



**BankSA - A Division of Westpac Banking
Corporation ABN 33 007 457 141
SMSF Deed of trust declarations and
undertakings**

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BankSA

SMSF Deed of trust declarations and undertakings

Details

Financier:
(“we”)

BankSA – A Division of Westpac Banking Corporation (ABN 33 007 457 141)
Address: 97 King William Street, Adelaide SA 5000

SMSF Trustee:

WHITING SUPERANNUATION PTY LTD (ACN 160 162 998) of 21
Austin Street Adelaide SA 5000 (including its successors and assigns)

SMSF Trust name:

WHITING FLOORING SUPERANNUATION FUND

SMSF Trust deed:

Superannuation Fund Trust Deed made 3 September 2012 by WHITING
SUPERANNUATION PTY LTD (ACN 160 162 998) as trustee

**SMSF Trustee’s
documents:**

(describe all documents the trustee
enters into in connection with the
transaction)

This deed

Facility offers dated 9 November 2012(\$325,000.00 and \$50,000.00) and any
document signed or to be signed by the *SMSF trustee* connected with any of
them.

**Directors of SMSF
trustee (if the trustee is a
company):**

COLIN FRANCIS WHITING and **SHEENA WHITING** both of 170 Target
Hill Road Salisbury Heights SA 5109

**SMSF Beneficiaries who
are intended to sign this
document:**

COLIN FRANCIS WHITING and **SHEENA WHITING** both of 170 Target
Hill Road Salisbury Heights SA 5109

Security Custodian:

WHITING PROPERTIES PTY LTD (ACN 160 163 913) of 21 Austin Street
Adelaide SA 5000 (including its successors and assigns)

Security Custodian trust name:

Bare Trust

Custodian Document:

Deed made on 3 September 2012 by **WHITING PROPERTIES PTY LTD**
(ACN 160 163 913) in its capacity as trustee for each Investor severally

Security Custodian's documents:

(describe all documents the Security Custodian enters into in connection with the transaction)

This deed
Memorandum of Mortgage over Certificate of Title Register Book Volume 5907 Folio 68
Guarantee and Indemnity in respect to the Borrower
and any document signed or to be signed by the *Security Custodian* connected with any of them.

Directors of Security Custodian (if the Security Custodian is a company):

COLIN FRANCIS WHITING and **SHEENA WHITING** both of 170 Target Hill Road Salisbury Heights SA 5109

Borrower's details:

WHITING SUPERANNUATION PTY LTD (ACN 160 162 998) as trustee for Whiting Flooring Superannuation Fund

Date of SMSF deed of trust declarations and undertakings:

Provisions

Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this deed.

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Declarations

1.1 You declare that:

- (a) the *SMSF trustee* is the only trustee of the *SMSF trust*; and
- (b) the *SMSF trustee* has the power to sign the *SMSF trustee's documents* and perform its obligations under them; and
- (c) the *trustee* has signed or will sign the *trustee's documents* as trustee of the *trust*; and
- (d) the *SMSF trustee* has signed or will sign the *SMSF trustee's documents* with the consent of the *beneficiaries* who sign this deed and for the benefit of all beneficiaries of the *SMSF trust*; and
- (e) the *SMSF trustee* has the right to be indemnified out of the *SMSF trust fund* for all obligations it incurs in relation to the *SMSF trustee's documents* and the *SMSF trust fund* is sufficient to satisfy that right of indemnity; and
- (f) no action has been taken or proposed to remove the *SMSF trustee* as trustee of the *SMSF trust* or to appoint an additional or alternate trustee of the *SMSF trust*; and
- (g) you have given us true (i.e. complete and up to date) copies of the *SMSF trust deed* and other documents relating to the *SMSF trust* containing all the terms of the *trust*; and
- (h) the *SMSF trust* has been properly constituted and the *SMSF trust deed* is valid and enforceable; and
- (i) the *SMSF trustee* has complied with the *trust deed* and its obligations as *SMSF trustee*; and
- (j) no action has been taken or proposed to terminate the *SMSF trust* or revoke a power of the *SMSF trustee* and (as far as you are aware) no-one intends to take any such action; and
- (k) unless you tell us otherwise in writing, the *beneficiaries* who sign this deed are the only beneficiaries of the *SMSF trust*; and

- (l) our rights under the *SMSF trustee's documents* have priority over the interests of the *beneficiaries*; and
 - (m) the *Security Custodian* is the only trustee of the *Security Custodian trust*; and
 - (n) the *SMSF trustee* is the only beneficiary of the *Security Custodian trust*; and
 - (o) the *Security Custodian* has the power to sign the *Security Custodian's documents* and perform its obligations under them; and
 - (p) the *Security Custodian* has signed or will sign the *Security Custodian's documents* as trustee of the *Security Custodian trust*; and
 - (q) the *Security Custodian* has signed or will sign the *Security Custodian's documents* with the consent of the *beneficiaries* who sign this deed; and
 - (r) the *Security Custodian* has the right to be indemnified out of the *Security Custodian trust fund* for all obligations it incurs in relation to the *Security Custodian's documents* and the *Security Custodian trust fund* is sufficient to satisfy that right of indemnity; and
 - (s) no action has been taken or proposed to remove the *Security Custodian* as trustee of the *Security Custodian trust* or to appoint an additional or alternate trustee of the *Security Custodian trust*; and
 - (t) you have given us true (i.e. complete and up to date) copies of the *Custodian Document* and other documents relating to the *Security Custodian trust* containing all the terms of the *Security Custodian trust*; and
 - (u) the *Security Custodian trust* has been properly constituted and the *Custodian Document* is valid and enforceable; and
 - (v) the *Security Custodian* has complied with the *Custodian Document* and its obligations as *Security Custodian*; and
 - (w) no action has been taken or proposed to terminate the *Security Custodian trust*
- or revoke a power of the *Security Custodian* and (as far as you are aware) no-one intends to take any such action; and
 - (x) our rights under the *Security Custodian's documents* have priority over the interests of the *beneficiaries* or the *SMSF trust*; and
 - (y) the *SMSF trust* was constituted and has been and will be conducted and administered in accordance with, and the entering into of the *SMSF trustee's documents* will comply with, all applicable laws, including the *SIS Laws*.
- 1.2 You must tell us whenever anything happens preventing you from repeating all the declarations in clause 1.1.

Undertakings and consent

- 2.1 The *SMSF trustee* agrees:
- (a) to do everything necessary to bind itself and its successors under the *SMSF trustee's documents*; and
 - (b) to comply with its obligations as *SMSF trustee*; and
 - (c) to ensure that it is the sole beneficiary of the *Security Custodian trust*.
- 2.2 The *Security Custodian* agrees:
- (a) to do everything necessary to bind itself and its successors under the *Security Custodian's documents*; and
 - (b) to comply with its obligations as *Security Custodian*; and
 - (c) to transfer the *property* to the *SMSF trustee* once all amounts secured by the mortgage over the *property* has been repaid in full and the mortgage discharged; and
 - (d) to ensure that the *SMSF trustee* is the sole beneficiary of the *Security Custodian trust*.
- 2.3 You agree to ensure that, without our consent:
- (a) the *SMSF trustee* does not retire or cease to act and is not removed or

- replaced as trustee of the *SMSF trust*; and
- (b) another person is not appointed as joint or alternate trustee of the *SMSF trust*; and
- (c) the *SMSF trust* is not terminated and a vesting date is not declared; and
- (d) the *SMSF trust deed* is not changed and the terms of the *SMSF trust* are not otherwise varied; and
- (e) the *SMSF trust fund* is not mixed with other property, resettled or sought to be brought under court control; and
- (f) the *SMSF trustee's* right to be indemnified out of the *SMSF trust fund* for obligations it incurs in relation to the *SMSF trustee's documents* is not restricted; and
- (g) nothing is done to restrict the ability of the *SMSF trustee* to comply with its obligations in relation to the *SMSF trustee's documents*; and
- (i) the *Security Custodian* does not retire or cease to act and is not removed or replaced as trustee of the *Security Custodian trust*; and
- (j) another person is not appointed as joint or alternate trustee of the *Security Custodian trust*; and
- (k) the *Security Custodian trust* is not terminated and a vesting date is not declared; and
- (l) the *Custodian Document* is not changed and the terms of the *Security Custodian trust* are not otherwise varied; and
- (m) the *Security Custodian trust fund* is not mixed with other property, resettled or sought to be brought under court control; and
- (n) the *Security Custodian's* right to be indemnified out of the *Security Custodian trust fund* for obligations it incurs in relation to the *Security Custodian's documents* is not restricted; and

- (o) nothing is done to restrict the ability of the *Security Custodian* to comply with its obligations in relation to the *Security Custodian's documents*.

