

Form 603

Corporations Act 2001 Section 671B

Notice of initial substantial holder

To Company Name/Scheme St Barbara Mines Limited

ACN/ARSN ACN 009 165 086

1. Details of substantial holder (1)

Name Resource Capital Fund II L.P.

ACN/ARSN (if applicable) n/a

The holder became a substantial holder on 8 / 7 / 2003**2. Details of voting power**

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

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Common shares	34,057,084	34,057,084	7.89%

3. Details of relevant interests

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

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Resource Capital Fund II L.P.	Legal & beneficial owner	34,057,084 Ordinary shares

4. Details of present registered holders

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

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Resource Capital Fund II L.P.	Resource Capital Fund II L.P.	Resource Capital Fund II L.P.	34,057,084 Ordinary shares
Resource Capital Fund II L.P.	Resource Capital Fund II L.P.	Resource Capital Fund II L.P.	38,607,563 options

5. Consideration

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

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Resource Capital Fund II L.P.	8 July 2003		\$595,068.49	15,910,922 Ordinary shares
Resource Capital Fund II L.P.	8 July 2003		n/a	26,776,631 options

6. Associates

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

Name and ACN/ARSN (if applicable)	Nature of association
n/a	

7. Addresses

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

Name	Address
Resource Capital Fund II L.P.	1400 Sixteenth Street, Suite 200 Denver CO 80202 USA

Signature

print name

Mason Hills

capacity

Attorney

sign here

M. Hills

date

10/7/03**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

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

FACILITY AGREEMENT

**St Barbara Mines Limited
Silkwest Holdings Pty Ltd
St Barbara Pastoral Co Pty Ltd**

and

Resource Capital Fund II L.P.



Level 1 88 Colin Street West Perth 6005
Tel: 08 9327 0800 Fax: 08 9327 0888
Ref: paw/1646

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FACILITY AGREEMENT

made on December 2001 between:

1. **St Barbara Mines Limited** ABN 36 009 165 066
 (Borrower)
2. **Silkwest Holdings Pty Ltd** ABN 43 067 834 235 and **St Barbara Pastoral Co. Pty Ltd** ABN 35 067 716 312
 (Guarantors)
3. **Resource Capital Fund II L.P.**
 (Lender)

Introduction

The Lender has agreed at the request of the Borrower and the Guarantors to make available a credit facility to the Borrower on the terms and conditions contained in this agreement.

1 Definitions and interpretation

1.1 Definitions

In this agreement, unless the contrary intention appears:

ASX means Australian Stock Exchange Limited.

ASX Listing Rules means the Official Listing Rules of ASX.

Australian Dollars, AUD and A\$ means the currency of the Commonwealth of Australia.

Authorisation includes any consent, registration, filing, agreement, certificate, licence, approval, permit, authority or exemption from, by or with a Governmental Agency.

Availability Period means, subject to clause 3.2, the period commencing from the CP Satisfaction Date and ending on the earlier of:

- (a) the date that occurs 3 months prior to the Repayment Date; or
- (b) the date on which the Commitment is cancelled in full.

Bill means a bill of exchange as defined in the Bills of Exchange Act 1909 (Cth).

Business Day means a day on which banks are open for general banking business in Perth, Sydney, New York and Denver, excluding Saturdays, Sundays and public holidays.

Commitment means the maximum amount agreed to be provided by the Lender under the Facility, being an amount of A\$20,000,000 as reduced in accordance with the provisions of this agreement, or another amount agreed between the Lender and the Borrower.

Collateral Security means any present or future Encumbrance, Surety Obligation or other document entered into by the Borrower or another Transaction Party as security for the payment of the Secured Moneys.

Contested Tax means a Tax payable by a Transaction Party where the Transaction Party:

- (a) in good faith and in accordance with proper procedures, is contesting its liability to pay that Tax and is not required by applicable law to pay that Tax before contesting its liability to pay that Tax; and
- (b) has satisfied the Lender that it has set aside sufficient reserves of liquid assets to pay that Tax and any fine, penalty or interest payable if the contest is unsuccessful.

Controlled Project means:

- (a) each Existing Project;
- (b) a gold or other mineral project in which the Borrower or another Group Member beneficially owns a majority interest; and
- (c) a gold or other mineral project undertaken by a company in which the Borrower or another Group Member has the power to control the composition of the board of directors of that company.

Corporations Act means the Corporations Act 2001 (Cth).

CP Satisfaction Date means the date of satisfaction (or waiver by the Lender) of the conditions precedent described in clause 3.1.

Default means the occurrence of an event of default described in clause 9.1.

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.

Excluded Documents is defined in clause 3.2(a).

Existing Project means the gold projects being undertaken by the Borrower at Meekatharra and by Taipan Resources NL, a Subsidiary of the Borrower at, or known as, Paulsens.

Facility means the facility to be provided under clause 2.1.

Financial Indebtedness means any debt or other monetary liability in respect of moneys borrowed or raised or financial accommodation including, but not limited to, under or in respect of any:

- (a) Bill, bond, debenture, note, letter of credit, bank guarantee or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;

- (c) Surety Obligation;
- (d) finance lease;
- (e) deferred purchase price for more than 90 days of any asset or service;
- (f) obligation to deliver goods or provide services paid for in advance by any financier or in relation to another financing transaction;
- (g) trade creditors; or
- (h) amount of capital and premium payable in connection with the redemption of preference shares or an amount of purchase price payable for or in connection with the acquisition of redeemable preference shares,

and irrespective of whether the debt or liability:

- (i) is present or future;
- (j) is actual, prospective, contingent or otherwise;
- (k) is at any time ascertained or unascertained;
- (l) is owed or incurred alone or severally or jointly or both with another person; or
- (m) is a combination of the above.

Financial Statements means:

- (a) a profit and loss statement;
- (b) a balance sheet; and
- (c) a statement of cash flows,

together with any notes to those documents and a directors' declaration as required under the Corporations Act, and any other information necessary to give a true and fair view.

Force Majeure Event means:

- (a) an act of God;
- (b) war, revolution, or any other unlawful act against public order or authority;
- (c) a restraint by a Governmental Agency; and
- (d) any other event which a reasonable person could not foresee or reasonably make provision for or insure against,

which wholly or partially prevents, hinders, obstructs, delays or interferes with the development or operation of a Project or the sale of gold therefrom.

Funding Date means the date on which a Funding Portion is, or is to be, provided to the Borrower under this agreement.

Funding Notice means a notice requesting the provision of a Funding Portion in the form of schedule 1, and specifying the matters indicated in that schedule.

Funding Portion means each portion of the Commitment provided under clause 4.3.

Funding Rate means 10 per cent per annum.

GAAP means generally accepted accounting standards and principles as in effect from time to time in Australia.

Governmental Agency means a government or a governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Gross Up Amounts is defined in clause 6.3(a)(2).

Group means:

- (a) the Borrower; and
- (b) each Subsidiary of it.

Group Guarantee means the deed of guarantee and indemnity dated on or about the date of this agreement between the Guarantors and the Lender.

Group Member means a member of the Group.

