

Registration Deed Of Charge

Date:

TRANSURBAN CITY LINK PTY. LIMITED
(the "Company")

PERPETUAL TRUSTEE COMPANY LIMITED
AS TRUSTEE OF THE TRANSURBAN CITY LINK UNIT TRUST
(the "Trustee")
(each a "Chargor")

AND

THE HONOURABLE WILLIAM R. BAXTER, MINISTER FOR ROADS AND PORTS
OF THE STATE OF VICTORIA FOR AND ON BEHALF OF
THE CROWN IN RIGHT OF THE STATE OF VICTORIA
(the "Chargee")

This is Annexure "A" of pages referred to in the Form 309 - Notification of Details of a Charge -
signed by me and dated / /1995.

Signature

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BETWEEN **TRANSURBAN CITY LINK LIMITED ACN 070 810 678** of Level 2, 437 St Kilda Road, Melbourne (the "**Company**") and **PERPETUAL TRUSTEE COMPANY LIMITED ACN 000 001 007** as trustee of the **TRANSURBAN CITY LINK UNIT TRUST** of Level 7, 39 Hunter Street, Sydney (the "**Trustee**") (each a "Chargor")

AND **THE HONOURABLE WILLIAM R BAXTER, MINISTER OF ROADS AND PORTS OF THE STATE OF VICTORIA FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF VICTORIA** ("**Chargee**")

THIS DEED PROVIDES

1. DEFINITIONS AND INTERPRETATION

1.1 Concession Deed

In this Charge any word, expression, reference or term used which is defined in the Concession Deed and is not specifically defined below shall, unless the context requires otherwise, have in this Charge the same meaning as in the Concession Deed.

1.2 Definitions

In this Charge, unless the context otherwise requires:

"Borrowing" means money borrowed or raised or any liability (whether actual or contingent) incurred.

"Business" means:

- (a) in respect of the Company, each business conducted by the Company either alone or with others during the currency of this Charge; and
- (b) in respect of the Trustee, each business conducted by the Trustee as trustee of the Trust whether alone or with others during the currency of this Charge.

"Capital" means:

- (a) in relation to the Company the uncalled and called but unpaid nominal or premium capital of the Company and the right of the Company to receive amounts due or payable in respect of Project Securities; or
- (b) in relation to the Trustee, the rights of the Trustee to receive amounts due or payable in respect of Units.

"Charged Debts" means, in relation to a Chargor, all book debts and other debts, actual or

contingent, at any time owing to the Chargor, together with all books or documents of account or records evidencing or recording such debts (including, without limitation, the Insurances) but excluding the debt owed to a Chargor in respect of the deposits referred to in paragraph 14.4(a) of the Concession Deed and rights in respect of those deposits.

"Charged Property" means where this term is used in relation to:

- (a) the Company, the Company Property ,
- (b) the Trustee, the Trust Property; or
- (c) the Chargors, the Company Property and the Trust Property.

"Company Property" means all of the Company's assets, undertaking and rights, both present and future, including without limiting the generality of the foregoing all of the following:

- (a) the assets, undertaking and goodwill of the Business relating to the Company;
- (b) the Capital relating to the Company; and
- (c) the Charged Debts relating to the Company,

but excluding the debt owed to the Company in respect of the deposits referred to in paragraph 14.4(a) of the Concession Deed and rights in respect of those deposits.

"Concession Deed" means the deed made with effect from 20 October 1995 entitled "Concession Deed" and made between the Chargee, the Company, the Trustee and the Manager.

"Event of Crystallisation" means each or any of the following events:

- (a) any breach of clause 5.1;
- (b) any Security Interest over any Company Property or Trust Property (or over any interest of the Company or of the Trustee in a Project Document to which the State is a party) becomes enforceable or is enforced or any Security Interest that is a floating security over any Company Property or Trust Property (or over any such interest) crystallises or otherwise becomes a fixed or specific security;
- (c) any Event of Insolvency occurs in relation to a Chargor;
- (d) the Commissioner of Taxation, or its delegate, determines to issue a notice under section 74 of the Sales Tax Assessment Act 1992 or section 218 of the Income Tax Assessment Act 1936 for any amount due by a Chargor in respect of any Tax under such Act.

"Event of Default" means the occurrence of an event which entitles the State to exercise its rights of termination under any of clauses 14.6(b)(i), 15.1, 15.2(i), 15.2(j), 15.3(i) or 15.3(j) of the Concession Deed and an Event of Default, subsists if:

- (a) it comprises an event to which clauses 14.6(b)(i) or 15.1 of the Concession Deed applies, while the Chargee is entitled to give (or after the Chargee has given) notice to terminate under the clause;
- (b) it comprises an event to which clause 15.2 or 15.3 of the Concession Deed applies, while the Chargee is entitled to give (or after the Chargee has given) notice of termination under paragraphs 15.2(i), 15.2(j), 15.3(i) or 15.3(j) of the Concession Deed (as the case requires).

"Event of Insolvency" is:

- (a) in relation to a body corporate incorporated within the Commonwealth of Australia, any of the following events:
 - (i) an application is made to a court for an order or an order is made that the body corporate be wound up (unless the application is withdrawn or the order is stayed within 21 days of its being made or the State is satisfied within 21 days of the application being made, that it is vexatious or frivolous);
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the body corporate, or one of them is appointed, whether or not under an order (unless the application is withdrawn or the order is stayed, or the liquidator or provisional liquidator is removed, within 21 days of the appointment, or the State is satisfied within 21 days of the application being made, that it is vexatious or frivolous);
 - (iii) an administrator is appointed in respect of the body corporate;
 - (iv) a receiver or receiver and manager is appointed by any person to the whole or any part of the property of the body corporate;
 - (v) except to reconstruct or amalgamate while solvent on terms which the State approves (which approval shall not be unreasonably withheld or delayed), the body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for, the benefit of all or any class of its creditors;
 - (vi) except to reconstruct or amalgamate while solvent on terms which the State approves (which approval shall not be unreasonably withheld or delayed), the body corporate resolves to wind itself up, or otherwise dissolve itself, or is otherwise wound up or dissolved;

- (vii) the body corporate is, or states that it is, unable to pay its debts when they fall due; or
 - (viii) any distress, execution, attachment, garnishee order or other process is made or levied against any asset of the body corporate in an amount exceeding \$5,000,000 (subject to escalation in accordance with CPI), which is not satisfied or discharged within 14 days; and
- (b) in relation to the Trust, if at any particular time there are reasonable grounds to believe, were the redemption or repurchase price of Units to be calculated under the Trust Deed at that time, that no value would then be attributed to the Units.

