of that repayment or receipt.

7.2 Break Costs calculation

The *Bank* will determine the compensation required to be paid by the *borrower* under **clause 7.1** by calculating the present day value of the difference between the amount which the *Bank* would have received had there been no early repayment and the amount that the *Bank* will be able to receive by lending those moneys to, or investing those moneys with, someone else at the then market rate of return.

7.3 Acknowledgements

Where the *facility* is provided at a fixed *interest rate* or is the subject matter of a *treasury agreement* the *borrower* and each *guarantor* acknowledge that:

- (a) it understands that movements in interest rates generally may result in it losing the possible benefit of having a *facility* with an *interest rate* that is fixed;
- (b) it has assessed, understands and accepts the risk of movements in interest rates generally;

- (c) it understands the consequences of repayment (voluntarily or otherwise) of a *facility* to which a fixed *interest rate* or *treasury agreement* applies;
- (d) it has been advised to obtain, and has had sufficient opportunity to obtain, financial advice prior to making its decision to accept a fixed *interest rate* or to enter into the corresponding *treasury agreement*; and
- (e) it has not otherwise relied on any advice or opinion from the *Bank* or any of its officers or agents (past or present) in deciding to accept a fixed *interest rate* or to enter into the corresponding *treasury agreement*.

Note 8:

This clause lists the *events of default* and what happens if an *event of default* occurs.

8. EVENTS OF DEFAULT

8.1 Nature

Each of the following is an *event of default*:

- (a) the *borrower* or a *guarantor* fails to pay to the *Bank* when due any amount required to be paid under any *relevant document*;
- (b) the *borrower* or a *guarantor* does not perform or comply with any other covenant, agreement or undertaking on its part contained in any *relevant document* or any *material document* and if that default is capable of rectification:
 - (i) it is not rectified within 5 *business days* (or any longer period agreed by the *Bank*) of its occurrence; and
 - (ii) the *borrower* or any *guarantor* does not during that period take all action which in the opinion of the *Bank* is necessary or desirable to promptly remedy that default;
- (c) any representation, warranty or statement by the *borrower* or a *guarantor* in any *relevant document* or any document delivered under any of them is not complied with or is incorrect in any material respect when made or deemed to be repeated;
- (d) any other indebtedness of the *borrower* or a *guarantor* in excess of the *threshold amount* becomes due and payable or capable of being declared due and payable before its stated maturity;
- (e) any *encumbrance* held by any person over any property of the *borrower* or a *guarantor* becomes enforceable;
- (f) an *insolvency event* occurs;
- (g) if the *borrower* enters into a *relevant document* or any *material document* as partners, there is any change in the composition of that partnership without the prior written approval of the *Bank*;
- (h) the *borrower* or a *guarantor* enters into or resolves to enter into any arrangement, composition or compromise with or an assignment for the benefit of any of its creditors or a person is appointed under any applicable law to investigate any part of the affairs of the *borrower* or a *guarantor*;
- (i) execution is levied against any of the *borrower's* or a *guarantor's* assets for an amount in excess of the *threshold amount*;
- (j) the *borrower* or a *guarantor* ceases, or threatens to cease, to carry on its business;
- (k) if, without the *Bank's* prior written consent, there is a change in the identity of the person or persons who control the *borrower*, any *guarantor* or any *trust*;
- (l) all or any part of any *relevant document* or any *material document* is terminated or is able to be terminated or is, or becomes capable of becoming void, voidable, illegal, invalid or unenforceable or of limited force and effect;
- (m) any other event or circumstance occurs which, in the reasonable opinion of the *Bank*, is likely to have a *material adverse effect*;
- (n) without the prior written consent of the *Bank*, the *borrower* or a *guarantor* increases its liability under any *encumbrance* over any part of the *secured property* ranking ahead of the *securities*;
- (o) an *event of default* (however described) occurs under, or there is any failure to observe any covenant or undertaking contained in, the *securities* or any *material document*;
- (p) the death of the *borrower* or a *guarantor*; or

- (q) the *securities* do not have the priority specified in the *letter of offer* or, if not specified, as required by the *Bank*.

8.2 Exercise of Rights

If an *event of default* occurs the *Bank* may do any one or more of the following:

- (a) cancel all or any part of any *facility*;
- (b) make the *outstanding sum* under or in connection with any *facility* immediately due for payment or payable on demand; or
- (c) enforce its rights under any *relevant document*.