GST has the same meaning as in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means the happening of any of the following events with respect to a Group Member:

- (a) an application is made, which is not set aside or stayed within 7 days, to a court for an order, or an order is made, that a Group Member be wound up;
- (b) an application is made, which is not set aside or stayed within 7 days, to a court for an order appointing a liquidator or provisional liquidator in respect of a Group Member, or one of them is appointed, whether or not under an order;
- (c) a receiver, receiver and manager, trustee, administrator, controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of a Group Member;
- (d) except to reconstruct or amalgamate while solvent on terms approved by the Lender which approval cannot be unreasonably withheld or delayed, a Group Member enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a Group Member resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Lender or is otherwise wound up or dissolved;
- (f) a Group Member is unable to pay its debts when they are due or states that it is insolvent or is insolvent as defined in the Corporations Act;
- (g) a Group Member suspends payment of its debts generally;

- (h) a Group Member takes any step to obtain protection or is granted protection from its creditors under the Corporations Act or an administrator is appointed to a Group Member under the Corporations Act;
- (i) a Group Member becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (j) a notice under section 601AB of the Corporations Act is given to, or an application under section 601AA is made by, or in respect of a Group Member.

Interest Payment Date means:

- (a) 30 June 2002; and
 - (b) the Repayment Date,
- or as the Lender may otherwise agree.

Lending Office means the office of the Lender notified by the Lender to the Borrower under this agreement.

Macquarie Consent Letter means the letter dated 21 December 2001 from Macquarie Bank Limited to the Borrower and the Lender.

Market Price in relation to a St Barbara Share on any day, means the weighted average sell price of that St Barbara Share quoted on ASX during the 20 trading days immediately preceding that day.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of a Transaction Party to perform an obligation under a Transaction Document to which it is a party;
- (b) the value of the Secured Property; or
- (c) the business or operations of a Group Member.

Officer means:

- (a) in the case of a Transaction Party, a director or company secretary for the time being; and
- (b) in the case of the Lender, an officer whose title contains the word "managing director" or "principal", or a person performing the functions of any of them,

or, in any case, a person appointed by a party to act as an Officer for the purposes of this agreement and each of the other Transaction Documents.

Overdue Rate in relation to an unpaid amount on any date, means the rate which is the sum of 2% per annum and the Funding Rate.

Payment Currency means the currency in which any payment is actually made.

Permitted Encumbrances means the Encumbrances described in schedule 2.

Permitted Purpose means:

- (a) the acquisition and development of gold and other mineral projects, and the acquisition of shares in gold or other mineral producing companies or companies with gold or other mineral properties at a pre-feasibility or later stage of development;
- (b) the development of an Existing Project; and
- (c) any other purpose the Lender may approve.

Potential Default means an event or condition that with notice or lapse of time or satisfaction of some other condition or any combination of the foregoing would become a Default.

Power means a right, power, authority, discretion or remedy conferred on the Lender by a Transaction Document, an applicable law or otherwise.

Principal Outstanding at any time, means the sum of all outstanding Funding Portions drawn under the Facility at that time.

Priority Deed means the deed of priority made or to be made between Macquarie Bank Limited, the Lender, the Borrower and the Guarantors.

Proved Reserves and **Probable Reserves** means "Proved Ore Reserves" and "Probable Ore Reserves" as construed, reported and calculated in accordance with the Australasian Code for Reporting of Mineral Resources and Ore Reserves effective as at September 1999 (as amended from time to time).

Relevant Currency means Australian Dollars.

Repayment Date means 31 December 2002, or another date agreed between the Lender and the Borrower.

Same Day Funds means a Lender cheque or other immediately available funds.

Secured Moneys means all debts and monetary liabilities of the Borrower and each other Transaction Party to the Lender under any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by or on account of the Borrower or that other Transaction Party alone, or severally or jointly with any other person;
- (e) are owed to or incurred for the account of the Lender alone, or severally or jointly with any other person;
- (f) are owed to any other person as agent (whether disclosed or not) for or on behalf of the Lender;
- (g) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- (h) are owed to or incurred for the account of the Lender directly or as a result of:

- (1) the assignment or transfer to the Lender of any debt or liability of the Borrower or a Transaction Party (whether by way of assignment, transfer or otherwise); or
- (2) any other dealing with any such debt or liability;
- (i) are owed to or incurred for the account of the Lender before the date of this agreement, before the date of any assignment of this agreement to the Lender by any other person or otherwise; or
- (j) comprise any combination of the above.

Secured Property means the property the subject of the Securities and each Collateral Security.

Securities means the securities described in schedule 3.

Share Election is defined in clause 17.1(a).

Sponsorship Agreement means the sponsorship agreement dated on or about the date of this agreement between the Borrower and Salomon Smith Barney Private Clients Pty Ltd and, if applicable, a nominee agreement (by whatever name called) between some or all of the Borrower, Salomon Smith Barney Private Clients Pty Ltd and a nominee company of Salomon Smith Barney Private Clients Pty Ltd.

Sponsorship Agreement Side Deed means the deed dated on or about the date of this agreement between the Borrower, the Lender and Salomon Smith Barney Private Clients Pty Ltd and, if applicable, a nominee company of Salomon Smith Barney Private Clients Pty Ltd.

St Barbara Option means an option to acquire a St Barbara Share on the terms set out in clauses 17.2, 17.3 and 17.4.

St Barbara Securities means:

- (a) St Barbara Shares; and
- (b) St Barbara Options.

St Barbara Share means an ordinary fully paid share in the capital of the Borrower.

Subsidiary of a body corporate, means another body corporate which is a subsidiary of the first within the meaning of part 1.2 of division 6 of the Corporations Act.

Surety Obligation means a guarantee, suretyship, letter of credit, letter of comfort or another obligation (whatever called and of whatever nature):

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify a person against the consequences of default in the payment of; or
- (c) to be responsible for,

a debt or monetary liability of another person, or the assumption of a responsibility or obligation in respect of the insolvency or the financial condition of another person.

Tax means:

- (a) a tax, levy, charge, impost, duty, fee, deduction or withholding;
- (b) income, stamp or transaction duty, tax or charge; or
- (c) GST,

which is assessed, levied, imposed or collected by, or payable to, a Governmental Agency (other than in respect of the overall net income of the Lender) and includes, but is not limited to, interest, fines, penalties, charges, fees or other amounts imposed on or in respect of any of the above.

Taxable Supply has the same meaning as in the GST Act.

Transaction Documents means:

- (a) this agreement;
- (b) the Securities;
- (c) the Sponsorship Agreement;
- (d) the Sponsorship Agreement Side Deed;
- (e) the Group Guarantee;
- (f) the Priority Deed;
- (g) each Collateral Security;
- (h) each document which is executed under the terms of any of the foregoing or which is collateral, supplemental or related to any of the foregoing; and
- (i) each document which the Borrower and the Lender agree is a Transaction Document.

Transaction Party means:

- (a) the Borrower; and
- (b) each Guarantor.

Undrawn Commitment at any time, means the amount of the Commitment less the Principal Outstanding under the Facility at that time.

Voting Power has the meaning ascribed to the expression "voting power" in section 610 of the Corporations Act as at the date of this agreement.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) clause headings do not affect the interpretation of this agreement and a reference to clauses, paragraphs and schedules is a reference to the clauses, paragraphs and schedules in this agreement;

2 Facilities, purpose and availability

2.1 Facilities

Subject to this agreement, the Lender agrees during the Availability Period to make available Funding Portions to the Borrower up to a maximum amount which does not exceed the Commitment.

