

Our Ref: 619067

**Fax Cover Sheet**

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**To:** ASX Market Announcements

**Fax:** 1300 135 638

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**Copy to:** The Company Secretary, Wellard Limited

**Fax:** +61 8 9432 2880

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**From:** HWL Ebsworth Lawyers

**Phone:** +61 8 9420 1500

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**Subject:** Notice of Initial Substantial Holder from Theta Asset Management Ltd

**Date:** 21 September 2016

**No. of Pages:** 30 (including this one)

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Dear Sir/Madam

We act for Theta Asset Management Ltd.

On behalf of Theta Asset Management Ltd, we attach an initial substantial holder notice in relation to Wellard Limited ACN 607 708 190. This notice is given by Theta Asset Management Ltd and each of the beneficiary parties referred to in section 3 of the notice and Annexure A.

If there are any issues with the transmission, please contact Andrew Shearwood (08) 9420 1535 or Joris De Geest (08) 9420 1576.

Yours sincerely



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Perth  
Sydney

**Form 603**  
Corporations Act 2001  
Section 671B

**Notice of initial substantial holder**

To Company Name/Scheme: Wellard Limited

ACN/ARSN: ACN 607 759 130

**1. Details of substantial holder (1)**

Name: Theta Asset Management Ltd

ACN/ARSN (if applicable): ACN 031 807 584

This notice is given by Theta Asset Management Ltd, as Junior Security Trustee, on behalf of itself and each of the Beneficiary Parties named in the list of 1 page annexed to this notice and marked **Annexure A**.

The holder became a substantial holder on: 19/09/2016

**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
ORD	67 750 000	67 750 000	10.94%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Theta Asset Management Ltd	Power to control voting and disposal of securities on behalf of Beneficiary Parties (as that term is defined below), pursuant to deed of mortgage of securities dated 19 September 2016 between WGH Commodities, Land and Transport Pty Ltd and Theta Asset Management Ltd (as Junior Security Trustee) of 26 pages, a copy of which accompanies this notice and is marked <b>Annexure B (Deed of Mortgage of Securities)</b> .	ORD 67,750,000
Each of the beneficiary parties listed in Annexure A to this notice, in the respective proportions noted in that Annexure A (Beneficiary Parties)	Power to control voting and disposal of securities on instruction to Junior Security Trustee, pursuant to Deed of Mortgage of Securities	ORD 67,750,000

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
WGH Holdings Pty Ltd ACN 009 263 423	Current registered holder of securities (pending completion of intra-group transfer of securities to WGH Commodities, Land and Transport Pty Ltd (a wholly owned subsidiary of WGH Holdings Pty Ltd))	WGH Commodities, Land and Transport Pty Ltd ACN 128 615 341	ORD 67,750,000

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
N/A				

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	N/A

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
Theta Asset Management Pty Ltd	Suite 501, Level 5, 210 Clarence Street, Sydney, New South Wales 2000
Beneficiary Parties	See Annexure A

**Signature**

print name	Robert Marie	capacity	Director
sign here		date	21/09/2016

**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 606 and 671(2)(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme (multiplied by 100).
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany the form (together with a written statement certifying this contract, scheme or arrangement); and
  - (b) any qualification of the power of a person to exercise, control or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (not stating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any non-monetary benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisition, even if they are not paid directly to the person from whom the relevant interest was acquired.

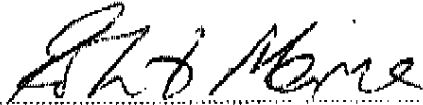
**Wellard Limited  
ACN 607 708 190**

**Annexure "A"**

**Beneficiary Parties**

*This is annexure "A" of 1 page referred to in Form 603 Notice of initial substantial holder*

*Signed by me and dated 21 September 2016*



Robert Marie, Director

<b>Beneficiary Party</b>	<b>Proportionate underlying interest in Present Securities by reference to Obligations owed by the Grantor (to the Beneficiary Party)</b>
<b>Kontago Shipping Co Inc.</b> C/o Fideconsult Anstalt, Kirchstrasse 33, FL-9490 Vaduz, Liechtenstein	42.6%
<b>Mr Tariq Mahmood Butt</b> C/o AL BATINA LIVESTOCK LLC - P.O. Box 2155 - Muscat - Sultanate of Oman	3.3%
<b>New Finley Assets Limited</b> 8 Temasek Boulevard, #29-02 Suntec Tower Three, Singapore 038988	11.8%
<b>Ms Giovanna Faroni</b> C/o WGH Holdings Pty Ltd 1A Pakonham Street, Fremantle WA 6160	2.9%
<b>Camuna Pte Ltd</b> Care of Wellard Ships Pte. Ltd. 7 Temasek Boulevard, #09-02 Suntec Tower One Singapore (038987)	39.5%

**Wellard Limited  
ACN 607 708 190**

**Annexure "B"**

**Copy of Deed of Mortgage of Securities**

*This is annexure "B" of 26 pages referred to in Form 603 Notice of initial substantial holder*

*Signed by me and dated 21 September 2016*



.....

Robert Marie, Director

**ashurst**

**Execution version**

## **Deed of mortgage of securities**

**WGH Commodities, Land and Transport Pty Ltd**  
ACN 128 615 341

**and**

**Theta Asset Management Ltd ABN 37 071 807 684**  
Junior Security Trustee

19 SEPTEMBER 2016

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**THIS DEED** is made on 19 SEPTEMBER 2016

**BETWEEN:**

- (1) **WGH Commodities, Land and Transport Pty Ltd ACN 128 615 341 (the Grantor);**  
and
- (2) **Theta Asset Management Ltd ABN 37 071 807 684 (the Junior Security Trustee).**

**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 Definitions**

In this mortgage:

**Collateral** means:

- (a) any Present Securities;
- (b) any Other Security; and
- (c) any proceeds (as defined in the PPSA) relating to the property referred to in paragraphs (a) and (b).

