

The Draft Amended Principle Debenture Trust Deed includes the following:

- All special resolutions since 2002 (highlighted with green); and
- New amendments proposed by the Debenture Trust Deed requires a special resolution and not an ordinary resolution by the shareholders. (highlighted with turquoise). Unitholders are referred to the AGM notice for further detail and justification around these proposed amendments.

**Draft AMENDED
PRINCIPAL DEBENTURE TRUST DEED**

between

ORYX PROPERTIES LIMITED

AND

FISHER QUARMBY & PFEIFER

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INTRODUCTION

1.1 In this agreement, unless a contrary intention clearly appears the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

- (a) "Act" means the Companies Act, No. 28 of 2004 as amended;
- (b) "addenda" means the first addendum, second addendum, third addendum, fourth addendum and fifth addendum to the Principal Deed;
- (c) "additional debentures" means the additional debentures issued by the Company as more described in 3.13;
- (d) "business day" means any day excluding a Saturday, Sunday or public holiday in the Republic of Namibia;
- (e) "the company" means Oryx Properties Limited, Registration Number 2001/673;
- (f) "debenture holders" means the registered holders for the time being of the debentures whether forming part of the linked units or otherwise;
- (g) "debentures" means all the unsecured debentures governed by this deed or where so indicated by the context, the debentures of any one or more issues of debentures governed by this deed, whether as part of linked units or otherwise;
- (h) "deed" or "this deed" means this principal debenture trust deed, the schedule hereto and the supplemental debenture trust deeds hereto or, where indicated by the context, this principal debenture trust deed, the schedule hereto and any one or more supplemental debenture trust deeds hereto;
- (i) "the existing supplemental deeds" means the first supplemental deed, second supplemental deed, third supplemental deed, fourth supplemental deed, fifth supplemental deed and sixth supplemental deed;
- (j) "the fifth debentures" means the debentures governed by the fifth supplemental deed;
- (c)

- (k) "the fifth supplemental deed" means the fifth supplemental debenture trust deed to the Principal Deed signed on 29 January 2008;
- (l) "the First Addendum" means the first addendum, dated 27 July 2004 to the Principal Agreement;
- (m) "the first debentures" means the debentures governed by the first supplemental deed;
- (n) "the first supplemental deed" means the first supplemental debenture trust deed to the Principal Deed signed on 3 October 2002;
- (o) "the first record date" means 31 December of each year;
- (p) "the fourth addendum" means that addendum to the Principal Deed dated on or about the date of the sixth supplemental deed, being 3 December 2019;
- (q) "the fourth debentures" means the debentures governed by the fourth supplemental deed;
- (r) "the fourth supplemental deed" means the fourth supplemental debenture trust deed dated 05 November 2007, to the Principal Deed;
- (s) "the initial period" means the period commencing on the issue of the first debentures and termination on 30 June 2003;
- (t) "the Principal Deed" means the Principal Debenture Trust Deed concluded between the Company and the trustee on 2 October 2002 as supplemented by the first supplemental deed, second supplemental deed, third supplemental deed, fourth supplemental deed, fifth supplemental deed, sixth supplemental deed as well as the addenda;
- (u) "the NSX" means the Namibian Stock Exchange;
- (v) "the JSE" means The JSE Securities Exchange SA;
- (w) "linked unit" means a linked unit comprising:
- (i) one ordinary share with a par value of 1 cent in the issued share capital of the company; and
- (ii) one debenture issued by the company having a

- nominal value of 449 cents;
- which shall be inseparable and only dealt with as a unit;
- (x) "nominal value" means 449 cents in respect of a debenture, and 1 cent in respect of an ordinary share;
- (y) "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;
- (z) "ordinary shares" means ordinary shares, securities convertible into ordinary shares, options to subscribe for ordinary shares and any securities which the trustee agrees, (which agreement shall not unreasonably be withheld) are ordinary shares, issued from time to time by the company;
- (aa) "ordinary shareholders" means the holders of ordinary shares;
- (bb) "register" means the register or, as the case may be, registers of debenture holders maintained by the company in terms of the Act;
- (cc) "the second debentures" means the debentures governed by the second supplemental deed, dated 7 September 2006;
- (dd) "the Second Addendum" shall mean the second addendum, dated 7 September 2006 to the Principal Agreement;
- (ee) "the Second supplemental deed" means the second supplemental debenture trust deed, dated 7 September 2006, to the Principal Deed;
- (ff) "the second record date" means 30 June of each year;
- (gg) "securities" includes shares and debentures and shall generally have the meaning defined in the Stock Exchanges Control Act No 1 of 1985.
- (hh) "the sixth supplemental deed" means the sixth supplemental debenture trust deed, dated 3 December 2019, to the Principal Deed;

- (ii) "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% 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% of the votes cast at such poll by debenture holders present in person or by proxy;
- (jj) "third addendum" means the third addendum to the Principal Deed dated 7 September 2006;
- (kk) "third debentures" means the debentures governed by the third supplemental deed, dated 7 September 2006;
- (ll) "third supplemental deed" means the second supplemental debenture trust deed, dated 7 September 2006, to the Principal Deed,;
- (mm) "transfer office" means the office of the transfer secretaries of the company from time to time;
- (nn) "trustee" means Fisher Quarmby & Pfeifer, legal practitioners of Windhoek and its successors in office, and any future trustee appointed under this deed, whilst acting in that capacity;
- (oo) "unsubordinated creditors" means at any particular date, all creditors of the company, other than the debenture holders in respect of the debentures, who have claims against the company which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company including those having contingent claims against the company at a value determined by the company and approved by the trustee, which approval shall not unreasonably be withheld;

1.2 Words importing:

- (a) Any one gender includes the other gender;
- (b) The singular includes the plural and *vice versa*; and
- (c) Natural persons include created entities (corporate or unincorporated) and *vice versa*;

- 1.3 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;
- 1.4 The headings to the clauses 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; and

- 1.5 If any provision in a definition is a substantive provision imposing rights or 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.

2.

RECORDAL

- 2.1 It is recorded that:

- (a) The company may from time to time create and resolve to issue linked units of which the debenture forms part. The debenture will be governed by this principal debenture trust deed, and one or more supplemental debenture trust deeds hereto, which will record certain specific terms relating to each issue; and
- (b) The trustee has agreed to act under this principal debenture trust deed and supplemental debenture trust deed/s hereto, as trustee for the holders of the debentures issued in terms of the aforesaid issues.
- (c) On 3 October 2002 the directors of the Company resolved to create linked units being one ordinary share linked to one unsecured variable rate debenture.
- (d) In terms of the resolution referred to in (c) the directors of the Company resolved to create and issue the first debentures.
- (e) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the first debentures and has approved the contents of the first supplemental deed.
- (f) On 28 February 2006 the directors of the Company resolved to issue further linked units, being the second debentures.
- (g) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the second debentures and has approved the contents of the second supplemental deed.