"Excluded Taxes" means:

- (a) a Tax imposed by a jurisdiction on the net income of the Chargee in consequence of the chargee being a resident of or organised or doing business in that jurisdiction;
- (b) a Tax imposed by a jurisdiction other than the Commonwealth of Australia or a State or Territory of Australia other than by reason of any connection of the payer with that jurisdiction; or
- (c) Australian withholding tax required to be deducted or withheld from interest to the extent only that the total amount of Australian withholding tax required to be deducted or withheld from the payment of interest does not exceed 10% of the gross amount of payment.

"Insolvency Provision" means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or beneficiaries of trusts or any Law of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

"Insurances" means the insurances required to be taken out or maintained by the Chargors or either of them to comply with the provisions of the Concession Deed.

"Intellectual Property" means, in relation to a Chargor, all trademarks, trade names, copyrights, patents, designs, know how or other intellectual property which is now or hereafter held by or registered in the name of the Chargor or which the Chargor now or hereafter has the benefit of, has an interest in or is entitled to use.

"Licence" means, in relation to a Chargor, each licence, certificate, document, registration, permission, privilege, permit, authority or consent which is issued or held to enable or facilitate conduct by the Chargor of the Business, or which is necessary or desirable in relation to that Business, including any variations or renewals.

"Marketable Securities" has the meaning given in section 9 of the Corporations Law.

"Obligations" means, in relation to a Chargor, all the liabilities and obligations of the Chargor to the Chargee under or by reason of the Project Documents or any of them, and, without limiting the generality of the foregoing, includes liabilities and obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence upon or after the date of this Charge;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Chargor is liable or obligated solely, or jointly or jointly and severally with another person; or
- (h) the capacity in which the Chargor and the Chargee comes to owe or be owed such liability or obligation,

provided, however, that, at any particular time, "Obligations" shall not include any obligation or liability under paragraph 3.1(d) of the Concession Deed or in respect of Concession Notes if, at that time, that obligation or liability is contingent or prospective.

"Permitted Security Interest" means:

- (a) a lien created by operation of law securing an obligation arising in the ordinary and usual course of business of the lien or and securing obligations not more than 30 days overdue;
- (b) an encumbrance created by Law in favour of a Government Agency securing the payment of Taxes except as created by a failure to pay Taxes when due (other than where liability for the Tax is being contested in a bona fide manner and adequate reserves are available to pay the Tax);
- (c) an interest in or power over an asset securing an obligation arising in the ordinary and usual course of business and which is not more than 30 days overdue;

- (d) any of the Securities;
- (e) a beneficial interest in the Trust of any beneficiary of the Trust.

"Power" means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, Receiver or any attorney or agent appointed under this Charge, by any Project Document or by Law.

"Receiver" means a receiver or receiver and manager appointed by the Chargee under this Charge, and, if more than one, then each of them, and also any servant, agent or delegate of any of them.

"Relevant Agreements" means, in relation to a Chargor, any contract entered into by the Chargor with a person other than the State providing for the performance of obligations which, when performed, will satisfy in whole or part any of its obligations to the State under the Concession Deed.

"Secured Money" means, at any time, in relation to a Chargor, all money the payment or repayment of which then forms part of the Obligations relating to the Chargor.

"Securities" has the same meaning as in the Master Security Deed.

"Security Interest" means a mortgage, charge, pledge, lien, encumbrance, security interest or any other security agreement or arrangement in favour of any person.

"Trust Property" means all property, and all interests in property, the subject of any Security Interest in favour of the Agent (within the meaning of the Master Security Deed), the Security Trustee or any Lender, granted by the Trustee (as trustee of the Trust) on or about, or before, the date of Financial Closing, but excluding that debt owed to the Trustee as trustee of the Trust in respect of any deposit referred to in paragraph 14.4(a) of the Concession Deed and rights in respect of any such deposit.

1.3 Interpretation

In this Charge, headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) the expression **"person"** includes an individual, the estate of an individual, a corporation, a Government Agency and an authority or association whether incorporated or unincorporated;
- (b) a reference to any party or person includes that party's or person's executors, administrators, successors, substitutes and assigns, and any person taking by way of novation;
- (c) a reference to this Charge, to a Project Document or to any other document, includes respectively this Charge, the Project Document or that other document

as amended, varied, novated, supplemented, ratified or replaced from time to time;

- (d) a reference to any Law or to any statutory provision includes any statutory modification or re-enactment or any statutory provision substituted therefor, and all ordinances, by-laws, regulations and other statutory instruments issued thereunder;
- (e) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (f) a reference to a clause is a reference to a clause of this Charge;
- (g) where any word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning; and
- (h) all accounting terms used in this Charge have the meaning given them under Australian accounting standards and statements of accounting concepts.

1.4 **Delegate**

- (a) The Chargee may appoint a person as a delegate to perform any of its functions under this Charge. The Chargee will give the Chargor written notice of any delegate it appoints, setting out the functions delegated to that person.
- (b) The Chargee may revoke the appointment of the person under paragraph (a) and appoint a substitute and shall notify the Chargor in writing of each appointment and revocation.
- (c) The appointment of a delegate to perform some or all of the functions of the Chargee under this Charge will not limit or affect the Chargee's obligations or liability under this Charge or expand the Chargee's rights under this Charge.

1.5 **Discontinuance of Bodies or Associations**

- (a) If an authority, institute or association or other body referred to in this Charge is reconstituted, renamed or replaced or if its powers or functions are transferred to another body, this Charge is deemed to refer to that new body.
- (b) If an authority, institute or association or other body referred to in this Charge ceases to exist, this Charge is deemed to refer to that body which serves substantially the same purpose or object of the former body.

1.6 **Trustee Obligations**

The provisions of clauses 1.12 to 1.14, inclusive, of the Concession Deed apply to this

Deed as if:

- (a) incorporated into this Deed; and
- (b) each reference in those provisions to the State were a reference to the Chargee.

2. CHARGE

2.1 The Charge and Insurances

- (a) The Company as beneficial owner charges all the Charged Property with the due and punctual performance, observance and fulfilment of the Obligations relating to it and the due and punctual payment in full to the Chargee of all the Secured Money relating to it.
- (b) The Trustee charges all the Charged Property with the due and punctual performance, observance and fulfilment of the Obligations relating to it and the due and punctual payment in full to the Chargee of all the Secured Money relating to it.