2.4 You (other than the *SMSF trustee*) consent to the *SMSF trustee* signing the *SMSF trustee's documents* and exercising rights and performing obligations in relation to the *SMSF trustee's documents*.

2.5 You (other than the *Security Custodian*) consent to the *Security Custodian* signing the *Security Custodian's documents* and exercising rights and performing obligations in relation to the *Security Custodian's documents*.

Indemnity

3. You indemnify us against and you must therefore pay us for:

- (a) loss we suffer in connection with you not observing any of your obligations or agreements under this deed or in connection with any declaration in this deed being inaccurate; and
- (b) the reasonable expenses we reasonably incur in enforcing this deed.

Waiver

4.1. You waive any right you have to claim that the *SMSF trustee* breaches the *SMSF trust* by signing a *SMSF trustee's document* or exercising rights or performing obligations in relation to a *SMSF trustee's document*.

4.2. You waive any right you have to claim that the *Security Custodian* breaches the *Security Custodian trust* by signing a *Security Custodian's document* or exercising rights or performing obligations in relation to a *Security Custodian's document*.

Acknowledgement

5. You know that we are relying on you entering this deed before signing or accepting the *SMSF trustee's documents* and *Security Custodian's documents* and that, each time we give or continue to provide the *SMSF trustee* financial accommodation under the *SMSF trustee's documents* or we give or continue to

provide to any person financial accommodation of which the *SMSF trustee* or *Security Custodian* guarantees repayment, we will be relying on your not having breached this deed. You acknowledge incurring obligations, and giving us rights, under this deed for valuable consideration from us.

Limited Recourse

6.1 Limit and release

Despite any other provision of this deed, we may not have recourse to you or your assets under or in connection with this deed, except we may have recourse to the *property* and its proceeds and the total amount available to us as a result of a realisation of the *property* (after payment of enforcement costs etc).

6.2 Unrestricted remedies

(a) (**Charges and guarantees**) Subject to sub-paragraph (b), nothing in clause 6.1 (**Limit and release**) limits us in:

- exercising our rights or powers under any *security interest*;
- obtaining an injunction or other order to restrain any breach of this deed by any party; or
- obtaining declaratory relief.

(b) (**Limited agency**) In exercising any right, power or remedy under this deed, neither we nor any receiver, receiver and manager, agent or attorney appointed under this deed shall incur, or have the authority to incur, any liability on your behalf or for your account except a liability which is itself subject to the limitation in clause 6.1 (**Limit and release**).

(c) (**Amount owing**) For the purpose of determining the liability of any guarantor in relation to the amount outstanding, the limit on your liability under clause 6.1 (**Limit and release**) will be disregarded.

6.3 Restricted remedies

Except as provided in clause 6.2 (**Unrestricted remedies**), we will not, in

relation to any liability for which you are not liable under clause 6.1 (**Limit and release**):

- (**judgment**) obtain a judgment for the payment of money or damages by you;
- (**statutory demand**) issue any demand under s459E(1) of the *Corporations Act 2001* (or any analogous provision under any other law) against you;
- (**winding up**) apply for the winding up of you;
- (**execution**) levy or enforce any distress or other execution to, on or against any of your assets other than the *property*;
- (**court appointed receiver**) apply for the appointment by a court of a receiver to any of your assets other than the *property*; and
- (**set-off or counterclaim**) exercise or seek to exercise any set-off or counterclaim against you,

or take proceedings for any of the above and we waive our rights in respect of those applications and proceedings.

6.4 The *SMSF trustee* agrees that its beneficial interest in the *property* will be subject to any *security interest* which the *Security Custodian* gives to us over the *property*. We are not obliged or required to take notice of, or be bound by, any actual, contingent or future interest the *SMSF trustee* may have in the *property*.

Consumer Credit Code

7. This clause 7 applies to the extent, if any, that a Consumer Credit Code applies to this deed. If:

- that Code would otherwise make a provision of this deed illegal, void or unenforceable; or
- a provision of this deed would otherwise contravene a requirement of that Code or impose an obligation or liability which is prohibited by that Code,

this deed is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

Your obligations are unaffected

8. You agree that you are bound by this deed even if a person who was intended to sign this deed or a similar document does not do so or does not do so effectively.

Consents

9. Consents in connection with this deed must be in writing. We may give or refuse our consent in any way we consider appropriate, including by imposing conditions.

Applicable law

10. This deed is governed by the law of the state or territory where our address specified in the details is situated.

Execution

11. Where any party to this deed is a party in more than one capacity, the proper execution of this deed once will bind that party in each of its capacities.

Deed

12. This document is a deed.

Meaning of words

13. *beneficiaries* means all the beneficiaries of the *SMSF trust*.

arrangement with us means an arrangement (including an agreement or a security interest) under which the *SMSF trustee*, the *Security Custodian* or any other party to a *security interest* specified in the facility offer (as defined in the *SMSF trustee's documents*) has or could in the future have obligations to us or any of our "related entities" (as defined in the *Corporations Act*).

Custodian Document means the Custodian Document described in the details.

property means the property mortgaged to us by the *Security Custodian*.

Security Custodian means each person named in the details as Security Custodian. If there are more than one, *Security Custodian* means each of them separately and every two or more of them jointly.

Security Custodian's documents means the Security Custodian's documents described in the details.

Security Custodian trust means the trust established under the *Custodian Document*.

Security Custodian trust fund means the property held on trust by the *Security Custodian* under the *Custodian Document*.

security interest means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. *Security interest* also includes a guarantee and indemnity.

SIS Laws means Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth).

SMSF trust means the trust established under the *SMSF trust deed*.

SMSF trust deed means the SMSF Trust deed described in the details.

SMSF trustee means each person named in the details as SMSF Trustee. If there are more than one, *SMSF trustee* means each of them separately and every two or more of them jointly.

SMSF trustee's documents means the SMSF Trustee's documents described in the details.

SMSF trust fund means the property held on trust by the *SMSF trustee* under the *SMSF trust deed*.

we means the person or persons named in the details as financier. If there are more

than one, we means each of them separately and every two or more jointly. We includes our successors and assigns.

you means each of the *SMSF trustee*, each director of the *SMSF trustee* (if it is a corporation), the *Security Custodian*, each director of the *Security Custodian* (if it is a corporation), and each *beneficiary* who signs this deed separately and every two or more of them jointly.

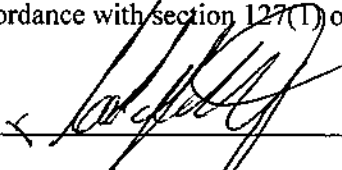

The singular includes the plural and vice versa.

A reference to:

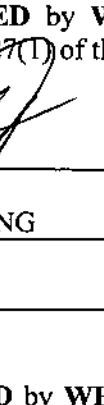
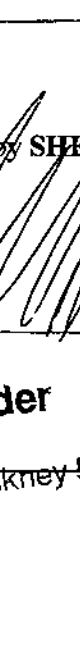
- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it.