- (h) On 23 June 2006 the directors of the Company resolved to issue further linked units, being the second debentures.
- (i) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the third debentures and has approved the contents of the second supplemental deed.
- (j) On 29 August 2006 the directors of the Company resolved to issue further linked units, being the fourth debentures.
- (k) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the fourth debentures and has approved the contents of the fourth supplemental deed.
- (l) On 27 February 2007 the directors of the Company resolved to issue further linked units, being the fourth debentures.
- (m) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the fifth debentures and has approved the contents of the fifth supplemental deed.
- (n) On 03 December 2019 the directors of the Company resolved to issue further linked units, being the additional debentures, issued on the dates indicated below:
- (i) 11,008,335 debentures on 22 November 2013;
 - (ii) 11,809,780 debentures on 24 November 2015;
 - (iii) 1,086,878 debentures on 14 December 2018;
 - (iv) 8,366,538 debentures on 4 April 2019; and
 - (v) 65,628 debentures on 7 June 2019;
- (o) The trustee has, in accordance with clause 3.2 of the Principal Deed, consented to the issue of the additional debentures, as reflected in the content of the sixth supplemental deed, over and above the terms and conditions of the Principal Deed. The parties however wish to have a formal record of the issue of the additional debentures, and accordingly have agreed to enter into and execute the sixth supplemental deed.
- (p) The NSX was notified of the issue of the additional debentures and the debentures are listed.

3.

ISSUE OF DEBENTURE AND STOCK EXCHANGE LISTING

- 3.1 The directors of the company may by resolution, and subject to clauses 3.2, 3.3 and 3.4, resolve to create and issue debentures to be governed by this deed and to be issued subject to the terms of this deed.
- 3.2 The issue of debentures to be governed by this deed and the contents of all supplemental debenture trust deeds hereto, shall be subject to the consent of the trustee, which consent shall not unreasonably be withheld.
- 3.3 All issues of debentures to be governed by this deed, subsequent to the first such issue of debentures, may only be issued as part of an issue of linked units.
- 3.4 All debentures issued in terms of this deed shall:
 - (a) In the event of the liquidation or winding up of the company, no matter when issued, rank *pari passu* in all respects with regard to payment of interest and repayment but, for the purpose of proving claims against the company, the trustee shall, subject to clause 6, claim separately for the amounts due to the holders of each specific issue of debentures in terms of this deed;
 - (b) For the purposes of payment of the respective amounts due to debenture holders on redemption rank *pari passu* in all respects.
- 3.5 The terms of each issue of debentures and any other relevant terms shall be set out in a supplemental debenture trust deed between the company and the trustee and each such deed shall form an integral part of the principal deed. Each supplemental debenture trust deed shall record the capital amount of the relevant debenture issue together with all the terms thereof to the extent that such terms are not contained in this deed.
- 3.6 If the linked units of which the debenture forms part, are listed on the NSX or the JSE, then each issue of the linked units is conditional on the NSX or the JSE, as the case may be, granting a listing for the ordinary shares and debentures and the company undertakes to use its best endeavours to maintain such listing for so long as the linked units remain in issue, unless the shareholders

and debenture holders of the company resolve to delist the company.

- 3.7 All decimals of a cent arising in any final calculation in respect of debentures will be rounded to the nearest cent. Decimal fractions in excess of 0.5 will be rounded up to the nearest cent and decimal fractions of 0.5 and below will be rounded down to the nearest cent.
- 3.8 The capital amount of the loan to the Company of the first debentures to be authorised for issue in terms of clause 3.2 of the Principal Deed shall be N\$184,489,24-82 divided into 41,088,918 debentures of 449 cents per debenture.
- 3.9 The capital amount of the loan to the Company of the second debentures to be authorised for issue in terms of clause 3.2 of the Principal Deed shall be N\$29,315,340-21 divided into 6,529,029 debentures of 449 cents per debenture.
- 3.10 The capital amount of the loan to the Company of the third debentures to be authorised for issue in terms of clause 3.2 of the Principal Deed shall be N\$18,719,290-43 divided into 4,169,107 debentures of 449 cents per debenture.
- 3.11 The capital amount of the loan to the Company of the fourth debentures to be authorised for issue in terms of clause 3.2 of the Principal Deed shall be N\$5,070,745-50 divided into 1,129,342 debentures of 449 cents per debenture.
- 3.12 The capital amount of the loan to the Company of the fifth debentures to be authorised for issue in terms of clause 3.2 of the Principal Deed shall be N\$9,542,501-10 divided into 2,125,279 debentures of 449 cents per debenture.
- 3.13 The capital amount of the loan to the Company of the additional debentures authorised for issue in terms of clause 3.2 of the Principal Deed was as follows:
- 3.13.1 N\$49,427,424-15 divided into 11,008,335 debentures of 449 cents per debenture;
- 3.13.2 N\$43,025,912-20 divided into 11,809,780 debentures of 449 cents per debenture;
- 3.13.3 N\$4,880,082-22 divided into 1,086,878 debentures of 449 cents per debenture;
- 3.13.4 N\$37,565,755-62 divided into 8,366,538 debentures of 449 cents per debenture;

3.13.5 N\$294,669-72 divided into 65,628 debentures of 449 cents per debenture;

3.14 In so far as this may be required, the parties by the execution of the sixth supplemental deed ratify the issuing of the additional debentures, and agree to be bound by the provision of the sixth supplemental deed recording the terms and conditions of issue over and above the terms and conditions of the Principal Deed in respect of all the additional debentures in issue, retrospectively to the date on which each such additional debenture was issued.

4.

CERTIFICATES AND TRANSFER OF LINKED UNITS

- 4.1 The terms set out in this clause 4 apply to shares and debentures.**
- 4.2 The company shall issue a certificate/s in respect of the shares and debentures allotted and issued to every debenture holder within 21 days after the date of allotment and issue, provided that:**
 - (a) Joint holders shall be entitled to one certificate only in respect of the linked ordinary shares or linked preference shares held by them jointly; and**
 - (b) Delivery of that certificate to any one of the joint holders shall be good for delivery to all of them.**
 - (c) Certificates shall be issued in denominations of N\$100.00 (one hundred Namibian Dollars) per certificate; provided that the Company may issue block certificates to debenture holders reflecting in one certificate the entire holding of a debenture holder.**
 - (d) Irrespective of the provisions of clause 4.2(c) above, there shall be no restrictions on splitting denominations into denominations under N\$100.00 (one hundred Namibian Dollars).**
- 4.3 Certificates shall be dispatched by pre-paid registered post or certified mail to the linked unit holders, at the risk of the linked unit holders in question.**
- 4.4 Every transfer of linked units shall be in writing in the usual form, as required by the Act, and the form of transfer shall be signed by the registered holder or his duly authorised agent. The transfer form shall be delivered to the company's transfer secretaries**

together with the certificates in respect of the linked units to be transferred and such evidence as to identity, title, authority and legal capacity of the transferor and the transferee and their respective agents, if any, as the company may reasonably require. The company shall not be bound to enter in the register notice of any trust or to recognise any right of any other person to the linked units or to the benefit of the linked units. No transfer of any linked units shall be registered while the register is closed.