2.2 Purpose

- (a) The Borrower must apply the proceeds of each Funding Portion drawn under the Facility for a Permitted Purpose.
- (b) Save for the acquisition of shares in the companies notified to, and approved by, the Lender prior to the date of this agreement, the Borrower must obtain the Lender's prior written consent to the application of funds for any other Permitted Purpose prior to the issue of a Funding Notice relating to the provision of those funds.
- (c) The Borrower may only draw Funding Portions to fund the acquisition of shares if Salomon Smith Barney Private Clients Pty Ltd is the sponsoring broker and those shares are subject to the Sponsorship Agreement and the Sponsorship Agreement Side Deed.

2.3 Cancellation during Availability Period

- (a) The Borrower may at any time during the Availability Period cancel all or part of the Undrawn Commitment by giving the Lender at least 5 Business Days' prior written notice.
- (b) The notice must specify the amount of the cancellation.
- (c) A partial cancellation of the Undrawn Commitment may only be made in an amount that is not less than A\$100,000 and is an integral multiple of A\$100,000.
- (d) Unless the Lender otherwise agrees, a notice given under clause 2.3(a) is irrevocable.

2.4 Cancellation at end of Availability Period

The Undrawn Commitment is cancelled at 4.00 pm (Perth time) on the last day of the Availability Period applicable to it.

3 Conditions precedent

3.1 First utilisation of a Facility

The Lender is not obliged to provide the Commitment or the first Funding Portion until the Lender has received all of the following in form and substance satisfactory to it:

- (a) **constitution:** a certified copy of the constitution or other constituent documents of each Transaction Party which is, or on the first Funding Date will be, a party to a Transaction Document;

- (b) **Transaction Documents:** an original copy of each of the documents described in paragraphs (a), (b), (c), (d), (e) and (f) of the definition of "Transaction Documents", executed, stamped (unless the Borrower has provided the Lender with sufficient funds to cover the likely stamp duty liability in respect of those Transaction Documents) and, where applicable, in registrable form together with all fully executed documents and other things necessary to effect registration of them;
- (c) **corporate authorisation:** a copy of a resolution of the directors of each Transaction Party approving the Facility and the transactions contemplated by the Transaction Documents to which it is a party, authorising execution by that Transaction Party of those Transaction Documents, and authorising a person or persons (being Officers) to sign all notices, certificates or other documents in connection with the Facility on behalf of the Borrower;
- (d) **authorised signatories:** a certified copy of the specimen signatures of all Officers of the Borrower who are authorised to sign all notices, certificates or other documents in connection with the Facility on its behalf;
- (e) **regulatory approvals:** evidence in the form of a certificate signed by 2 directors of the Borrower that the Borrower has obtained all applicable approvals under the ASX Listing Rules, the Corporations Act and any other approvals required by any Governmental Agency to the transactions contemplated in this agreement including, but not limited to, the issue to the Lender of the St Barbara Securities described in this agreement;
- (f) **Financial Statements:** a copy of the Group's consolidated Financial Statements for the period ending 30 June 2001;
- (g) **certificate regarding Material Adverse Effect:** a certificate signed by 2 directors of the Borrower that certifies that since the end of the accounting period for the Financial Statements described in clause 3.1(e), no event has occurred (and is continuing) which has, or may have, a Material Adverse Effect;
- (h) **due diligence:** a technical, financial and legal due diligence of the Group;
- (i) **enquiries:** results of searches, enquiries and requisitions concerning each Transaction Party, its capacity to enter into and perform its obligations under the Documents to which it is a party, and the Secured Property;
- (j) **board of directors of Borrower:** details of the composition of the board of directors of the Borrower which must be satisfactory to the Lender; and
- (k) **legal opinion:** an opinion of counsel to the Lender with respect to certain aspects of the transactions contemplated by the Transaction Documents.

3.2 Limitation on initial Funding Portion

- (a) If the Borrower wishes to utilise the Facility prior to it being able to deliver an original counterpart of the Priority Deed and the documents described in paragraphs 1 and 2 of schedule 3 (*Excluded Documents*) to

the Lender as required by clause 3.1(b), then, provided the Borrower has satisfied all of the other conditions precedent in clause 3.1, the Lender may agree (but is not obliged to) to permit the Borrower to draw Funding Portions up to an aggregate amount not exceeding A\$5,000,000 (or such other amount as the Lender may agree) for the sole purpose of funding the acquisition of the shares in the companies notified to, and approved by, the Lender prior to the date of this agreement.

- (b) Before the Borrower may draw the Funding Portion contemplated in clause 3.2(a), it must deliver to the Lender a signed copy of the Macquarie Consent Letter.

3.3 Conditions precedent to each utilisation of a Facility

The Lender is not obliged to provide a Funding Portion at any time until the following conditions are fulfilled to the complete satisfaction of the Lender:

- (a) **no default:** no Default or Potential Default has occurred and is continuing and no Default or Potential Default will result from the provision of the proposed Funding Portion;
- (b) **Commitment:** the Commitment is not, and will not be, exceeded if that Funding Portion is provided;
- (c) **no Material Adverse Effect:** since 30 June 2001, no event has occurred which has, or is likely to have, a Material Adverse Effect (in the reasonable opinion of the Lender); and
- (d) **other matters:** it has received any other certificates, authorisations, documents, matters or things which the Lender may reasonably request.

3.4 Certified copies

Where a certified copy of a document is to be given to the Lender under this clause 3, an Officer of the relevant Transaction Party must certify the copy to be a true, complete and up-to-date copy of the original document as at a date acceptable to the Lender.

3.5 Waiver

A requirement in this clause 3 is for the benefit of the Lender and may only be waived by a written notice issued by the Lender to the Borrower.

4 Funding procedures

4.1 Delivery of Funding Notice

- (a) If the Borrower wishes to utilise the Facility, it must deliver to the Lender a duly completed Funding Notice.
- (b) Each Funding Notice must be signed by an Officer of the Borrower and received by the Lender not later than 10.00 am (Perth time) on a day which is at least 3 Business Days (or a lesser period which the Lender may agree) before the proposed Funding Date.

- (c) A Funding Notice is effective on actual receipt by the Lender in legible duly completed form and is irrevocable.

4.2 Content of Funding Notices

- (a) Each Funding Notice given under clause 4.1(a) must specify:
- (1) the proposed Funding Date which must be a Business Day during the Availability Period;
 - (2) the amount of the proposed Funding Portion which, unless otherwise agreed by the Lender, must be not less than A\$100,000 and be an integral multiple of A\$100,000;
 - (3) the purpose for which the Funding Portion is to be used; and
 - (4) the account of the Borrower into which the proposed Funding Portion is to be paid.
- (b) Each Funding Notice given under clause 4.1(a) must contain a representation and warranty by the Borrower that the representations and warranties set out in clauses 7.1 and 7.2:
- (1) are correct and not misleading on the date of that Funding Notice; and
 - (2) each will be correct and not misleading on the Funding Date applicable to the drawing requested in that Funding Notice.