Signing pages


EXECUTED AS A DEED by WHITING SUPERANNUATION PTY LTD (ACN 160 162 998) in accordance with section 127(1) of the Corporations Act 2001 (Cwth) by:

 Signature 
COLIN FRANCIS WHITING Print Name SHEENA WHITING
DIRECTOR Print Position DIRECTOR

EXECUTED AS A DEED by WHITING PROPERTIES PTY LTD (ACN 160 163 913) in accordance with section 127(1) of the Corporations Act 2001 (Cwth) by:

 Signature 
COLIN FRANCIS WHITING Print Name SHEENA WHITING
DIRECTOR Print Position DIRECTOR

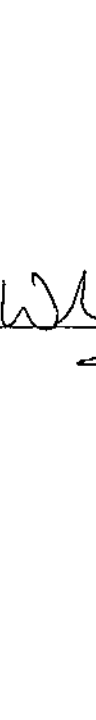
Signed sealed and delivered by COLIN FRANCIS WHITING in the presence of:

) 
)
) Colin Francis Whiting

Witness

Mark Sander
Solicitor
9 Hackney Rd Hackney 5069

Signed sealed and delivered by SHEENA WHITING in the presence of:

) 
)
) Sheena Whiting

Witness

Mark Sander
Solicitor
9 Hackney Rd Hackney 5069

Signed on behalf of
WESTPAC BANKING CORPORATION
by its attorney(s) under power of attorney dated
17 January 2001 registered no 9037336 in the
presence of:

By executing this document the attorney states
that they have received no notice of revocation of
the power of attorney.

Witness (signature)

Attorney (signature)

Name of Witness (print name)

Name and Tier of Attorney (print)

Address of Witness

Business Hours Telephone Number



BankSA – A Division of Westpac Banking Corporation
ABN 33 007 457 141
SMSF guarantee and indemnity
Regulated by the Code of Banking Practice
granted by SMSF beneficiary

Warning

- You should seek independent legal and financial advice on the effect of this guarantee and indemnity before you agree to sign it.
- You can refuse to sign this guarantee and indemnity.
- There are financial risks involved in signing this guarantee and indemnity (for example, it may become necessary for you to sell your assets so that you can pay us).
- You have the right to limit your liability under this guarantee and indemnity in accordance with the Code of Banking Practice and as allowed by law.
- You can request information about the transaction or facility to be guaranteed (including any existing facility with us to be refinanced by the new facility).
- **This guarantee and indemnity covers liability under a future credit contract to the extent the future credit contract (together with all other existing credit contracts secured by this guarantee and indemnity) is within a limit previously agreed in writing by you.**

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Guarantee and indemnity

Details	
Financier: ("we")	BANKSA – A Division of Westpac Banking Corporation ABN 33 007 457 141 Address: 97 King William Street, Adelaide SA 5000
Guarantor: ("you")	Name(s): COLIN FRANCIS WHITING SHEENA WHITING Address: of 170 Target Hill Road Salisbury Heights SA 5109
Trustee details: (if guarantor is signing as trustee)	Trust name: N/A Trust deed: N/A
Customer:	Name(s): WHITING SUPERANNUATION PTY LTD (ACN 160 162 998) Address: of 21 Austin Street Adelaide SA 5000 as trustee for Whiting Flooring Superannuation Fund
Description of guaranteed agreement	Facility Offers dated 9 November 2012 (\$325,000.00 and \$50,000.00) addressed to the Customer and accepted by the Customer and Guarantor and any Facility Offer from time to time varying or in substitution for the said Facility Offer.
Limit: - special conditions:	See clause 29
Date of guarantee and indemnity:	

Provisions

Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this guarantee and indemnity.

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Purpose of this guarantee and indemnity and extent of your obligations

- 1.1 This guarantee and indemnity is entered into in consideration of us providing or continuing to provide financial accommodation to the *customer* or not immediately enforcing rights against the *customer* at your request.
- 1.2 By signing this guarantee and indemnity, you could become liable to pay us:
 - (a) under the guarantee in clause 2
 - (b) under the indemnity in clause 3
 - (c) *costs* and other expenses under clause 4
 - (d) interest under clause 5.

However, the maximum amount we can recover from you is set out in the special conditions attached to this guarantee and indemnity.

- 1.3 You are liable for all the obligations under this guarantee and indemnity both separately on your own and jointly with any one or more other persons named in this guarantee and indemnity as guarantor.

What you undertake in giving this guarantee and indemnity

Guarantee

- 2.1 You unconditionally and irrevocably guarantee payment to us of the *guaranteed money*. If the *customer* does not pay the *guaranteed money* on time and in accordance with any arrangement under which it is expressed to be owing, then you agree to pay the *guaranteed money* to us on demand from us (whether or not we have made demand on the *customer*).

- 2.2 The guarantee in clause 2.1 is a continuing obligation and extends to all of the *guaranteed money*.
- 2.3 Except to the extent you have a right conferred by the Code of Banking Practice, you cannot otherwise withdraw from, end or limit this guarantee and indemnity.

Indemnity

- 3.1 You unconditionally and irrevocably indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* we suffer or incur if:
- (a) the *customer* does not, is not obliged to, or is unable to, pay us the *guaranteed money* (or amounts which would have been *guaranteed money* if the *customer* were obliged to pay) in accordance with any arrangement (or what would have been an arrangement if valid) under which it is expressed to be owing (for example because the arrangement is void, illegal, voidable, a breach of trust or not properly executed by the *customer*); or
 - (b) you are not obliged to pay us an amount under clause 2; or
 - (c) we are obliged, or we agree, to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt person or *insolvent* company) in connection with a payment by you or the *customer*. (For example, we may have to, or may agree to, pay interest on the amount.)

You as principal debtor agree to pay us on demand a sum equal to the amount of any such liability, loss or costs and any amount that the *customer* would have been obliged to pay us if the arrangement had been valid and enforceable.

- 3.2 The indemnity in clause 3.1 and the other indemnities in this guarantee and indemnity are continuing obligations, independent of your other obligations under this guarantee and indemnity. They continue even after those other obligations end. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this guarantee and indemnity.

Waiver

4. Despite any other provision of this guarantee and indemnity or any right conferred or implied by law or statute, you unconditionally and irrevocably agree that your rights against the *customer* and the *security custodian*, whether by way of right of contribution, subrogation, indemnity or any other equivalent right, arising from or in connection with this guarantee and indemnity are limited to the *property* and, if you pay us any amount under this guarantee and indemnity, you are only entitled to recourse against the *property* and you are not entitled to claim that amount, or any part of that amount, from any other asset of the *customer* or the *security custodian*.

Additional amounts you must pay

Our *costs* and other expenses

- 5.1 You must pay us for:
- (a) our reasonable *costs* in arranging, administering (including giving and considering consents, variations, discharges and releases, producing title documents or enforcing, attempting to enforce or taking any other action in connection with our rights) and terminating this guarantee and indemnity; and
 - (b) all *taxes*, fees, and charges payable in connection with this guarantee and indemnity and any transaction (such as a payment or

receipt) under it, and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us even if we do not expressly ask you to pay us.

5.2 You agree to compensate us on demand if we determine that, as a direct or indirect result of the imposition of *GST*, our *costs* in connection with this guarantee and indemnity are increased. If we:

- (a) reasonably decide that we are liable to pay *GST* on a supply made in connection with this guarantee and indemnity; and
- (b) certify that we have not priced the supply to include *GST*,

then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing *GST* rate.

5.3 You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* (including consequential or economic loss) we suffer or incur:

- (a) if you default under this guarantee and indemnity; or
- (b) in connection with any person exercising, or not exercising, rights under this guarantee and indemnity.

5.4 You must pay us an amount equal to any liability, loss or *costs* (including consequential or economic loss) of a kind referred to in clauses 4.3(a) and (b) suffered or incurred by any of our employees, officers, agents, attorneys or contractors.

5.5 If a judgment, order or proof of debt in connection with the *guaranteed money* is expressed in a currency other than

that in which the *guaranteed money* is due, then you indemnify us against, and you must therefore pay us on demand for:

- (a) any difference arising from converting the other currency if the exchange rate we use for converting the other currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the *costs* of conversion.

You acknowledge that it might be necessary to convert the other currency through more than one currency to determine the exchange rate available to us.

Interest

6.1 You must pay interest on any amount under clauses 3 or 4 which is due for payment. The interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365. You must pay interest owing under this clause 5 on demand from us.

6.2 The rate of interest applying to each daily balance is the rate specified by us from time to time or (if no rate is specified) 2% above the highest interest rate applying to the *guaranteed money* on that day.

6.3 Each month (or any other period we choose), we may add to the amount you owe us any interest under this clause 5 which has not been paid. You will then be liable for interest under this clause 5 on the total amount.