8.3 Investigation

If the *Bank* reasonably believes that an *event of default* is, or may be, continuing, the *Bank* may appoint a person to investigate whether this belief is accurate. The *borrower* and/or *guarantor* must co-operate with and comply with all reasonable requests made by this person. If there is or was an *event of default*, the *borrower* must pay all costs associated with the investigation.

Note 9:

Clause 9 sets out various requirements that the *borrower* and/or the *guarantor* must observe and deals with the payment of any applicable *GST*.

9. GST PROVISIONS

9.1 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under a *relevant document* are exclusive of *GST*.

9.2 Payment of GST

If *GST* is payable by a supplier or by the representative member for a *GST* group of which the supplier is a member, on any supply made under any *relevant document*, the recipient will pay to the supplier an amount equal to the *GST* payable on the supply.

9.3 Timing of GST payment

The recipient will pay the amount referred to in **clause 9.2** in addition to and at the same time that the consideration for the supply is to be provided under the *relevant document*.

9.4 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 9.2**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

9.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under a *relevant document*, the amount payable by the recipient under **clause 9.2** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

9.6 Reimbursements

Where a party is required under a *relevant document* to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a *GST* group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to *GST*, an amount equal to that *GST*.

Note 10:

This clause applies where the *borrower* or a *guarantor* act as trustee of a *trust*, whether or not the *Bank* is aware of the existence of that *trust*.

10. TRUSTS**10.1 Additional representations and warranties**

The *borrower* and each *guarantor* represents and warrants to the *Bank* that:

- (a) the *trust* is validly formed and the *trust deed* has been validly executed and stamped;
- (b) it is validly appointed as the trustee of the *trust*, is not in breach of its obligations as trustee and no circumstances exist by which it may be removed as trustee;
- (c) each *relevant document* and each *material document* is executed pursuant to, and in proper exercise of its powers as trustee of, the *trust* and all formalities required in connection with such execution have been observed;
- (d) the *approved purpose* and performance by it of its obligations under the *relevant documents* and the *material documents* is for a proper purpose of, and provides commercial benefit to, the *trust* and its beneficiaries;
- (e) it is entitled to be fully indemnified out of the assets of the *trust* for its liability under each *relevant document* and each *material document* and it has not charged its right of indemnity to any other party;
- (f) it will, at the *Bank's* request exercise its right of indemnity against the assets of the *trust*;
- (g) it is the legal owner of all the assets of the *trust*;
- (h) there is no dispute between it and any other person in relation to the *trust* or the assets of the *trust*;
- (i) it is empowered to carry on its business as now conducted or contemplated and to own its property and assets in its capacity as trustee of the *trust* and there is no restriction or condition in the *trust deed* upon such activity by it;

- (j) the *trust* has not terminated and no event for the vesting of the assets of the *trust* has occurred;
- (k) the assets of the *trust* have not been re-settled or set aside and are sufficient to satisfy its right of indemnity;
- (l) all action required under the *trust deed* in relation to execution of the *relevant documents* and the *material documents* and the entry into the transactions contemplated by them has been taken; and
- (m) any copy *trust deed* supplied to the *Bank* is a true and complete copy of the original and no other documents exist which affect the terms of the *trust*.

10.2 Further obligations

The *borrower* and/or each *guarantor* must not, without the *Bank's* consent:

- (a) cease to be the trustee of the *trust* or do anything which would cause or enable its removal, or retire, as trustee of the *trust*;
- (b) cause or permit the *trust* to be determined or a vesting date to be appointed;
- (c) do or permit anything which adversely affects its right of indemnity against the assets of the *trust*;
- (d) re-settle, set aside or distribute any of the assets of the *trust* unless required to do so by the *trust deed*;
- (e) in any way vary or permit to be varied the terms of the *trust deed*;
- (f) make any distribution of the capital of the trust fund of the *trust* or, whilst any *event of default* or *potential event of default* subsists, the income of the *trust*;
- (g) issue, redeem, cancel, transfer or otherwise deal with any units issued under the *trust deed*;
- (h) mix or blend the assets of the *trust* with any other assets; or
- (i) delegate any of its power as trustee of the *trust* or exercise any power of appointment.

10.3 Additional covenants

The *borrower* and each *guarantor* must:

- (a) procure any person who becomes a trustee of the *trust* (whether in replacement of or in addition to it) to enter into a deed with the *Bank* under which that person agrees to perform the obligations identical to those of the *borrower* or a *guarantor* under the *relevant documents* and the *material documents*; and
- (b) comply with all of its duties as trustee of the *trust*.