**Constitution** means, in relation to any person, the replaceable rules, constitution or combination of both (as those terms are used in section 134 of the Corporations Act) of that person (if any).

**Controller** has the meaning given in section 9 of the Corporations Act.

**Cost** means any cost, expense, charge, liability or disbursement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Deal** means sell, lease, transfer or otherwise dispose of any asset or permit to exist any other interest in any part of the Collateral.

**Delegate** means any agent, attorney or other delegate appointed under this mortgage by the Junior Security Trustee or by any receiver or receiver and manager appointed under this mortgage.

**Entity** means any corporation or other person, shares or other Marketable Securities of which form part of the Collateral.

**Event of Insolvency** means each of the following events or circumstances:

- (a) an Obligor:
  - (i) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Beneficiary in its capacity as such) with a view to rescheduling any of its indebtedness;
- (b) a moratorium is declared in respect of any indebtedness of any Obligor;

- (c) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor for the purpose of winding up such a person which is disputed by an Obligor acting diligently and in good faith and dismissed within 10 Business Days;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any of its assets except on application made to a court for the purpose of appointing such a person which is disputed by an Obligor acting diligently and in good faith and dismissed within 10 Business Days; or
  - (iv) enforcement of any Security over any assets of any Obligor,

or analogous procedure or step is taken in any jurisdiction.

**Junior Security Trust Deed** means the Junior Security Trust Deed dated on or about the date of this mortgage between, amongst others, the Grantor and the Junior Security Trustee.

**Marketable Securities** has the meaning given to "marketable securities" in section 9 of the Corporations Act but as if the reference to "managed investment scheme" included any unit trust which is not registered under the Corporations Act.

**Obligations** means all the liabilities and obligations of any Obligor to any Beneficiary under or in relation to or by reason of any Junior Finance Document and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this mortgage;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only (whether for breach of contract, tort or incurred on any other ground);
- (f) accrue as a result of any Event of Default; or
- (g) any combination of the above,

and irrespective of:

- (h) whether any Obligor is liable or obligated solely, jointly or jointly and severally with another person;
- (i) the circumstances in which any Beneficiary comes to be owed each liability or obligation, including any assignment of any liability or obligation; or

- (j) the capacity in which any Obligor and any Beneficiary comes to owe or to be owed that liability or obligation.

**Other Security means:**

- (a) all of the present and future right, title and interest of the Grantor in:
- (i) any dividend reinvestment scheme, bonus issue, rights issue, allotment, offer, benefit, privilege, note, stock, debenture or right to take up Marketable Securities in another corporation or other person;
  - (ii) any rights consequent on any conversion, redemption, cancellation, reclassification, forfeiture, consolidation or subdivision; or
  - (iii) any rights consequent on a reduction of capital, liquidation or scheme of arrangement,
- in any case, in respect of or in connection with any Present Securities; and
- (b) all entitlements, including dividends, distributions, proceeds and other amounts from time to time payable to or accruing to the Grantor in respect of any right, title or interest referred to in paragraph (a) of this definition.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on a Beneficiary, any Receiver or any Delegate, in any case, under this mortgage, under any other Junior Finance Document or by law.

**Present Securities** means 67,750,000 shares in Wellard owned as at the date of this mortgage or acquired after the date of this mortgage by the Grantor which are issued by Wellard (being the 80,000,000 Wellard shares held or to be held by the Grantor excluding the 12,250,000 shares the subject of the subject of any Option Deed (as defined in the Senior Loan Notes Subscription Agreement)) and all of the present and future rights attaching or relating to such shares all entitlements, including dividends, distributions, proceeds and other amounts from time to time payable to or accruing to the Grantor in respect of any such shares referred to in this definition.

**Receiver** means a receiver or receiver and manager appointed by the Junior Security Trustee under this mortgage and, if more than one, then each of them and also any employee, contractor or Delegate of any receiver or receiver and manager.

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act.

**Secured Money** means all money the payment or repayment of which from time to time forms part of the Obligations.

**Transfer** means an undated transfer of a Marketable Security executed by the Grantor (or its nominee, if applicable) as transferor in registrable form but with the name of the transferee and the consideration left blank.

## 1.2 Junior Security Trust Deed

- (a) Unless otherwise defined, expressions used in this mortgage have the meanings given to them in or for the purposes of the Junior Security Trust Deed.
- (b) This mortgage is a "Junior Finance Document" for the purposes of the Junior Security Trust Deed.

### 1.3 Interpretation

(a) Headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) "Junior Security Trustee" includes any of the successors to the Junior Security Trustee identified in this mortgage appointed under the Junior Security Trust Deed.

(c) Unless a contrary indication appears, any reference in this mortgage to:

- (i) the "Junior Security Trustee", any "Beneficiary", any "Obligor" or any "Party" shall be construed so as to include its executors, administrators, successors, substitutes (including by novation) and assigns to, or of, its rights and/or obligations under the Junior Finance Documents as permitted in the Junior Finance Documents;
- (ii) "assets" includes present and future properties, revenues and rights of every description;
- (iii) a "Junior Finance Document" is a reference to that Junior Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated in accordance with the terms of the Junior Security Trust Deed;
- (iv) any other agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated;
- (v) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vi) a "person" or "entity" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or two or more of them and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;
- (vii) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;
- (viii) a provision of law or a regulation is a reference to that provision as amended or re-enacted;
- (ix) a time of day is a reference to Sydney time; and
- (x) the words "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

(d) Section, Clause and Schedule headings are for ease of reference only.