6.4 If any amount you must pay under this guarantee and indemnity becomes covered by a court order, you must pay interest on that amount as a separate

obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the rate that applies under clause 5.3 or the rate in the court order (whichever is higher).

Your own costs and other expenses

7. You must pay for anything which you must do under this guarantee and indemnity.

Changes to rights

Reinstatement of rights

8. Under law relating to *insolvency*, a person may claim that a transaction (including a payment) in connection with this guarantee and indemnity or the *guaranteed money* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the *guaranteed money* to which we were entitled immediately before the transaction; and
- (b) on request from us, you agree to do anything (including signing any document) to restore to us any *security interest* we held from you immediately before the transaction.

Our rights are protected

- 9.1 Rights given to us under this guarantee and indemnity and your liabilities under it are not affected by any act or omission by us or by anything else that might otherwise affect them under law or otherwise, including:

- (a) the fact that we vary or replace any arrangement under which the *guaranteed money* is expressed to be owing, such as by increasing

the credit limit or extending the term; or

- (b) the fact that we release the *customer* or give them a concession, such as more time to pay; or
- (c) the fact that the *customer* opens another account with us; or
- (d) the fact that we release, lose the benefit of or do not obtain any security; or
- (e) the fact that we do not register any security which could be registered; or
- (f) the fact that we release any person who guarantees any of the *customer's* obligations; or
- (g) the fact that the obligations of any person who guarantees any of the *customer's* obligations may not be enforceable; or
- (h) the fact that any person who was intended to guarantee any of the *customer's* obligations does not do so or does not do so effectively; or
- (i) the death, mental or physical disability or insolvency of any person including you or the *customer*; or
- (j) changes in the membership, name or business of a firm, partnership, committee or association.

- 9.2 This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, mortgage, charge or other security, or right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of

the *guaranteed money* or any other amount payable under this guarantee and indemnity.

We can still exercise our rights under this guarantee and indemnity as well as under the judgment, order, other guarantee, indemnity, mortgage, charge, other security, right or remedy.

- 9.3 This guarantee and indemnity binds each person who signs as guarantor even if another person who was intended to sign does not sign it or is not bound by it.

Your rights are suspended

10. As long as any of the *guaranteed money* remains unpaid, you may not, without our consent:
- (a) reduce your liability under this guarantee and indemnity by claiming that you or the *customer* or any other person has a right of set-off or counterclaim against us; or
 - (b) exercise any legal rights to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other security given in connection with the *guaranteed money* or any other amount payable under this guarantee and indemnity. (For example, you may not try to enforce any mortgage we have taken to ensure repayment of the *guaranteed money*.); or
 - (c) claim an amount from the *customer*, or another guarantor of the *customer's* obligations, under a right of indemnity; or
 - (d) claim an amount in the insolvency of the *customer* or another guarantor of the *guaranteed money* (including a person who has signed this guarantee and indemnity with you).

What you acknowledge and declare

- 11.1 You acknowledge that you are responsible for making yourself aware of the financial position of the *customer* and any other person who guarantees the *guaranteed money*.
- 11.2 You declare that:
- (a) neither you, nor, if you are a corporation, any director or other person breaches any law or any obligation to another person by signing this guarantee and indemnity and that all necessary authorisations to do so have been obtained; and
 - (b) your obligations under this guarantee and indemnity are valid and binding and enforceable in accordance with its terms; and
 - (c) if you are a corporation, you benefit by entering into this guarantee and indemnity; and
 - (d) all information given by you or on your behalf (such as financial statements) is correct and not misleading; and
 - (e) since the date the information was given there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this guarantee and indemnity; and
 - (f) you have not withheld information that might have caused us not to enter into any *arrangement with us*; and
 - (g) unless otherwise stated in this guarantee and indemnity, you are not signing this guarantee and indemnity as a trustee of any trust or settlement; and
 - (h) all declarations made by you in each other *arrangement with us*

are correct and not misleading;
and

- (i) you have power to carry on your business and you are not in breach of any law or obligation; and
- (j) there is no pending or threatened court or other proceeding affecting you except those in which a decision against you would be insignificant.

11.3 You must tell us whenever anything happens which would mean you could not truthfully repeat all the declarations in clause 10.2.

What happens to money we receive?

12.1 We may use any money paid by or for the *customer* towards meeting any part of the *guaranteed money* we choose. We may use any money paid by you under this guarantee and indemnity towards paying any part we choose of the *guaranteed money* or any other amount you owe us under this guarantee and indemnity. This applies even if that part or that amount only falls due after we give a notice of demand.

12.2 We may place in a suspense account any payments we receive from you for as long as we think prudent.

12.3 Subject to clause 11.2, if, at the time we receive the money, any part of the *guaranteed money* is not then due for payment, we may retain an amount equal to that part. We must hold it in an interest bearing account and use it (and any net interest after tax) to pay the *guaranteed money* when it becomes due for payment.

12.4 We must pay any money remaining after the *guaranteed money* is paid either to you or to another person entitled to it. We do not pay you interest on any money remaining after the *guaranteed money* is paid.

12.5 We only credit payments as soon as practicable after we receive them.

General

Currency conversions

13.1 You must make each payment in the currency in which it is due.

13.2 If we receive an amount in a currency other than that in which it is due:

- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate. We may deduct our usual *costs* in connection with the conversion; and
- (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

Payment in full

14.1 You must pay us the *guaranteed money* in full without set-off, counterclaim or deduction.

14.2 If a law requires you to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:

- (a) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below); and
- (b) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance

with applicable law and give the original receipts to us; and

- (c) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

Notices and other communications

15.1 Notices, certificates, consents, approvals and other communications in connection with this guarantee and indemnity must be in writing. If you are a corporation, communications from you must be signed by a director or another person we approve.

15.2 They may be:

- (a) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at the address stated in the details or any other address we tell you); or
- (b) left at the address last notified; or
- (c) sent by prepaid post to the address last notified; or
- (d) sent by fax to the fax number last notified; or
- (e) given in any other way permitted by law.

15.3 They take effect from the time they are received unless a later time is specified in them.

15.4 If they are sent by post, they are taken to be received three days after the date of posting.

15.5 If they are sent by a fax machine that produces a transmission report, they are

taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.

Our certificates

- 16. We may give you a certificate about a matter or about an amount payable in connection with this guarantee and indemnity. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

When must you pay?

17.1 A demand may be made at any time and from time to time. However, if a special condition restricting the time when we can make a demand on you is attached to this guarantee and indemnity, we may only make a demand as set out in that special condition.

17.2 You must pay any amount payable to us under this guarantee and indemnity by 12 noon (local time) on the date which we specify.

Prompt performance

- 18. If this guarantee and indemnity specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

You must take further steps

- 19. You must do anything we ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to bind yourself under this guarantee and indemnity.

How we may exercise our rights

- 20.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.

20.2 We may claim against you under this guarantee and indemnity before we enforce other rights or remedies:

- (a) against the *customer* or any other person; or
- (b) under another document such as a guarantee or mortgage, charge or other security.

If we have more than one guarantee and indemnity or security, we may enforce them in any order that we choose.

20.3 If we do not exercise a right or remedy fully or at a given time, then we can still exercise it later.

20.4 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by our negligence.

20.5 Our rights and remedies under this guarantee and indemnity are in addition to any other rights and remedies provided by law independently of this guarantee and indemnity or by any security (such as a mortgage).

20.6 Our rights and remedies under this guarantee and indemnity may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or any other person we authorise.

Dealing with rights under this guarantee and indemnity

21. We may assign or otherwise deal with our rights under this guarantee and indemnity in any way we consider appropriate. If we do this, you may not claim against any assignee (or any other person who has an interest in this guarantee and indemnity) any right of set-off or other rights you have against us.

However, you may not assign or otherwise deal with your rights under

this guarantee and indemnity unless we consent.

