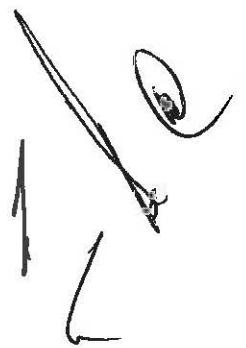


**DEBENTURE TRUST DEED**

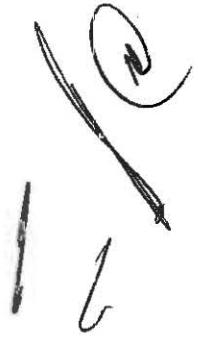
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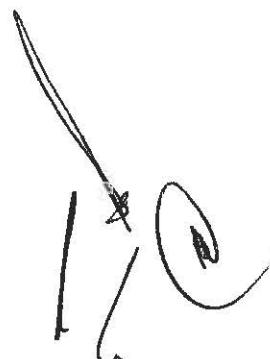
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## **ANNEXURES**

- ANNEXURE A - A SCHEME OF ARRANGEMENT BETWEEN INCOME PLAN RELATED PUBLIC AND PRIVATE COMPANIES AND THE TRUST RECORDED IN APPENDIX APPI TO THIS ARRANGEMENT DOCUMENT AND THEIR CREDITORS AND SHAREHOLDERS IN TERMS OF THE PROVISIONS OF SECTION 311 OF THE COMPANIES ACT, NO. 61 OF 1973, AS AMENDED, PROPOSED BY THE INCOME PLAN COMPANIES.
- ANNEXURE B - THE SCHEDULE, VALUES AND LINKAGES OF THE SPECIFIC COMPANIES TO THE DEBENTURE CLASSES.
- ANNEXURE C - SPREADSHEET DEPICTING THE LINE ITEMS COMPRISING OF EBDTA.
- ANNEXURE D - MEETINGS OF DEBENTURE HOLDERS.
- ANNEXURE E - CERTIFICATE OF DEBENTURE.
- ANNEXURE F - FORM OF ELECTION TO EXCHANGE DEBENTURES INTO ORDINARY SHARES.
- ANNEXURE G - DRAFT DIRECTORS RESOLUTION TO ISSUE DEBENTURES

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## **DEBENTURE TRUST DEED**

between

**THE RECEIVERS**

for

**SCHEME CREDITORS AND SCHEME SHAREHOLDERS**

and

**NOVA PROPERTY GROUP INVESTMENTS (PTY) LIMITED**

(Registration No: 2009/014997/07)

and

**NOVA PROPERTY GROUP HOLDINGS LIMITED**

(Registration No: 2011/003964/06)

and

**DEREK PEDOE COHEN**

(Identity No. 5111012 5126 089)

NOW THEREFORE THESE PRESENTS WITNESS:

### **Part I – Interpretation**

#### **1. Interpretation and preliminary**

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears:



**1.1** words importing:

- 1.1.1** any one gender includes the other two genders;
  - 1.1.2** the singular include the plural and *vice versa*; and
  - 1.1.3** natural persons include created entities (corporate or unincorporate) and *vice versa*;
- 1.2** Unless otherwise indicated in this Debenture Trust Deed, words and phrases defined in Annexure 1, shall have meanings attributed to such words and phrases.

**1.3** The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 1.3.1** "Act" means the Companies Act, 61 of 1973, as amended;
- 1.3.2** "company" means Nova Property Group Investments (Pty) Limited;
- 1.3.3** "debenture holders" means scheme shareholders and scheme creditors who qualify to participate under the Scheme and qualify for a specific class of debenture, as set out in clause 1.3.5 and Annexure B;
- 1.3.4** "EBDTA" means the nett pro-rata monthly income attributable to debenture holders nett of expenses (and nett of any provisions) before taxation,

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depreciation, and amortization of a company which has issued a specific class of debenture in terms of 1.3.5, which is attributable to that company;

- 1.3.5** "debentures" means exchangeable debentures to be issued by the company to scheme shareholders as envisaged in Annexure A of R1 each as follows:

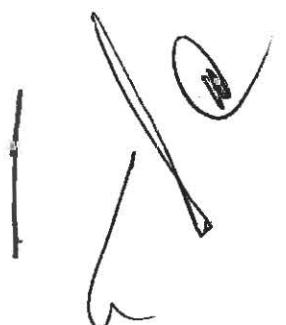
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| CLASS OF DEBENTURES | COMPANY / TRUST                                | VALUE [ R ]          |
|---------------------|--|----------------------|
| A                   | 148 Leeuwoort Street Property Investment Trust | 3,263,639            |
| B                   | De Marionette Holdings Ltd                     | 81,932,304           |
| C                   | Shopmakers Village Holdings Ltd                | 34,861,170           |
| D                   | Benoni Hyper Holdings Ltd                      | 84,239,718           |
| E                   | Centurion Hazel Holdings Ltd                   | 6,859,786            |
| F                   | Tarentaal Centre Holdings Ltd                  | 30,817,538           |
| G                   | Magalieskruin Holdings Ltd                     | 21,362,383           |
| H                   | Silverwater Crossing Centre Ltd                | 65,879,099           |
| I                   | Athlone Park Shopping Centre Ltd               | 64,346,357           |
| J                   | Waterglen Shopping Centre Holdings Ltd         | 64,528,776           |
| K                   | Carletonville Centre Holdings Ltd              | 32,994,211           |
| L                   | Flora Centre Holdings Ltd                      | 68,983,236           |
| M                   | Liberty Mall Holdings Ltd                      | 160,515,672          |
| N                   | Oxford Gate Holdings Ltd                       | 24,929,720           |
| O                   | Parkside Plaza Holdings Ltd                    | 64,188,831           |
| P                   | Range View Holdings Ltd                        | 15,381,931           |
| Q                   | Rivonia Square Shopping Mall Holdings Ltd      | 138,916,077          |
| R                   | The Village Holdings Ltd                       | 36,023,470           |
| S                   | Witbank Highveld Holdings Ltd                  | 100,091,419          |
| T                   | Lydenburg Pick 'n Pay Holdings                 | 11,609,187           |
| U                   | Nelspruit Hyper Holdings Ltd                   | 64,782,347           |
| V                   | Sharemax Platinum Two Development Fund Ltd     | 1                    |
|                     |  | <b>1,176,506,872</b> |

created by this deed (their aggregate value being R 1,176,506,872 (ONE BILLION, ONE HUNDRED AND SEVENTY SIX MILLION, FIVE HUNDRED AND SIX THOUSAND, EIGHT HUNDRED AND SEVENTY TWO RAND) with each debenture class receiving the EBDTA attributable to each class of debenture, as set out in Annexure B and Annexure C;