- (e) Unless a contrary indication appears, a term used in any other Junior Finance Document or in any notice given under or in connection with any Junior Finance Document has the same meaning in that Junior Finance Document or notice as in this mortgage.
- (f) An Event of Default is "continuing" or "subsisting" if it has not been remedied or waived.
- (g) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

#### 1.4 Limitation of liability

The Junior Security Trustee enters into this mortgage solely in its capacity as trustee of the WGH Junior Security Trust and in exercise of its powers under the Junior Security Trust Deed. Accordingly:

- (a) the rights of the Junior Security Trustee under or in respect of this mortgage are held by it as part of the Trust Property for the benefit of the Beneficiaries; and
- (b) without limitation, clause 1.6 of the Junior Security Trust Deed is incorporated into this mortgage as if set out in full with all necessary changes.

#### 1.5 Actions of the Junior Security Trustee

The Grantor acknowledges and agrees that in exercising its rights and performing its obligations under this mortgage, the Junior Security Trustee will act in accordance with the written instructions set out or referred to in clause 4 of the Junior Security Trust Deed.

#### 1.6 Deed of Priority and Subordination and CBA Deed of Priority and Subordination

The parties acknowledge and agree that this mortgage operates subject to the terms of the Deed of Priority and Subordination and the CBA Deed of Priority and Subordination. The terms of the Deed of Priority and Subordination and the CBA Deed of Priority and Subordination prevail over the terms of this mortgage to the extent of any inconsistency.

## 2. MORTGAGE

### 2.1 The mortgage

By this mortgage, the Grantor as beneficial owner mortgages the Collateral to the Junior Security Trustee to secure the satisfaction of the Obligations and the payment of the Secured Money.

### 2.2 Priority

Subject to the Deed of Priority and Subordination and CBA Deed of Priority and Subordination, this mortgage will operate as a first ranking security subject only to any Security Interest mandatorily preferred by law or any prior Permitted Security Interest.

### 2.3 Conversion

At any time after an Event of Default has occurred and while it subsists, subject to the terms of the Deed of Priority and Subordination, the Junior Security Trustee may procure itself (or its nominee) to be registered as the holder of the shares, units or other Marketable Securities comprising the Collateral (or any of them). To facilitate this, the Grantor irrevocably and unconditionally authorises the Junior Security Trustee to date and complete any Transfers and lodge those Transfers for stamping and registration accompanied by, if certificated, the share or unit certificates relating to those Transfers.

## **2.4 Notice**

The Junior Security Trustee may at any time after the date of this mortgage notify any Entity or other person of its interest in the Collateral.

## **3. REPRESENTATIONS AND WARRANTIES**

### **3.1 General representations and warranties**

The Grantor represents and warrants to the Junior Security Trustee that:

- (a) **(Good title)** it has good title to the Collateral and good right to mortgage the Collateral as beneficial owner in the manner provided in this mortgage and the Collateral is free of all Security Interests other than in favour of the Junior Security Trustee or as expressly permitted by this mortgage and any other Junior Finance Document (including, for the avoidance of doubt, any Permitted Security Interest);
- (b) **(Income from Collateral)** no legal or beneficial right or interest in any income or entitlement or any right to receive any income or entitlement whether payable now or in the future and derived from the Collateral, have been assigned or secured to any other person except as expressly permitted in accordance with any other Junior Finance Document; and
- (c) **(Information for financing statement)** the Security Trustee has received from the Grantor all information needed by it to complete the financing statement (or financing change statement, if necessary) for this mortgage.

### **3.2 Representations and warranties repeated**

Each representation and warranty in clause 3.1(a) will be repeated on each date that any representation and warranty in the Junior Security Trust Deed is repeated, with reference to the facts and circumstances then subsisting.

## **4. GENERAL UNDERTAKINGS**

### **4.1 Satisfaction of Obligations**

The Grantor will satisfy, or procure the satisfaction of, the Obligations and will pay the Secured Money in the manner provided in this mortgage or in any other Junior Finance Document.

### **4.2 Junior Security Trustee assumes no obligations**

The Junior Security Trustee will not be deemed by virtue of this mortgage to have assumed any obligation of the Grantor under any law.

## **5. ADDITIONAL UNDERTAKINGS CONCERNING THE COLLATERAL**

### **5.1 Restrictions in relation to the Collateral**

The Grantor will not without the Junior Security Trustee's prior written consent or as expressly permitted in this mortgage or any other Junior Finance Document:

- (a) **(No Security Interest)** create, purport or attempt to create or permit to exist any Security Interest, however ranking, over the Collateral other than a Permitted Security Interest;

- (b) **(Voting entitlement)** at any time following the occurrence of an Event of Default and during the period it subsists, vote at any meeting of the members or creditors of any Entity in any way contrary to the directions of the Junior Security Trustee;
- (c) **(No Dealing)** Deal with any part of the Collateral other than a Permitted Disposal;
- (d) **(Not to prejudice)** do, fail to do or consent to any act, omission or thing as a result of which the Collateral becomes or is reasonably likely to become liable to surrender, forfeiture or cancellation, or becomes or is reasonably likely to become materially prejudiced in any manner, or the value of this mortgage as a Junior Security to the Beneficiaries becomes or is reasonably likely to become materially lessened; or
- (e) **(Take any steps)** take any steps towards doing any of these things.