- 4.5 Each certificate shall be signed by two directors of the company or by one director of the company and an officer of the company duly authorised thereto by the directors.
- 4.6 Any signature referred to in clause 4.5 may be affixed to a certificate by autographic or mechanical means.
- 4.7 In the event of any certificate being lost, destroyed or spoilt, upon proof thereof to the satisfaction of the company and upon being provided with such indemnity and security as it may require, the company shall issue a substitute certificate in place of the original to the person entitled thereto.
- 4.8
 - (c) All authorities to sign transfer deeds granted by members 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 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 expressed by 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.
 - (d) Even after the giving and lodging of such notice, the company shall be entitled to give effect to any instrument signed under the authority to sign and certified by any officer of the company as being an order before the giving and lodging of such notice. There shall be no restrictions on the transfer of fully paid debentures.

5.

JOINT HOLDERS

Only the person whose name stands first in the register of members as one of the joint holders of the linked units shall be entitled to receive notices from the company and any notice given to such person shall be

deemed to be a notice to all joint holders.

6.

SUBORDINATION

- 6.1 The debentures are not subordinated. If in the opinion of the auditor of the company at any time hereafter the company shall be trading in insolvent circumstances in contravention of any law and the auditor gives the trustee notice in writing to that effect, the debentures shall immediately upon receipt of such notice and *ipso facto* be subordinated to the claims of the unsubordinated creditors. The trustee shall notify each debenture holder as soon as possible after receiving such written notification from the auditor. If the company ceases to be in the aforesaid insolvent circumstances, and the auditor gives a certificate to that effect and that it is not a short term situation, the company and the trustee shall take such steps as shall be available to render the debentures unsubordinated.
- 6.2 If the debentures become subordinated and if the debentures become repayable while so subordinated, that repayment shall be made only after the unsubordinated creditors have received payment in full of their claims. In order to ensure the fulfilment of the provisions of this sub-clause:
 - (a) The trustee shall be the only person entitled to make and prove claims as against the insolvent company on behalf of debenture holders and such claims shall be made and proved in the name of the trustee;
 - (b) Any claim made or proved by the trustee shall be subject to the condition that no amount shall be paid in respect thereof if the effect of such payment would be that any amount due to the unsubordinated creditors would be reduced;
 - (c) If the company is placed in liquidation and the liquidator is not prepared or is unable to accept claims proved subject to the condition contained in clause 6.2(b), then the following shall apply:
 - (i) the trustee shall make or prove claims for the full amount due to the debenture holders;
 - (ii) any amounts in respect of the debenture paid to the trustee *pari passu* with the amounts payable to the unsubordinated creditors shall be held by the

trustee in trust:

- (aa) for distribution amongst the unsubordinated creditors in the winding-up and the trustee may repay to the liquidator the amount due to the unsubordinated creditors upon trust to distribute the same, and the trustee shall not be bound to supervise such distribution; and
- (bb) the trustee shall receive for distribution amongst the debenture holders only such amount (if any) as shall be available to be applied in or towards payment of the amount owing in respect of their debentures after the claims of the unsubordinated creditors shall have been satisfied, paid or provided for in full.

6.3 If the debentures become subordinated and if debentures become repayable while so subordinated:

- (a) The company shall within six weeks of the debentures becoming repayable, compile from its records a list of unsubordinated creditors ("the list") at that date ("the notice date") showing the nature and amount of their claims;
- (b) Within twenty business days of the notice date, the company shall advise all persons on the list in writing by ordinary mail that the debentures are to be repaid and that objections thereto are to be received by the trustee within a period of twenty business days from the date of posting that advice to unsubordinated creditors. The company shall be deemed to have advised all unsubordinated creditors even though it fails to advise, inadvertently or otherwise, any particular unsubordinated creditor or creditors. The trustee shall not be obliged to take account of any objections received from unsubordinated creditors at the notice date after the period of twenty business days has expired;
- (c) If an unsubordinated creditor as at the notice date objects to the repayment of the debentures, the company shall in its discretion, either:
 - (i) settle the claim of the unsubordinated creditor concerned; or

- (ii) secure the payment of the unsubordinated creditor's claim in any manner reasonably required by the unsubordinated creditor concerned.
 - (d) The auditors of the company shall investigate and report his findings to the trustee upon the carrying out of clauses 6.3(a), 6.3(b) and 6.3(c) and no payment in respect of the debentures shall be made in terms hereof unless the said auditors report that the said provisions have been properly carried out;
 - (e) Nothing in this clause 6.3 contained shall preclude the trustee from bringing an application to wind up the company, in which event the provisions of clause 6.2 shall apply.
- 6.4 Each holder of debentures authorises and directs the trustee on his behalf to take such action as may be necessary or appropriate to fulfil the subordination as provided in this clause 6 and appoints the trustee as his agent for such purpose.
- 6.5 If, after the debentures become subordinated and for so long as they so continue to be subordinated, this deed is amended in any manner that affects the vested rights of unsubordinated creditors (and for this purpose any amendment to this clause 6, or clauses 9.1, 9.2 or 10 shall be deemed to affect those vested rights):
- (a) The terms of this deed prior to such amendment shall nevertheless continue in force in respect of those unsubordinated creditors at the date upon which the amendment becomes effective and in respect of the amounts owing to them on that date;
 - (b) This deed, as amended, shall apply to unsubordinated creditors in respect of the amounts owing to them which arose after the date upon which the amendment became effective.
- 6.6 This clause 6 shall constitute a contract for the benefit of the unsubordinated creditors and shall be capable of acceptance by any or all of them.

7.

INTEREST

- 7.1 The rate or amount of interest, the manner in which it is determined, the intervals at which interest becomes payable, the

dates upon which interest will accrue and become payable in respect of each issue of debentures governed by this deed shall be contained in the supplemental debenture trust deed entered into in respect of each such issue of debentures.

7.2 If the company changes the date upon which its financial year ends, the company and the trustee shall be and they are hereby authorised by the debenture holders to change the dates upon which interest accrues and becomes payable provided that:

- (a) The rights of the debenture holders to interest on their debenture shall not be diminished or adversely affected by such changes;
- (b) The changes are approved by the trustee, which approval shall not unreasonably be withheld;
- (c) The company shall forthwith notify debenture holders by circular of the changes made;
- (d) Only the registered debenture holders on the last date to register shall be entitled to the payment of interest.

7.3 The company shall give at least fifteen business days' notice of the last date to register for an interest payment. A copy of each such notice shall be sent to the listings division of the NSX. The last day for debenture holders to be registered must be a Friday or, if the Friday is not a business day, then the last day to register must be the preceding business day.

7.4 The directors of the company may close the register for a period not exceeding ten business days following immediately after the last date to register.

7.5 Each first, second, third, fourth and fifth debenture shall confer on the holder thereof the right to receive interest which:

(a) Shall:

- (i) In respect of the initial period; and thereafter,
- (ii) In respect of the six monthly period ending on the first and second record dates, respectively,

Be due and payable as set out in clause 7.5 (b)

(b) Shall, subject to clause 7.2 of the Principal Deed, be due and shall accrue to the first debenture holders registered on the first record date (and be payable no later than 4 weeks following the release of the interim results), in respect of

the interim payment and on second record date (and be payable no later than 4 weeks following the release of the final results each year), in respect of the final payment, commencing on the second record date inline with the NSX listings requirements;

(c) Subject to clause 23 of the Principal Deed, the interest entitlement on each debenture shall be not less than 75% of the IFRS profit/(loss) for the year of the company adjusted for:

- Debenture interest
- Depreciation/amortisation
- Deferred tax
- Straight line adjustments
- Any fair value adjustments
- Profit/loss on sale of investment property and investments
- Any exchange gains/losses due to translation from a foreign currency
- Income received from associate other than by way of dividends

and with all capital items noted above being transferred to any non-distributable reserve.