4.3 Provision of Funding Portions

If the Borrower gives a Funding Notice requesting the provision of a Funding Portion which complies with clause 4.2 and subject always to the terms of this agreement, the Lender must provide that Funding Portion to the Borrower in Same Day Funds and in the currency stated in that Funding Notice not later than 2.00 pm (Perth time) on the specified Funding Date.

5 Interest, repayment and prepayment

5.1 Payment of interest

- (a) The Borrower must pay interest on the principal amount of each Funding Portion at the Funding Rate.
- (b) Interest is calculated on daily balances on the basis of:
- (1) a 365 day year; and
 - (2) for the actual number of days elapsed from and including the first day of each Funding Period to, but excluding, the last day of that Funding Period.
- (c) The Borrower must pay accrued interest in arrears to the Lender on each Interest Payment Date, subject always to clause 17.1.

5.2 Repayment of Debt Facilities Generally

The Borrower must repay all outstanding Funding Portions under the Facility and all other Secured Moneys in full on or before the Repayment Date, or any other date on which that part of the Secured Moneys are, or are required to be, repaid in full.

5.3 Prepayment

- (a) The Borrower may prepay all or part of a Funding Portion by giving the Lender at least 5 Business Days' prior written notice, but a partial prepayment may only be made in an amount which is not less than A\$100,000 and is an integral multiple of A\$100,000.
- (b) A notice given under clause 5.3(a) is irrevocable.
- (c) On the prepayment date specified in the notice given under clause 5.3(a), the Borrower must pay:
 - (1) the full amount of the prepayment specified in that notice; and
 - (2) all unpaid interest and fees accrued to the prepayment date in respect of the prepaid amount.
- (d) Amounts prepaid may be redrawn by the Borrower in accordance with the terms of this agreement.

6 Payments

6.1 Manner of payment

All payments by the Borrower under the Transaction Documents must be made in Same Day Funds in the Relevant Currency, and not later than 11.00 am (Perth time) on the due date, to the account specified or as otherwise directed by the Lender to the Borrower from time to time.

6.2 Appropriation of payments

- (a) All payments made by a Transaction Party may be appropriated as between principal, interest and other amounts as the Lender in its absolute discretion determines or, failing any determination, in the following order:
 - (1) first, towards reimbursement of all fees, costs, expenses, charges, damages, indemnity payments and other like amounts incurred or owing by the Transaction Parties under the Transaction Documents;
 - (2) next, towards payment of interest owing under the Facility; and
 - (3) next, towards repayment or prepayment of the Principal Outstanding.
- (b) Any appropriation under clause 6.2(a) overrides any appropriation made by the Borrower.

6.3 Payments to be made without set-off or deduction

- (a) All payments which a Transaction Party is required to make under a Transaction Document to which it is a party must be:
- (1) without set-off, counterclaim or condition; and
 - (2) without deduction or withholding for present or future Tax unless that Transaction Party is compelled by law to deduct or withhold that Tax, in which case it must pay to the Lender additional amounts (*Gross Up Amounts*) necessary to enable the Lender to receive, after deduction and withholding for that Tax, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.
- (b) If the Borrower makes the Share Election with respect to any payment due by it under this agreement, then the Borrower must still pay the Gross Up Amounts to the Lender in the same manner as if the Borrower had made that payment in Australian Dollars.

6.4 Amounts payable on demand

If an amount payable by a Transaction Party under a Transaction Document to which it is a party is not expressed to be payable on a specified date, that amount is payable on demand by the Lender.

7 Representations

7.1 Representations - General

Each Transaction Party represents and warrants to and for the benefit of the Lender that:

- (a) **registration:** each Group Member is a corporation as that expression is defined in the Corporations Act having limited liability, registered (or taken to be registered) and validly existing under the Corporations Act;
- (b) **corporate power:** each Group Member has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into the Transaction Documents to which it is a party and to perform its obligations under them;
- (d) **corporate authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of the Transaction Documents to which it is a party in accordance with their terms;
- (e) **binding obligations:** the Transaction Documents to which it is a party constitute its legal, valid and binding obligations and are enforceable in accordance with their terms;
- (f) **transactions permitted:** the execution, delivery and performance by it of the Transaction Documents to which it is a party do not and will not

violate any law, regulation, authorisation, ruling, consent, judgment, order or decree of a Governmental Agency, its constitution or other constituent documents, or an Encumbrance or document which is binding on it or on its assets;

- (g) **Authorisations:** any Authorisations presently required in connection with the execution and performance by it and the validity and the enforceability against it of each of the Transaction Documents to which it is a party, and its performance of the transactions contemplated by those Transaction Documents (other than Authorisations that as a matter of law or generally applicable administrative or usual business practice cannot or should not be obtained until shortly before the events to which they relate occur where those events are not imminent) have been obtained and are in full force and effect and there has been no material default by it in the performance of any of the terms and conditions of those Authorisations;
- (h) **no default or breach:**
 - (1) no Group Member is in breach of an agreement binding on it which has, or may have, a Material Adverse Effect;
 - (2) no Group Member is in default in the payment of a material sum, or in the compliance with a material obligation in respect of Financial Indebtedness;
- (i) **no litigation:** save as disclosed to the Lender in writing prior to the date of this agreement, no litigation, arbitration, dispute or administrative proceeding has been commenced, is pending or to its knowledge is threatened, which if adversely determined would have, or is likely to have, a Material Adverse Effect;
- (j) **Financial Statements:** the most recent Financial Statements of the Group delivered to the Lender:
 - (1) were prepared in accordance with GAAP; and
 - (2) contain all information necessary to give a true and fair view of its and the Group's financial condition and state of affairs at the date to which the Financial Statements relate and the results of its and the Group's operations for the accounting period to which the Financial Statements relate;
- (k) **no change in affairs:** there has been no change in any Group Member's state of affairs since the end of the accounting period to which the Financial Statements referred to in clause 8.1(j) relate which has, or may have, a Material Adverse Effect;
- (l) **no Default:** no event has occurred which constitutes a Default or a Potential Default;
- (m) **disclosure:** all information provided to the Lender by or on behalf of it in respect of the Transaction Documents, the transactions contemplated by them, the Group and the assets, business and affairs of the Group, is true and correct as at the time it is given in all material respects and is not, whether by omission of information or otherwise, misleading in a material respect;

- (n) **laws:** each Group Member has complied in all material respects with all material laws, statutes and regulations which are applicable to it and the business carried on by it;
- (o) **Taxes:** each Group Member has complied with all tax laws in all applicable jurisdictions and it has paid all Taxes due and payable by it other than Contested Taxes;
- (p) **no Encumbrance:** there is no Encumbrance over the Secured Property other than an Encumbrance created by a Transaction Document or a Permitted Encumbrance;
- (q) **assets:** each Group Member is the sole beneficial owner of all of its assets described in the Financial Statements referred to in clause 8.1(j) free of all Encumbrances other than the Permitted Encumbrances;
- (r) **no immunity:** no Group Member nor its assets, enjoy immunity from suit or execution;
- (s) **adverse agreements:** no Group Member is a party to any agreement, document, arrangement or understanding which has, or may have, a Material Adverse Effect;
- (t) **not a trustee:** no Group Member is a trustee of a trust or settlement;
- (u) **solvency:** each Group Member is solvent and is able to pay its debts as and when they become due;
- (v) **commercial benefit:** the entry into, and performance by it of its obligations under, the Transaction Documents to which it is a party is for its commercial benefit and is in its commercial interests; and
- (w) **regulatory approvals:** the Borrower has obtained all applicable approvals under the ASX Listing Rules, the Corporations Act and any other approvals required by any Governmental Agency to the transactions contemplated in this agreement including, but not limited to, the issue to the Lender of the St Barbara Securities described in this agreement.