Disclosure of information

22. Information you provide to us may be disclosed:

- (a) if you consent (you may not unreasonably withhold your consent); or
- (b) if required by any stock exchange or if allowed or required by law; or
- (c) to any person in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other person considering contracting with us in connection with this guarantee and indemnity; or
- (d) to our officers and employees, to receivers and to legal and other advisers; or
- (e) to any of our “related entities” (as defined in the Corporations Act); or
- (f) if the information is generally and publicly available; or
- (g) to the *customer* or to any other person who guarantees payment of any of the *guaranteed money*.

Consents

23. You must comply with all conditions in any consent which we give in connection with this guarantee and indemnity.

Variation and waiver

24. A provision of this guarantee and indemnity, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

Trustee provisions

25. You make the following declarations if you enter into this guarantee and indemnity as trustee of any trust or settlement:
- (a) this guarantee and indemnity is for the benefit of the trust;
 - (b) you are the sole trustee of the trust;
 - (c) you have authority to enter into this guarantee and indemnity; and
 - (d) you have the right to be fully indemnified out of the trust assets for obligations incurred under this guarantee and indemnity;
 - (e) no action has been taken or proposed to terminate the trust;
 - (f) the copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust; and
 - (g) you have not delegated any of your powers as trustee or exercised any power of appointment.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations.

Code of Banking Practice

- 26.1 The relevant provisions of the Code of Banking Practice apply to this guarantee and indemnity.
- 26.2 If a provision of this guarantee and indemnity contravenes a requirement of that Code or imposes an obligation or liability which is prohibited by that Code, this guarantee and indemnity is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

Inconsistent law

27. To the extent permitted by law, this guarantee and indemnity prevails to the extent it is inconsistent with any law.

Applicable law and serving documents

- 28.1 This guarantee and indemnity is governed by the law of the State or Territory where our address specified in the details is situated. You and we submit to the non-exclusive jurisdiction of the courts of that place.
- 28.2 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to, or leaving it at, your address set out in the details or such other address as you and we agree at any time. This clause does not prevent any other method of service. If you are incorporated in a jurisdiction outside Australia, you irrevocably appoint the *customer* (or the first named *customer* if more than one) as your agent to accept service of any process in connection with this guarantee and indemnity.

Limited recourse

29.1 Limit

Despite any other provision of this guarantee and indemnity or any right conferred or implied by law or statute the maximum amount we can recover from you under this guarantee and indemnity is all amounts payable:

- (a) in connection with the *guaranteed agreement*; plus
- (b) under clauses 5, 6 and 8 of this guarantee and indemnity; plus
- (c) for breach of an obligation you owe (other than an obligation to pay money) under this guarantee and indemnity.

This clause does not limit the amount we can claim from you. This clause limits the amount we can ultimately recover from you. For example, we might claim more than the maximum amount we can recover if you are bankrupt or being wound up and we want to maximise the distribution we receive from your trustee in bankruptcy or liquidator.

Meaning of words

30. **accountable taxes** means *taxes* imposed by a *relevant country* other than those:

- (a) imposed on, or calculated having regard to, our net income, or
- (b) which would not be required to be deducted by you if we provided you with any of our name, address, registration number or similar details or any relevant tax exemption or similar details.

arrangement with us means an arrangement (including an agreement or a *security interest*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our "related entities" (as defined in the Corporations Act).

controller has the meaning given to it in the Corporations Act.

costs includes charges and expenses; and costs, charges and expenses in connection with advisers (in the case of legal advisers on a full indemnity basis or solicitor and own client basis, whichever is higher).

customer means each person named in the details as *customer*. If there are more than one, *customer* means each of them separately and every two or more of them jointly. **Customer** includes their successors and assigns.

debtor/guarantor means:

- the *customer*; and

- you and any other person who guarantees payment of any part of the *guaranteed money*; and
- any other person you and we agree is to be a "*debtor/guarantor*" for the purpose of this guarantee and indemnity.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax Act 1999)*.

guaranteed agreement means the facility agreement named in the Details as *guaranteed agreement*.

guaranteed money means all amounts that:

at any time;

for any reason or circumstance in connection with the agreement which is described in the "Details" section of this guarantee and indemnity, under which we agree to lend money to the *customer*;

whether at law or otherwise;

and whether or not of a type within the contemplation of you, of us or of the *customer* at the date of this guarantee and indemnity:

- are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by the *customer* to us; or
- we have advanced or paid on the *customer's* behalf or on the *customer's* express or implied request; or
- we have paid or are liable to pay as a result of the *customer's* act or omission; or
- are reasonably foreseeable as likely, after that time, to fall

within any of the above paragraphs.

This definition applies:

- irrespective of the capacity in which we or the *customer* became entitled to the amount concerned;
- irrespective of the capacity in which we or the *customer* became liable in respect of the amount concerned;
- whether we or the *customer* are liable as principal debtor, as surety, or otherwise;
- whether the *customer* is liable alone, or together with another person;
- even if the *customer* owes an amount or obligation to us because it was assigned to us, whether or not:
 - the assignment was before, at the same time as, or after this guarantee or indemnity is executed; or
 - we or the *customer* consented to or were aware of the assignment; or
 - the assigned obligation was secured;
- even if this guarantee and indemnity was assigned to us, whether or not:
 - you consented to or were aware of the assignment; or
 - any of the *guaranteed money* was previously not guaranteed;
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

including or **such as**, when introducing an example, does not limit the meaning of the words to which the example

relates to that example or to examples of a similar kind.

A person is *insolvent* if:

- they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or receiver and manager appointed to any part of their property; or
- they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us); or
- an application or order has been made, resolution passed, proposed put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or
- they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
- they are the subject of any event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject); or
- they are otherwise unable to pay their debts when they fall due; or
- something having a substantially similar effect to any of the things referred to above happens in

connection with them under the law of any jurisdiction.

payable, in relation to an amount, means an amount which is currently payable or will or may be payable in the future.

person includes an individual, a firm, a body corporate, an unincorporated association and an authority.

property means the property mortgaged to us by the *security custodian*.

relevant country means any country, or political sub-division of one or more countries, or any federation or association of countries in which you or a *debtor/guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which you or a *debtor/guarantor* carry on business or own or lease property or from which, or through which, any payment under an *arrangement with us* is made.

security custodian means the security custodian specified in the *customer's arrangement with us*.

security interest means any security interest for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power or title retention arrangement. *Security interest* also includes a guarantee and indemnity.

such as see including.

taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

we means the person or persons named in the details as financier. If there are more than one, we means each of them separately and every two or more of

them jointly. **We** includes our successors and assigns.

you means each person named in the details as guarantor. If there are more than one, **you** means each of them separately and every two or more of them jointly.

The singular includes the plural and vice versa.

A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them);
- anything (including the *guaranteed money*) includes the whole and each part of it;
- the Corporations Act means the Corporations Act 2001 (Cth).

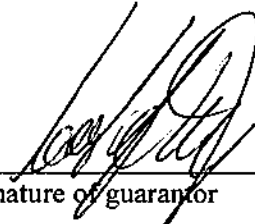
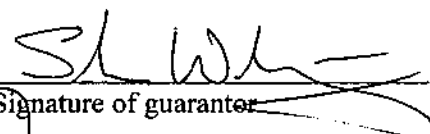
Signing page

Warning: If the debtor is under 18 years old, the courts might not let you sue the debtor if you have to pay amounts under this guarantee and indemnity (ie you may not be entitled to an indemnity against the debtor).