## 5.2 Undertakings regarding the Collateral

The Grantor will

- (a) **(Additional securities)** promptly notify the Junior Security Trustee in writing if, after the date of this mortgage, it acquires any Present Securities or if it becomes entitled to any Other Security and will, during the currency of this mortgage, exercise and take up its entitlements to each Other Security which it is offered;
- (b) **(Pay calls)** duly and punctually pay all calls, premiums and instalments which may be or become payable in respect of the Collateral and duly and punctually pay all money which may become due or owing by the Grantor to any Entity on any account;
- (c) **(Compliance with Entity's Constitution)** comply in all material respects with the Constitution or other constituent documents of any Entity and any resolution, rule or regulation made under any such documents;
- (d) **(No lien)** not do or omit to do any act or thing which, if that act or thing was done or omitted to be done (as the case may be), would entitle any Entity to a lien over or to forfeit any of the Collateral;
- (e) **(No variation of rights)** not consent to, vote in favour of or permit any variation or abrogation of the rights and privileges attaching to the Collateral or any diminution of the benefits and privileges held in respect of the Collateral;
- (f) **(Protection of Collateral)** at the request of the Junior Security Trustee take or defend all legal proceedings that the Junior Security Trustee, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Collateral; and
- (g) **(Documents of title and other securities)** Subject to the terms of the Junior Finance Documents, lodge with the Junior Security Trustee on the date of this mortgage or, if later, the date on which the relevant Collateral is acquired all certificates, scrip and other indicia of title or interest in any Marketable Securities forming part of the Collateral and any Transfers for those Marketable Securities required by the Junior Security Trustee, signed by the Grantor, and with the name of the transferee, consideration and date left blank.

## 5.3 Indemnity against calls

If the Junior Security Trustee or its nominee becomes the registered holder of any of the Collateral, the Grantor will indemnify and keep indemnified the Junior Security Trustee against any money payable or other liability arising in relation to that Collateral except to

the extent the money is payable or other liability arises directly from the gross negligence, wilful misconduct or fraud of the Junior Security Trustee.

#### **5.4 Collateral not registered in name of Grantor**

If any Marketable Security comprising the Collateral is not registered in the name of the Grantor, the Grantor will, subject to the terms of the Junior Finance Documents, deliver to the Junior Security Trustee immediately on demand one or more duly stamped and registrable transfers of those Marketable Securities and all certificates, scrip or other indicia of title relating to those Marketable Securities necessary to enable those Marketable Securities to be registered in the name of the Grantor, together with an irrevocable authority to the relevant Entity to deliver up to the Junior Security Trustee the certificates, scrip or other indicia of title relating to those Marketable Securities following registration by any Entity in the name of the Grantor.

#### **5.5 Cash distributions and benefits**

At the request of the Junior Security Trustee, which may be made at any time following the occurrence of an Event of Default and during the period it subsists, the Grantor will pay to the Junior Security Trustee, or as it directs in writing, the following:

- (a) **(Dividends)** all cash dividends;
- (b) **(Returns of capital)** all cash returns of capital;
- (c) **(Rights issues)** all proceeds from the disposal or relinquishment of rights; and
- (d) **(Options)** all proceeds in relation to options or other rights granted to the Grantor or granted by the Grantor,

in relation to any Marketable Security comprising the Collateral.

#### **5.6 Events of Default**

The Grantor will ensure that no Event of Default occurs. Without affecting the liability of the Grantor or any Power in any other respect (including where a breach of this clause 5.6 is a breach of any other provision of any Junior Finance Document), the Grantor is not liable in damages for a breach of its obligations under this clause 5.6 but the Junior Security Trustee may exercise the Powers following any breach of this clause 5.6, during the period it subsists.

#### **5.7 Register Share Transfers**

Notwithstanding any provision contained in the Constitution of any Entity, the Grantor will take all steps necessary to approve any transfer of shares in that Entity in its share register, where the transfer arises because of the enforcement of any Security Interest granted under any Junior Finance Document.

#### **5.8 Postponement or waiver of Security**

If requested by the Junior Security Trustee, the Grantor will immediately cause:

- (a) any Security Interest (other than any Security Interest expressly permitted under this mortgage or any other Junior Finance Document to rank in priority to this mortgage) which has arisen or which arises from time to time by operation of law over the Collateral in favour of any person to be postponed in all respects after and subject to this mortgage or to be otherwise discharged, released or terminated; and



- (b) any Financial Indebtedness or other obligation secured by any Security Interest of the type referred to in clause 5.8(a), to be waived, released, paid or performed.

## 6. EVENTS OF DEFAULT

If any Event of Default occurs then, during the period it subsists, at the option of the Junior Security Trustee and despite any delay or previous waiver of the right to exercise that option:

- (a) the Secured Money becomes immediately due and payable on demand from the Junior Security Trustee;
- (b) all Powers not previously exercisable become exercisable; and
- (c) any rights of the Grantor to deal with the Collateral (other than through a Receiver appointed under this mortgage) immediately cease.

## 7. RECEIVERS: APPOINTMENT AND POWERS

### 7.1 Appointment of Receiver

If any Event of Default occurs then, during the period it subsists, the Junior Security Trustee may:

- (a) appoint any person or persons to be a receiver or receiver and manager of the Collateral;
- (b) terminate the appointment of any Receiver; and
- (c) in case of the removal, retirement or death of any Receiver, appoint another person or persons in the place of that Receiver.