7.2 Representations – Controlled Projects

Each Transaction Party represents and warrants to and for the benefit of the Lender that:

- (a) **Projects:** the Borrower is the sole beneficial owner of the Existing Project located at Meekatharra and Taipan Resources NL is the sole beneficial owner of the Existing Project situated at, or known as, Paulsens, free of all Encumbrances other than the Permitted Encumbrances;
- (b) **Project Authorisations:** all necessary Authorisations and other approvals and consents which are then necessary for the construction, development and operation of each Controlled Project (other than Authorisations that as a matter of law or generally applicable administrative or usual business practice cannot or should not be obtained until shortly before the events to which they relate occur where those events are not imminent) have been obtained;

- (c) **Project operation:** there has been no change in the conduct or operation of each Controlled Project which has, or is likely to have, a Material Adverse Effect;
- (d) **Environmental approvals:** the development, construction and operation of each Controlled Project complies with all applicable environmental laws and environmental approvals;
- (e) **Environmental liabilities:** there are no environmental liabilities affecting any Controlled Project or the assets relating to that Controlled Project which may have a Material Adverse Effect and there are no factors affecting that Controlled Project or those assets which are likely to give rise to any environmental liability; and
- (f) **native title:** save as disclosed to the Lender in writing prior to the date of this agreement, no native title claims, sacred site applications or other claims have been made or lodged in respect of any Controlled Project.

7.3 Survival and repetition

The representations and warranties in, or given under, this agreement:

- (a) survive the execution of each Transaction Document; and
- (b) are repeated on each day during the term of the Facilities with reference to the facts and circumstances then applicable.

7.4 Reliance

The Borrower and each of the Guarantors acknowledges that the Lender has entered into each Transaction Document to which it is a party in reliance on the representations and warranties given under this agreement including, but not limited to, clauses 7.1 and 7.2.

8 Undertakings

8.1 Terms of covenants

Each Transaction Party must at all times comply with, or cause to be complied with, the undertakings in this clause 8.

8.2 Undertakings – Controlled Projects

- (a) **Operation of Projects:** The Borrower must ensure that each Controlled Project is diligently developed, equipped, completed, operated and maintained in accordance with good mining practice.
- (b) **Authorisations:** The Borrower must ensure that all Authorisations (including, but not limited to, any environmental approvals) necessary for the construction, development and operation of each Controlled Project is applied for, renewed or replaced on time and diligently pursued and when obtained, renewed or replaced are maintained in good order and it must ensure that the relevant person having obligations under them observes those obligations.

- (6) not do or omit anything or permit anything to be done which may adversely affect an insurance policy; and
- (7) do all things necessary and provide all documents, evidence and information necessary to enable the Lender to collect or recover money due or to become due under an insurance policy relating to the Secured Property.

(i) **Access:** The Borrower must ensure that representatives of the Lender on giving reasonable notice are allowed:

- (1) to have access to any Controlled Project upon request to inspect or observe any of the Controlled Project assets; and
- (2) to inspect any books, records, data and information which are in the custody or possession of a Transaction Party.

8.3 General undertakings

(a) **Negative pledge:**

- (1) The Borrower must ensure that no Group Member creates, permits, suffers to exist, or agrees to, any Encumbrance other than an Encumbrance in favour of the Lender, or a Permitted Encumbrance, over any of its assets without the prior written consent of the Lender which consent cannot be unreasonably withheld or delayed.
- (2) The restriction in clause 8.3(1) does not apply to any bona fide project finance facility (*Senior Project Debt*) entered into by the Borrower, another Transaction Party or Taipan Resources NL to fund the construction, development and operation of the Existing Project located at, or known as, Paulsens or any other Controlled Project which the Borrower or that other Transaction Party may undertake without the prior approval of the Lender and the security granted to secure that Senior Project Debt may rank in priority to any Transaction Document that is an Encumbrance for the amount of that Senior Project Debt and any related hedging arrangements (approved by the Lender) provided that the project life ratio (as determined by the Lender in accordance with its usual practice by reference to the Proved Reserves and Probable Reserves relating to the Controlled Project which is the subject of that project finance facility) applicable to the Senior Project Debt is not less than 1.75:1. Prior to entering into a commitment for the provision of that Senior Project Debt (and any relating hedging), the Borrower must provide, or must cause that other Group Member to provide, to the Lender full details of that project finance facility (including any related hedging arrangements).

(b) **Disposal of assets:**

- (1) The Borrower must ensure that no Group Member deals with, sells or otherwise disposes of or parts with possession of any of its assets otherwise as permitted under clause 8.3(b)(2).

(2) The undertaking in clause 8.3(b)(1) does not apply to a dealing, sale or disposal of assets:

(A) which is in the ordinary course of its ordinary business; or

(B) to which the Lender consents in writing which consent cannot be unreasonably withheld or delayed,

provided that unless the Lender otherwise agrees, the net proceeds of that dealing, sale or other disposal are applied in or towards repayment of the Principal Outstanding.

(c) **Financial Indebtedness:** The Borrower must ensure that no Group Member incurs any Financial Indebtedness save for Financial Indebtedness

(1) incurred under, or contemplated by, the Transaction Documents,

(2) which comprises senior corporate debt in an amount not exceeding A\$5,000,000;

(3) which comprises Senior Project Debt;

(4) incurred in the ordinary course of business; and

(5) with the prior written consent of the Lender which consent cannot be unreasonably withheld or delayed.

(d) **Financial accommodation:** The Borrower must ensure that no Group Member lends money or provides any other financial accommodation to any person without the prior written consent of the Lender provided that consent cannot be withheld where the financial accommodation is provided by one Transaction Party to another Transaction Party and:

(1) the repayment of it is subordinated in a manner acceptable to the Lender; or

(2) the aggregate amount of it does not exceed A\$50,000.

(e) **Surety Obligations:** The Borrower must ensure that no Group Member issues any Surety Obligation in favour of any third party without the prior written consent of the Lender.

(f) **Proper accounts:** The Borrower must ensure that each Group Member keeps proper books of account which give a true and fair view of the financial condition and state of affairs of it, and ensure that the Financial Statements provided by it under clause 8.4 are prepared in accordance with GAAP for Financial Statements for a financial year.

(g) **Compliance with Transaction Documents:** Each Transaction Party must at all times fully comply with all of its obligations under the Transaction Documents to which it is a party.

(h) **Corporate existence:** The Borrower must ensure that each Group Member does everything necessary to preserve its corporate existence in good standing.