EXECUTED as an agreement

IMPORTANT

<p style="text-align: center;">BEFORE YOU SIGN</p> <ul style="list-style-type: none"> * READ THIS GUARANTEE AND INDEMNITY AND THE DOCUMENTS FOR THE TRANSACTION OR FACILITY TO BE GUARANTEED. * You should obtain independent legal advice. * You should also consider obtaining independent financial advice. * You should make your own enquiries about the credit worthiness, financial position and honesty of the <i>debtor</i>. 	<p style="text-align: center;">THINGS YOU MUST KNOW</p> <ul style="list-style-type: none"> * Understand that, by signing this guarantee and indemnity, you may become personally responsible instead of, or as well as, the <i>debtor</i> to pay the amounts which the <i>debtor</i> owes and our expenses in enforcing this guarantee and indemnity. * If the <i>debtor</i> does not pay you must pay. This could mean you lose everything you own including your home. * You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee and indemnity. * This guarantee and indemnity covers liability under a future credit contract to the extent the future credit contract (together with all other existing credit contracts secured by this guarantee and indemnity) is within a limit previously agreed in writing by you.
--	---

 x _____ Signature of guarantor	19/11/12	/	19/11/12	/		 _____ Signature of guarantor	19/11/12	/	19/11/12	/	
--	----------	---	----------	---	--	---	----------	---	----------	---	--

Colin Francis Whiting
 Name of guarantor (please print)
 I witnessed the above guarantor sign this document

 Signature of witness

Sheena Whiting
 Name of guarantor (please print)
 I witnessed the above guarantor sign this document

 Signature of witness

 Name of witness (please print)

Mark Sander
 Solicitor
 9 Hackney Rd Hackney 5069

 Address of witness (please print)

 Name of witness (please print)

Mark Sander
 Solicitor
 9 Hackney Rd Hackney 5069

 Address of witness (please print)



BankSA

A Division of
Westpac Banking
Corporation
ABN 33 007 457 141

**BankSA – A Division of
Westpac Banking Corporation
ABN 33 007 457 141**

SMSF guarantee and indemnity

Warning

- If you sign this guarantee and indemnity, you could become liable instead of or as well as the *customer*.
- It may become necessary for you to sell your assets so that you can pay us.
- You should have the full consequences of the guarantee and indemnity explained to you by an independent lawyer before you agree to sign it.
- By signing this guarantee and indemnity, you take on a personal liability to guarantee that we will receive payment. This is additional to any liability you have under any security (such as a mortgage) that you give us in connection with this guarantee and indemnity.

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BankSA

Guarantee and indemnity

Details

Financier:
("we")

BANKSA – A Division of Westpac Banking Corporation
(ABN 33 007 457 141)

Address: 97 King William Street, Adelaide SA 5000

Guarantor:
("you")

Name(s): **WHITING PROPERTIES PTY LTD**

ACN: 160 163 913

Address: 21 Austin Street Adelaide SA 5000

Specified percentage (if any): *N/A*

Trustee details:
(if guarantor is signing as trustee)

Trust name: **BARE TRUST**

Trust deed: Deed made on 3 September 2012 by **WHITING PROPERTIES PTY LTD** (ACN 160 163 913)

Customer:

Name(s): **WHITING SUPERANNUATION PTY LTD** (ACN 160 162 998) of 21 Austin Street Adelaide SA 5000 as trustee for Whiting Flooring Superannuation Fund

Description of guaranteed agreement

Facility offers dated 9 November 2012 (\$325,000.00 and \$50,000.00) from the Financier to the Customer and accepted by the Customer and the Guarantor

Limit - special conditions:

See clause 28

Date of guarantee and indemnity:

Provisions

Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this guarantee and indemnity.

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Purpose of this guarantee and indemnity and extent of your obligations

- 1.1 This guarantee and indemnity is entered into in consideration of us providing or continuing to provide financial accommodation to the *customer* or not immediately enforcing rights against the *customer* at your request.
- 1.2 By signing this guarantee and indemnity, you could become liable to pay us:
 - (a) under the guarantee in clause 2
 - (b) under the indemnity in clause 3
 - (c) *costs* and other expenses under clause 4
 - (d) interest under clause 5.

However, if special conditions setting out a limit on the amount we can recover from you are attached to this guarantee and indemnity, the maximum amount we can recover is set out in those special conditions.

- 1.3 You are liable for all the obligations under this guarantee and indemnity both separately on your own and jointly with any one or more other persons named in this guarantee and indemnity as guarantor.

What you undertake in giving this guarantee and indemnity

Guarantee

- 2.1 You unconditionally and irrevocably guarantee payment to us of the *guaranteed money*. If the *customer* does not pay the *guaranteed money* on time and in accordance with any arrangement under which it is expressed to be owing, then you agree to pay the *guaranteed money* to us on demand from us (whether or not we have made demand on the *customer*).

- 2.2 The guarantee in clause 2.1 is a continuing obligation and extends to all of the *guaranteed money*.

Indemnity

- 3.1 You unconditionally and irrevocably indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* we suffer or incur if for any reason:
- (a) the *customer* does not, is not obliged to, or is unable to, pay us the *guaranteed money* (or amounts which would have been *guaranteed money* if the *customer* were obliged to pay) in accordance with any arrangement (or what would have been an arrangement if valid) under which it is expressed to be owing (for example because the arrangement is void, illegal, voidable, a breach of trust or not properly executed by the *customer*); or
 - (b) you are not obliged to pay us an amount under clause 2; or
 - (c) we are obliged, or we agree, to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt person or *insolvent* company) in connection with a payment by you or the *customer*. (For example, we may have to, or may agree to, pay interest on the amount.)

You as principal debtor agree to pay us on demand a sum equal to the amount of any such liability, loss or *costs* and any amount that the *customer* would have been obliged to pay us if the arrangement had been valid and enforceable.

- 3.2 The indemnity in clause 3.1 and the other indemnities in this guarantee and indemnity are continuing obligations, independent of your other obligations under this guarantee and indemnity. They continue even after those other obligations end. It is not necessary for

us to incur expense or make payment before enforcing a right of indemnity conferred by this guarantee and indemnity.

Waiver

4. You unconditionally and irrevocably waive, and agree not to claim, any right of contribution, subrogation and indemnity (and any other equivalent right) against the *customer* and the *security custodian* arising from or in connection with this guarantee and indemnity.

Additional amounts you must pay

Our *costs* and other expenses

- 5.1 You must pay us for:
- (a) our reasonable *costs* in arranging, administering (including giving and considering consents, variations, discharges and releases, producing title documents or enforcing, attempting to enforce or taking any other action in connection with our rights) and terminating this guarantee and indemnity; and
 - (b) all *taxes*, fees, and charges payable in connection with this guarantee and indemnity and any transaction (such as a payment or receipt) under it, and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us even if we do not expressly ask you to pay us.

- 5.2 You agree to compensate us on demand if we determine that, as a direct or indirect result of the imposition of *GST*, our *costs* in connection with this guarantee and indemnity are increased. If we

- (a) reasonably decide that we are liable to pay *GST* on a supply made in connection with this guarantee and indemnity; and
- (b) certify that we have not priced the supply to include *GST*,

then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing *GST* rate.

5.3 You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* (including consequential or economic loss) we suffer or incur:

- (a) if you default under this guarantee and indemnity; or
- (b) in connection with any person exercising, or not exercising, rights under this guarantee and indemnity.

5.4 You must pay us an amount equal to any liability, loss or *costs* (including consequential or economic loss) of a kind referred to in clauses 4.3(a) and (b) suffered or incurred by any of our employees, officers, agents, attorneys or contractors.

5.5 If a judgment, order or proof of debt in connection with the *guaranteed money* is expressed in a currency other than that in which the *guaranteed money* is due, then you indemnify us against, and you must therefore pay us on demand for:

- (a) any difference arising from converting the other currency if the exchange rate we use for converting the other currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the *costs* of conversion.

You acknowledge that it might be necessary to convert the other currency through more than one currency to determine the exchange rate available to us.

Interest

6.1 You must pay interest on any amount under clauses 3 or 4 which is due for payment. The interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days. You must pay interest owing under this clause 5 on demand from us.

6.2 The rate of interest applying to each daily balance is the rate specified by us from time to time or (if no rate is specified) 2% above the highest interest rate applying to the *guaranteed money* on that day.

6.3 Each month (or any other period we choose), we may add to the amount you owe us any interest under this clause 5 which has not been paid. You will then be liable for interest under this clause 5 on the total amount.

6.4 If any amount you must pay under this guarantee and indemnity becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the rate that applies under clause 5.3 or the rate in the court order (whichever is higher).

Your own costs and other expenses

7. You must pay for anything which you must do under this guarantee and indemnity.

Changes to rights

Reinstatement of rights

8. Under law relating to *insolvency*, a person may claim that a transaction (including a payment) in connection with this guarantee and indemnity or the *guaranteed money* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the *guaranteed money* to which we were entitled immediately before the transaction; and
- (b) on request from us, you agree to do anything (including signing any document) to restore to us any *security interest* we held from you immediately before the transaction.