10.4 Liability

The *borrower's* and the *guarantor's* liability under the *relevant documents* and the *material documents* is not limited or otherwise affected by it being trustee of the *trust* or by the extent of its ability to indemnify itself out of the assets of the *trust*. The *borrower* and/or each *guarantor* are liable under the *relevant documents* and the *material documents* personally and as trustee of the *trust*.

Note 11:

Clause 11 applies where the *borrower* enters into the agreement as partners in a partnership.

11. PARTNERSHIP

11.1 Partnership

Where the *borrower* enters into a *relevant document* or any *material document* as partners in a partnership:

- (a) the *borrowers* represent and warrant that they are all the partners of that partnership;
- (b) each *borrower* as a separate, independent, principal and personal obligation must pay to the *Bank* all amounts due under the *facility* whether or not the *Bank* may recover any sum from the partnership assets;
- (c) the *relevant documents* and the *material documents* continue to be binding on each *borrower* notwithstanding any changes in the composition of the partnership;
- (d) and the partnership is dissolved:

- (i) the *borrower* must immediately give written notice of that event to the *Bank*; and
- (ii) each *borrower* must act in relation to the administration of the partnership assets in the manner (if any) directed by the *Bank*;
- (e) a retiring partner is not discharged from any liability to the *Bank* as a result of an agreement between the then existing partners; and
- (f) the obligations of a retiring partner to the *Bank* under any *relevant document* and any *material document* are not affected by anything which might otherwise affect them at law or in equity.

Note 12:

Clause 12 contains certain indemnities given by the *borrower* and each *guarantor* to the *Bank* and provisions dealing with the extent of those indemnities.

12. INDEMNITIES

12.1 Nature

The *borrower* and each *guarantor* indemnifies, and must keep indemnified, the *Bank* against any liability, loss, cost or expense (including consequential and economic loss) which the *Bank* incurs or sustains or for which the *Bank* becomes liable, directly or indirectly, which is caused, or contributed to, by:

- (a) any *event of default*;
- (b) any *environmental liability*;
- (c) the exercise or attempted exercise or preservation of any right by the *Bank* under any *relevant document* or any *material document*;
- (d) any act by the *Bank* in reliance on any communication purporting to be from the *borrower* or to be given on its behalf;
- (e) any *drawing* requested by the *borrower* not being provided by the *Bank* for any reason, other than a default by the *Bank*;
- (f) any claim against the *Bank* under, or in connection with, an *external obligation*; and
- (g) the repayment to, or receipt by, the *Bank* of all or any part of an *advance*, in

relation to which the *interest rate* is fixed, prior to the expiry of the period for which the *interest rate* is fixed.

12.2 Scope

Each indemnity contained in these *terms* and in any other *relevant document* is:

- (a) a continuing obligation;
- (b) an additional, separate and independent obligation; and
- (c) not limited by, and does not limit, any other indemnity.

12.3 Preservation of Liability

The liability of the *borrower* and each *guarantor* under each indemnity contained in these *terms* and in any other *relevant document* is not affected by any act or omission of the *Bank* (or its servants and agents) or by anything that might otherwise affect that liability at law or in equity.

Note 13:

This clause 13 contains various additional provisions relevant to the arrangements between the *Bank*, the *borrower* and the *guarantor*.

13. MISCELLANEOUS

13.1 Certificate

A certificate signed by the *Bank* or any *authorised officer* stating an amount owing to the *Bank* at a particular date or as to any other matter or thing, is conclusive evidence against the *borrower* and the *guarantor* (as the case may be) unless proved incorrect.

13.2 Assignment

The *Bank* may assign its rights under a *relevant document* to any person at any time without the consent of the *borrower* or a *guarantor*. Neither the *borrower* nor any *guarantor* may, without the prior consent in writing of the *Bank*, assign or encumber any of its rights under a *relevant document*.

13.3 Notices

Any notice, demand, consent, or other communication from the *Bank* under a

relevant document must be in writing signed by the *Bank* or any *authorised officer* and may be served (in addition to any method authorised by law) on the *borrower* or a *guarantor* by being delivered personally or by being sent by:

- (a) post to its registered office or at its address shown in a *relevant document*;
- (b) facsimile to the facsimile number shown on any document sent to the *Bank* or as specified in a facsimile directory; or
- (c) to such other address or facsimile number as may be last known to the person signing or sending such communication.

If sent by post it will be deemed to be given 2 *business days* after it is posted and if sent by facsimile on completion of the transmission.