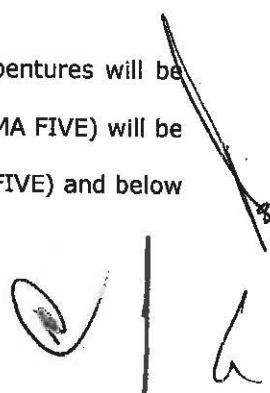
- 1.3.6** "exchanged debentures" means those debentures, either in part or in whole, to be exchanged by the debenture holders with Public NEWCO into ordinary shares of Public NEWCO;
- 1.3.7** "JSE" means the JSE Limited;
- 1.3.8** "SENS" means the Stock Exchange News Service.
- 1.3.9** "the prime rate" means the prime overdraft interest rate as quoted by Standard Bank from time to time, nominal annual compounded monthly in arrears;
- 1.3.10** "ordinary shares" means the issued ordinary shares to be issued to debenture holders who wish to acquire such shares in Public NEWCO by exchanging such debentures with Public NEWCO.
- 1.3.11** "ordinary resolution" means a resolution passed at a properly constituted meeting of debenture holders, upon a show of hands, by a majority of the debenture holders present in person and voting thereat, or, if a poll is duly demanded, by a majority of the votes cast at such poll by debenture holders present in person or by proxy in terms of Annexure D;

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- 1.3.12** "register" means the register or, as the case may be, registers of debenture holders maintained by the company in terms of the Act;
- 1.3.13** "special resolution" means a resolution passed at a properly constituted meeting of debenture holders, upon a show of hands, by a majority consisting of not less than 75% (SEVENTY-FIVE PERCENT) of the debenture holders present in person and voting thereat, or, if a poll is duly demanded, by a majority consisting of not less than 75% (SEVENTY-FIVE PERCENT) of the votes cast at such poll by debenture holders present in person or by proxy in terms of Annexure D;
- 1.3.14** "capital" means the value of scheme shares, shareholder interests and shareholder linked financial interests constituting the debenture capital as set out in Annexure A.
- 1.3.15** "this deed" or "Trust Deed" includes the Annexures hereto;
- 1.3.16** "trustee" means DEREK PEDOE COHEN and his successors in title, and any future trustee appointed under this deed, whilst acting in that capacity;
- 1.3.17** "Public NEWCO" means Nova Property Group Holdings Limited;
- 1.3.18** "the receivers" means Johannes Frederick Klopper and Cornelius Fourie Myburgh, or any person appointed by the North Gauteng Court, Pretoria to act

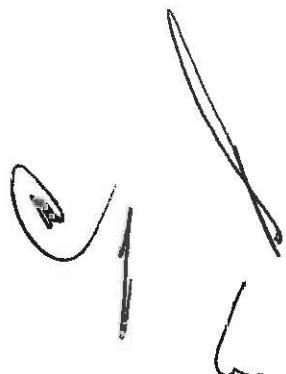
as receivers for scheme creditors and scheme shareholders under the scheme, acting jointly.

- 1.4 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.6 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.8 schedules or Annexures to this deed shall be deemed to be incorporated in and form part of this deed;
- 1.9 all decimals of a cent arising in any final calculation in respect of debentures will be rounded to the nearest cent. Decimals in excess of 0,5 (NOUGHT COMMA FIVE) will be rounded up to the nearest cent and decimals of 0,5 (NOUGHT COMMA FIVE) and below will be rounded down to the nearest cent.

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**Part II – CREATION OF AND SUBSCRIPTION FOR AND TERMS OF DEBENTURES****2 CREATION OF THE DEBENTURES**

- 2.1** The company hereby creates the debentures.
- 2.2** The debentures shall bear no interest, other than arrear interest, with each debenture class receiving the EBDTA from the specific company, specified in Annexure B.
- 2.3** The debentures shall be issued at R1 per debenture to the debenture holders.
- 2.4** The capital amount of the debentures to the company assuming that all the debentures are issued is R 1,176,506,872 (ONE BILLION, ONE HUNDRED AND SEVENTY SIX MILLION, FIVE HUNDRED AND SIX THOUSAND, EIGHT HUNDRED AND SEVENTY TWO RAND) as aforesaid with no amounts other than payments of the EBDTA, repayments of the capital and arrear interest payment being made to the debenture holders.
- 2.5** The company shall issue to debenture holders, certificates for the debentures in the form of Annexure E to this deed within 90 (NINETY) calendar days after the effective date.

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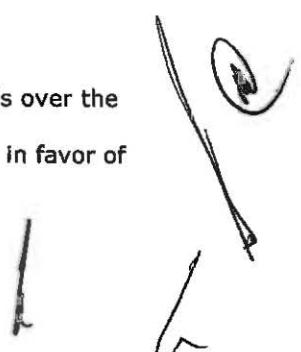
- 2.6** Only debenture holders registered as such on a relevant record date shall be entitled to the payment of EBDTA, repayment of capital and payment of arrear interest. In that regard, to the extent that the debentures are listed on an exchange:
- 2.6.1 the company shall, not less than 15 (FIFTEEN) business days before any record date (or such shorter period as may be permitted or prescribed by the JSE and/or the relevant exchange), publish a notice of such record date on SENS and/or on any other news service of the relevant exchange and in at least one English Johannesburg daily newspaper and such other publications as may be required by the JSE or the relevant exchange on which the debentures are listed, provided that if the JSE or such other exchange dispenses with any such notice requirement, the company shall also, with the written consent of the trustee, be entitled to dispense therewith; and,
- 2.6.2 provided that the prior written approval of the JSE (or the relevant exchange on which the debentures are listed) has been obtained, the directors of the company may, in their sole discretion, close the register for a period not exceeding ten business days subsequent to each record date.
- 2.7** Any amounts not paid on a due date therefore, shall bear interest from such date up to the date of payment (excluding date of payment), calculated and compounded on a daily basis at the prime rate plus 2%.
- 2.8** The EBDTA, the capital and arrear interest may be paid or repaid by cheque sent through the post or electronic transfer to the registered address or designated bank account, as the case may be, of the debenture holder or, in the case of the joint

holders, to the registered address or designated bank account of that joint holder whose name appears first on the register or to such person and to such address or designated bank account as the debenture holder or first named joint holder may, in a manner acceptable to the company, in writing direct, provided that the company shall not be responsible for any loss in transmission and the postal authorities or its bank shall be deemed to be the agent of the debenture holder for the purpose of all such payments. Payment of the cheque or proof of the electronic payment shall be a valid discharge of the company, the receivers and the trustee.