### 7.2 Joint Receivers

If more than one person is appointed as a Receiver, the Junior Security Trustee may at its option specify whether the appointment and the Powers of each appointee will be joint or joint and several. If no specification is made, the appointment and the Powers of each appointee will be joint and several.

### 7.3 Remuneration of Receiver

The Junior Security Trustee may fix the rate of remuneration of each Receiver, which will not exceed the standard hourly rate from time to time charged by the firm of which that Receiver is a member for work of the level carried out by that Receiver.

### 7.4 Agent of Grantor

Each Receiver will be the agent of the Grantor. The Grantor will be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.

### 7.5 Powers of Receiver

Without the need for any consent from the Grantor or any other person, each Receiver will have all of the following powers:

- (a) (Section 420) all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;

- (b) **(Dispose)** whether or not in possession, to dispose of the Collateral in such manner and on such terms as the Receiver thinks fit;
- (c) **(Borrow or raise money)** to borrow or raise from the Junior Security Trustee or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Security Interest over the Collateral (whether in the name of the Grantor or otherwise) so that the Security ranks in priority to, pari passu with or after this mortgage. The Junior Security Trustee will not be bound to inquire as to the necessity or propriety of any Financial Indebtedness nor be responsible for the misapplication or non-application of any money so borrowed or raised;
- (d) **(Register)** to register itself or its nominee as the holder of the Marketable Securities (or any of the Marketable Securities) comprising the Collateral;
- (e) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
- (f) **(Take up entitlements)** to exercise all or any of the rights, privileges or entitlements conferred on or accruing to the registered holder of the Collateral in all respects as if it were the absolute beneficial owner of the Collateral, including to attend and vote at any meeting of the members or creditors of any Entity or of the holders of any Marketable Securities or class of Marketable Securities comprising the Collateral, to appoint attorneys and proxies, and to prove in any winding up or scheme of arrangement;
- (g) **(Take up issues)** to take up and accept any rights issues, bonus shares or other Marketable Securities of any Entity, and to pay any sum or sums of money necessary or expedient for the taking up of those rights, shares or other Marketable Securities, with any sum or sums paid being deemed to be and become part of the Secured Money and bearing interest accordingly;
- (h) **(Receive dividends)** to receive all dividends, interest, income and other money payable on the Collateral and to apply any money so received towards satisfaction of the Secured Money without being liable to account for it;
- (i) **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Collateral in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
- (j) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Grantor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Collateral or entered into in the exercise of any Power;
- (k) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
- (l) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Collateral, to grant

to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of any Beneficiary;

- (m) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Collateral;
- (n) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Collateral or for the security or other benefit of any Beneficiary;
- (o) **(Delegate)** with the Junior Security Trustee's prior approval, to delegate to any person, for any time, any of the Powers including this power of delegation;
- (p) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Grantor which the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of the Grantor and the Junior Security Trustee in respect of any agreement for sale and to obtain for the Beneficiaries all of the benefits of this mortgage and any other Finance Document;
- (q) **(Operate bank accounts)** to open or operate any bank account in the name of the Grantor (whether alone or jointly with any other person) to the exclusion of the Grantor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Grantor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (r) **(Do all other things)** to do all things the law allows an owner of any interest in the Collateral, or any Controller of the Collateral, to do; and
- (s) **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers as the Junior Security Trustee confers on a Receiver by notice in writing to that Receiver.

## 7.6 Indemnity

The Junior Security Trustee may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Junior Security Trustee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

## 8. JUNIOR SECURITY TRUSTEE'S POWERS

### 8.1 Exercise of Power

If any Event of Default occurs then, during the period it subsists, the Junior Security Trustee may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the Powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on the Junior Security Trustee;
- (b) exercise all other Powers; and
- (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (In which case

clauses 7.1, 7.3, 7.6, 11.2, 11.3 and 11.4 will apply as if the agent or agents were each appointed as a Receiver).

## 8.2 Act jointly

The Junior Security Trustee and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Security Interest over the Collateral or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Junior Security Trustee or the relevant Receiver thinks fit.

## 8.3 Power of attorney

(a) In consideration of the Beneficiaries entering into the Junior Finance Documents, the Grantor irrevocably appoints the Junior Security Trustee and each of its directors, company secretaries and attorneys from time to time and each Receiver, severally, as an attorney of the Grantor with power at any time an Event of Default has occurred and is subsisting:

- (i) to do all acts which ought to be done by the Grantor under any Junior Finance Document;
- (ii) to do all acts to exercise or give effect to any Power;
- (iii) to demand, sue for, recover and receive the Collateral from any person, in the name of the Grantor or in the name of the Junior Security Trustee, the relevant Receiver or any other attorney appointed under this clause 8.3;
- (iv) to take further action and to execute further instruments which are, or are in the opinion of the Junior Security Trustee, the relevant Receiver or any other attorney appointed under this clause 8.3, necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the Secured Money or to sell or otherwise deal with the Collateral; and
- (v) to appoint (and remove at will) at any time any person as a substitute for an attorney.

(b) The Grantor:

- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Grantor and either the interests of that attorney or a Related Party of that attorney or another duty of that attorney; and
- (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 8.3(b)(i) or in respect of which that attorney has a personal interest.