(d) The amount of interest in respect of the debenture shall be rounded down to the nearest quarter (0,25) of a cent;

(e) Dividends shall be payable as follows:

(i) An initial dividend for the initial period may be paid by the Company;

(ii) Thereafter an interim dividend for the six month period ending on the first record date and the final dividend for the six month period ending on the second record date may be paid by the Company;

(f) Any interest not paid on the due date as provided for in clause 4.2, shall bear interest, from such date up to the date of payment, calculated on a daily basis at a rate per annum determined by the percentage which twice the amount of such overdue interest per debenture bears to the nominal value of a debenture;

(g) Nothing in this clause shall be construed as entitling the debenture holders to participate in the profits of the Company available for distribution to the shareholders.

8.

PAYMENTS OF INTEREST TO LINKED UNIT HOLDERS

- 8.1 Interest may be paid by electronic transfer to the account of the debenture holders, and who have provided the company with particulars of the account into which electronic transfers are to be made. Payment into the designated account by electronic transfer of funds shall be a valid discharge of the company and the trustee.
- 8.2 Any interest remaining unclaimed for a period of three years from its declaration may, provided notice of the declaration has been sent to the last registered address of the person entitled thereto, be forfeited by resolution of the directors for the benefit of the Company. The directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. All unclaimed interest may be invested or otherwise made use of by the directors for the benefit of the Company. Monies other than interest due to debenture holders must be held in trust by the Company indefinitely until lawfully claimed by the debenture holder.

9.

REPAYMENT, REDEMPTION AND PURCHASE OF DEBENTURES

- 9.1 The debenture shall become repayable:
 - (a) Forthwith, if a final order of a competent court is made or an effective resolution is passed for the winding-up of the company; or
 - (b) In accordance with clause 10.
- 9.2 The debentures shall be redeemable as follows:
 - (a) At the instance of the debenture holders at any time after the expiry of 25 years from the 2nd December 2002 being the first date of the allotment of debentures;
 - (b) The debenture holders may exercise the right to require the debentures to be redeemed in accordance with clause 9.2(a) only by special resolution;
 - (c) The procedure to be followed by the company in regard to the redemption shall be determined by the company at the appropriate time and be approved by the trustee, which approval shall not unreasonably be withheld, and the NSX.

The last day of registration for redemption rights must be a Friday or, if Friday is a holiday, then the previous business day will be the date for registration.

- (d) Any debentures redeemed shall be cancelled and may not be reissued.
 - (e) In any payment of part of the amount due on the debentures, unless a new certificate is issued, a note of such payment shall be en faced on the relevant certificate.
- 9.3 The redemption conditions provided for in this clause 9 shall remain unaltered unless sanctioned by general meetings of debenture holders and ordinary shareholders.
- 9.4 Upon the first debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the first debenture holders shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the debentures were issued and divided by the original number of debentures issued.
- 9.5 Upon the second debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the second debenture holders shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the debentures were issued and divided by the original number of debentures issued.
- 9.6 Upon the third debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the third debenture holders shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the debentures were issued and divided by the original number of debentures issued.
- 9.7 Upon the fourth debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the fourth debenture holders shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the debentures were issued and divided by the original number of debentures issued.
- 9.8 Upon the fifth debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the fifth debenture holders shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the

debentures were issued and divided by the original number of debentures issued.

- 9.9 Upon any of the additional debentures becoming repayable in terms of clause 9.1(a) or 9.1(b) of the Principal Deed, the debenture holders, holding such additional debentures, shall be entitled to receive the aggregate of an amount equal to the appropriate weighted average issue price in terms of which the particular tranche of additional debentures were issued, divided by the number of additional debentures issued in that tranche.

10.

SUMMARY REPAYMENT OF DEBENTURES

- 10.1 The debentures, together with interest thereon and all other monies repayable in terms of this deed, shall become repayable immediately on the happening of any of the following events:

- (a) The company fails to pay any monies due by it in terms of this deed on the due date thereof and thereafter persists in such failure for a further twenty-one business days after receipt by it of a written notice from the trustee demanding that payment be made;
- (b) The company commits:
 - (i) a material breach of any material obligation under this deed, which cannot be remedied; or
 - (ii) a material breach of any non-material obligation, or a non-material breach of any obligation, under this deed, which cannot be remedied, and fails, within twenty-one business days after receipt by it of a written notice from the trustee requiring it to do so, to initiate and thereafter to pursue all proper steps designed to prevent its recurrence; or
 - (iii) any breach of any obligation under this deed, which can be remedied, and fails within 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 requiring the breach to be remedied, to remedy the breach.
- (c) The company:

- (i) 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; or
- (ii) offers or agrees to enter into any general composition or compromise or arrangement with all its creditors; or
- (iii) makes any alteration to its memorandum or articles of association which, in the opinion of the trustee, adversely affects the interests of the debenture holders;
- (iv) reduces its issued share capital or stated capital account (other than a reduction which does not involve any distribution or payment in cash or in kind by the company to its members or any of them or the redemption of any preference shares issued or to be issued by the company with redemption rights or a reduction of the stated capital account for any purpose permitted by Section 77(3) of the Act);
- (v) reduces its share premium account, (other than a reduction permitted by Section 76(3) of the Act or which does not involve any distribution or payment in cash or in kind by the company to its members or any of them);

provided that the above clauses shall not apply if the event in question:

- (aa) in the opinion of the trustee, does not adversely affect the interests of the debenture holders; or
 - (bb) is sanctioned by a special resolution;
- (d) An order is made placing the company under final judicial management;
 - (e) Any material assets of the company are attached under a writ of execution issued out by any court in the Republic of Namibia as a result of a final judgement against the company and the writ is not satisfied or set aside within twenty-one business days after the attachment has come to the notice of the board of directors of the company;
 - (f) The company ceases to carry on its business;
 - (g) The company defaults in the discharge of any liability

which is material in relation to the business of the company and concerning which no *bona fide* dispute between the company and the creditor in question exists.