2.2 Assets over which this Charge is fixed

The Charge of a Chargor will operate as a fixed charge over all of Charged Property of the Chargor listed below (whether present or future):

- (a) all real and leasehold property (with the exceptions of the Leases) and all fixtures and improvements thereon;
- (b) all Capital;
- (c) all machinery, and plant and equipment, including without limitation, the Plant but excluding from this paragraph (c) any item the value of which does not exceed \$500,000 (escalated by reference to CPI);
- (d) all documents, contracts, rights and records relating to the Business of the Chargor including, without limitation, manuals for the Tolling System and the Plant, Operation and Maintenance Manuals and maintenance records for the Link;
- (e) all Charged Debts and right, title and interest of the Chargor in the Insurance Proceeds Account applicable to it and the Maintenance and Repairs Account.
- (f) the goodwill of the Business, and all Licences, relating to the Chargor;
- (g) all Security Interests, Marketable Securities, documents of title and Intellectual Property (insofar as it is in, or is with respect to, the Tolling System, the Proprietary Documentation or any part of that system or documentation) relating

to the Chargor;

- (h) the Relevant Agreements relating to the Chargor;
- (i) so much of the Charged Property which at any particular time does not fall within any of the preceding paragraphs, but which, were the Concession Deed to terminate at that time, would need to be handed over, surrendered, delivered or novated, or possession of which would need to be given to the Chargee, under clause 3.4 of the Concession Deed,

with the intention that each item of future property described in this clause 2.2 will be specifically charged to the Chargee at the time it is acquired by the Chargor. This Charge will operate as a floating charge as regards all other Charged Property.

2.3 **Priority**

Subject to the Master Security Deed, this Charge will operate as a first ranking security.

2.4 **Notice of Security**

On execution of this Charge each Chargor will:

- (a) give the bank or other financial institution with which its Insurance Proceeds Account and the Maintenance and Repairs Account are held, notice of the fixed charge created by this Charge; and
- (b) if that bank or financial institution is not a Lender, procure an acknowledgment from the bank or financial institution of receipt of that notice, and its agreement that it will not exercise any rights of set-off, counterclaim, or other claims against or in respect of the Insurance Proceeds Account or the Maintenance and Repairs Account, in each case, in form and substance satisfactory to the Chargee.

2.5 **Dealing in accordance with Project Documents**

- (a) Subject to paragraphs (c) and (d), a Chargor may in respect of any part of the Charged Property relating to it which is subject to the floating charge created by this Charge, deal with and pay or apply that part of the Charged Property in the ordinary and usual course of the Chargor's Business
- (b) Subject to paragraph (c) and (d), a Chargor may in the ordinary and usual course of the Chargor's Business:
 - (i) sell, convey, assign, transfer, lease, apply, pay, deal with or otherwise dispose of, or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interests in, any part of the Charged Property and Proprietary Documentation relating to it which is subject to the fixed charge created by this Charge

except insofar as that fixed charge applies to the Plant, the manuals for the Tolling System, the Operation and Maintenance Manuals and the maintenance records for the Link, Intellectual Property (and the Proprietary Documentation) relating to the Tolling System, or that part of the Charged Property as falls within sub-paragraph 2.2(i);

- (ii) amend or vary, consent to any amendment or variation of, release, surrender, terminate or discharge, or grant any waiver under, any security, instrument, document or agreement forming part of the Charged Property relating to it.
- (c) The provisions of paragraphs (a) and (b) are subject to any provision of a Project Document to the contrary (such as clause 2.6 of this Deed). Without limitation:
- (i) no Security Interest may be created by a Chargor except a Permitted Security Interest or in accordance with clause 18.2 of the Concession Deed;
 - (ii) Project Documents and Transaction Documents may not be terminated, amended or otherwise dealt with in breach of Article 14 or 18 of the Concession Deed.
- (d) Except to the extent that the rights of a Chargor under paragraphs (a) and (b) must be exercised in order to satisfy obligations owed to the State under the Project Documents, the right of a Chargor under paragraphs (a) and (b) shall lapse, and the Chargor shall not do what it otherwise may do under those paragraphs, if:
- (i) either:
 - (A) an Event of Crystallisation occurs in respect of that Chargor or that Chargor's Property; or
 - (B) an Event of Default occurs and the Chargee gives notice to a Chargor that its rights under those paragraphs have lapsed (whether generally or in relation to particular assets specified in the notice); and
 - (ii) the lapse of those rights is not then inconsistent with the obligations of the State under clause 3.5 of the Master Security Deed.

2.6 **Crystallisation of floating charge**

If the rights of a Chargor under paragraphs 2.5(a) and 2.5(b) lapse, the floating charge created by this Charge will at that time crystallise and immediately become a fixed charge over that part of the Charged Property of both Chargors (and each Chargor) not immediately prior to such occurrence the subject of the fixed charge and (if applicable),

specified in the Chargee's notice to a Chargor under paragraph 2.5(d). The Chargee will be deemed to have intervened and to have exercised all its rights of intervention in respect of that Charged Property, and (subject to clause 3.5 of the Master Security Deed) to have the right either in its own name or in the name of each or either Chargor immediately to seek and obtain relief in relation to that part of the Charged Property appropriate to the affect or threat relating to that Event of Crystallisation or Event of Default.

2.7 **Re-conversion from fixed into floating charge**

The Chargee may at any time by notice in writing to a Chargor convert this Charge from a fixed charge into a floating charge as regards any asset or class of asset specified in that notice. When that notice is received by a Chargor, this Charge as regards the specified asset or class of asset of the Chargor will immediately become and operate as a floating charge subject to the provisions of this Charge, and will cease to be a fixed charge over the specified asset or class of asset.

2.8 **Prospective liability**

For the purpose only of section 282(3) of the Corporations Law the specified maximum amount of the prospective liability secured by this Charge is \$1,500,000,000. The nature of the prospective liability is as shown on the notice lodged with this Charge with the Australian Securities Commission. Nothing in this clause 2.8 will limit, or put the Chargee under any obligation to do any act or thing so as to increase, the amount of the moneys secured by this Charge.

3. **REPRESENTATIONS AND WARRANTIES**

3.1 **General representations and warranties**

- (a) The Company represents and warrants to the Chargee:
 - (i) (Good Title): the Company has good right to charge the Charged Property as beneficial owner in the manner provided in this Charge; and
 - (ii) (No Security Interests): the Charged Property relating to the Company is free of all Security Interests other than the Permitted Security Interests.