- 2.9** To the extent practicable and permissible in terms of the rules of the JSE and/or the relevant exchange on which the debentures may be listed, payment to the debenture holder may however be effected by any other means as may be agreed in writing between the debenture holder and the company including payment by electronic transfer into a designated account, provided that the company shall not be responsible for any loss in transmission or errors in banking such payment.
- 2.10** All debentures no matter when issued, shall rank pari passu in all respects.
- 2.11** The issue or cancellation of debentures to be governed by his deed shall be subject to the written consent of the trustee, which consent shall not unreasonably be withheld or delayed.

### **3 ISSUE OF DEBENTURES**

- 3.1** The issue of debentures is subject to the registration of the covering bonds over the properties owned by the companies listed in Annexure B, by the company in favor of

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the class of debenture holders forthwith after the effective date but prior to the issue of the debentures.

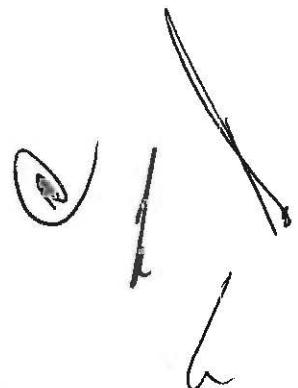
- 3.2** The special resolution for the creation of the debentures in the company being duly passed by the requisite majority of members in terms of S43(6) of the Companies Act, No. 71 of 2008 which resolution forms part of the scheme documents constituting the scheme.
- 3.3** The requisite directors' resolution being passed authorizing the issue of the debentures in the company in terms of S43(6) of the Companies Act, No. 71 of 2008 in the form set out in Annexure G.

#### **4 OBLIGATION TO PAY CAPITAL**

The company binds itself to pay to the debenture holders or to the trustee on behalf of and in trust for such holders, the respective sums which, at the company's option, shall become due to such debenture holders for capital and the EBDTA on the debentures in terms of this deed.

#### **5 EBDTA**

The timing of all payments of EBDTA in respect of debentures during the course of the company's financial year will be at the company's sole and absolute discretion.

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**6. REDEMPTION**

**6.1** The debentures shall become repayable in full at the election of the company together with the receivers approval within a period of 1 (ONE) to 10 (TEN) years from the effective date.

**6.2** Upon any class of debenture becoming repayable, either in part or in whole, in terms of clause 6.1 above, each relevant debenture holder shall be entitled to receive:

6.2.1 the nominal value, either in part or in whole, of the debentures held by the debenture holder; plus

6.2.2 any EBDTA determined in accordance with clause 5 accrued and unpaid on the particular class debenture(s) held by such holder, whether due and payable or not, calculated for the period commencing on the day immediately following the last day of the last EBDTA payment and ending on the day immediately preceding the date of repayment of the capital, whether in part or in whole, of the particular class of debenture(s) (both days inclusive), together with, if applicable, any arrear interest payable at the prime rate plus 2% (TWO PERCENT).

**6.3** Subject to clause 8.4 below, the debentures shall be redeemable as follows:

6.3.1 All or some of the debentures shall be redeemable, either in whole or in part, at the written instance of the company, with the written approval of the receivers and the trustee notwithstanding the date on which any of the debentures are issued before

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- 6.3.1.1 the 10<sup>th</sup> (TENTH) anniversary of the election date by the company with the receivers approval in respect of such redemption; or
- 6.3.1.2 any date on which the company elects with the receivers and the trustee's written approval to redeem some or all of the debentures; or
- 6.3.1.3 upon the written approval of the receivers and the trustee in clause 6.3.1, some or all of the debentures shall be redeemed by the company at their nominal value, either in part or in whole, on the last Friday (or if that day is not a business day, the immediately preceding business day) 90 (NINETY) calendar days after which the written approval of the receivers is granted. Any redemption so made by the company shall have the effect of cancelling or the debentures redeemed, which shall be deemed to have been repaid in full by the company. Such debentures may not be re-allotted or reissued. In the event that the company partially redeems some or all of the debentures, then the company shall re-allot and reissue new debentures to the debenture holders in respect of the unredeemed portion within 90 (NINETY) calendar days after the date of such partial redemption; and,
- 6.3.1.4 the procedure to be followed by the company in regard to the partial or full redemption of debentures shall be determined by the company at the appropriate time and be approved in writing by both the receivers and the trustee, whose approval shall not unreasonably be withheld or delayed, and, by the JSE or such other exchange on which the debentures are listed; and
- 6.3.1.5 not less than 90 (NINETY) calendar days written notice of any capital redemption, either in part or in whole, shall be given to the specific debenture holders prior to any such redemption being affected.

- 6.4** If the debentures are listed on the JSE and/or any other exchange then any redemptions of debentures either in whole or in part, shall be affected in accordance with the timetable determined in terms of the Listings Requirements of the JSE and/or such other exchange.
- 6.5** Subject to the receivers and the trustee's written approval, the company or its nominee shall have the right at any time (subject to compliance with the Listings Requirements of the JSE and/or such other exchange and the Act, as the case may be) to purchase debentures. Purchases shall not be made by the company or its nominee at a price that is higher than the market price. Any purchase so made by the company shall have the effect of cancelling the debentures purchased, which shall be deemed to have been repaid in full by the company. Such debentures may not be reallocated or reissued. The company shall advise the trustee and the receivers promptly in writing in respect thereof.
- 6.6** Any capital redemption may be repaid by cheque sent through the post or electronic transfer, as the case may be, to the registered address or designated bank account of the debenture holder or, in the case of joint holders, to the registered address or designated bank account of that joint holder whose name appears first on the register or to such person and to such address as the debenture holder or first names joint holder may, in a manner acceptable to the company, in writing direct, provided that the company shall not be responsible for any loss in transmission and the postal authorities and its bank shall be deemed to be the agent of the debenture holder for the purpose of all such payments. Payment of the cheque or proof of electronic payment shall be a valid discharge of the company, the receivers and the trustee.
- 5.7** To the extent practicable and permissible in terms of the rules of the JSE and/or the relevant exchange on which the debentures may be listed, payment to a debenture holder may however be effected by any other means as may be agreed in writing

between the debenture holder and the company including payment by electronic transfer into a designated account, provided that the company shall not be responsible for any loss in transmission or errors in banking such payment.