10.2 For the purposes of clauses 9.1 and 10.1:

- (a) 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 period prescribed by the Rules of Court as extended, if at all, by the Court;
 - (b) Any attachment referred to in clause (e) shall be deemed to have come to the notice of the board of directors of the company, within twenty-one business days of being made, unless the contrary shall be shown. The period of twenty-one business days referred to in clause (e) shall be extended, pending any proceedings begun to set aside that writ or remove the attachment, until twenty-one business days after a final and unappealable judgement refusing that setting aside or removal. The term "*writ of execution*" in clause (e) does not include a writ of attachment "*ad fundandam jurisdictionem*" or "*ad confirmandam jurisdictionem*".
- 10.3 Upon the happening of any of the events referred to in clause 10.1 the trustee may, in his discretion, require the debentures together with interest accrued thereon, to be repaid and shall be entitled to take legal action to enforce repayment.
- 10.4 The trustee shall be entitled, before taking legal action, to require that the debenture holders furnish him with sufficient monies to enable him to meet the expense of giving effect to such legal action.
- 10.5 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, he shall be entitled to assume that no such event has taken place.
- 10.6 Subject to the provisions of Section 123 of the Act, the trustee shall not be responsible for any loss to any debenture holder or the company or any other person resulting from the exercise or non-exercise of the powers, authorities or discretion's vested in the trustee in terms of this deed.

10.7 A debenture holder shall not be entitled to enforce his rights under this deed, but all rights of enforcement shall vest in the trustee in accordance with the provisions of this deed.

11.

APPLICATION OF MONIES BY TRUSTEE

11.1 All monies received by the trustee after he has exercised or arising from the exercise of any power conferred on him by this deed and all monies due to debenture holders in his hands at the date of the exercise of any such power shall be applied by him in making the following payments in the order set out:

- (a) In paying all costs (including the trustee's remuneration), charges and expenses and satisfying every liability incurred by him in the execution of the trusts, powers and provisions contained in this deed;
- (b) If applicable, in paying all amounts due to unsubordinated creditors as provided in clause 6.2;
- (c) In paying all other amounts due in terms of this deed; excluding the amount repayable on the debentures in accordance with clause 9;
- (d) In paying the amount repayable on the debentures in accordance with clause 9;
- (e) In paying to the company any surplus of such monies;

provided that:

- (f) If there shall not remain sufficient monies to pay the amount referred to in clause 11.1(d) in full, the loss in respect thereof shall be borne by the debenture holders *pro rata* in proportion to the capital amounts owing to them;
- (g) The trustee shall not be bound immediately to distribute any such monies among the debenture holders if the amount thereof is insufficient to enable him to make a distribution of at least ten cents in the Namibia Dollar on the amount repayable on the debentures in accordance with clause 9.

11.2 All monies received by the trustee and payable in accordance with clause 11.1, may pending payment thereof in terms of clause 11.1,

be placed by the trustee on deposit in his name with any bank, building society or financial institution. The income earned thereon shall be added to the monies available for payment in terms of clause 11.1.

12.

POWERS OF TRUSTEE

12.1 The trustee shall at all times have the following powers in addition to the powers conferred on him by law and elsewhere in this deed:

- (a) Power to enforce the due performance by the company of all terms and conditions of this deed and to recover from the company all monies due by it in respect of the debentures;
- (b) Power to waive or condone (but so far only as in his opinion the interests of the debenture holders shall not be prejudiced thereby), on such terms and conditions as the trustee may think fit, any breach by the company of any of the conditions of this deed but subject to any prior directions given by special resolution precluding or limiting such waiver or condonation in respect of any particular type of breach or generally;
- (c) Power to employ, as far as may reasonably be necessary, and to pay any legal practitioner or any other person to transact any business or do any act of whatsoever nature required to be done pursuant to this deed including the receipt and payment of money, and any payment made in terms of this sub-clause shall be refunded to the trustee by the company. Should the trustee himself be a legal practitioner or other person engaged in any profession or business, he may be so employed to act and shall be entitled to charge and be paid by the company all professional or other charges for any business or act done by him or his firm in pursuance of this deed;
- (d) Power to take and act upon any expert or professional advice;
- (e) Generally, without imposing any obligation on the trustee in that regard, power to make any payment, incur any disbursement or expense or to perform any act which the company should have made, incurred or performed in the discharge of its obligations under the provisions of this deed (provided that such payment, disbursement, expense

or act is not being disputed by the company);

- (f) Power to demand, claim, sue for and recover from the company any monies, costs, charges or expenses (with interest thereon at the rate quoted at that time by Bank Windhoek Limited in Windhoek as that at which it is prepared to lend on unsecured overdraft to its most favoured corporate customers in the private sector, compounded monthly, as certified by any branch manager, whose authority it shall not be necessary to prove) paid or incurred by the trustee in satisfying any liability incurred by him in the execution of any of the trusts, powers and provisions of this deed or in satisfying any obligation which the company has failed to discharge in terms of this deed;
- (g) Notwithstanding the provisions hereof, the trustee shall be entitled, if he so deems fit, to convene a meeting of debenture holders to obtain from them a specific mandate in regard to anything which the trustee might do or refrain from doing, whether or not such act is within the trustee's discretion and the company shall, if so required by the trustee, convene such meeting at the company's cost and expense.

12.2 The company:

- (a) Hereby appoints the trustee with power of substitution to be its attorney and agent, irrevocably and *in rem suam* to do, on its behalf, all acts and things which, upon enforcement of the provisions of this deed, the trustee is entitled to do on the company's behalf in terms of this deed;
- (b) Shall be liable for and shall pay to the trustee on demand, any monies reasonably expended by the trustee in the exercise of the powers granted to him under this deed, and all costs, charges, expenses and liabilities reasonably incurred by him in the execution of any of the trusts, powers and provisions contained in this deed, with interest thereon at the rate quoted at that time by Bank Windhoek Limited as that at which it is prepared to lend on unsecured overdraft to its most favoured corporate customers in the private sector, compounded monthly, from the date of expenditure to the date of repayment if such monies are not paid within twenty-one business days of the trustee rendering an account therefor.

13.

GENERAL PROVISIONS REGARDING TRUSTEE'S DISCRETIONS AND RESPONSIBILITIES

- 13.1 Subject to any provisions of this deed to the contrary, the trustee shall have absolute discretion in the exercise or non-exercise of any trusts, powers and discretion's vested in him and shall not (despite any provision of this deed to the contrary) be bound to act at the request of the debenture holders unless the persons requiring the trustee to act shall first have sufficiently indemnified him against and, insofar as the trustee may reasonably require, provide him with funds to enable him to meet all costs, charges, expenses and liabilities likely to be incurred in complying with such request.
- 13.2 The trustee shall not be responsible for any action which he may take pursuant to a resolution purporting to have been passed at a meeting of the debenture holders which he reasonably believes to have been properly and correctly passed even though it may afterwards appear that such resolution was for any reason whatsoever invalid.
- 13.3 The trustee (including any person assumed or appointed in the place of any trustee) shall be exempt from any obligation to furnish security in connection with his appointment and/or for the due administration of the trust to the Master of the High Court or any other person, body or authority, as provided for in the statutes or any other law now in force or to come into force relating to trusts and the protection of trust monies, and the Master and any such other person, body or authority are hereby directed to dispense with such security.

14.

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 fulfilment 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 discretion's 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.