- (b) The Trustee (as trustee of the Trust) represents and warrants to the Chargee:
 - (i) (Good title): the Trustee has good right to charge the Charged Property in the manner provided in this Charge; and
 - (ii) (No Security Interests): the Charged Property relating to the Trustee is free of all Security Interests other than the Permitted Security Interests.

3.2 **Representations and warranties repeated**

Each representation and warranty made by a Chargor in this Charge will be repeated on the last Business Day of each quarter whilst any Secured Money relating to the Chargor remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

4. **CHARGOR'S GENERAL COVENANTS**

4.1 **Performance of Obligations**

Each Chargor will punctually perform, observe and fulfil the Obligations relating to it and pay the Secured Money relating to it in the manner provided in this Charge or in any Project Document to which the State is party.

4.2 **Permissions and authorisations**

Each Chargor will obtain, renew, maintain and comply with all consents, licences, approvals and authorisations necessary for the validity, enforceability and performance of its obligations under this Charge, and will promptly provide copies of any material consents, licences, approvals and authorisations to the Chargee when they are obtained or renewed.

5. **CHARGOR'S COVENANTS CONCERNING THE CHARGED PROPERTY**

5.1 **Restrictions in relation to the Charged Property**

Without the Chargee's prior written consent, except as may be permitted under clauses 18.1 and 18.2 of the Concession Deed or (in the case of paragraphs (b),(c),(d) and (e)) under clause 2.5, each Chargor shall not:

- (a) **(No Security Interests):** create, purport or attempt to create or permit to exist any Security Interest howsoever ranking, other than the Permitted Security Interests, over any part of the Charged Property;
- (b) **(No sale, lease etc.):** convey, assign, transfer, lease or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property whilst such part of the Charged Property is subject to the fixed charge created in this Charge;
- (c) **(Charged Debts and Accounts):** assign, transfer or deal with or attempt to assign transfer or deal with or enter into any agreement, arrangement, or course of dealing to hold to the account of or on trust for any person, or permit any set-off or combination of accounts in respect of, any Charged Debts or an Insurance Proceeds Account or the Maintenance and Repairs Account;

- (d) **(Not to prejudice)**: do or permit any act, omission or thing whereby any substantial part of the Charged Property becomes liable to surrender, forfeiture or cancellation; or
- (e) **(Ordinary course)**: , deal with or attempt to deal with the Charged Property other than in the ordinary course of its ordinary Business and in accordance with the requirements of the Project Documents.

5.2 **Chargee assumes no obligations**

The Chargee will not be deemed by virtue of this Charge to have assumed any obligation of either Chargor under any Licence or Law.

5.3 **Documents of title and other securities**

Except insofar as they are lodged with the Security Trustee as security for Project Debt, each Chargor will lodge with the Chargee all documents of title relating to each Security Interest under which the Chargor is a Security Interest holder, all certificates, scrip and other indicia of the Chargor's title or interest in any Marketable Securities, all negotiable instruments other than cheques, and all other documents of title to the whole or part of the Charged Property immediately on receipt of the same.

6. **EVENTS OF DEFAULT**

Subject to the Master Security Deed, at the option of the Chargee and notwithstanding any delay or previous waiver of the right to exercise that option, the Secured Money becomes immediately due and payable on demand by the Chargee made while an Event of Default subsists, and all Powers not previously exercisable then become exercisable.

7. **RECEIVERS: APPOINTMENT AND POWERS**

7.1 **Appointment of Receiver**

While an Event of Default subsists, the Chargee may:

- (a) appoint in writing any person or persons to be a Receiver of the whole or part of the Charged Property relating to either Chargor or both Chargors;
- (b) withdraw the appointment of that Receiver as to the whole or part of the Charged Property; and
- (c) (in case of the removal, retirement or death of any Receiver) appoint another person or persons in the Receiver's place.

7.2 **Joint Receivers**

If more than one person is appointed as a Receiver of the whole or any part of Charged

Property, the Chargee may specify whether the appointment, and the Powers of each appointee, will at its option be joint, or joint and several, and failing such specification, the appointment and the Powers of each person will be deemed to be joint and several.

7.3 **Remuneration of Receiver**

The Chargee may fix the remuneration of any Receiver at such rate as the Chargee from time to time determines, which rate will not exceed the standard hourly rate from time to time charged by the firm of which the Receiver is a member for work of the level conducted by the Receiver.

7.4 **Agent of the Chargor**

Every Receiver will be the agent of each Chargor in relation to whose Charged Property the Receiver has been appointed and, subject to all applicable laws, that Chargor will be solely responsible for all acts and omissions by and the remuneration of the Receiver. In the case of the Trustee, however, it is acknowledged and agreed that:

- (a) any Receiver will be agent of the Trustee in its capacity as trustee of the Trust only; and
- (b) notwithstanding anything else in this clause, or at law, the Trustee is not responsible for any negligent act or negligent omission of a Receiver.

7.5 **Powers of Receiver**

Without the need for any consent by either Chargor, each Receiver will have all of the powers specified in section 420 of the Corporations Law, and in addition to those and any other Powers, will have all of the following powers in relation to the Charged Property with respect to which the Receiver has been appointed and in relation to each Chargor to whom that Charged Property relates: :

- (a) **(To take possession)**: to take possession or control of or make use of the whole or any part of the Charged Property or relinquish such possession or control;
- (b) **(To convert to money)**: to convert, liquidate and reduce the whole or any part of the Charged Property into money;
- (c) **(To lease)**: whether or not the Receiver has taken possession, to lease or licence in the name of the Chargor or otherwise the whole or any part of the Charged Property for any period and on any terms or to vary or terminate a lease or licence;
- (d) **(To carry on business)**: to carry on or concur in carrying on any business then conducted by the Chargor, and to effect all Insurances and do all acts which the Chargor might do in the ordinary conduct of such business for the protection or improvement of the whole or part of the Charged Property;