## **7 EXCHANGE**

- 7.1** Debenture holders may within 90 (NINETY) calendar days after the effective date elect in terms of the Election Form contained in Annexure G, to exchange some or all of their debentures in Public NEWCO each with a nominal value of R0,00001 (ONE THOUSANDTH OF ONE CENT). The number of shares in Public NEWCO to be issued to the electing scheme shareholders are to be calculated by Public NEWCO, under the supervision of the receivers, with reference to the market value, at the time, of all the assets of Public NEWCO and the pro-rata value of the shareholder interests and the shareholder linked financial interests of such shareholder having made such election, in accordance with the formula recorded in Appendix "ARR8" of Annexure A and furthermore in terms of the scheme.
- 7.2** On receipt of the original Election Form contained in Annexure G, the company will forthwith procure transfer the exchanged debentures into the name of Public NEWCO and issue the correct number of ordinary shares in the name of the debenture holder. On registration of such exchanged debentures into the name of Public NEWCO, the company shall be entitled to cancel such debentures.
- 7.3** Each debenture holder completing the Form of Election as contained in Annexure G and delivering same to the company within the stipulated period after the effective date shall be deemed to have authorized the trustee irrevocably as his agent to enter

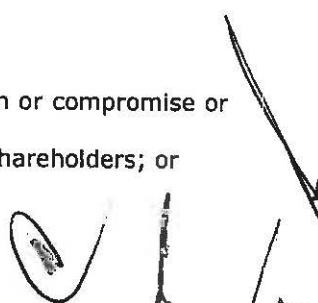
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into an agreement with Public NEWCO and the company in terms of which the relevant debenture(s) is lawfully exchanged to comply with any other action or deed which may be required in order to transfer ownership in the debenture(s) and to register the ordinary shares in the name(s) of the debenture holder.

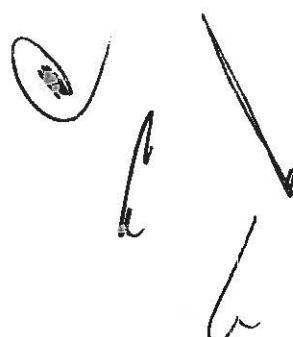
## **8. SUMMARY REPAYMENT OF DEBENTURES**

**8.1** The debentures shall become immediately repayable on any of the following events:

- 8.1.1 a breach of any obligation under this deed, which cannot be remedied, and fails, within 21 (TWENTY ONE) calendar days after receipt by it of a written notice from the trustee, given in the manner prescribed herein, requiring it to do so to initiate and thereafter to pursue reasonable steps designed to prevent its recurrence; or,
- 8.1.2 any breach of any obligation under this deed, which can be remedied, and fails within 21 (TWENTY ONE) business days or such longer period as may reasonably be required in the circumstances, after receipt by it of a written notice from the trustee, given in the manner prescribed in clause 8.1.1, requiring the breach to be remedied, to remedy the breach;
- 8.1.3 the company:
  - 8.1.3.1 disposes of or attempts to dispose of the whole or substantially the whole of its undertaking or the whole or the greater part of its assets other than in the normal course of business; or,
  - 8.1.3.2 offers or agrees to enter into any general composition or compromise or arrangement with all or some of its creditors and/or shareholders; or

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- 8.1.3.3 defaults or threatens to default in the payment of its liabilities generally;
- 8.1.3.4 makes any alteration to the provisions of its memorandum or articles of association, provided that the above clauses shall not apply if the event in question:
  - 8.1.3.5 in the reasonable opinion of the trustee, does not adversely affect the interests of the debenture holders, or
  - 8.1.3.6 is sanctioned by a debenture special resolution;
- 8.1.4 an order is made placing the company under business rescue proceedings, provisional or final liquidation; or
- 8.1.5 any material assets of the company are attached under a writ of execution issued out of any court of competent jurisdiction in the Republic of South Africa as a result of a final judgement against the company and the writ is not satisfied or set aside within 21 (TWENTY ONE) calendar days after the attachment has come to the notice of the board of directors of the company; or
- 8.1.6 the company ceases to carry on its business; or
- 8.1.7 the company defaults in the discharge of any liability which is material in relation to the business of the company no bona fide dispute between the company and the creditor in question exists.

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**8.2** For the purposes of 8.1:

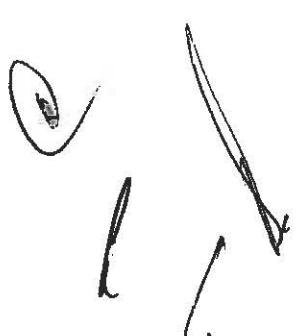
- 8.2.1 an order of court shall not be deemed to be final unless, being appealable, the period for noting such appeal has lapsed without an appeal being noted or having been noted, the appeal is dismissed, abandoned or not proceeded with within the the period prescribed by the Rules of Court as amended, if at all, by the Court; and,
- 8.2.2 any attachment referred to in clause 8.1.5 shall be deemed to have come to the notice of the board of directors of the company, within 21 (TWENTY ONE) calendar days of being made, unless the contrary shall be shown. The period of 21 (TWENTY ONE) calendar days referred to in clause 9.5 shall be extended, pending any proceedings begun to set aside that writ or remove the attachment, until 21 (TWENTY ONE) calendar days after a final and unappeasable judgement refusing that setting aside or removal. The term "writ of execution" in clause 8.1.5 does not include a writ of attachment "*ad fundandam jurisdictionem*" or "*ad confirmandam jurisdictionem*".
- 8.3 Upon the happening of any of the events referred to in clause 8.1, the trustee may, in its discretion, require the debentures together with outstanding EBDTA for a particular period and any interest accrued thereon, to be repaid immediately and may, in addition, enforce the powers contained in this deed by giving written notice to the company to that effect and the trustee shall be bound to give such notice if required to do so by a debenture special resolution. The trustee shall further be entitled to take legal action, to enforce the provisions hereof.
- 8.4 The trustee shall be entitled, before carrying out the directions of debenture holders, to require that the debenture holders furnish him with sufficient monies into a separate bank account under his control to enable him to meet the expense of giving effect to such directions. All debenture holders will be bound by this clause 8.4. In

the event of the initial monies not being sufficient to cover such expenses then the trustee will be entitled to require the debenture holders to furnish him with further monies for this purpose.

- 8.5** Notwithstanding any provisions of this deed to the contrary and without limiting the provisions of clause 8.3, the trustee shall have a discretion not to act in terms of clause 8.3, if, on receipt by the company of the notice referred to in clause 8.1.2, the default or breach complained of is remedied in such manner that, in the trustee's sole and absolute opinion, the debenture holders will not be prejudiced by non enforcement of the trustee's rights in terms of clause 8.3.
- 8.6** The trustee shall not be required to take any steps to ascertain whether any event, upon the happening of which the debenture is liable to become repayable, shall have occurred and unless and until the trustee shall have knowledge or shall have been served with express written notice of such happening in the manner prescribed in clause 8 the trustee shall be entitled to assume that no such event has taken place.
- 8.7** Subject to the provisions of section 123 of the Act, the trustee shall not be responsible for any loss to any other person resulting from the exercise or non exercise of the powers, authorities or discretions vested in the trustee in terms of this deed.
- 8.8** A debenture holder shall not be entitled to enforce his rights under his deed, but all rights of enforcement shall vest in the trustee in accordance with the provisions of this deed.