13.4 No merger

Subject to **clause 15.3**, nothing in these terms prejudicially affects any *security* or any rights the *Bank* may have against the *borrower*, any *guarantor* or any other person nor do the *securities* prejudicially affect its rights under these terms.

These terms do not merge with or prejudicially affect, and are not prejudicially affected by, any *encumbrance* or other right or remedy to which the *Bank* is entitled or a judgement which the *Bank* obtains against a *borrower* or a *guarantor* or any other person in connection with the *relevant documents*. The *Bank* may still exercise its rights under the *relevant documents* as well as under the judgement, other *encumbrance* or the right or remedy.

13.5 No waiver or variation

Subject to **clause 4**, any waiver under, or variation of, a *relevant document* is effective only to the extent it is in writing.

13.6 Exercise of rights

No failure on the part of the *Bank* to exercise, no delay in exercising and no course of dealing with respect to any rights, powers or remedies under any *relevant document* impairs or operates as a waiver of those rights, powers or remedies. No single or partial exercise of any of these rights, powers or remedies precludes any further exercise of

them or the exercise of any other rights, powers or remedies.

exercise against the *Bank* any right of set-off available to it.

13.7 Moratorium

Any legislation that varies, prevents or prejudicially affects the exercise by the *Bank* of any right, power or remedy conferred on it under any *relevant document* is, to the extent permitted by law, excluded.

13.8 Time of the essence

Time is of the essence of the *borrower's* and any *guarantor's* obligations under any *relevant document*.

13.9 Severance

Any provision of a *relevant document* that is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of the provision in any other jurisdiction.

13.10 Power of attorney

The *borrower* and each *guarantor* irrevocably appoint the *Bank* as its attorney with power to appoint and remove at its pleasure any one or more of its *authorised officers* as substitute attorneys to do, at any time after the occurrence of an *event of default*, everything that the *borrower* or that *guarantor* may lawfully authorise an agent to do in relation to any *relevant document* or any *material document*.

13.11 Set-off and combination

The *borrower* and each *guarantor* authorise the *Bank* at any time to set-off against, or combine with any money, any amount standing to the credit of any *account* of the *borrower* and/or the *guarantor* with the *Bank* in or towards satisfaction of any sum due but unpaid by the *borrower* and/or the *guarantor* (as the case may be) to the *Bank* under any *relevant document* or other agreement or arrangement.

The *Bank* has no obligation to exercise its rights under this clause.

To the extent legally permissible, the *borrower* and each *guarantor* may not

13.12 Governing law

These terms and the *letter of offer* are governed by the laws of the jurisdiction of the *Bank's* address as shown in the *letter of offer* and, if no address is shown, where the *account* is situated and the *borrower* and each *guarantor* submit to the non-exclusive jurisdiction of the courts of that place.

13.13 Authorisation

The *borrower* and each *guarantor* authorise the *Bank* to provide a copy of any *relevant document* to any *government body* in which the *securities* are to be stamped, lodged, filed or registered.

13.14 Authorised officers

A determination by, or an opinion of, an *authorised officer* given to the *borrower* and/or the *guarantor* is deemed to be a determination by, or an opinion of, the *Bank*.

13.15 Rights cumulative

The rights of the *Bank* under the *relevant documents* are cumulative and are in addition to any other rights of the *Bank*.

13.16 Disclosure

The *Bank* may disclose to any person any information in its possession relating to the *borrower*, the *guarantor*, the *relevant documents*, the *material documents* and any *external obligation* if:

- (a) the *borrower* or the *guarantor* (as the case may be) consent (which consent may not be unreasonably withheld or delayed);
- (b) it is legally required or permitted to do so;
- (c) it is otherwise permitted under the *relevant documents* or the *material documents* to do so;
- (d) it is publicly available;
- (e) it is in accordance with any directive or request of a *government body*;
- (f) that person proposes to enter, or has entered, into a contract or dealing with

the *Bank* in connection with the *relevant documents* or the *material documents* or the subject matters of the *relevant documents* or the *material documents*;

- (g) that disclosure is necessary or desirable to enable the *Bank* to exercise or deal with its rights or obligations under the *relevant documents*, the *material documents* or any *external obligation*;
- (h) that disclosure is to a related body corporate (as that expression is defined in the *Corporations Act*) of the *Bank*; or
- (i) that disclosure is to the *borrower* or any *guarantor*.