- (e) **(To employ)**: to employ consultants, professional advisers, contractors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested, and that person may charge for his or her services as if he or she had been independently retained at such salaries or remuneration as the Receiver thinks fit), and to act on any advice given by that person;
- (f) **(To conduct works)**: to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property, and to demolish, alter, rebuild or extend any existing improvements on the Charged Property. All outlays and expenses so paid or incurred by the Receiver in this regard will be deemed part of the Secured Money;
- (g) **(To sell property)**: whether or not the Receiver has taken possession, to sell or concur in selling all or any of the Charged Property by public auction, private treaty or tender, for cash or on credit, in one lot or in parcels, with or without special conditions or stipulations as to title, or the time and the mode of payment of purchase money and on such other terms as the Receiver thinks fit, with power to allow deferred payment of any part of the purchase money, whether or not secured by a Security Interest from the purchaser and with full power to buy in and to rescind or vary any contract for sale, and to resell without being responsible for loss including a right to require that the purchaser assume all or any obligations of the Chargor under the Project Documents, whether those obligations are present or future, actual or contingent;
- (h) **(Contracts for sale)**: to exercise all or any rights, powers and remedies of the Chargor under any contract for sale, and to execute those contracts, any applications for transfer, transfers, assignments and assurances of all or any part of the Charged Property in the name and on behalf of the Chargor or otherwise, and to do all other acts and things for implementing and completing any sale that the Receiver deems necessary;
- (i) **(To sever and sell fixtures)**: to sever fixtures belonging to the Chargor and to sell those separately from any other part of the Charged Property;
- (j) **(To invest proceeds against contingencies)**: if any part of the Secured Money is contingent, to invest, deposit or hold any part of the Charged Property in a form or mode of investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until such part of the Secured Money ceases to be contingent;
- (k) **(To enter into contracts)**: to enter into any contract or arrangement with any person for any purpose connected with this Charge or the whole or any part of the Charged Property or in furtherance of any Power (other than a contract for

borrowing or raising of funds), on such terms and conditions as the Receiver in its absolute discretion thinks fit, including without limitation, granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring, or other dealing with, the whole or any part of the Charged Property;

- (l) **(To perform contracts)**: to perform, observe and carry out, enforce specific performance of, exercise or refrain from exercising, the Chargor's rights and powers under, obtain the benefit of, and to vary or rescind, all contracts and rights forming part of the Charged Property or entered into in the exercise of any Power;
- (m) **(To take proceedings)**: to institute, conduct or defend any proceedings in law, equity or bankruptcy, and to submit to arbitration, mediation or conciliation in the name of the Chargor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property or otherwise;
- (n) **(To compromise)**: to make any settlement, arrangement or compromise regarding any action or dispute arising in connection with the Charged Property, to grant to any person involved therein time or other indulgence; and to execute such releases or discharges in connection therewith as the Receiver thinks expedient in the interests of the Chargee;
- (o) **(To appeal)**: to appeal against or to enforce any judgment or order;
- (p) **(To bankrupt debtors and wind-up companies)**: to make debtors bankrupt and to wind-up companies and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the whole or part of the Charged Property, or for the security or other benefit of the Chargee;
- (q) **(To delegate)**: with the consent in writing of the Chargee, to delegate to any person for such time or times as the Chargee approves, any of the Powers, including this power of delegation;
- (r) **(To file)**: to file all certificates, registrations and other documents and to take any and all action on behalf of the Chargor which the Chargee or Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of the Chargor and the Chargee in respect of any agreement for sale, and to obtain for the Chargee all of the benefits of this Charge and any Project Document; and in particular, the placing of the Chargor into liquidation or the appointment of a Receiver will be deemed to be an event against which the Chargee may protect its rights;
- (s) **(To make calls)**: to call and get in Capital;
- (t) **(To operate bank accounts)**: to open or operate any bank account in the name

of the Chargor whether alone or jointly to the exclusion of the Chargor, and to deposit or withdraw any money to the credit of that account, and to sign and endorse or to authorise others to sign and endorse in the name of the Chargor cheques, promissory notes bills of exchange and other negotiable instruments;

- (u) **(To do all other things necessary)**: to do all things necessary to perform, observe and fulfil any of the covenants on the part of the Chargor contained in this Charge; and
- (v) **(Deal with property in conjunction)**: without limitation, insofar as any of the Charged Property is or may be used in connection with other property (including the Charged Property of the other Chargor), exercise all or any of its powers in relation to the Charged Property (and any part of it) and its powers and discretions in relation to the other property in conjunction, and, insofar as it does so, attribute to the Charged Property that part or proportion of the results or proceeds from any such exercise as the Receiver considers in good faith to be appropriate;
- (w) **(Receiver's discretion)**: subject to duties owed by the Receiver to a Chargor and its creditors at law which may not be excluded by contract, to do all other acts and things without limitation as such Receiver thinks expedient in the interests of the Chargee,

and any further powers and discretions as the Chargee confers on the Receiver by notice in writing to the Receiver for the purposes referred to in this clause 7.5.

7.6 **Indemnity**

The Chargee may give such indemnities to the Receiver concerning the performance of the Receiver's duties as are permitted by law.

8. **CHARGEES POWERS**

8.1 **Exercise of power**

While an Event of Default subsists, the Chargee may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the Powers conferred on a Receiver or which would be conferred on a Receiver if appointed as if those Powers had been expressly conferred on the Chargee;
- (b) exercise all other Powers; and
- (c) appoint an agent or joint and several agents and delegate such powers to it or them (in which case clauses 7.1, 7.3 and 7.6 will apply as if it or they were appointed as a Receiver).

8.2 **Act jointly**

The Chargee or Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by any other holder of a Security Interest of the whole or part of the Charged Property or by any receiver appointed by that other holder of a Security Interest, and may enter into and give effect to agreements and arrangements with that other holder of a Security Interest or receiver as the Chargee or Receiver thinks fit.

8.3 **WorkCover, Workers' compensation, etc.**

The Chargee may from time to time debit and charge to the Chargors or either of them all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by the Chargee or any Receiver appointed by the Chargee or any attorney of the Chargor appointed under any Law relating to Workcare, WorkCover and/or workers' compensation.

8.4 **Power of attorney**

- (a) As from the date of this Charge, for the purpose of the doing of any act by the Chargor under clause 15.1, each Chargor irrevocably appoints the Chargee, and each agent and attorney from time to time of the Chargee, and any Receiver appointed under this Charge, severally, as attorney of the Chargor, with power to:
 - (i) do all acts which ought to be done by the Chargor under clause 15.1 of this Charge and which the Chargor has failed to do within 20 Business Days of being requested to do so by the Chargee; and
 - (ii) appoint (and remove at will) at any time any person(s) as a substitute(s) for an attorney or attorneys.
- (b) Each Chargor irrevocably appoints the Chargee, each agent from time to time of the Chargee, and any Receiver appointed under this Charge, severally, as attorney of the Chargor, with power while an Event of Default subsists to:
 - (i) do all acts which ought to be done by the Chargor under this Charge or another Project Document or to exercise any Power;
 - (ii) take further action and to execute further instruments which are, or are in the reasonable opinion of the Chargee, necessary to perfect the security interest created by this Charge; and
 - (iii) appoint (and remove at will) at any time any person(s) as a substitute(s) for an attorney or attorneys.
- (c) Subject to the Master Security Deed, upon a breach by a Chargor of its

obligation under clause 13.7(a)(viii) of the Concession Deed to apply certain insurance proceeds in or toward satisfaction of certain costs the Chargor irrevocably appoints the Chargee and each agent from time to time of the Chargee, and any Receiver appointed under this Charge, severally, as attorney of the Chargor, with power to withdraw from the Insurance Proceeds Account all moneys standing to the credit of that account for the purpose of applying them toward the repair or reinstatement of a damaged or destroyed Section.