## **9 OBLIGATIONS OF AND RESTRICTIONS ON THE COMPANY**

The company hereby undertakes in favour of the trustee that it shall:



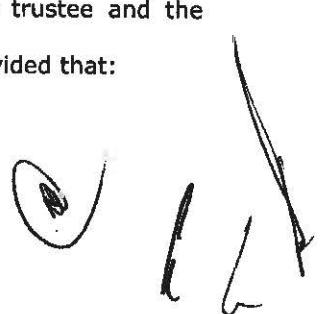
- 9.1** properly keep the books of account of its business transactions and operations;
- 9.2** forward to the trustee copies of the audited annual financial statements of the company (Including the EBDTA calculations and group financial statements, if any,) within 2 (TWO) months after the company's financial year end and the quarterly management accounts of the company in a format acceptable to the trustee within a period of 30 (THIRTY) calendar days after the end of each financial year quarter;
- 9.3** execute and attend to all deeds, documents and things which the trustee may reasonably require to enable the trustee to carry out the duties, powers and provisions contained in this deed;
- 9.4** provide the trustee with such information or extracts, certified by the company's auditors if so required by the trustee, from the books, records and documents of the company as may reasonably be required by the trustee to carry out its duties, and any such certificate or extract shall be conclusive evidence of the information contained therein;
- 9.5** within 21 (TWENTY ONE) business days after the payment of any amount under the debenture, furnish the trustee with a certificate signed by the secretary or a director of the company stating whether or not all payments due on the relevant debentures have been duly made. The trustee shall be entitled to accept the contents of such certificate as being correct without being obliged to verify same;
- 9.6** conduct its affairs in a proper and businesslike manner and shall not, without the prior sanction of a debenture special resolution:
  - 9.6.1** modify, alter or vary any of the rights or restrictions attaching to the debentures and the authorized share capital of the company, if any;

- 9.6.2 reduce, repay or distribute any part of the share capital, share premium or the reserves of the company;
  - 9.6.3 amend its articles of association if such amendment would result in an increase in the borrowing powers of the company; or
  - 9.6.4 alienate the business of the company or the whole or the greater part of the assets of the company.
- 9.7 notify the trustee immediately, in writing, if any breach of any provision of this deed.

## **10 FURTHER RIGHTS OF DEBENTURE HOLDERS**

- 10.1 If at any time after the date of signature of this deed, the company:
- 10.1.1 converts its ordinary shares into shares having a par value; or
  - 10.1.2 consolidates or sub divides its ordinary shares; or,
  - 10.1.3 undertakes a capitalization issue of ordinary shares to its ordinary shareholders

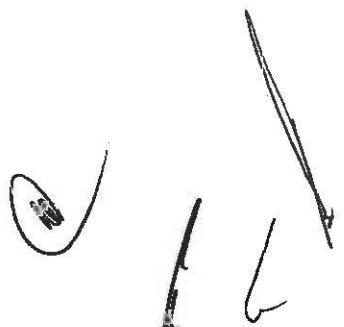
then the rights of debenture holders to payment on their debentures in terms of clause 8 and to the amount repayable on the debentures in accordance with clause 8 shall, if applicable, be adjusted. Such adjustment shall be calculated forthwith by the auditors of the company, at the company's cost, and shall be subject to the written approval by the trustee and the receivers, which approval shall not unreasonably be withheld or delayed, provided that:



- 10.1.4 the company shall not undertake a capitalization issue to its ordinary shareholders and any other equity shareholders who may be entitled thereto, of securities other than ordinary shares, or a capitalization issue which is paid up, without the prior written consent of the trustee and the receivers, which consent shall not unreasonably be withheld and shall not be withheld if the proposed capitalization issue does not adversely affect the interests of debenture- holders; and,
- 10.1.5 the company shall forthwith notify the debenture holders by a circular, to be approved by the trustee, of the extent, nature and effect of the adjustments made and approved.
- 10.2** If at any time after the date of signature of this deed the company proceeds with a rights offer of further debentures in terms of this deed, then such rights offer shall be made to the debenture holders.

## **11 MEETINGS AND POWERS OF DEBENTURE HOLDERS**

- 11.1** The provisions with regard to meetings of debenture holders shall be as set out in Annexure D.
- 11.2** Every director, the secretary of the designated professional advisors of the company, as well as the receivers and any other person authorized in writing by the company and approved of by the trustee may attend and speak at a meeting of debenture-holders.

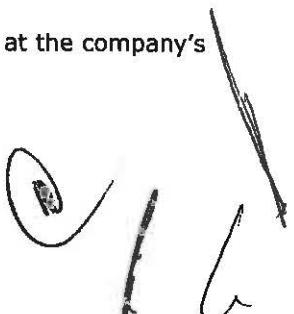
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- 11.3** A resolution duly passed at a meeting duly convened and held in accordance with the provisions of Annexure D, shall be binding upon the debenture holders, the company, the receivers and the trustee.
- 11.4** The debenture holders shall, in addition to the powers given elsewhere in this deed and without derogating from the powers conferred on the trustee by this deed, have the following powers which may only be exercised by debenture special resolution:
- 11.4.1 to bind the debenture holders to any compromise or arrangement to be made between the company, the receivers and the debenture holders or any of them;
- 11.4.2 to agree to any variation or modification of any of the rights of the debenture-holders, in each case subject to the written consent or concurrence of the company, the receivers and the trustee, and;
- 11.4.3 subject to section 123 of the Act, to discharge or exonerate the trustee from liability in respect of any specific breach of trust.

#### **PART IV – THE TRUSTEE**

#### **12 ADDITIONAL POWERS OF TRUSTEE**

- 12.1** The trustee shall have at all times the following powers in addition to the powers by law conferred on trustees:
- 12.1.2** Power to take and act upon any expert or professional advice at the company's or debenture holder's cost, as the case may be;

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- 12.1.3** Power to demand, claim, sue for and recover from the company any moneys, costs, charges or expenses (with interest thereon compounded monthly in arrear at the prime rate plus 2% (TWO PERCENT) paid or incurred by the trustee in satisfying any liability incurred by it in the execution of any of the trusts, powers and provisions of this deed or in satisfying any obligations which the company and/or its subsidiaries has failed to discharge in terms of this deed;
- 12.1.4** Power to delegate any person to perform all or any acts or exercise all or any discretions which it is entitled to perform or exercise under this deed;
- 12.1.5** Power to borrow money on behalf of the debenture holders and chargeable against any capital, EBDTA and interest accruing to the debenture holders, for the purpose of providing funds which in the trustee's opinion are reasonably necessary to enable it to exercise any powers conferred by this trust deed;
- 12.1.6** The trustee shall not be bound to exercise and shall not be liable for the non-exercise of any such power unless it has a direction of the debenture holders given by ordinary resolution requiring it to exercise such power but it may exercise any power if it so determines without such direction, then the trustee shall convene a meeting of debenture holders to enable any such direction to be given;
- 12.1.7** The powers contained in this clause shall be in addition to the powers exercisable by the trustee in terms of the other provisions of this deed.