OBLIGATIONS OF THE COMPANY

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

- 15.1 Properly keep the books of account of its business transactions and operations;
- 15.2 Forward to the trustee and all debenture holders at the same time that they are forwarded to the ordinary shareholders of the company, copies of the annual financial statements of the company (including group annual financial statements, if any) and the interim reports of the company;
- 15.3 Execute and attend to all deeds, documents and things which the trustee may reasonably require to enable the trustee to carry out the trusts, powers and provisions contained in this deed;
- 15.4 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;
- 15.5 Within twenty-one business days after the payment of any interest, furnish the trustee with a certificate signed by the secretary or a director of the company stating whether or not all interest payments due on 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;
- 15.6 Conduct its affairs in a proper and businesslike manner and shall not, without the prior sanction of a special resolution:
 - (a) Alienate the business of the company or the whole or the greater part of the assets of the company;
 - (b) Modify, alter or vary any of the rights or restrictions attaching to the linked units and the authorised share capital of the company, if any;
- 15.7 Not, without the prior written consent of the trustee, which consent shall not unreasonably be withheld, permit the issue of or voluntarily sell or otherwise dispose of any shares in or any assets of any subsidiary company which would have the effect of reducing the shareholders' consolidated interest in the company as at the immediately preceding financial year end of the company,

adjusted for the sale or disposal, to below the amount stated in the relevant supplemental debenture trust deed;

- 15.8 Notify the trustee immediately, in writing, if any breach of any provision of this deed takes place.

16.

TRUSTEE'S FEES

- 16.1 The company shall pay the trustee for the services to be rendered by him in terms of this deed in accordance with the provisions of the supplemental debenture trust deeds.
- 16.2 In addition to the aforementioned fees, the company shall pay the trustee:
- (a) A reasonable fee for arranging meetings of debenture holders (unless requisitioned by or otherwise called at the instance of the debenture holders);
 - (b) For undertaking exceptional work not normally undertaken by trustees;
 - (c) 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).
 - (d) Such fees as may be agreed between the company and the trustee from time to time.

17.

CESSATION OF OFFICE OF TRUSTEE AND APPOINTMENT OF NEW TRUSTEE

- 17.1 The trustee shall remain in office until he ceases to hold office in terms of clause 17.2.
- 17.2 The trustee shall cease to hold office if:
- (a) He resigns, having given at least sixty business days written notice to the company in the manner prescribed in

clause 20. 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 his resignation; or

- (b) He becomes disqualified in law to hold the office of trustee; or
- (c) He is removed from office by a special resolution; or
- (d) Being a natural person, his estate is provisionally or finally sequestrated or surrendered as insolvent or his person or property is placed under curatorship.

17.3 Upon the termination of office of a trustee, the company shall immediately nominate a new trustee, which shall have been approved by a special resolution. 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 special resolution, make such appointment.

17.4 Upon the appointment of a trustee in place of a former trustee, the new trustee shall, in writing, signify his 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 had originally been appointed trustee, other than any liability for breach of trust by any former trustee.

18.

TRUSTEE'S FIDUCIARY POSITION

The trustee shall not, by reason of his fiduciary position, be precluded from making any contract or entering into any transaction with the company in the ordinary course of the business of the trustee or from acquiring or holding any of the linked units or other securities of the company either directly or indirectly; provided however, that should any conflict of interest arise between the trustee and the company as a consequence of the foregoing, the trustee shall take such steps as he deems appropriate to resolve such conflict to the extent which he deems the same to be inconsistent with its duties as trustee.

19.

INDEMNITY

Subject to the provisions of Section 123 of the Act and the Trust Moneys Protection Act No. 34 of 1934 the company indemnifies the trustee and any officer, employee or representatives of the trustee against all proceedings, claims costs or demands of any nature whatever in respect of anything done or not done or 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 such other person, provided that:

- 19.1 The trustee and such other person shall not be indemnified against any liability arising out of breach of trust if the trustee fails to exercise that degree of care and diligence required of him as trustee, having regard to the provisions of this deed; but
- 19.2 The trustee and such other person may be released from any liability contemplated in clause 19.1, either in respect of specific acts or omissions or on the trustee ceasing to act, by a special resolution.

The trustee (including any person assumed or appointed in the place of any trustee) shall be exempt from any obligation to furnish security in connection with his appointment and/or for the due administration of the trust to the Master of the High Court or any other person, body or authority, as provided for in the statutes or any other law now in force or to come into force relating to trusts and the protection of trust monies, and the Master and any such other person, body or authority are hereby directed to dispense with such security.

20.

DOMICILIUM AND NOTICES

- 20.1 The parties choose as their *domicilium 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:

(a) The company:

Physical address – 2nd Floor, Maerua Mall Office Tower,
Corner of Jan Jonker & Robert Mugabe
Avenue, Windhoek, Namibia;

Postal address - P O Box 97723, Maerua Park,
Windhoek, Namibia.

(b) The trustee:

Physical address – Fisher Quarmby & Pfeifer
Corners of Robert Mugabe Avenue
and Thorer Street, with the entrance
on 43 Burg Street
Windhoek;

Postal address – PO Box 37
Windhoek.

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

20.3 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 Namibia, provided that the change shall become effective on the 7th day from the deemed receipt of the notice by the other party.

20.4 Any notice to a party:

(a) Sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved);

(b) 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.

(c) Sent by any electronic means 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 electronic communication sent.

20.5 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*.

- 20.6 Any notice required to be given in terms of this deed to any debenture holder:
- (a) Shall be given to the debenture holder's address as shown in the register;
 - (b) 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;
 - (c) Shall be given by posting it by ordinary mail to that debenture holder **or by any electronic method, such as email;**
 - (d) 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 **or in the event of electronic communication, on the day it was sent.**
- 20.7 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.
- 20.8 Copies of notices which all debenture holders are entitled to receive from the company or the trustee shall, if the debenture (in the form a linked unit or otherwise) is listed on the NSX, be given simultaneously to the General Manager, Listings Division of the NSX in the appropriate quantity.
- 20.9 Notices shall be sent to debenture holders at least six weeks before each redemption date.

21.

MEETINGS AND POWER OF DEBENTURE HOLDERS

- 21.1 The provisions with regard to meetings of debenture holders shall be as set out in **Schedule 1** to this deed.
- 21.2 Every director, the secretary of and the legal practitioner to the company and every other person authorised in writing by the

company, may attend and speak at a meeting of debenture holders.

- 21.3 A resolution duly passed at a meeting duly convened and held in accordance with the provisions of **Schedule 1** to this deed, shall be binding upon the debenture holders, the company and the trustee.
- 21.4 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 special resolution:
 - (a) To bind the debenture holders to any compromise or arrangement to be made between the company and the debenture holders or any of them;
 - (b) To agree to any variation or modification of any of the rights of the debenture holders, in each case subject to the consent or concurrence of the company; and
 - (c) Subject to Section 123 of the Act, to discharge or exonerate the trustee from liability in respect of any specific breach of trust.
 - (d) The sanction of a separate general meeting of ordinary shareholders shall be obtained for the grant of special privileges.

22.

APPLICABLE LAW

This deed shall be interpreted and take effect according to the laws of the Republic of Namibia.

23.