For the purposes of this clause 8.3(b) a Related Party of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

- (c) The Grantor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this mortgage.
- (d) The Grantor will do anything requested by the Junior Security Trustee, acting reasonably, to enable the Junior Security Trustee to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

#### **8.4 Junior Security Trustee may make good any default**

If an Event of Default is subsisting, the Junior Security Trustee may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the reasonable opinion of the Junior Security Trustee to make good or to attempt to make good that default. The Grantor will take all steps which the Junior Security Trustee, acting reasonably, requests to facilitate the exercise by the Junior Security Trustee of its rights under this clause 8.4. The Junior Security Trustee will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 8.4.

#### **8.5 Notice for exercise of Powers**

- (a) The Powers may be exercised by the Junior Security Trustee and any Receiver at any time during the period any Event of Default is subsisting, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 8.5(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - (i) an Event of Default must continue in the satisfaction of the whole or any part of the Obligations including in the payment of any part of the Secured Money before the Junior Security Trustee may give any notice or demand as required by any law affecting the Powers; and
  - (ii) the whole or any part of the Obligations or in the payment of any part of the Secured Money must continue unsatisfied after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Junior Security Trustee or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

#### **8.6 Exclusion of PPSA enforcement provisions**

To the extent permitted by law, and in respect of each Security Interest created by this mortgage:

- (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA); and
- (b) the Grantor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this mortgage.

**9. APPLICATION OF MONEY****9.1 Priority of payments**

All money received by the Junior Security Trustee or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this mortgage will be applied in the order specified in the Junior Security Trust Deed.

**9.2 Money received**

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 9.1, the Grantor will be credited only with as much of the money available for that purpose as is actually received by the Junior Security Trustee or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

**9.3 Application of money**

The Junior Security Trustee and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this mortgage (and which is to be applied in payment of the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

**9.4 Reliance on certificate**

In making any payment to the holder of any other Junior Security as contemplated by clause 9.1, the Security Trustee and each Receiver may rely on a certificate from that holder as to the amount secured by the relevant Junior Security and is not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Junior Security.

**10. LIABILITY AND RELEASE****10.1 Continuing obligation**

This mortgage constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

**10.2 Personal liability**

No grant of full or partial satisfaction of or discharge from this mortgage by the Junior Security Trustee will, unless it expressly provides otherwise, release the Grantor from personal liability under this mortgage or under any other Junior Finance Document until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

**10.3 Grantor's liability not affected**

This mortgage and the liability of the Grantor under this mortgage will not be affected or discharged by any of the following:

- (a) (Indulgence) the granting to the Grantor or to any other person of any time or other indulgence or consideration;

- (b) **(Finance Documents)** any Beneficiary failing or neglecting to recover by the realisation of any Junior Finance Document or any other Junior Security or otherwise any of the Secured Money;
- (c) **(Laches)** any other laches, acquiescence, delay, act, omission or mistake on the part of any Beneficiary or any other person;
- (d) **(Release)** the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Junior Finance Document, other Junior Security, judgment or negotiable instrument held from time to time or recovered by any Beneficiary from or against the Grantor or any other person (other than an express release or discharge of the Grantor from all of its liabilities under this mortgage); or
- (e) **(Any other thing)** any other matter or thing.

#### 10.4 **Claim on Grantor**

The Junior Security Trustee is not required to:

- (a) make any claim or demand on any other Obligor or any other person;
- (b) enforce any other Junior Finance Document or other Junior Security; or
- (c) enforce any other Power,

In any case, before making any demand on the Grantor under this mortgage or otherwise enforcing this mortgage.

#### 10.5 **Release of Collateral**

The Junior Security Trustee will be under no obligation to grant a release of the Collateral from this mortgage unless at the time the release is to be provided, none of the Secured Money is owing (whether actually, contingently or prospectively), none of the Obligations remain to be satisfied and it is not reasonably foreseeable that there could be any Secured Money owing or other Obligations to be satisfied in the future in which case the Junior Security Trustee must reconvey, surrender or release the Collateral from this mortgage at the request of the Grantor.

### 11. **PROTECTION AND INDEMNITY**

#### 11.1 **Waiver by Grantor**

The Grantor waives in favour of the Junior Security Trustee:

- (a) all rights against the Junior Security Trustee and any other person, estate or assets as far as is necessary to give effect to any provision of this mortgage;
- (b) promptness and diligence on the part of the Junior Security Trustee; and
- (c) all rights inconsistent with the provisions of this mortgage.

#### 11.2 **No liability for loss**

The Receiver will not be liable or otherwise accountable for any act, omission, delay, mistake, loss or irregularity in or concerning the exercise, attempted exercise, non exercise or purported exercise of any Power, except for its own gross negligence, fraud or willful misconduct.

**11.3 No liability to account**

Neither the Junior Security Trustee nor any Receiver will, by reason of the Junior Security Trustee or that Receiver entering into possession of the Collateral, be liable to account as mortgagee or chargee in possession, for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or chargee in possession might be liable. The liability of the Junior Security Trustee and of each Receiver will be for actual receipts only.

**11.4 No conflict**

The Junior Security Trustee and each Receiver may exercise any Power, even though the exercise of that Power involves a conflict between any duty owed to the Grantor by the Junior Security Trustee or that Receiver and any duty owed by the Junior Security Trustee or that Receiver to any other person or the interests of the Junior Security Trustee or that Receiver. No contract will be void or voidable by virtue of that conflict of duty or interest nor will the Junior Security Trustee or Receiver be liable to account to the Grantor or any other person for any money or property as a result of that conflict.