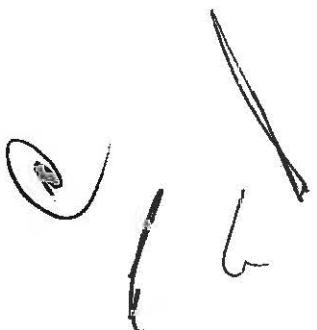
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**13 POWER OF ATTORNEY AND REIMBURSEMENT**

- 13.1** The company appoints the trustee with power of substitution to be its attorney and agent irrevocably and *in rem suam* to do all acts and things which the trustee is entitled to do on its behalf under the terms of this deed.
- 13.2** The company shall be liable for and shall pay to the trustee on demand any moneys expended by him in accordance with the powers granted to it under this deed, and all costs, charges, expenses and liabilities incurred by him in the execution of any of the trusts, powers and provisions contained in this deed, together with interest on such moneys at the rate of the prime rate plus 2% (TWO PERCENT) from the date of expenditure to the date of repayment.

**14 POWER OF TRUSTEE TO CONTRACT**

The trustee shall not by reason of its fiduciary position be precluded from making any contract or entering into any transaction with the company or the receivers in the ordinary course of the profession or business of the trustee or from acquiring or holding any of the debentures either directly or indirectly.

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**15 CESSATION OF OFFICE OF THE TRUSTEE AND APPOINTMENT OF A NEW TRUSTEE**

**15.1** The trustee shall remain in office until it ceases to hold office in terms of clause 15.2.

**15.2** The trustee shall cease to hold office if:

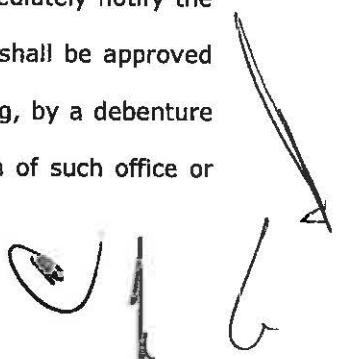
15.2.1 he resigns having given at least 60 business days' written notice to the company in the manner prescribed herein. Such resignation shall be effective without any leave of any Court or any other person. At the expiration of such period of notice the trustee shall be discharged from the trusts hereof and shall not be responsible for any loss or costs occasioned by its resignation; or,

15.2.2 he becomes disqualified in law to hold the office of trustee; or,

15.2.3 is removed from office by a debenture special resolution; or,

15.2.4 his estate is provisionally or finally sequestrated or surrendered as involvent or his person or property is placed under curatorship.

**15.3** Upon the termination of office of a trustee, the company shall immediately notify the debenture holders and nominate a new trustee, which nomination shall be approved by debenture holders at a meeting convened as an ordinary meeting, by a debenture special resolution, within 90 (NINETY) business days of termination of such office or



such additional period as may be reasonable in the circumstances. In the event of the company failing, within a reasonable time, to nominate a person approved by debenture holders, the debenture holders may themselves, by debenture ordinary resolution, make such appointment.

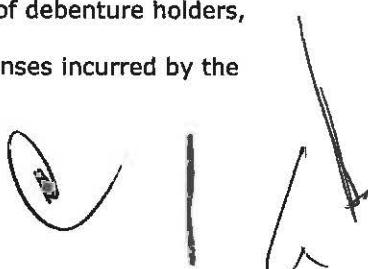
- 15.4** Upon the appointment of a trustee in place of a former trustee, the new trustee shall, by notice in writing to the company, signify its acceptance of the appointment and shall thereafter be vested with all the rights, powers, authorities and privileges and be subject to all the trusts and obligations set out in this deed, as if it has originally been appointed trustee, other than any liability for breach of trust by any former trustee. The provisions of clause 15.1 and 15.2 shall apply to every successive trustee.

## **16 TRUSTEE'S FEES**

- 16.1** Before the effective date, in consideration for the services to be rendered by the trustee to the company in terms of this deed, the company shall confirm in writing to the trustee a monthly fee acceptable to the trustee in respect of his duties and responsibilities in terms of this deed. Such fee will be reviewed and adjusted annually by the company and the trustee taking into account inflation and other factors influencing this fee.

- 16.2** In addition to the aforementioned fees, the company shall pay the trustee:

- 16.2.1 a reasonable fee for arranging and attending meetings of debenture holders, as well as the reimbursement of any out of pocket expenses incurred by the

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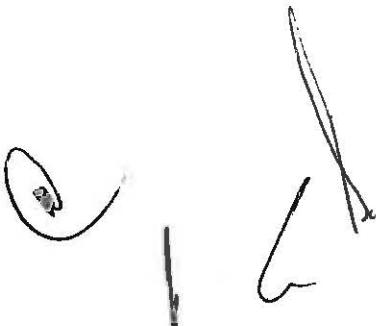
trustee in respect thereof (unless requisitioned by or otherwise called at the instance of the debenture holders);

16.2.2 for undertaking exceptional work not normally undertaken by trustees; and,

16.2.3 all travelling and other expenses and disbursements of any nature which the trustee may reasonably incur in carrying out his duties in terms hereof (notwithstanding the appointment of a liquidator or any judgement which the trustee or one or more of the debenture holders may obtain against the company).

## **17. INDEMNITY**

Subject to the provisions of section 123 of the Act the company and the debenture holders indemnify the trustee and any officer, employee or representative of the trustee against all proceedings, claims, costs or demands of any nature whatever in respect of anything done or not done in terms of this deed, including, but not limited to, any liability arising out of any mistake or error of judgment of the trustee or any other person that the trustee may employ or utilize to assist him in discharging his duties and responsibilities in terms of this deed.