- (i) **Conduct of business:** The Borrower must ensure that each Group Member carries on and conducts its business in a proper and efficient manner.
- (j) **Pay debts:** The Borrower must ensure that each Group Member pays, or causes to be paid, each financial obligation when due and payable, unless:
 - (1) that obligation is being contested by that Group Member in good faith;
 - (2) prior written notice of the contest has been given to the Lender; and
 - (3) the Lender is satisfied that an adverse finding against that Group Member will not have, or is unlikely to have, a Material Adverse Effect.
- (k) **Payment of Taxes and outgoings:** The Borrower must ensure that each Group Member pays all Taxes (other than Contested Taxes) and outgoings payable when due and at the request of the Lender, deliver to the Lender all receipts or documents evidencing payment.
- (l) **Dividends:** The Borrower must ensure that no Group Member declares or pays any dividend or makes any other distribution of any nature to its shareholders without the prior written consent of the Lender.
- (m) **Registration and protection of security:** The Borrower must ensure that each of the Transaction Documents is registered and filed in all registers in all jurisdictions in which they must be registered and filed to ensure enforceability, validity and priority against all persons and to be effective as a security.
- (n) **Change of business:** The Borrower must ensure that no Group Member changes the nature of its business without the prior written consent of the Lender.
- (o) **Priority Deed:** If the Borrower has not delivered the Excluded Documents to the Lender prior to the first Funding Portion being drawn under this agreement as contemplated in clause 3.2, then the Borrower must deliver an original counterpart of each of the Excluded Documents executed by all parties (other than the Lender) to the Lender on or before 14 January 2002.
- (p) **Appointment of Representative to the Board of Directors of the Borrower:** The Borrower must cause a nominee of the Lender to be appointed to its board of directors upon request by the Lender.
- (q) **Acquisitions of shares:** After the date of this agreement, the Borrower may only acquire shares or other securities in its own name (or in the name of a nominee company of Salomon Smith Barney Private Clients Pty Ltd) and Salomon Smith Barney Private Clients Pty Ltd must be the sponsoring broker of those shares which must be subject to the Sponsorship Agreement and the Sponsorship Agreement Side Deed and on the basis that those shares are secured in favour of the Lender under the document described in paragraph 3 of schedule 3 on a first priority ranking basis.

8.4 Information and reports

The Borrower must provide, or cause to be provided, to the Lender all of the following:

- (a) **annual Financial Statements:** as soon as practicable, and no later than 120 days after the end of the Borrower's financial year, a copy of the audited Financial Statements of the Borrower individually and the Group (prepared on a consolidated basis) for that financial year;
- (b) **semi-annual Financial Statements:** as soon as practicable, and no later than 120 days after the end of the Borrower's financial half year, a copy of its unaudited semi-annual Financial Statements of the Borrower individually and the Group (prepared on a consolidated basis) for that financial half year;
- (c) **Project reports:** promptly upon request, such reports in relation to status of the development, construction and operation of any Controlled Project that the Lender may reasonably request (including, but not limited to, life of mine plans) which reports must be prepared in form and substance satisfactory to the Lender acting reasonably;
- (d) **compliance certificate:** upon request by the Lender, a certificate signed by 2 directors of the Borrower which certifies that no Default or Potential Default has occurred which continues unremedied;
- (e) **documents issued to shareholders:** copies of all notices, circulars, documents and other written information by a Transaction Party to its shareholders; and
- (f) **other information:** at the request of the Lender, any other information about the operation, financial condition or state of affairs of a Controlled Project or a Transaction Party as the Lender may reasonably require.

8.5 Notices

The Borrower must notify the Lender as soon as it is aware of:

- (a) any pending or threatened material dispute in relation to any Controlled Project including particulars of the dispute and the action (if any) proposed to be taken;
- (b) any material breach of, or default under, any material document relating to a Controlled Project;
- (c) any intention to exercise any right, power or remedy, authority or discretion under or in respect of any of any material document;
- (d) a Force Majeure Event affecting a Controlled Project and any steps taken to remedy it;
- (e) any matter which it may reasonably be anticipated will have a Material Adverse Effect;
- (f) the occurrence of a Default or a Potential Default together with details of that Default or Potential Default and any action being taken to remedy that Default or Potential Default;

- (g) any representation, warranty or statement made, or taken to be made, by it being or becoming false, misleading or incorrect in a material respect;
- (h) any litigation, arbitration or administrative proceeding which a Group Member is affected by in respect of an amount in excess of A\$100,000;
- (i) a change in the persons authorised by it to sign notices, certificates or other documents on the Borrower's behalf in connection with the Facilities, giving specimen signatures of any new authorised person, and giving satisfactory evidence, where requested by the Lender, of the authority of that person;
- (j) any change in the executive management or board of directors of a Group Member; and
- (k) any change in any law, regulation, Authorisation, official directive, instrument, undertaking or obligation which may have a Material Adverse Effect.

9 Default

9.1 Default

It is a Default, whether or not it is within the control of a Transaction Party, if:

- (a) **failure to pay by a Transaction Party:** a Transaction Party fails to pay any part of the Secured Moneys within 2 Business Days after the due date for payment;
- (b) **non-remediable failure:** a Transaction Party fails to comply with another undertaking, obligation or agreement expressed or implied in, or given in relation to, a Transaction Document and that failure is not, in the opinion of the Lender, remediable, and the Transaction Party does not demonstrate to the satisfaction of the Lender in its discretion that the failure is immaterial within 5 Business Days, or a longer period determined by the Lender after receipt by the Transaction Party of a notice from the Lender specifying the failure;
- (c) **remediable failure:** if the failure described in clause 12.1(b) is, in the opinion of the Lender, remediable, and the Transaction Party does not remedy the failure within 5 Business Days, or a longer period determined by the Lender after receipt by the Transaction Party of a notice from the Lender specifying the failure;
- (d) **abandonment:**
 - (1) all or any material part of a Controlled Project is abandoned or placed on a "care and maintenance" basis without the prior written consent of the Lender; or
 - (2) processing of ore at the processing plant in relation to a Controlled Project ceases for more than 14 consecutive days other than in accordance with routine maintenance requirements;

- (e) **Authorisations:** an Authorisation necessary to enable a Transaction Party to comply with its obligations under a Transaction Document to which it is a party ceases to be in full force and effect;
- (f) **misrepresentation:** a warranty, representation or statement by a Transaction Party is or becomes false, misleading or incorrect when made or regarded as made by that Transaction Party under a Transaction Document to which it is a party, or under a document contemplated by a Transaction Document;
- (g) **acceleration of payments:** a Group Member does anything which constitutes an event, whatever called, which causes or enables the acceleration of a payment exceeding A\$100,000 to be made under any document binding on it;
- (h) **cross default:** any Financial Indebtedness of a Group Member in an amount exceeding A\$100,000 (or its equivalent in another currency) (other than under a Transaction Document):
 - (1) is due and payable (other than by reason of a Group Member electing to prepay it) or is capable of being declared due and payable before the due date for payment by reason of an event of default; or
 - (2) is not paid when due or at the end of any period of grace which may apply;
- (i) **Encumbrance:** an Encumbrance is enforceable against an asset of a Group Member;
- (j) **Surety Obligation:** a Surety Obligation securing an amount exceeding A\$100,000 is enforceable against a Group Member;
- (k) **judgment:** a judgment in an amount exceeding A\$100,000 (or its equivalent in another currency) is obtained against a Group Member, and is not set aside, stayed or satisfied within 7 days;
- (l) **execution:** distress, attachment, execution or other process of a Governmental Agency in an amount exceeding A\$100,000 (or its equivalent in another currency) is issued against, levied or enforced on an asset of a Group Member, and is not set aside, stayed or satisfied within 7 days;
- (m) **Insolvency Event:** an Insolvency Event occurs;
- (n) **amendment of constitution:** the constitution or other constituent document of a Group Member is amended, without the prior written consent of the Lender which consent may not be unreasonably withheld or delayed;
- (o) **ceasing business:** a Group Member ceases, or threatens to cease, to carry on business;
- (p) **investigation:** a person is appointed under any legislation in respect of companies to investigate the affairs of a Group Member;