13.17 Illegality

If the *Bank's* compliance with its obligations under the *relevant documents* becomes illegal, the *Bank* may by written notice cancel the *facility*. Upon receipt of such notice of cancellation the *borrower* must immediately pay to the *Bank* the *outstanding sum* and all other moneys owing (actually or contingently) by it to the *Bank* in connection with that *facility*.

13.18 Increased costs

If, as a result of any change of law or directive or change of interpretation of any law or directive, the *Bank* determines (in good faith) that the cost to the *Bank* of providing the *facility* is increased or the *Bank's* return is reduced, the *borrower* must on demand pay to the *Bank* the amount certified by the *Bank* as being necessary to compensate it for such increased cost or foregone return.

13.19 Business days

If:

- (a) the day on which any payment is due under a *relevant document* is not a *business day*, that payment must be made on the preceding *business day*; and
- (b) the day on which any other thing is to be done under a *relevant document* is not a *business day*, that thing must be done on the following *business day*.

13.20 Independence and survival

Each indemnity in a *relevant document* is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives the termination of that *relevant document*.

13.21 Privacy Act

The *Bank* will comply with its obligations under the Privacy Act 1988 (Cwlth) in its dealings with the *borrower* and a *guarantor*. The *Bank's* privacy declaration and privacy statement are available at any office of the *Bank* and at www.ruralbank.com.au. The *Bank's* privacy officer can be contacted between 8am and 6pm (Central Standard Time) on any *business day* on 1300 600 115.

13.22 Other Legislation

If the *Bank* considers that the Anti-Money Laundering & Counter-Terrorism Financing Act 2006 (Cwlth) or any similar legislation may apply to the *borrower*, a *guarantor* or to any use of a *facility*:

- (a) the *borrower* and each *guarantor* must provide to the *Bank* such information as the *Bank* may require to ensure the *Bank* complies with its obligations under that legislation; and
- (b) the *Bank* may take such steps including, refusing to provide a *facility*, withdrawing a *facility* and disclosing information, as it considers necessary to comply with its obligations under that legislation.

13.23 Further assurance

The *borrower* and each *guarantor* agree to do anything which the *Bank* asks (such as obtaining consents, signing and producing documents) to bind the *borrower*, each *guarantor* and any other person intended to be bound under the *relevant documents* and to show whether the *borrower* and each *guarantor* is complying with the *relevant documents*.

Without limiting the above paragraph, the *borrower* and each *guarantor* agree to make such amendments to the *relevant documents*, and to do such other things, as the *Bank* may require from time to time to ensure that any security interest that the *Bank* has arising out of or in connection with

the *relevant documents* is perfected under the *PPSA Law* and to otherwise protect the *Bank's* position under the *PPSA Law*.

13.24 Commissions

The *borrower* and each *guarantor* acknowledge that:

- (a) the *Bank* may pay or be paying a commission or other benefit to third parties in connection with a *facility*;
- (b) the *Bank* may receive or have received a commission or benefit in connection with a *facility*; and
- (c) the obligation of the *borrower* and/or a *guarantor* to reimburse any fees, costs or expenses is not affected by any commission or benefit which may have been, or be, received by the *Bank* and any such commission or benefit (even if quantifiable) is to be ignored.

Note 14:

Clause 14 sets out the provisions which apply to a *facility* which is, or includes, an *external obligation*.

14. EXTERNAL OBLIGATIONS

14.1 Application

This **clause 14** applies where the *facility* is, or involves, the issue by the *Bank* of an *external obligation*.

14.2 Payment

The *borrower* and *guarantor* irrevocably and unconditionally authorise the *Bank* to pay immediately any amount claimed at any time against the *Bank* under any *external obligation* and acknowledge that the *Bank* may pay the amount of any such claim:

- (a) without reference to, or obtaining any further authority from, the *borrower* or a *guarantor*; without enquiring whether the claim has been properly made; and
- (b) notwithstanding that the *borrower* or a *guarantor* (or any other person) may dispute the validity of the claim; and
- (c) notwithstanding any direction from the *borrower* or a *guarantor* not to make that payment.

14.3 Voluntary Payment

The *Bank* may, at any time (in its absolute discretion) and without notice to the *borrower* or a *guarantor*, make a voluntary payment to the holder of any *external obligation* to terminate the *Bank's* obligations under, or in connection with, that *external obligation*.