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**18. GENERAL PROVISIONS REGARDING THE TRUSTEE'S DISCRETIONS AND RESPONSIBILITIES**

- 18.1** Subject to the indemnity provisions of this deed and to any particular provisions of this deed fettering the trustee's powers and discretions, the trustee shall, as regards all the trusts, powers, and discretions vested in it, have absolute discretion as to the exercise or non-exercise thereof and in the absence of fraud shall not be responsible for any loss, costs, damages or inconveniences that may result from the exercise or non-exercise thereof. In particular the trustee shall not (despite any other provisions of this deed) be bound to act at the request of the debenture holders unless the trustee shall first be sufficiently indemnified, by the persons requiring it to act, against (and, in so far as it may reasonably require, provided with funds to enable it to meet) all costs, charges, expenses and liability to be incurred in complying with such request.
- 18.2** The trustee shall not be responsible for any action which it may take pursuant to a resolution purported to have been passed at a meeting of the debenture holders which it believes to have been properly and correctly passed even should it afterwards appear that such resolution is not in fact binding or valid by reason of a defect in the convening of the meeting or in proceedings thereat or otherwise.
- 18.3** Insofar as the provisions of this deed require the trustee not unreasonably to withhold its consent or approval in respect of any matter or thing, the onus of establishing unreasonableness on the part of the trustee shall rest on the party which alleges any such unreasonableness.

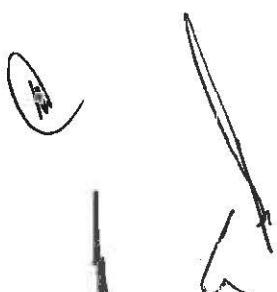
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**Part V – Company's further duties****19 STOCK EXCHANGE LISTING FOR THE DEBENTURES**

The company shall not be obliged to apply for a listing in respect of the debentures in terms hereof.

**20 INDULGENCE**

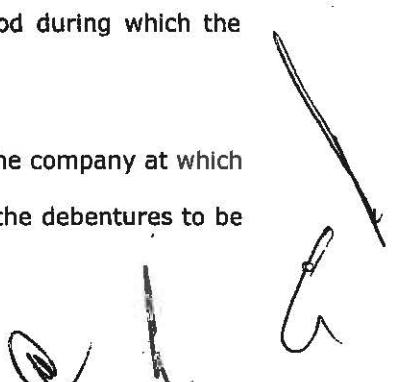
The company shall not be released from any of its obligations under this deed by reason of any indulgence extended to it by the trustee or by the debenture holders for the payment of any sum of money then due or for the fulfillment of any other obligation by it, nor in respect of any act or deed of the trustee in the exercise of any of the trusts, powers, authorities or discretions vested in the trustee by this deed or by anything the debenture holders or the trustee may omit or neglect to do, whether by act or deed or howsoever, which, but for this provision, would operate to release or discharge the company.

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**Part VI – Register and transfer of debentures****21 REGISTER OF DEBENTURES**

- 21.1** The company shall cause a register of debentures to be kept of the names, addresses and descriptions of and the debentures held by the holders of the debentures in compliance with the law. A duplicate of the register shall be prepared and lodged with the trustee and the receivers and the company shall from time to time provide the trustee and the receivers with particulars of any alterations in or additions to the register of which particulars the trustee shall make the necessary alterations in or additions to the duplicate register.
- 21.2** The register may be closed during such period or periods (not exceeding 60 (SIXTY) business days in any year) as may be specified in the articles of association of the company, provided that the first day of any period of closure for the purpose of determining the debenture holders entitled to EBDTA, interest or capital redemptions shall always be a Saturday so that the last day for registration of transfers before that closure shall be a Friday or if the Friday is a public holiday the preceding business day.

**22 TRANSFER OF DEBENTURES**

- 22.1** The registration of transfers may be suspended during any period during which the register of debenture holders is closed.
- 22.2** Every instrument of transfer shall be left at the transfer office of the company at which it is presented for registration, accompanied by the certificate of the debentures to be
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transferred and/or such other evidence as the company may require, to prove the title of the transferor or his rights to transfer the debentures. All authorities to sign transfer deeds granted by debenture holders for the purpose of transferring debentures, which may be lodged, produced or exhibited with or to the company at any of its proper offices shall, as between the company and the grantor of such authorities be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at each of the company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notice, the company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the company as being in order before the giving and lodging of such notice.

### **Part VII – Notice and meetings of debenture holders**

#### **23 NOTICES**

- 23.1** All notices may be given by the company or the trustee to any debenture holder either personally or by sending the notices through the post in a prepaid letter addressed to such debenture holder (or the first named holder in case of joint holders) at his registered address or to such other person or address as he may direct and any notice, if served by post shall be deemed to have been served when the letter containing the same was put into the Post Office, and in proving such service it will be sufficient to prove that such letter was properly addressed and put into the Post Office.
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**23.2** Wherever in the preceding provisions of this deed, it is provided that any communication or notice shall or may be sent to the company by post (whether registered, certified or otherwise), such notice or communication may in the alternative be physically delivered to the company at its registered office.

#### **24 MEETINGS OF DEBENTURE HOLDERS**

The provisions with regard to meetings of debenture holders and the powers of the holders are as set forth in Annexure D.

#### **Part IX – General**

#### **25. APPLICABLE LAW**

This deed shall be governed and interpreted by the substantive laws of South Africa (and if the prescription laws of South Africa are not considered to be substantive laws thereof, by the prescription laws as well).

#### **26 AMENDMENT OF TRUST DEED**

**26.1** Save as provided in clause 28.2 the terms of this deed may be amended with either:

26.1.1 the consent in writing of the holders of 75% (SEVENTY-FIVE PERCENT) of the debentures; or

- 26.1.2 the sanction of a special resolution of debenture holders.
- 26.2** The terms of this deed may be amended by agreement between the trustee, the company and the receivers:
- 26.2.1 to such extent only as may be necessary to comply with the requirements of the JSE and/or such other exchange if the debentures are or are to be listed;
- 26.2.2 in the correction of any manifest typographical or descriptive error.
- 26.3** Amendment of this deed before any debentures are issued shall not require any consent under clause 26.1.

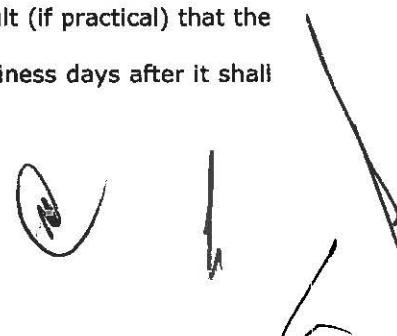
**27 COSTS**

The company shall pay all legal costs and charges incidental to the preparation of this deed, and all other legal and professional work, reasonably and necessarily incurred in regard to the creation of the debentures and the issue of the debentures.