- (q) **vitiating of Transaction Documents:** all or part of a provision of a Transaction Document is or becomes illegal, void, voidable, unenforceable or otherwise of limited force or effect, or a person is or becomes entitled to terminate, rescind or avoid all or part of a provision of a Transaction Document;
- (r) **destruction of Secured Property:** all or a material part of the Secured Property is destroyed, lost or damaged beyond repair or proves to be materially defective in circumstances not covered by any insurance in favour of a Transaction Party;
- (s) **adverse change:** a Material Adverse Effect (in the opinion of the Lender) occurs;
- (t) **breach of undertaking:** an undertaking given in writing to the Lender or its solicitors by a Transaction Party, or another person for or on behalf of a Transaction Party in connection with a Transaction Document, is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within 3 Business Days of notice to the Transaction Party by the Lender of non-compliance with the undertaking;
- (u) **Securities:** a Security is enforceable against an asset of a Transaction Party;
- (v) **compulsory acquisition:**
 - (1) all or a material part of a Group Member's assets is compulsorily acquired by, or by order of, a Governmental Agency or under any law; or
 - (2) a Governmental Agency orders the sale, vesting or divesting of all or a material part of a Group Member's assets,

and in either case, the event has or may have (in the opinion of the Lender) a Material Adverse Effect;
- (w) **failure to deliver Excluded Documents:** the Borrower fails to comply with clause 8.3(o) by the due date;
- (x) **change in control:** a person who as at the date of this agreement does not have Voting Power of 30% or more in the Borrower or any other Group Member obtains Voting Power of 30% or more in the Borrower, or in any other Group Member after the date of this agreement; or
- (y) **change in management of the Borrower:** there is a change in the key management of the Borrower including, but not limited to, the Executive Chairman of the Borrower.

9.2 Effect of Default

- (a) On or after the occurrence of a Default, the Lender may:
 - (1) by notice to the Borrower:
 - (A) declare that the Secured Moneys are immediately due and payable;

- (B) declare that the Commitment is cancelled;
 - (C) take any action or proceedings necessary or desirable in order to exercise any Power conferred by the Transaction Documents,
- or do a combination of any of those things; and
- (2) at the cost of the Borrower, appoint a firm of independent accountants or other experts to review and report to the Lender on the affairs, financial condition and business of any Transaction Party.
- (b) The Borrower must following receipt of a notice under clause 9.2(a)(1) immediately repay in full the Secured Moneys to the Lender.
 - (c) Where a Security provides that the Security may be enforced after a Default (as defined in that Security) occurs without the requirement of notice to any person, then nothing in this agreement is to be construed as inferring that the Security can only be enforced after a notice has first been given under clause 9.2(a)(1).
 - (d) If the Lender appoints a firm of independent accountants or other experts under clause 9.2(a)(2), each Transaction Party must do everything in its power to ensure the review and report can be carried out promptly, completely and accurately. Without limitation, it must co-operate fully with the review and ensure that the accountants and experts are given access to all premises and records of each Transaction Party which they require from time to time. It must ensure that all officers and employees of each Transaction Party do the same.

9.3 Borrower to continue to perform

If the Lender makes a declaration under clause 9.2 then, without affecting the obligations of the Borrower under clause 9.2, the Borrower must continue to perform its obligations under the Transaction Documents as if the declaration had not been made, subject to the directions that may be given by the Lender from time to time.

9.4 Enforcement

- (a) The Transaction Documents may be enforced without notice to or consent by a Transaction Party or another person even if the Lender accepts any part of the Secured Moneys after a Default, or there has been another Default.
- (b) The Lender is not liable to a Transaction Party for any loss or damage a Transaction Party becomes liable for arising out of or in connection with the Lender exercising a Power under a Transaction Document.

10 Illegality and increased costs

10.1 Illegality

If an event occurs (including, but not limited to, a change in or the introduction, implementation, operation or taking effect of an applicable law, regulation, order, treaty or official directive or in the interpretation or administration of any of them by a Governmental Agency charged with the administration of them) which makes it unlawful, impossible or impracticable for the Lender to maintain or give effect to its obligations under this agreement, the Lender may appoint a date as the termination date of the Facility with the consequence that the Secured Moneys must be paid to the Lender on or before that termination date.

10.2 Increased costs

- (a) If the Lender determines that it is affected by a change or proposed change in a law, regulation, order, treaty, official directive or request (whether or not having the force of law), or the interpretation or administration of any of them by a Governmental Agency, and that as a result (directly or indirectly):
- (1) the effective cost to the Lender of making, funding or maintaining the Facility or the Principal Outstanding or performing any of its obligations under or in respect of the Transaction Documents is increased;
 - (2) any amount paid or payable to, or received or receivable by, the Lender, or the effective return to the Lender, under the Transaction Documents is reduced;
 - (3) the Lender makes, or is required to make, any payment or forego any interest or other return on or calculated by reference to:
 - (A) any sum received or receivable by it under or in respect of the Transaction Documents in an amount which the Lender considers material; or
 - (B) any capital or other amount which is or becomes directly or indirectly allocated by the Lender to its Commitments in an amount which the Lender considers material; or
 - (4) the Lender is restricted in its capacity to enter into, or is prevented from entering into, any other transaction with any consequence referred to in clause 10.2(a)(1), (2) or (3) or with any other cost or loss of return to the Lender,
- then, and in each case described above:
- (5) when it becomes aware of the relevant result and has calculated or otherwise determined the relevant effects, the Lender will notify the Borrower of the event;
 - (6) on demand from time to time by the Lender, the Borrower must pay the amount which compensates the Lender for the increased cost, reduction, payment or foregone interest or other loss of return or liability.

- (b) If the Lender has acted in good faith it is no defence that a cost, increased cost, reduction or liability could have been avoided.
- (c) The Lender may use any method it considers appropriate to determine an amount payable under clause 10.2(a) and, in the absence of manifest error, a certificate by an Officer of the Lender is conclusive evidence as to the amount payable.
- (d) The Lender acknowledges that an amount payable under clause 10.2(a) will not include any amount that results from any increase in the corporate income tax rate payable by the Lender.

11 Indemnities

11.1 General indemnity

Each Transaction Party indemnifies the Lender against any claim, action, damage, loss (including currency exchange loss), liability, cost, expense or payment which the Lender pays, suffers, incurs or is liable for, in respect of the following:

- (a) a Funding Portion required by a Funding Notice, not being made for any reason including, but not limited to, a failure by a Transaction Party to fulfil a condition precedent contained in clause 3, but excluding a default by the Lender;
- (b) a repayment or prepayment of all or part of a Funding Portion not being made on the due date;
- (c) a payment being made or received in a currency other than the Relevant Currency;
- (d) the occurrence of a Default; or
- (e) the Lender exercising its Powers consequent on or arising out of the occurrence of a Default.