Our rights are protected

9.1 Rights given to us under this guarantee and indemnity and your liabilities under it are not affected by any act or omission by us or by anything else that might otherwise affect them under law or otherwise, including:

- (a) the fact that we vary or replace any arrangement under which the *guaranteed money* is expressed to be owing, such as by increasing the credit limit or extending the term; or
- (b) the fact that we release the *customer* or give them a concession, such as more time to pay; or
- (c) the fact that the *customer* opens another account with us; or
- (d) the fact that we release, lose the benefit of or do not obtain any security; or

- (e) the fact that we do not register any security which could be registered; or
- (f) the fact that we release any person who guarantees any of the *customer's* obligations; or
- (g) the fact that the obligations of any person who guarantees any of the *customer's* obligations may not be enforceable; or
- (h) the fact that any person who was intended to guarantee any of the *customer's* obligations does not do so or does not do so effectively; or
- (i) the death, mental or physical disability or insolvency of any person including you or the *customer*; or
- (j) changes in the membership, name or business of a firm, partnership, committee or association.

9.2 This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, mortgage, charge or other security, or right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of the *guaranteed money* or any other amount payable under this guarantee and indemnity.

We can still exercise our rights under this guarantee and indemnity as well as under the judgment, order, other guarantee, indemnity, mortgage, charge, other security, right or remedy.

9.3 This guarantee and indemnity binds each person who signs as guarantor even if another person who was intended to sign does not sign it or is not bound by it.

Your rights are suspended

10. As long as any of the *guaranteed money* remains unpaid, you may not, without our consent:

- (a) reduce your liability under this guarantee and indemnity by claiming that you or the *customer* or any other person has a right of set-off or counterclaim against us; or
- (b) exercise any legal rights to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other security given in connection with the *guaranteed money* or any other amount payable under this guarantee and indemnity. (For example, you may not try to enforce any mortgage we have taken to ensure repayment of the *guaranteed money*.); or
- (c) claim an amount from the *customer*, or another guarantor of the *customer's* obligations, under a right of indemnity; or
- (d) claim an amount in the insolvency of the *customer* or another guarantor of the *guaranteed money* (including a person who has signed this guarantee and indemnity with you).

What you acknowledge and declare

11.1 You acknowledge that you are responsible for making yourself aware of the financial position of the *customer* and any other person who guarantees the *guaranteed money*.

11.2 You declare that:

- (a) neither you, nor, if you are a corporation, any director or other person breaches any law or any obligation to another person by signing this guarantee and indemnity and that all necessary

authorisations to do so have been obtained; and

- (b) your obligations under this guarantee and indemnity are valid and binding and enforceable in accordance with its terms; and
- (c) if you are a corporation, you benefit by entering into this guarantee and indemnity; and
- (d) all information given by you or on your behalf (such as financial statements) is correct and not misleading; and
- (e) since the date the information was given there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this guarantee and indemnity; and
- (f) you have not withheld information that might have caused us not to enter into any *arrangement with us*; and
- (g) unless otherwise stated in this guarantee and indemnity, you are not signing this guarantee and indemnity as a trustee of any trust or settlement; and
- (h) all declarations made by you in each other *arrangement with us* are correct and not misleading; and
- (i) you have power to carry on your business and you are not in breach of any law or obligation; and
- (j) there is no pending or threatened court or other proceeding affecting you except those in which a decision against you would be insignificant.

11.3 You must tell us whenever anything happens which would mean you could not truthfully repeat all the declarations in clause 10.2.

What happens to money we receive?

- 12.1 We may use any money paid by or for the *customer* towards meeting any part of the *guaranteed money* we choose. We may use any money paid by you under this guarantee and indemnity towards paying any part we choose of the *guaranteed money* or any other amount you owe us under this guarantee and indemnity. This applies even if that part or that amount only falls due after we give a notice of demand.
- 12.2 We may place in a suspense account any payments we receive from you for as long as we think prudent.
- 12.3 Subject to clause 11.2, if, at the time we receive the money, any part of the *guaranteed money* is not then due for payment, we may retain an amount equal to that part. We must hold it in an interest bearing account and use it (and any net interest after tax) to pay the *guaranteed money* when it becomes due for payment.
- 12.4 We must pay any money remaining after the *guaranteed money* is paid either to you or to another person entitled to it. We do not pay you interest on any money remaining after the *guaranteed money* is paid.
- 12.5 We only credit payments as soon as practicable after we receive them.

General

Currency conversions

- 13.1 You must make each payment in the currency in which it is due.
- 13.2 If we receive an amount in a currency other than that in which it is due:
- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate. We may deduct our usual *costs* in

connection with the conversion; and

- (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

Payment in full

- 14.1 You must pay us the *guaranteed money* in full without set-off, counterclaim or deduction.
- 14.2 If a law requires you to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:
- (a) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below); and
 - (b) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
 - (c) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

Notices and other communications

- 15.1 Notices, certificates, consents, approvals and other communications in connection with this guarantee and indemnity must be in writing. If you are a corporation, communications from

you must be signed by a director or another person we approve.

15.2 They may be:

- (a) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at the address stated in the details or any other address we tell you); or
- (b) left at the address last notified; or
- (c) sent by prepaid post to the address last notified; or
- (d) sent by fax to the fax number last notified; or
- (e) given in any other way permitted by law.

15.3 They take effect from the time they are received unless a later time is specified in them.

15.4 If they are sent by post, they are taken to be received three days after the date of posting.

15.5 If they are sent by a fax machine that produces a transmission report, they are taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.

Our certificates

16. We may give you a certificate about a matter or about an amount payable in connection with this guarantee and indemnity. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

When must you pay?

17.1 A demand may be made at any time and from time to time. However, if a special condition restricting the time when we can make a demand on you is attached to this guarantee and indemnity, we may only make a demand as set out in that special condition.

17.2 You must pay any amount payable to us under this guarantee and indemnity by 12 noon (local time) on the date which we specify.

Prompt performance

18. If this guarantee and indemnity specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

You must take further steps

19. You must do anything we ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to bind yourself under this guarantee and indemnity.

How we may exercise our rights

20.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.

20.2 We may claim against you under this guarantee and indemnity before we enforce other rights or remedies:

- (a) against the *customer* or any other person; or
- (b) under another document such as a guarantee or mortgage, charge or other security.

If we have more than one guarantee and indemnity or security, we may enforce them in any order that we choose.

20.3 If we do not exercise a right or remedy fully or at a given time, then we can still exercise it later.

20.4 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by our negligence.

20.5 Our rights and remedies under this guarantee and indemnity are in addition

to any other rights and remedies provided by law independently of this guarantee and indemnity or by any security (such as a mortgage).

- 20.6 Our rights and remedies under this guarantee and indemnity may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or any other person we authorise.

Dealing with rights under this guarantee and indemnity

21. We may assign or otherwise deal with our rights under this guarantee and indemnity in any way we consider appropriate. If we do this, you may not claim against any assignee (or any other person who has an interest in this guarantee and indemnity) any right of set-off or other rights you have against us.

However, you may not assign or otherwise deal with your rights under this guarantee and indemnity unless we consent.

Disclosure of information

22. Information you provide to us may be disclosed:
- (a) if you consent (you may not unreasonably withhold your consent); or
 - (b) if required by any stock exchange or if allowed or required by law; or
 - (c) to any person in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other person considering contracting with us in connection with this guarantee and indemnity; or
 - (d) to our officers and employees, to receivers and to legal and other advisers; or

- (e) to any of our “related entities” (as defined in the Corporations Act); or
- (f) if the information is generally and publicly available; or
- (g) to the *customer* or to any other person who guarantees payment of any of the *guaranteed money*.

Consents

23. You must comply with all conditions in any consent which we give in connection with this guarantee and indemnity.

Variation and waiver

24. A provision of this guarantee and indemnity, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

Trustee provisions

25. You make the following declarations if you enter into this guarantee and indemnity as trustee of any trust or settlement:
- (a) this guarantee and indemnity is for the benefit of the trust;
 - (b) you are the sole trustee of the trust;
 - (c) you have authority to enter into this guarantee and indemnity; and
 - (d) you have the right to be fully indemnified out of the trust assets for obligations incurred under this guarantee and indemnity;
 - (e) no action has been taken or proposed to terminate the trust;
 - (f) the copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust; and

- (g) you have not delegated any of your powers as trustee or exercised any power of appointment.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations.