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**28 ARBITRATION**

- 28.1** In the event of any difference, dispute or deadlock arising at any time between the company and the trustee in regard to any matters referred to in, arising from or in connection with, this deed or, without limiting the generality aforesaid, any breach thereof or its validity, or the legal interpretation to be applied thereto, then either the company or the trustee shall have the right to demand that such difference, dispute or deadlock be submitted to and determined by arbitration in accordance with the following provisions:
- 28.1.1 the arbitration shall be held in Johannesburg;
- 28.1.2 there shall be one arbitrator who shall be agreed upon between the company and the trustee; failing agreement within 5 (FIVE) business days of the arbitration being demanded, either the company or the trustee shall be entitled to require the appointment of an arbitrator by the Chairman for the time being of the Johannesburg Bar Council who, in making his appointment, shall have regard to the nature of the dispute in question;
- 28.1.3 the arbitration shall be conducted according to such procedure as shall be laid down by the arbitrator, provided that:
- 28.1.3.1 such procedure shall be designed to have the result (if practical) that the arbitration be completed within 20 (TWENTY) business days after it shall have been demanded;

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28.1.3.2 the arbitration shall be conducted in a summary manner;

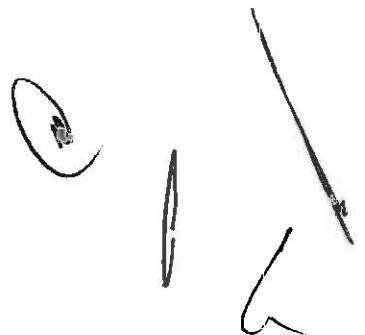
28.1.3.3 the arbitrator shall be entitled to dispense with the rules of procedure and discovery, to the extent that he deems this necessary so as not to delay the expeditious conclusion of the proceedings, but he shall observe the rules of evidence.

**28.2** The decision of the arbitrator shall be final and binding on the company and the trustee and shall be carried into effect. The arbitrator's award may be made an order of any court of competent jurisdiction.

**28.3** This clause 29 shall be severable from the rest of this deed and remain effective even if this deed is cancelled or terminated.

**29 AUTHORITY**

In entering into this deed the company is represented by the signatory hereto on its behalf who is one of its directors and whose full names appear below its signature. That director is authorised hereto by a resolution (a certified copy whereof is hereto annexed) passed at a meeting of its board of directors held upon the date shown in the said certified copy.

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**30 DOMICILIUM AND NOTICES**

**30.1** The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

30.1.1 the receivers:

1st Floor, Building B  
Peter Place Park  
54 Peter Place  
Bryanston  
2021

30.1.2 the company:

105 Club Avenue  
Waterkloof Heights  
Pretoria  
0181.

30.1.3 Public NEWCO:

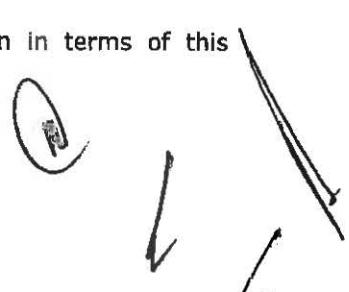
105 Club Avenue  
Waterkloof Heights  
Pretoria  
0181.

30.1.4 the trustee:

Ground Floor,  
Fredman Towers,  
13 Fredman Drive,  
Sandton  
2196

and shall be marked "For the attention of the trustee of the holders of exchangeable debentures in Nova Property Investments (Pty) Limited":

**30.2** Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.



**30.3** Either party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that the change shall become effective on the seventh day from the deemed receipt of the notice by the other party.

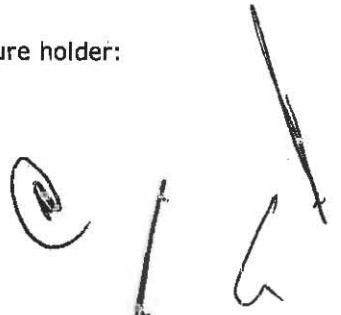
**30.4** Any notice to a party:

30.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to its at its *domicilium citandi et executandi* shall be deemed to have been received on the seventh business day after posting (unless the contrary is proved);

30.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

**30.5** Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**30.6** Any notice required to be given in terms of this deed to any debenture holder:

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- 30.6.1 shall be given at the debenture holder's address as shown in the register;
- 30.6.2 in the case of joint holders, shall be notice to all those joint holders if the notice is given to the debenture holder whose name stands first in the register;
- 30.6.3 shall be given by posting it by ordinary mail to that debenture holder;
- 30.6.4 shall be deemed (unless the contrary is proved) to have been received by that debenture holder to whom it is addressed at his address in the register, on the day after it has been posted.
- 30.7** In proving the giving of any notice in terms of this deed, it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and sent by the appropriate method of posting.
- 30.8** Copies of notices which all debenture holders are entitled to receive from the company or the trustee shall, if the debentures in question are listed on the JSE, be given simultaneously to The General Manager, Listings and Equity Markets of the JSE in the appropriate quantity.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

Date: 11 November 2011 Place: Pretoria

Witnesses:

1 

2 

For: **THE RECEIVERS FOR SCHEME CREDITORS AND  
SCHEME SHAREHOLDERS**

Who warrants that he/she are authorized to sign hereto

CORNELIUS FOURIE MYBURGH

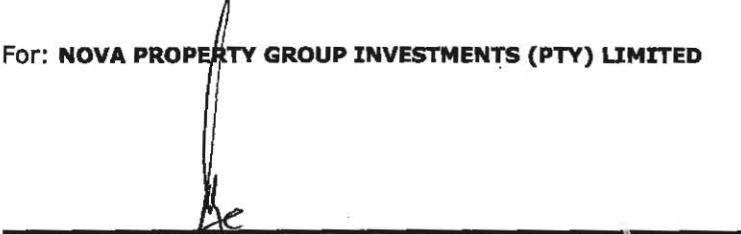
FULL NAMES OF RECEIVERS SIGNING

Date: 11 November 2011

Place: Pretoria

Witnesses:

1 

2 

For: **NOVA PROPERTY GROUP INVESTMENTS (PTY) LIMITED**

Who warrants that he/she are authorized to sign hereto

Dominique Haese

FULL NAMES OF DIRECTORS SIGNING

Date: Place:

Witnesses: For: **NOVA PROPERTY GROUP HOLDINGS LIMITED**

1 \_\_\_\_\_

2 \_\_\_\_\_

Who warrants that he/she are authorized to sign hereto

Dominique Haese

FULL NAMES OF DIRECTOR(S) SIGNING

Date: 11 November 2011 Place: Derek

Witnesses: **DEREK PEDOE COHEN**

1 \_\_\_\_\_

2 \_\_\_\_\_

Derek

b 1