14.4 Reimbursement

The *borrower* must pay to the *Bank*, immediately following the *Bank's* demand for payment, an amount equal to each amount demanded from, or paid (whether voluntarily or otherwise) by, the *Bank* under an *external obligation*. The *borrower* irrevocably and unconditionally authorises the *Bank* to debit to the relevant *account* (or if the *borrower* has no existing account at the *Bank*, to open an account in the name of the *borrower* and debit to that account) any payment made by the *Bank* under, or in connection with, an *external obligation*, even if demand by the *Bank* has not been made on the *borrower* for payment.

Note 15:

Clause 15 contains various definitions that are used in both these terms and the *letter of offer*. Clause 15 also contains some simple rules to assist in understanding these terms and the *letter of offer*.

15. DEFINITIONS AND INTERPRETATION

15.1 Definitions

In these terms:

"account" means, in relation to a *facility*, the account specified in, or determined in accordance with, the *letter of offer* relating to that *facility* or the account established in accordance with these terms;

"advance" means each advance of funds made under a *facility* by the *Bank* to, or at the request or direction of, the *borrower*;

"approved purpose" means the permitted purpose for a *facility* specified in the *letter of offer*;

"Australian dollars" and **"\$"** means the currency of Australia;

"authorised officer" means any director, secretary or attorney of the *Bank*, any lawyer acting for the *Bank* and any employee of the

Bank whose title includes the word “manager”;

“**Bank**” means Rural Bank Limited (ABN 74 083 938 416) and its successors and assigns;

“**Banking Account Terms and Conditions**” means the document entitled “Banking Account Terms and Conditions” issued by the *Bank* from time to time, a copy of which is available on the *Bank’s* website (www.ruralbank.com.au) or by telephoning the *Bank* on 1300 660 115;

“**Bank’s consultant**” means a quantity surveyor, investigative accountant, lawyer, valuer, real estate agent, consultant or other suitably qualified person appointed by the *Bank* at the cost in all respects of the *borrower*;

“**borrower**” means each person described in the *letter of offer* as a borrower and if more than one person is so described, a reference to “*borrower*” is a reference to them jointly and each of them severally;

“**builder**” means the person referred to as the builder in the *building contract*;

“**building contract**” means the contract made between the *borrower* and/or a *guarantor* and the *builder* in connection with the *development* a certified copy of which will be or has been provided to the *Bank*;

“**business day**” means a day on which banks in general are open for business in the city of the *Bank’s* address as shown, or as otherwise specified in, the *letter of offer*;

“**cash flow budget**” means a budget prepared and agreed to by the *borrower* and submitted to, and accepted by, the *Bank* from time to time, as required to be provided to the *Bank* under a *relevant document*;

“**Corporations Act**” means the Corporations Act 2001;

“**cost overrun**” means the difference (if a negative number) between the estimated cost of each stage of the *development* provided to, and approved by, the *Bank* and the actual amount required to complete that stage of the *development*;

“**cost to complete**” means at any time the amount required to complete the *development* in accordance with the *building contract*, the *plans and specifications* and the *development consents* as estimated by the *Bank’s consultant*;

“**development**” means the building or other works which are to be carried out by the *builder* in accordance with the *development consents*, the *plans and specifications* and the *building contract*;

“**development consents**” means each approval, licence, permit, or consent from any *government body* necessary or desirable to enable the *development* to be completed;

“**drawing**” means a use of a *facility* by, or at the request or direction of, the *borrower* including, the making of an *advance* and the issue of an *external obligation*;

“**encumbrance**” means, in relation to any property, any interest in or right over the property, and, anything which prevents, restricts or delays the registration of any interest in or right over the property and includes any “security interest” under, and as defined in, any *security*;

“**environmental legislation**” means any law, regulation, statute, code, treaty, licence, condition or ordinance relating to environmental matters including land use and development, planning, pollution, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources, climate change, resource allocation, rehabilitation, contamination, health, safety and occupational health, safety and welfare;

“**environmental liability**” means any obligation, expense, fine, penalty, cost, damage or expense which could be imposed on the *Bank*, the *borrower* and/or a *guarantor* directly or indirectly arising from a breach of any *environmental legislation* by any person or as a result of the retrospective effect of any *environmental legislation*;

“**event of default**” means any of the events referred to in **clause 8** and any other event of default (however described) referred to in a *letter of offer* or a *relevant document*;

“**external exposure**” means, at any time, the maximum liability (actual or contingent) of the *Bank* at that time under each *outstanding external obligation* plus any amount paid by the *Bank* under an *external obligation* which has not been reimbursed to the *Bank* under **clause 14.4**;