- (d) Each Chargor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of its attorney under this Power of Attorney.
- (e) Each Chargor declares that this Power of Attorney will continue in force until all actions taken under it have been completed, notwithstanding the discharge of this Charge or any of the agreements or arrangements to which it refers.

8.5 Chargee may make good default

If a Chargor defaults in duly performing, observing and fulfilling any covenant on the part of the Chargor contained or implied in this Charge, the Chargee may, without prejudice to any other Power, do all things and pay all money necessary to make good or to attempt to make good that default to the reasonable satisfaction of the Chargee.

8.6 Notice for exercise of Powers

- (a) The Powers may be exercised by the Chargee and the Receiver immediately after an Event of Default occurs, and at any time while the Event of Default subsists, without any notice or lapse of time being necessary unless required by a law which cannot be excluded or modified.
- (b) One day is hereby fixed as the period for which:
 - (i) default must continue in the performance, observance and fulfilment of the whole or any part of a Chargor's Obligations, or in the payment of any part of the Secured Money relating to a Chargor, including interest, before the Chargee may in relation to the Chargor serve any notice in writing as required by any Law affecting the Powers; and
 - (ii) default must continue after the service of notice before any power of sale given by Law may be exercised.

9. APPLICATION OF MONEY

9.1 Priority of payments

All money received by the Chargee or by the Receiver as a result of the exercise of the Powers may be applied:

- (a) (Incidental to exercise of Powers): in payment of all fees, costs, charges, expenses and disbursements incurred in or incidental to the exercise or performance or attempted exercise or performance of any of the Powers;
- (b) (Outgoings): in payment of any other outgoings as the Receiver or the Chargee thinks fit;
- (c) (Payment of Prior Encumbrances): in payment of other Security Interests of which the Chargee is aware to the extent to which they have priority to this Charge, in the order of their priority;
- (d) (Payment of Secured Money): in payment of the Secured Money relating to the Chargor with respect to which the Powers were exercised, then owing or contingently or prospectively owing, whether or not due and payable;
- (e) (Subsequent Encumbrances): in payment of subsequent Security Interests of which the Chargee is aware to the extent to which they have priority after this Charge in the order of their priority; and
- (f) (Surplus): the surplus (if any) belongs to the Chargor with respect to which the Powers were exercised, but does not carry interest and may be paid to either Chargor.

9.2 **Money received**

In applying any money towards satisfaction of the Secured Money relating to a Chargor, the Chargor will be credited only with so much of the money available for that purpose as will be actually received by the Chargee or the Receiver in relation to the relevant Charged Property and not required for whatever reason to be disgorged, any credit to be dated from the time of receipt. It is acknowledged that the amount of money actually received in relation to relevant Charged Property may be a function of the amount attributed to the Charged Property by the Chargee or the Receiver, especially where Powers in relation to the Charged Property are exercised in conjunction with powers relating to other property.

9.3 **Application of payments or credits**

Each of the Chargee and the Receiver has an absolute discretion to apply any payment or credit received by it under this Charge (and, to the extent relevant, attributed to the Secured Money relating to a Chargor) in reduction of any part or parts of the Secured Money relating to a Chargor, whenever and on whatever account the same became secured, notwithstanding any principle or presumption of law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

9.4 **Reliance on Certificate**

In making any payment to any other holder of a Security Interest under clause 9.1, the Chargee and the Receiver may rely on a certificate from that holder of a Security Interest as

to the amount secured, and are not bound to enquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Security Interest.

10. LIABILITY AND RELEASE

10.1 Continuing obligation

Subject to clause 10.5 this Charge constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing. Without limiting the generality of the foregoing each indemnity in this Charge is a separate additional and continuing obligation and will survive the discharge of this Charge. Unless otherwise agreed, payment by the Chargee will not be a pre-condition to liability under any indemnity.

10.2 Personal liability

Subject to clause 1.6, notwithstanding any payout figure quoted or other form of account stated by the Chargee, and notwithstanding the rule in *Groongal Pastoral Company Limited (In Liquidation) v. Falkiner* (1924) 35 CLR 157, no grant of full or partial satisfaction of or discharge from this Charge by the Chargee will release any Chargor from personal liability under this Charge or under any Project Document until all the Obligations relating to the Chargor have been satisfied and the Secured Money relating to the Chargor has in fact been received by the Chargee and is not liable to be disgorged for any reason, notwithstanding that the quotation or statement of account has arisen from the mistake, negligence, error of law or error of fact of the Chargee, its servants or agents.

10.3 Settlement conditional

Any settlement or discharge between a Chargor and the Chargee is conditional on any security or payment given or made to the Chargee by the Chargor or any other person in relation to the Obligations relating to the Chargor not being avoided, repaid or reduced by virtue of any Insolvency Provision. If the security or payment is avoided, repaid or reduced, the Chargee is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Chargor subsequently as if that settlement or discharge had not occurred.

10.4 Chargor's liability not affected

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

- (a) (Indulgence): the granting to the Chargor or to any other person of any time or other indulgence or consideration;
- (b) (Project Documents): the Chargee failing or neglecting to recover by the realisation of any Project Document, other security or otherwise any of the Secured Money relating to the Chargor;

- (c) (Laches): any other laches, acquiescence, delay, act, omission or mistake on the part of the Chargee or any other person;
- (d) (Release): the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Project Document, other security, judgment or negotiable instrument held from time to time or recovered by the Chargee from or against the Chargor or any other person; or
- (e) (Any other thing): any other matter or thing.

10.5 **Release of Charged Property**

The Chargee will be under no obligation to grant a release of Charged Property relating to a Chargee from this Charge unless (but will be so obliged if) at the time the release is to be provided, none of the Secured Money relating to the Chargee is owing (whether actually contingently or prospectively) and none of the Obligations relating to the Chargee remain to be performed.