**11.5 No notice or enforcement**

The Junior Security Trustee need not:

- (a) give any notice of this mortgage to any debtor of the Grantor, to any purchaser or to any other person;
- (b) enforce payment of any money payable to the Grantor;
- (c) vote at any meeting of members or creditors of any Entity or otherwise exercise any rights in respect of the Collateral; or
- (d) realise the Collateral or take any steps or proceedings for that purpose.

**11.6 Protection of persons dealing with the Junior Security Trustee or Receiver**

No person acquiring any money or asset from or paying or handing over any money or asset to or otherwise dealing with the Junior Security Trustee, any Receiver or any Delegate, or to whom is tendered for registration an instrument executed by the Junior Security Trustee, any Receiver or any Delegate, will be:

- (a) bound to inquire:
  - (i) whether the Junior Security Trustee or the relevant Receiver or Delegate has the right to dispose of any money or asset;
  - (ii) whether any Event of Default has occurred or is subsisting;
  - (iii) whether any of the Secured Money is owing or payable;
  - (iv) whether the relevant Receiver or Delegate has been properly appointed;
  - (v) as to the propriety or regularity of the exercise or purported exercise of any Power; or
  - (vi) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or



- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication,

and:

- (i) In the case of any person paying or handing over any money or asset, that person will be discharged from any further liability to pay or hand over that money or asset; and
- (ii) the irregular, improper or unnecessary exercise of any Power and any other dealing of any nature with the Junior Security Trustee, any Receiver or any Delegate will be, as regards the protection of any such person, deemed to be authorised by the Grantor and valid.

## 12. PAYMENTS

### 12.1 Money repayable as agreed or on demand

The Grantor will pay the Secured Money to the relevant Beneficiary in dollars or any other currency specified in the relevant Junior Finance Document in immediately available funds not later than 11.00 am in the place of payment on the due date (or if no due date is specified, on the date of demand by the Junior Security Trustee) and in compliance with any other requirements of the Junior Finance Documents.

### 12.2 Credit balances of other accounts

In determining the amount of the Secured Money, no credit need be allowed by the Junior Security Trustee for any credit balance in any joint or other account of the Grantor with any Beneficiary, or for any other money owing by any Beneficiary to the Grantor.

### 12.3 Merger

If the liability of the Grantor to pay any of the Secured Money becomes merged in any judgment or order, the Grantor will as an independent obligation pay, in accordance with the Finance Documents, interest at the rate which is the higher of that payable under the Finance Documents and that fixed by or payable under the judgment or order.

### 12.4 Suspense account

- (a) The Grantor acknowledges and agrees that the Junior Security Trustee may deposit into a suspense account any amount it or any Receiver receives as a result of the exercise of any Power for such time as it considers appropriate without the Junior Security Trustee being obliged to apply any such amount towards payment or repayment of the Secured Money.
- (b) If the Junior Security Trustee determines this is required, if the Junior Security Trustee deposits any amount into a suspense account as contemplated by clause 12.4(a) in order to preserve rights to prove in the bankruptcy or liquidation of a person, that amount will not be treated as an amount received as a result of the exercise of any Power until such time as the amount is withdrawn from the suspense account.

## 13. GOVERNING LAW

This mortgage is governed by the laws of Western Australia.

**14. JURISDICTION**

- (a) The courts having jurisdiction in Western Australia have exclusive jurisdiction to settle any dispute arising out of or in connection with this mortgage (including a dispute relating to the existence, validity or termination of this mortgage) (a "Dispute").
- (b) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 14 is for the benefit of the Beneficiaries only. As a result, no Beneficiary shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Beneficiaries may take concurrent proceedings in any number of jurisdictions.

**15. MISCELLANEOUS****15.1 Further acts and documents**

- (a) The Grantor will, and will use all reasonable endeavours to procure that all persons having or claiming any estate or interest in the Collateral from time to time after the date of this mortgage will, on demand by the Junior Security Trustee (and at the entire cost and expense of the Grantor) perform all acts and execute and deliver all further documents as the Junior Security Trustee, acting reasonably, requires:
  - (i) for more satisfactorily securing to the Beneficiaries the payment of the Secured Money in a manner not inconsistent with this mortgage;
  - (ii) to perfect the Security Interest created by this mortgage over the Collateral; or
  - (iii) for facilitating the exercise of any Power.
- (b) Without limiting clause 15.1(a) if the Junior Security Trustee determines that a Junior Finance Document (or a transaction related to a Junior Finance Document) is or contains a Security Interest, the Grantor agrees to promptly do anything (including amending any Junior Finance Document or executing any new document) which the Junior Security Trustee reasonably requires for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling the Junior Security Trustee to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Junior Security Trustee in a manner not inconsistent with this mortgage; or
  - (iii) enabling the Junior Security Trustee to exercise rights in connection with the Security Interest.

**15.2 Powers cumulative**

Each Power is cumulative and in addition to each other Power available to the Junior Security Trustee or any Receiver.

**15.3 Consents**

A consent required under this mortgage from the Junior Security Trustee may be given or withheld, or may be given subject to any conditions, as the Junior Security Trustee (in its absolute discretion) thinks fit, unless this mortgage expressly provides otherwise.

**15.4 Indemnities**

- (a) Each indemnity in this mortgage is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, expiration or release of this mortgage.
- (b) It is not necessary for the Junior Security Trustee to incur any expense or to make any payment before enforcing a right of indemnity conferred by this mortgage.
- (c) The Grantor must pay in the time specified (or, if not specified, on demand) any amount it must pay under an indemnity in this mortgage.

**15.5 Time of essence**

Time is of the essence in respect of the Grantor's obligations under this mortgage.