“**external obligation**” means any letter of credit, bank guarantee, performance bond or other obligation to a third party assumed by the *Bank* at the request, or direction, of the *borrower*;

“**facility**” means each *facility* which the *Bank* agrees to provide to the *borrower* in a *letter*

of offer and any other arrangement between the *Bank* and the *borrower* relating to the provision of financial accommodation by the *Bank* to the *borrower* including the issue by the *Bank* of an *external obligation* at the request of the *borrower*;

“facility limit” means in relation to a facility, the amount specified in, or determined in accordance with, the *letter of offer* as the facility limit for that *facility*;

“fees and charges schedule” means the booklet entitled Schedule of Fees and Charges published by the *Bank* from time to time, a copy of which is available on the *Bank’s* website (www.ruralbank.com.au) or by telephoning the *Bank* on 1300 660 115;

“finance application” means, in relation to a *facility*, any finance application, however described, made by the *borrower* and/or a *guarantor* to the *Bank* relating to that *facility* together with all documents attached to, or forming part of, that application;

“financial ratio” means any financial ratio or financial covenant set out in the *letter of offer*;

“financial statements” means:

- (i) a statement of financial performance;
- (ii) a statement of financial position; and
- (iii) a statement of cash flows,

together with any notes to those documents and a directors’ declaration as required under the *Corporations Act* and any other information necessary to give a true and fair view;

“government body” means any person, body politic or other thing exercising an executive, legislative or other governmental function or any judicial function and any person deriving by delegation a right directly or indirectly from any other *government body*;

“GST Law” has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999;

“guarantor” means each person, if any, described in the *letter of offer* as a *guarantor* and any other person who, now or in the future, gives an indemnity, a guarantee or a guarantee and indemnity to the *Bank* in relation to the *borrower’s* obligations to the *Bank*, and if there is more than one person so described or included, a reference to “*guarantor*” is a reference to them jointly and each of the severally;

“insolvency event” means, in relation to the *borrower* or a *guarantor*:

- (i) the appointment of a liquidator, provisional liquidator, administrator or controller (as those expressions are defined in the *Corporations Act*) to it or over the whole or any part of its property;
- (ii) it being, or stating that it is, unable to pay all its debts as and when they become due and payable;
- (iii) it commits an act of bankruptcy (as defined in the Bankruptcy Act 1966 (Cwlth));
- (iv) it being, or stating that it is, an insolvent under administration (as defined in the *Corporations Act*) or is otherwise deemed insolvent under the *Corporations Act*;
- (v) it is taken under Section 459F of the *Corporations Act* to have failed to comply with a statutory demand;
- (vi) any event described in Section 461 of the *Corporations Act* occurs in relation to it; or
- (vii) any action is taken to make any appointment referred to in this definition;

“interest rate” means, in relation to a *facility*, the interest rate specified in, or determined in accordance with, the *letter of offer* or these terms for that *facility*;

“letter of offer” means each letter of offer from the *Bank* to, or accepted or executed by, (whether alone or jointly with any other person) the *borrower* and/or a *guarantor* accompanying or incorporating these terms and each other agreement or arrangement which incorporates these terms entered into between the *Bank* and the *borrower* and/or a *guarantor* which relates to the provision of financial accommodation, or the issue of an *external obligation*, by the *Bank* to, or at the request of, the *borrower*;

“material adverse effect” means a material adverse effect upon:

- (i) the ability of the *borrower* or a *guarantor* to comply with its obligations under any *relevant document* or *material document*;
- (ii) the effectiveness, priority or enforceability of any *security*; or

- (iii) the financial position, management or business operations of the *borrower* or a *guarantor*;

"material documents" means all *pre development agreements*, the *building contract*, the *plans and specifications*, the *development consents* and all other documents the *Bank* and the *borrower* agree are material documents;

"outstanding external obligation" means any *external obligation* under which the *Bank* has any actual or contingent liability to the beneficiary of that *external obligation*;

"outstanding sum" means, at any time, the aggregate of the debit balance of each *account*, the *external exposure*, accrued interest, costs, expenses, accrued fees and any amount payable pursuant to **clause 7.1**;

"overdue rate" means:

- (i) in relation to a *facility*, the aggregate of 3% per annum and the *interest rate* applicable to those moneys under that *facility*; or
- (ii) otherwise, the aggregate of 3% per annum and the *Bank's* unsecured lending rate (as published from time to time);

"permitted security interest" means an *encumbrance* which:

- (i) is in favour of, or has been approved in writing by the *Bank*; or
- (ii) constitutes a purchase money security interest in *inventory* arising in the ordinary course of the *borrower's* or *guarantor's* (as applicable) business; or
- (iii) arises by operation of law or statute to secure the payment of *taxes* or other moneys to a *government body* provided those *taxes* or moneys are not due for payment;

"plans and specifications" means the plans and specifications in respect of the *development* which have been approved by the *Bank* or the *Bank's consultant* and all relevant *government bodies*;

"potential event of default" means anything that, with the giving of notice or lapse of time or both, would become an *event of default*;

"PPSA" means the Personal Property Securities Act 2009 (Commonwealth);

"PPSA Law" means:

- (i) the *PPSA*;

- (ii) any regulations made at any time under the *PPSA*; and

- (iii) any amendment made at any time to any other legislation as a consequence of a law referred to in sub-paragraphs (i) and (ii) above;

"pre development agreements" means any agreement relating to the sale or lease of the whole or any portion of the property comprised in a *development*;

"pre development conditions" means all terms and conditions which must be met by the *borrower* and/or a *guarantor* (as set out in the *letter of offer*), prior to the first *drawing* for the purposes of funding a *development*;

"relevant document" means:

- (i) each *letter of offer*;
- (ii) these terms;
- (iii) the *securities*;
- (iv) the *Banking Account Terms and Conditions*;
- (v) each *fees and charges schedule*;
- (vi) any indemnity given to the *Bank* in connection with an *external obligation*;
- (vii) each *treasury agreement*;
- (viii) any other agreement or arrangement made between the *borrower* and/or any *guarantor* (whether alone or jointly with any other person) and the *Bank*;
- (ix) any document required in connection with, or to give effect to, a transaction contemplated by any document listed above;
- (x) any document amending or varying any of the above;
- (xi) any document in connection with the full or partial discharge or release of any *security* or any other *relevant document*; and
- (xii) any document agreed between the parties to be a *relevant document*;

"repayment date" means, in relation to a *facility*, the date specified in the *letter of offer* as being the repayment date or termination date for that *facility*;

"secured property" means property subject, or intended to be subject, to a *security*;

"securities" means any security agreement, mortgage, charge, lien, indemnity, guarantee, guarantee and indemnity and other security interest described in the *letter of offer* or held by the *Bank* which secures or guarantees an obligation or liability of the *borrower* or a *guarantor* to the *Bank* together with any document required in connection with, or to give effect to, a transaction contemplated by any of them;

"taxes" means all present and future taxes, levies, imposts, stamp and other duties, fees, compulsory loans, withholdings or deductions and penalties and interest imposed in relation to any of them, but does not include a tax on the net income of the *Bank* or *GST*;

"treasury agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, forward rate agreement, forward exchange agreement, option agreement, futures contract, hedging agreement and any other derivative agreement which may now or in the future be made between the *Bank* and the *borrower* and/or a *guarantor*;

"threshold amount" means, unless another sum is specified in the *letter of offer*, \$10,000;

"trust" means any trust or settlement of which the *borrower* or a *guarantor* is trustee, whether or not the *Bank* has been notified of the existence of such trust; and

"trust deed" means each instrument establishing or varying a *trust*.

15.2 Interpretation

In these terms:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes all other genders;
- (c) "person" includes a partnership, a corporation, an unincorporated association and an authority;
- (d) the whole includes any part;
- (e) headings and notes do not affect its interpretation;
- (f) a reference to a document or legislation includes a reference to that document or legislation as varied, amended or replaced from time to time;

- (g) a reference to a person includes that person's executors, administrators, successors and permitted assigns;
- (h) a reference to time is to time in the city used for the purposes of determining a *business day*;
- (i) where an example of something is given, it does not limit what else may be included;
- (j) words and expressions which are not defined in these terms but which have a defined meaning in *GST Law* have the same meaning as in the *GST Law*;
- (k) a reference to an accounting term is (unless otherwise defined) a reference to that term as it is used in the accounting standards (as defined in the *Corporations Act*) or, if not inconsistent with those standards, in generally accepted accounting principles and practices in Australia; and
- (l) words and expressions which are not defined in these terms but which have a defined meaning in the *PPSA Law* have the same meaning as in the *PPSA Law*.

15.3 Inconsistency

To the extent of an inconsistency between these terms, any *letter of offer* and any *security*, the following order of precedence applies:

- (a) first, the *letter of offer*;
- (b) second, these terms; and
- (c) third, the *security*.