11. **PROTECTION AND INDEMNITY**

11.1 **Waiver by Chargor**

Each Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee as is necessary to give effect to any provision of this Charge;
- (b) promptness and diligence on the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing this Charge against the Chargor; and
- (c) all rights inconsistent with the provisions of this Charge, including any rights as to contribution or subrogation which the Chargor might otherwise be entitled to claim or enforce.

11.2 **No liability for loss**

Subject to any law which applies notwithstanding anything to the contrary, neither the Chargee nor any Receiver will be liable or otherwise accountable for any omission, delay or mistake, or any loss or irregularity in or about the exercise or attempted exercise, non-exercise or purported exercise of any Power, except for actual fraud or wilful misconduct.

11.3 **No liability to account**

Neither the Chargee nor any Receiver will, by reason of the Chargee or the Receiver

entering into possession of the whole or part of the Charged Property, be liable to account as mortgagee or chargee in possession, or for anything except actual receipts, (and, if relevant, attributed to the Charged Property of the relevant Chargor), or be liable for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or chargee in possession might be liable.

11.4 **No conflict**

The Chargee and any Receiver may exercise any Power notwithstanding that the exercise of that Power involves a conflict between any duty owed to a Chargor by the Chargee or that Receiver and any duty owed by the Chargee or Receiver to any other person, or the interests of the Chargee or Receiver. No contract will be void or voidable by virtue of any such conflict of duty or interest, nor will the Chargee or Receiver be liable to account to a Chargor or any other person for any money or property as a result of such conflict.

11.5 **No notice or enforcement**

The Chargee need not give any notice of the security created by this Charge to any debtor of a Chargor, or to any purchaser, or to any other person, or to enforce payment of any money payable to a Chargor, or realise any of the Charged Property, or to take any steps or proceedings for that purpose.

11.6 **Indemnity**

Subject to paragraph 7.4(b), each Chargor will on demand indemnify and keep the Chargee indemnified in respect of all costs, expenses, liabilities and losses incurred by the Chargee or the Receiver:

- (a) in the exercise, attempted exercise or non-exercise of any Power, including (without limitation) those consequent on any mistake, oversight, error of judgment or want of prudence on the part of the Chargee or the Receiver, unless the same is due to actual fraud or wilful misconduct;
- (b) as a consequence of the occurrence of any Event of Default; and
- (c) in respect of any act or omission for which the Chargee or the Receiver is exonerated by this Charge,

including legal costs (on a full indemnity basis) incurred in defending any action or proceeding relating to a matter the subject of this indemnity.

11.7 **Protection of Persons dealing with the Chargee or Receiver**

No person acquiring any money or asset from or paying or handing over any money or asset to or otherwise dealing with the Chargee, the Receiver or any attorney appointed under this Charge, or to whom is tendered for registration an instrument executed by the Chargee, the Receiver or any attorney appointed under this Charge will be:

- (a) bound to inquire:
 - (i) whether any Event of Default has occurred;
 - (ii) whether any of the Secured Money in relation to either Chargor is owing or payable;
 - (iii) whether the Receiver or attorney has been properly appointed;
 - (iv) as to the propriety or regularity of the exercise or purported exercise of any Power; or
 - (v) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication,

and the irregular, improper or unnecessary exercise of any Power will be, as regards the protection of any such person, deemed to be authorised by the Chargor and valid.

12. PAYMENTS

12.1 Money repayable as agreed or on demand

Unless otherwise provided in the Concession Deed, the Secured Money relating to a Chargor will be payable by the Chargor to the Chargee in Australian dollars immediately on demand by the Chargee.

12.2 Payment of interest

Each Chargor will pay interest on the Secured Money relating to it which is due and payable to the Chargee but unpaid in accordance with any Project Document and, in the absence of any relevant provision, at the Default Rate calculated on daily balances computed from the date the money falls due for payment to but excluding the date of payment. Interest accrues daily, and is payable on the earlier of a demand from the Chargee or the last Business Day of each calendar month.

12.3 Capitalisation of interest

The Chargee may capitalise any interest which has become due and owing in accordance with any Project Document or in the absence of any relevant provisions then at such periods of not less than one calendar month and from such dates as the Chargee elects. The accumulation of capitalised interest may continue until the Secured Money has been paid in

full notwithstanding any composition, compromise judgment or order in respect of any person or any other thing.

12.4 **Merger**

If the liability of a Chargor to pay to the Chargee any of the Secured Money becomes merged in any judgment or order, as an independent obligation the Chargor will pay interest at the rate which is the higher of that payable under this Charge and that fixed by or payable under that judgment or order.

12.5 **No deduction for Taxes and no set-off or counterclaim**

All payments by a Chargor under any Project Document, whether of principal, interest or other amounts due thereunder, will (except as provided for in a Project Document) be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for any present or future Taxes (other than Excluded Taxes), unless the Chargor is compelled by law to deduct or withhold the same, in which case (unless the covenant to pay contained in this paragraph is rendered void by section 261 of the Income Tax Assessment Act 1936) the Chargor will pay to the Chargee any additional amounts necessary to enable the Chargee to receive, after all deductions and withholding for such Taxes, a net amount equal to the full amount which would otherwise have been payable thereunder had no such deduction or withholding been required to be made.

13. **EXPENSES, STAMP DUTIES AND REGISTRATION**

13.1 **Expenses**

Each Chargor on demand will reimburse the Chargee for and keep the Chargee indemnified against all expenses, including legal fees, costs and disbursements (on a solicitor/own client basis) incurred or payable by the Chargee in connection with:

- (a) (Subsequent Matters): after execution of this Charge, any subsequent consent, agreement, waiver, amendment to, or discharge of this Charge; and
- (b) (Enforcement): the exercise, enforcement, preservation, or attempted exercise, enforcement or preservation of any rights under this Charge, including without limitation any expenses incurred or payable in the evaluation of any matter of material concern to the Chargee.

13.2 **Stamp duties**

- (a) (Payment of all duties): Each Chargor will pay all stamp, loan transaction, registration and similar Taxes, including fines and penalties (unless caused by the failure of the Chargee to lodge moneys received from the Chargor for the

purpose of making the payment within a reasonable time of the Chargee's receipt of those moneys) financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Charge, or any payment, receipt or other transaction contemplated by this Charge.

- (b) (Indemnity): Each Chargor will indemnify the Chargee against any loss or liability incurred or suffered by it as a result of the delay or failure by a Chargor to pay Taxes (unless caused by the failure of the Chargee to lodge moneys received from the Chargor for the purpose of making the payment within a reasonable time of the Chargee's receipt of those moneys).