FURTHER RIGHTS OF DEBENTURE HOLDERS

If at any time after the date of signature of this deed, the company:

- (a) Consolidates or sub-divides its ordinary shares; or
- (b) Converts its ordinary shares into shares of no par value; or
- (c) Undertakes a capitalisation issue of ordinary shares to its ordinary shareholders,

the rights of debenture holders to interest on their debentures in terms of clause 7 and to the amount repayable on the debentures in accordance with clause 9 shall, if applicable, be adjusted. Such adjustment shall be calculated by the auditors of the company and shall be subject to approval by the trustee, which approval shall not unreasonably be withheld; provided that:

- (d) The company shall not undertake a capitalisation issue to its ordinary shareholders and any other shareholders who may be entitled thereto, of securities other than ordinary shares, or a capitalisation issue which is paid up other than out of the share premium account of the company, without the prior written consent of the trustee, which consent shall not unreasonably be withheld and shall not be withheld if the proposed capitalisation issue not adversely affect the interests of debenture holders;
- (e) The company shall forthwith notify the debenture holders by circular of the extent, nature and effect of the adjustments made and approved.

24.

ARBITRATION

24.1 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:

- (a) The arbitration shall be held in Windhoek;
- (b) There shall be one arbitrator who shall be agreed upon between the company and the trustee; failing agreement within 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 President for the time being of the Law Society of Namibia who, in making his appointment, shall have regard to the nature of the dispute in question;
- (c) The arbitration shall be conducted according to such

procedure as shall be laid down by the arbitrator, provided that:

- (i) such procedure shall be designed to have the result (if practical) that the arbitration be completed within twenty business days after it shall have been demanded;
- (ii) the arbitration shall be conducted in a summary manner;
- (iii) 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.

- 24.2 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.
- 24.3 This clause 24 shall be severable from the rest of this deed and remain effective even if this deed is cancelled or terminated.

25.

AMENDMENT

Subject to clause 25.3, the terms of this deed may be amended:

- 25.1 By the trustee and the company acting together in order to:
- (a) Rectify any manifest or typographical error;
 - (b) Make such amendments or additions as may be reasonably required by the NSX which do not, in the opinion of the trustee, adversely affect the rights of debenture holders.
- 25.2 Subject to the prior written consent of the company, with:
- (a) The consent in writing of the debenture holders holding not less than 75% in number of the debentures in issue from time to time, provided that no such amendment shall be of any force or effect unless notice of the intention to make such amendment shall have been given to all debenture holders in the manner prescribed in clause 20 and **Schedule 1**; or

- (b) The sanction of a special resolution, but not otherwise.
- 25.3 If the debentures are listed on the NSX, any amendment of this deed shall be subject to the prior approval of the NSX.

26.

COSTS

The company shall pay all costs and charges (including stamp duty) of and incidental to the preparation and implementation of this deed, and all other charges reasonably and necessarily incurred in regard to the creation and issue of the debentures.

27.

MISCELLANEOUS

- 27.1 The trustee hereby accepts appointment as such on the terms and conditions contained herein.
- 27.2 The Company is herein represented by the Chairman and one other director, who warrants that he is duly authorised hereto under and by virtue of a resolution passed by its directors.

28.

AMENDMENT OF BORROWING POWERS OF THE COMPANY

The company shall not, without the prior sanction of a special resolution, amend the provisions of its memorandum or articles of association in relation to the borrowing powers of the company exercisable by the directors.

29.

REGISTER

- 29.1 The company:
- (a) Shall, in terms of the Act, keep a register of debenture holders in addition to a register of linked unit holders;
- (b) May also keep a branch register of debenture holders in any foreign country, and the directors may make and vary

such regulations as they deem fit in regard to the keeping of any such branch register and registers.

29.2 The register of debenture holders:

- (a) Shall be kept at the company's office or transfer office, as the company deems fit;
- (b) May consist of one or more books or sheets or may be in such other form as the company may deem fit;
- (c) Shall contain the names and addresses of the debenture holders and the number of linked units held by each of them;
- (d) Shall show the date on which each debenture holder becomes registered as such.

29.3 Subject to the provisions of the company's articles of association and such reasonable restrictions as the company may, in general meeting, impose:

- (a) Subject to clause 29.2, the register of debenture holders shall be open for inspection for at least 2 hours, to be appointed by the company, on every business day;
- (b) The register of debenture holders shall be closed for such period or periods during any year as the company may deem fit, provided that the aggregate of such periods may not exceed more than 60 days in any year.

CONVERSION OF DEBENTURES

30.1 Upon the happening of any of the following events, namely:

- (a) Any change in the system of taxation applicable in the Republic of Namibia including, without limiting the generality of the aforesaid, the introduction of a system where income taxation is charged uniformly;
- (b) The withdrawal of or change to any rulings related to income or other taxation relied on by the company given by representatives of the Commissioner for Inland Revenue of the Republic of Namibia or any other revenue authority which is able to regulate the income or other taxation payable by the company ,

which introduction, change or withdrawal, in the sole and absolute opinion of the directors of the company, is detrimental to the company, the company shall be entitled to convene a meeting of ordinary shareholders at which proposals will be considered which, if implemented, would eliminate or reduce the detrimental effects referred to above. Such proposals may include, but shall not be limited to:

- (c) The creation of appropriate property unit trusts or schemes of a similar nature; and
- (d) The de-linking of the debentures and the shares.

In the event of the de-linking of the debentures and the shares the company shall within a period of four months of a resolution being accepted on this proposal make the necessary arrangements to recall the existing linked unit certificates then in issue and replace them with separate debenture certificates and ordinary share certificates and make application to the NSX for separate listings of the debentures and ordinary shares in the company.

30.2 If a proposal, acceptable to the company, is approved by a special resolution passed by the ordinary shareholders at the meeting referred to in clause 30.1 or at any adjournment thereof and it can be made binding on all the debenture holders, after complying, where necessary, with the provisions of the Act, then:

- (a) If no additional requirements under the Act or otherwise are necessary to carry the proposal into effect, the proposal

shall be carried into effect;

- (b) If meetings of shareholders, debenture holders, or applications to the High Court of Namibia or any other court, or any other procedures are necessary to give effect to the proposal, the company shall use its best endeavours to procure that the required action is taken to carry the proposal into effect.
- 30.3 If a proposal put before a meeting of ordinary shareholders as provided for in clause 30.1, is not approved by a special resolution, or if such a proposal is approved but not carried into effect within four months after date of approval, the amount of interest payable on the debentures in terms of the relevant supplemental deed shall be adjusted by the auditors of the company in such a way that the aggregate interest payable on the debentures will be reduced by the amount of additional taxation payable by the company as a result of any change referred to in clause 30.1 above.

31.

PROCEDURE – MEETINGS OF DEBENTURE HOLDERS

The meetings of debenture holders shall be conducted in accordance with the procedures set out in **Schedule 1** hereto.