Inconsistent law

26. To the extent permitted by law, this guarantee and indemnity prevails to the extent it is inconsistent with any law.

Applicable law and serving documents

27.1 This guarantee and indemnity is governed by the law of the State or Territory where our address specified in the details is situated. You and we submit to the non-exclusive jurisdiction of the courts of that place.

27.2 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to, or leaving it at, your address set out in the details or such other address as you and we agree at any time. This clause does not prevent any other method of service.

Limited recourse

28.1 Limit and release

Despite any other provision of this guarantee and indemnity:

- (a) we may not have recourse to you or to your assets; and
- (b) neither you nor we may have recourse to the *customer* or the *customer's* assets

under or in connection with this guarantee and indemnity, except we may have recourse to the *property* and its proceeds and the total amount available to us as a result of a realisation of the *property* (after payment of enforcement costs etc).

28.2 Unrestricted remedies

- (a) **(Charges and guarantees)** Subject to sub-paragraph (b), nothing in clause 28.1 (**Limit and release**) limits us in:

- exercising our rights or powers over the *property* or under any *security interest*;
- obtaining an injunction or other order to restrain any breach of this guarantee and indemnity by any party; or
- obtaining declaratory relief.

- (b) **(Limited agency)** In exercising any right, power or remedy under this guarantee and indemnity:

- neither we nor any receiver, receiver and manager, agent or attorney appointed under this guarantee and indemnity shall incur, or have the authority to incur, any liability on your behalf or for your account except a liability which is itself subject to the limitation in clause 28.1 (**Limit and release**); and
- neither you, we, nor any receiver, receiver and manager, agent or attorney appointed under this guarantee and indemnity shall incur, or have the authority to incur, any liability on behalf of the *customer* or for the *customer's* account except a liability which is itself subject to the limitation in clause 28.1 (**Limit and release**).

- (c) **(Guaranteed money)** For the purpose of determining the amount of the *guaranteed money*, the limit on your and the *customer's* liability under clause 28.1 (**Limit and release**) will be disregarded.

28.3 Restricted remedies

Except as provided in clause 28.2 (**Unrestricted remedies**), we will not, in relation to any liability for which you or the *customer* is not liable under clause 28.1 (**Limit and release**):

- (a) (**judgment**) obtain a judgment for the payment of money or damages by you or the *customer*;
- (b) (**statutory demand**) issue any demand under s459E(1) of the Corporations Act 2001 (or any analogous provision under any other law) against you or the *customer*;
- (c) (**winding up**) apply for the winding up of you or the *customer*;
- (d) (**execution**) levy or enforce any distress or other execution to, on or against any of your or the *customer's* assets other than the *property*;
- (e) (**court appointed receiver**) apply for the appointment by a court of a receiver to any of your or the *customer's* assets other than the *property*; and
- (f) (**set-off or counterclaim**) exercise or seek to exercise any set-off or counterclaim against you or the *customer*,

or take proceedings for any of the above and you and we waive our rights in respect of those applications and proceedings.

Meaning of words

29. **accountable taxes** means *taxes* imposed by a *relevant country* other than those:
- (a) imposed on, or calculated having regard to, our net income, or
 - (b) which would not be required to be deducted by you if we provided you with any of our name,

address, registration number or similar details or any relevant tax exemption or similar details.

arrangement with us means an arrangement (including an agreement or a *security interest*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our "related entities" (as defined in the Corporations Act).

controller has the meaning given to it in the Corporations Act.

costs includes charges and expenses; and costs, charges and expenses in connection with advisers (in the case of legal advisers on a full indemnity basis or solicitor and own client basis, whichever is higher).

customer means each person named in the details as *customer*. If there are more than one, **customer** means each of them separately and every two or more of them jointly. **Customer** includes their successors and assigns.

debtor/guarantor means:

- the *customer*; and
- you and any other person who guarantees payment of any part of the *guaranteed money*; and
- any other person you and we agree is to be a "*debtor/guarantor*" for the purpose of this guarantee and indemnity.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax Act 1999)*.

guaranteed money means all amounts that:

at any time;

for any reason or circumstance in connection with the agreement which is described in the "Details" section of this guarantee and indemnity, under which

we agree to lend money to the *customer*;

whether at law or otherwise;

and whether or not of a type within the contemplation of you, of us or of the *customer* at the date of this guarantee and indemnity:

- are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by the *customer* to us; or
- we have advanced or paid on the *customer's* behalf or on the *customer's* express or implied request; or
- we have paid or are liable to pay as a result of the *customer's* act or omission; or
- are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

- irrespective of the capacity in which we or the *customer* became entitled to the amount concerned;
- irrespective of the capacity in which we or the *customer* became liable in respect of the amount concerned;
- whether we or the *customer* are liable as principal debtor, as surety, or otherwise;
- whether the *customer* is liable alone, or together with another person;
- even if the *customer* owes an amount or obligation to us because it was assigned to us, whether or not:
 - the assignment was before, at the same time as, or after

this guarantee or indemnity is executed; or

- we or the *customer* consented to or were aware of the assignment; or
- the assigned obligation was secured;

- even if this guarantee and indemnity was assigned to us, whether or not:
 - you consented to or were aware of the assignment; or
 - any of the *guaranteed money* was previously not guaranteed;
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

including or **such as**, when introducing an example, does not limit the meaning of the words to which the example relates to that example or to examples of a similar kind.

A person is *insolvent* if:

- they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or receiver and manager appointed to any part of their property; or
- they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation

while solvent on terms approved by us); or

- an application or order has been made, resolution passed, proposed put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or
- they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
- they are the subject of any event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject); or
- they are otherwise unable to pay their debts when they fall due; or
- something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

payable, in relation to an amount, means an amount which is currently payable or will or may be payable in the future.

person includes an individual, a firm, a body corporate, an unincorporated association and an authority.

property means the property mortgaged to us by the *security custodian*.

relevant country means any country, or political sub-division of one or more countries, or any federation or association of countries in which you or a *debtor/guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which you or a *debtor/guarantor* carry on business or

own or lease property or from which, or through which, any payment under an *arrangement with us* is made.

security custodian means the security custodian specified in the *customer's arrangement with us*.

security interest means any security interest for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power or title retention arrangement. *Security interest* also includes a guarantee and indemnity.

such as see including.

taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

we means the person or persons named in the details as financier. If there are more than one, **we** means each of them separately and every two or more of them jointly. **We** includes our successors and assigns.

you means each person named in the details as guarantor. If there are more than one, **you** means each of them separately and every two or more of them jointly.

The singular includes the plural and vice versa.

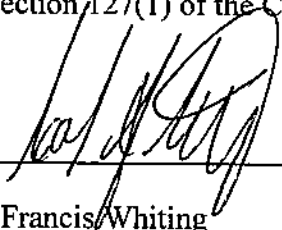
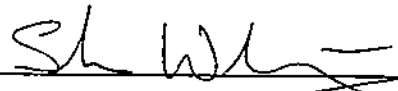
A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them);

- any thing (including the *guaranteed money*) includes the whole and each part of it;
- the Corporations Act means the Corporations Act 2001 (Cth).

Signing page

EXECUTED by **WHITING PROPERTIES PTY LTD** (ACN 160 163 913) in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by:

 _____	Signature	 _____
Colin Francis Whiting	Print Name	Sheena Whiting
Director	Print Position	Director

and if only one person has signed, that person states that he/she is the sole director and sole secretary of the company

Signed on behalf of
WESTPAC BANKING CORPORATION
by its attorney(s) under power of attorney
dated 17 January 2001 registered no
9037336 in the presence of:

By executing this document the attorney
states that they have received no notice of
revocation of the power of attorney.

Witness (signature)

Attorney (signature)

Name of Witness (print name)

Name and Tier of Attorney (print)

Address of Witness

Business Hours Telephone Number