13.3 **Registration**

Each Chargor at its own expense will ensure that this Charge is registered in the manner and within such time limits as may be prescribed by law to ensure the full efficacy of this Charge as (subject to the priorities set out in this Master Security Deed) a first ranking security to the Chargee in all relevant jurisdictions.

14. **GOVERNING LAW AND JURISDICTION**

14.1 **Governing law**

This Charge is to be governed by and construed in accordance with the laws of Victoria.

14.2 **Jurisdiction**

- (a) (Acceptance of jurisdiction): Each Chargor irrevocably submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Victoria with respect to any legal action or proceedings which may be brought at any time relating in any way to this Charge.
- (b) (No objection to inconvenient forum): Each Chargor irrevocably waives any objection it may now or in the future have to the venue of any such action or proceedings, and any claim it may now or in the future have that action or proceeding has been brought in an inconvenient forum.

15. **MISCELLANEOUS**

15.1 **Further assurance**

Each Chargor will from time to time after the date of this Charge on the request of the Chargee and at the cost of the Chargor, make, do and execute all acts, deeds and assurances for:

- (a) more satisfactorily securing to the Chargee the payment of the Secured Money

relating to the Chargor;

- (b) assuring or more satisfactorily assuring the Charged Property of the Chargor to the Chargee, or as the Chargee may direct; or
- (c) facilitating the exercise of any Power,

provided that a Chargor shall not be obliged under this clause to execute a deed or assurance if the provisions of it address matters addressed in this Charge but in a way which is more onerous on the Chargor than the corresponding provisions of this Charge.

15.2 **Certificate of Chargee**

A certificate in writing signed by an agent of the Chargee certifying the amount payable to the Chargee or stating any other act, matter or thing relating to this Charge or any Project Document is prima facie evidence in the absence of manifest error on the face of the certificate.

15.3 **Notices**

- (a) A notice, request, approval, consent or certificate given under this Charge (a "communication") shall be in writing and is deemed to be duly given to a party if it is:
 - (i) left at the party's address;
 - (ii) sent by prepaid post to the party's address with a request for confirmation of receipt to be provided by post; or
 - (iii) transmitted by facsimile to the party using the party's facsimile number, but only if the sender receives an "error free" transmission report for the correct facsimile number; and
 - (iv) in the case of a notice given to the Company marked "URGENT FOR THE IMMEDIATE ATTENTION OF THE CHIEF EXECUTIVE OFFICER - MELBOURNE CITY LINK PROJECT".
- (b) A communication given to a party is deemed to have been received by the party:
 - (i) if left at the party's address, when delivered;
 - (ii) if sent by prepaid post to that address with a request for confirmation of receipt to be provided by post, on the day evidenced by the receipt given by the postal service; and
 - (iii) if transmitted by facsimile using the facsimile number of the party, on

the day of transmission, but only if the sender receives an "error free" transmission report for the correct facsimile number,

provided however that:

- (iv) if a party would, but for this provision, be deemed to have received a communication after 4.00pm on a Business Day or on a day not being a Business Day, the party shall be deemed to have received the communication on the next Business Day; and
 - (v) in determining whether a requirement that there be a period of Business Days' notice in relation to a communication has been satisfied, the relevant number of Business Days shall be calculated from, but excluding, the Business Day of deemed receipt..
- (c) The address and facsimile number of each party is that set out below or such other address or facsimile number which that party from time to time gives notice of to each other party:

COMPANY:

Address: Level 2, 437 St Kilda Road, Melbourne
Facsimile: 9287 5850

TRUSTEE:

Address: Level 7, 1 Castlereagh Street, Sydney
Facsimile: (02) 221 7870

CHARGE:

Address: Care of Melbourne City Link Authority, Level 1, 150
Jolimont Road, East Melbourne
Facsimile: 9650 7410

15.4 No merger

Neither this Charge nor any of the Powers will merge or prejudicially affect or be merged in or prejudicially affected by and each Chargor's obligations under this Charge will not in any way be abrogated or released by any other security, any judgment or order, any contract, any cause of action or remedy, or any other matter or thing now or hereafter existing in respect of the Secured Money of either Chargor.

15.5 Severability of provisions

Any provision of this Charge which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining

provisions.

15.6 **Powers cumulative**

Each Power is cumulative and in addition to each other Power available to the Chargee or the Receiver.

15.7 **Waiver**

A failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any Power by the Chargee will not in any way preclude, or operate as a waiver of, any further exercise or enforcement of that or any other Power.

15.8 **Consents**

Any consent referred to in this Charge may be given or withheld and may be given subject to any conditions, as the Chargee thinks fit in its absolute discretion unless this Charge expressly provides otherwise.

15.9 **Written waiver and consent**

Any waiver or consent given by the Chargee under this Charge will only be effective and binding on the Chargee if it is given or confirmed in writing.

15.10 **Time of essence**

Time is of the essence in respect of each Chargor's obligations under this Charge.

15.11 **Moratorium legislation**

To the fullest extent permitted by Law, the provisions of all Laws operating directly or indirectly to lessen or affect in favour of a Chargor any obligation under this Charge, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived, negated and excluded.

15.12 **Binding on each signatory**

This Charge is binding on each of the signatories notwithstanding that any one or more of the named parties does not execute this Charge, that there is any invalidity, forgery or irregularity touching any execution of this Charge, or that this Charge is or becomes unenforceable, void or voidable against a named party.

15.13 **Counterparts**

This Charge may be executed in a number of counterparts, all of which taken together will be deemed to constitute one and the same document.

15.14 **No representation by or reliance on Chargee**

Neither Chargor enters into this Charge in reliance on or as a result of any representation, promise, statement, conduct or inducement by or on behalf of the Chargee otherwise than as expressly set out in the Project Documents.

EXECUTED as a deed.

SIGNED, SEALED and DELIVERED for)
and on behalf of **TRANSURBAN CITY**)
LINK LIMITED by its Attorney in the)
presence of:)

.....
Witness

.....
Name

SIGNED, SEALED and DELIVERED for)
and on behalf of **PERPETUAL TRUSTEE**)
COMPANY LIMITED by its Attorney in)
the presence of:)

.....
Witness

.....
Name

SIGNED, SEALED and DELIVERED by)
THE HONOURABLE WILLIAM R)
BAXTER MP, Minister for Roads and Ports)
of the State of Victoria for an on behalf of the)
Crown in Right of the State of Victoria in the)
presence of:)

.....
Witness

.....
Name