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

For : **Oryx Properties Limited**

For : **Fisher Quarmby & Pfeifer**

SCHEDULE I

MEETINGS OF DEBENTUREHOLDERS

1. Convening of meetings

- 1.1 The trustee or the company may at any time convene a meeting of the debenture holders ("a meeting" or "the meeting").
- 1.2 The trustee shall convene a meeting upon the requisition in writing of the holders of at least 10% (one tenth) of the debentures for the time being outstanding and upon being indemnified, to its satisfaction, against all costs and expenses thereby occasioned and being given notice, in the manner prescribed in this deed, of the nature of the business for which the meeting is to be held.
- 1.3 Whenever the company desires to convene a meeting, it shall give notice in writing to the debenture holders and the trustee, in the manner prescribed in this deed, of the place, day and hour thereof, the nature of the business to be transacted thereat and the wording of each resolution to be proposed.
- 1.4 Whenever the trustee desires to convene a meeting it shall give notice in writing to the debenture holders and the company, in the manner prescribed in this deed, of the place, day and hour thereof, the nature of the business to be transacted thereat and the wording of each resolution to be proposed.
- 1.5 All meetings of debenture holders shall be held at the registered office of the company or should this be impractical a venue in the same town as selected by the trustee.

2. Requisition

- 2.1 A requisition notice referred to in clause 0 shall state the nature of the business for which the meeting is to be held and shall be deposited at the office of the trustee.
- 2.2 The trustee shall notify the company of the deposit of a requisition notice forthwith.
- 2.3 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

3. C convening of meetings by requisitionists

- 3.1 If the trustee does not proceed to cause a meeting to be held within 30 (thirty) business days of the deposit of a requisition notice, the requisitionists, or a majority of them, or such of their number as together hold not less than 10% (one tenth) of the debentures for the time being outstanding, may themselves convene the meeting, but the meeting so convened shall be held within 60 (sixty) business days from the date of such deposit and shall be convened as nearly as possible in the same manner as that in which meetings may be convened by the trustee. Notice of the meeting shall be required to be given to the company and the trustee in the manner prescribed in this deed.

4. Notice of meeting

- 4.1 Unless the holders of at least 75% (seventy-five percent) of the debentures for the time being outstanding agree in writing to a shorter period, at least 21 (twenty-one) days' written notice specifying the place, day and time of the meeting and the nature of the business for which the meeting is to be held shall be given by the trustee or the company, as the case may be, to each debenture holder and to the company or trustee, as the case may be, in the manner prescribed in this deed.
- 4.2 The accidental omission to give such notice to any debenture holder or the non-receipt of any such notice, shall not invalidate the proceedings at a meeting.

5. Quorum

- 5.1 A quorum at a meeting shall:
- 5.1.1 for the purposes of considering an ordinary resolution, consist of debenture holders present in person or by proxy and holding in the aggregate not less than 10% (one-tenth) in value of the debentures then outstanding;
- 5.1.2 for the purposes of considering a special resolution, consist of debenture holders present in person or by proxy and holding in the aggregate not less than a clear majority in the value of the whole of the outstanding debentures.
- 5.2 No business shall be transacted at a meeting of debenture holders unless a quorum is present at the time when the meeting proceeds to business and is present throughout the meeting.

5.3 If, within 30 (thirty) minutes from the time appointed for the meeting, a quorum is not present, the meeting shall, if it was convened on the requisition of debenture holders, be dissolved. In every other case the meeting shall stand adjourned for not less than 14 (fourteen) days; in which event notice of the adjourned meeting shall be sent to every debenture holder and shall state that, if a quorum as above defined shall not be present at the adjourned meeting within thirty minutes from the time appointed for the adjourned meeting, those debenture holders then present in person or by proxy shall constitute a quorum for the purpose of considering any resolution, including a special resolution. At such adjourned meeting the quorum therefore shall be as specified in the notice of the adjournment.

6. Chairman

6.1 The trustee or its representative shall preside as chairman at meetings. If the trustee or its representative is not present within 10 (ten) minutes of the time appointed for the holding of the meeting, the debenture holders then present shall choose one of their own number to preside as chairman.

7. Adjournment

7.1 Subject to the provisions of clause 0 of this Schedule, the chairman may, with the consent of, and shall on the direction of, the meeting, adjourn the meeting from time to time and from place to place.

7.2 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

7.3 At least 14 (fourteen) days written notice of the place, day and time of an adjourned meeting shall be given by the company or the trustee, as the case may be, to each debenture holder and the company or the trustee, as the case may be, in the manner prescribed in this deed. In the case of a meeting adjourned in terms of clause 0 of this Schedule, the notice shall contain the details prescribed by the said clause.

8. How questions decided

- 8.1 At meetings, a resolution put to the vote shall be decided on a show of hands unless before or on the declaration of the result of the show of hands, a poll is demanded by the chairman or by any one or more of the debenture holders present in person or by proxy or, being a company or other body corporate, by its duly authorised representative and entitled in the aggregate to not less than 10% (ten percent) of the total votes of all debenture holders entitled to be present and to vote at the meeting.
- 8.2 Unless a poll is demanded, a declaration by the chairman that on a show of hands a resolution has been carried, or carried by a particular majority, or lost, shall be conclusive evidence of that fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.
- 8.3 A poll demanded on the election of a chairman or on the question of the adjournment of a meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting.
- 8.4 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

9. Votes

- 9.1 On a show of hands every debenture holder present in person or as a representative of a company or other body corporate shall have one vote and on a poll every debenture holder, present in person or as a representative as aforesaid or by proxy, shall have one vote for every N\$20.00 (twenty Namibia Dollar) of debentures of which he is the registered holder or representative, except that where the lowest denomination in which debentures can be transferred is more than N\$20.00 (twenty Namibia Dollar) such denomination shall be substituted for the amount referred to above.
- 9.2 Joint debenture holders shall have only one vote on a show of hands and one vote on a poll for each N\$20.00 (twenty Namibia Dollars) of debentures of which they are the registered holder and the vote may be exercised only by that holder present whose name appears first on the register in the event that more than one of such joint holders is present at the meeting in person or by proxy.

10. Proxies

- 10.1 On a poll votes may be given either in person or by proxy. A proxy shall be authorised in writing under any usual common form of proxy or by power of attorney under the hand of the appointer or of his authorised agent and, if the appointer is a company, other body corporate or association, signed by its authorised officer or agent.
- 10.2 A person appointed to act as proxy need not be a debenture holder.
- 10.3 The proxy form or power of attorney shall be deposited at the registered office of the company or at the office where the register is kept not less than 48 (forty-eight) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy or power of attorney proposes to vote, and in default, the proxy or power of attorney shall be invalid.
- 10.4 No proxy form or power of attorney shall be valid after the expiration of 12 (twelve) months from the date named in it as the date of its execution.
- 10.5 A proxy shall be deemed to have the right to demand or join in demanding a poll.
- 10.6 A proxy form shall be valid for any adjournment of a meeting, unless the contrary is stated thereon.
- 10.7 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death or incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of debentures in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity or revocation shall have been received by the company at the office of its transfer secretaries more than, and that the transfer has been given effect to by the company less than, 30 (thirty) minutes before the commencement of the meeting or adjourned meeting at which the proxy is to be used.

11. Minutes

- 11.1 The trustee shall cause minutes of all resolutions and proceedings of meetings to be duly entered in books to be provided by the company for that purpose.

- 11.2 Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, shall be receivable in evidence without any further proof, and until the contrary is proved, a meeting of debenture holders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

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