**15.6 Binding on each signatory**

This mortgage binds and is enforceable against the Grantor despite:

- (a) any other person not executing this mortgage or its execution being defective in any way; or
- (b) any obligation or liability of any other party under this mortgage not being binding or enforceable against that party for any reason.

**15.7 Counterparts**

This mortgage may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this mortgage.

**15.8 Registration**

The Junior Security Trustee may register this mortgage and any financing statement or financing change statement relating to this mortgage in the manner and within any time limits prescribed by law to ensure the full efficacy of this mortgage as a Security to the Junior Security Trustee in all relevant jurisdictions.

**15.9 Assignment****(a)**

- (i) The Junior Security Trustee may at any time assign or otherwise transfer all or any part of its rights under this mortgage in any way permitted in accordance with the Junior Finance Documents and not in any other manner.
- (ii) If the Junior Security Trustee assigns or otherwise transfers all or any part of its rights under this mortgage as permitted in accordance with this clause 15.9(a) the Grantor may not claim against any assignee or transferee any right of set-off or any other rights the Grantor has against the assigning or transferring Junior Security Trustee.

- (b) The Grantor cannot assign, novate or otherwise transfer any of its rights or obligations under this mortgage without the prior written consent of the Junior Security Trustee.

**15.10 No merger**

This mortgage and the Powers are in addition to and do not merge with, postpone, lessen or otherwise prejudicially affect any other Finance Document or any other right, power, authority, discretion, remedy or privilege of any Beneficiary.

**15.11 Blanks**

The Grantor authorises the Junior Security Trustee to complete any blanks in this mortgage or any document, of any nature, entered into or executed by the Grantor in connection with this mortgage.

**15.12 Confidentiality**

- (a) Subject to clause 15.12(b), if the Grantor is a debtor as defined in the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 15.12(a), does not apply to any disclosure of information or documents:
  - (i) in any proceeding arising out of or in connection with this mortgage to the extent that the disclosure is deemed by the disclosing party necessary to protect its interests;
  - (ii) where the information is in the public domain other than as a result of a breach by that disclosing party of this clause 15.12;
  - (iii) if required to do so under a binding order of any Governmental Agency or any procedure for discovery in any proceedings;
  - (iv) if the disclosing party reasonably believes it is required to do so by any law or stock exchange (except that this clause does not permit the Security Trustee to disclose any information of the kind referred to in section 275(1) of the PPSA, to the extent that disclosure can be resisted under subsection 275(6) of the PPSA);
  - (v) otherwise as required or permitted by any Junior Finance Document;
  - (vi) to a disclosing party's Related Bodies Corporate, its legal advisors and its consultants as long as it advises them of the confidential nature of the

information or documents of that nature is clear from the circumstances of the disclosure;

- (vi) by the Junior Security Trustee to a proposed assignee or transferee of any rights or obligations under any Junior Finance Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Junior Finance Document or any Obligor;
- (viii) by the Junior Security Trustee with the Grantor's prior written consent; or
- (ix) by the Grantor with the Junior Security Trustee's prior written consent.

Each party authorises disclosures made by the other party in accordance with clause 15.12(b)(i) to 15.12(b)(vii).

### 15.13 Costs

Without limiting the rights of indemnification given to the Junior Security Trustee by law and elsewhere in this mortgage or any other Junior Finance Document, the Junior Security Trustee will be indemnified by the Grantor against all Costs, Losses, claims, demands or actions suffered or reasonably incurred by or made against the Junior Security Trustee in connection with:

- (a) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any Power as the Junior Security Trustee under this mortgage; or
- (b) any action taken or omitted to be taken by the Junior Security Trustee in connection with the exercising, enforcing or preserving of, or attempting to exercise or enforce or preserve any Power under this mortgage,

except, in any case, to the extent that the Cost, Loss, claim, demand or action arises by reason of any wilful breach of the terms of this mortgage by the Junior Security Trustee or by reason of the gross negligence, fraud or wilful misconduct of the Junior Security Trustee. The Grantor agrees to pay amounts due under this indemnity within 5 Business Days of demand from the Junior Security Trustee.

**EXECUTED as a deed.**

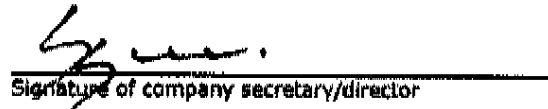
Each person who executes this mortgage on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**GRANTOR**

**EXECUTED by WGH COMMODITIES, LAND AND TRANSPORT PTY LTD ACN 128 615 341** in accordance with section 127 of the Corporations Act 2001 (Cth):

  
Signature of director

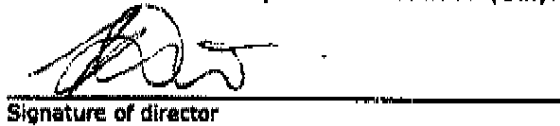
BALZARINI MAIRO  
Full name of director

  
Signature of company secretary/director

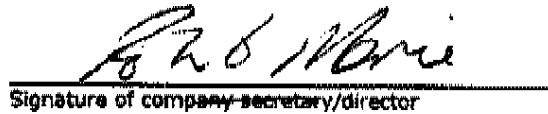
GREN WHEELER  
Full name of company secretary/director

**SECURITY TRUSTEE**

**EXECUTED by THETA ASSET MANAGEMENT LTD ABN 37 071 807 684** in accordance with section 127 of the Corporations Act 2001 (Cth):

  
Signature of director

KIRSTEN MARIE  
Full name of director

  
Signature of company secretary/director

ROBERT MARIE  
Full name of company secretary/director