11.2 Foreign currency indemnity

If at any time:

- (a) the Lender receives or recovers any amount payable by a Transaction Party for any reason including, but not limited to:
 - (1) any judgment or order of any Governmental Agency;
 - (2) any breach of any Transaction Document;
 - (3) the liquidation or bankruptcy of the Transaction Party or any proof or claim in that liquidation or bankruptcy; or
 - (4) any other thing into which the obligations of the Transaction Party may have become merged; and
- (b) the Payment Currency is not in the Relevant Currency,

each Transaction Party indemnifies the Lender against any shortfall between the amount payable in the Relevant Currency and the amount actually received or

recovered by the Lender, after the Payment Currency is converted or translated into the Relevant Currency under clause 11.3.

11.3 Conversion of currencies

In making any currency conversion under clause 11.2, the Lender may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

11.4 Continuing indemnities and evidence of loss

- (a) Each indemnity of a Transaction Party contained in this agreement is a continuing obligation of it despite:
 - (1) a settlement of account; or
 - (2) the occurrence of any other thing,and remains in full force and effect until:
 - (3) all money owing, contingently or otherwise, under the Transaction Documents has been paid in full;
 - (4) the Secured Moneys are fully and finally repaid; and
 - (5) each of the Securities has been finally discharged.
- (b) Each indemnity of a Transaction Party contained in this agreement is an additional, separate and independent obligation of it and no one indemnity limits the generality of another indemnity.
- (c) Each indemnity of a Transaction Party contained in this agreement survives the termination of a Transaction Document.
- (d) A certificate signed by an Officer of the Lender detailing the amount of damage, loss, liability, cost, charge, expense, outgoing or payment covered by an indemnity in this agreement is sufficient evidence unless the contrary is proved.

11.5 GST indemnity

- (a) If an indemnity payment constitutes the consideration for the whole or any part of a Taxable Supply by the Lender, the amount of that payment must be increased such that the Lender will receive the amount which the Lender would have received in the absence of GST.
- (b) If the Lender makes any Taxable Supply, the Borrower must (save to the extent that the Lender is entitled to be indemnified in respect of that GST by an increased payment under clause 11.5(a) above) pay on demand to the Lender an additional amount such that the Lender will receive the amount (net of payments by it in respect of GST) which the Lender would have received in the absence of a GST.
- (c) If any payment or other consideration provided by the Lender to a person other than the Borrower under or in connection with or for the purposes of any Transaction Document or any transaction contemplated by any Transaction Document may be increased or added to by reference to any

GST, the Borrower must pay on demand to the Lender such amount as may be necessary to indemnify the Lender in respect of that increase or addition.

- (d) If the Lender becomes liable to pay any penalty or interest as a result of late payment of GST where that late payment is as a result of the failure of the Borrower to comply with the terms of this clause, then the Borrower must pay on demand to the Lender an additional amount equal to the amount of that penalty or interest.

12 Fees, tax, costs and expenses

12.1 Up front fee

- (a) Subject to clause 17.1, the Borrower must pay to the Lender an up front fee in an amount of A\$2,000,000 (which fee is not refundable in any circumstances).
- (b) The up front fee is payable on or prior to the date the Borrower draws the first Funding Portion under this agreement but if the Lender agrees to permit the Borrower to draw Funding Portions in an aggregate amount not exceeding A\$5,000,000 prior to the delivery of the Excluded Documents as contemplated in clause 3.2, then that fee is payable:
- (1) as to A\$500,000 on or prior to the date the Borrower draws the first Funding Portion; and
 - (2) as to A\$1,500,000 on or prior to the date that the sum of all Funding Portions drawn by the Borrower exceed A\$5,000,000.

12.2 Standby fee

- (a) Subject to clause 17.1, the Borrower must pay to the Lender a standby fee of 1% per annum calculated by reference to the amount of the Undrawn Commitment.
- (b) The standby fee accrues from day to day commencing from the first day of the Availability Period up to the last day of that period and is payable in arrears on 30 June 2002 and on the last day of the Availability Period.
- (c) If the Lender agrees to permit the Borrower to draw Funding Portions in an aggregate amount not exceeding A\$5,000,000 prior to the delivery of the Excluded Documents as contemplated in clause 3.2, then that fee is payable:
- (1) on such amount of the Undrawn Commitment limited to A\$5,000,000 as remains undrawn during the period from the commencement of the Availability Period up to the date of delivery of the Excluded Document or 14 January 2001, whichever first occurs (*Relevant Date*); and
 - (2) thereafter, on the balance of the Undrawn Commitment that remains undrawn from the Relevant Date up to the last day of the Availability Period.

Tax

- (b) The Borrower must pay fines, penalties or other costs in respect of a failure to pay a Tax described in clause 12.3(a) except to the extent that a fine, penalty or other cost is caused by the Lender's failure to lodge money received from the Borrower before the due date for lodgement.
- (c) Each Transaction Party indemnifies the Lender against an amount payable under clause 12.3(a) or 12.3(b) or both.

Costs and expenses

The Borrower must pay all costs and expenses (including any applicable GST) of the Lender and each employee, Officer, agent, contractor, independent engineer, independent accountant or other expert of the Lender in relation to:

- (a) the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of a Transaction Document;
- (b) the enforcement, protection or waiver, or attempted enforcement or protection, of rights under a Transaction Document;
- (c) the consent or approval of the Lender given under a Transaction Document;
- (d) an enquiry by a Governmental Agency involving the Borrower; and
- (e) up to 1 site visit for 2 representatives of the Lender to each Controlled Project in each year,

including, but not limited to, administration costs of the Lender in connection with the matters referred to in clause 12.4(b), (c), (d) and (e) and legal costs and expenses (including, but not limited to, the Lender's internal legal costs and expenses) and professional consultant's fees for any of the above on a full indemnity basis.

Interest on overdue amounts

Payment of interest

The Borrower must pay interest on any part of the Secured Moneys due and payable, but unpaid.

13.2 Accrual of interest

Interest payable under clause 13.1:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised by the Lender at 30 day intervals.

13.3 Rate of interest

The rate of interest payable under clause 13 on any part of the Secured Moneys is the higher of:

- (a) the Overdue Rate determined by the Lender:
 - (1) on the date that part of the Secured Moneys becomes due and payable but is unpaid; and
 - (2) on each date which is 30 days after the immediately preceding date on which the Overdue Rate was determined under this clause 13.3(a); and
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 13.2(a).

14 Assignment

14.1 Assignment by Transaction Party

A Transaction Party must not transfer or assign any of its rights or obligations under a Transaction Document without the prior written consent of the Lender.

14.2 Assignment by the Lender

- (1) The Lender may at its own cost and expense at any time assign or otherwise transfer all or part of its rights under a Transaction Document without reference to, or the consent of, any Transaction Party.
- (b) The Borrower must at the expense of the Lender execute all documents which are required to give effect to the assignment.

14.3 Participation permitted

The Lender may grant by way of sub-participation (being a right to share in the financial effects of this agreement without rights against the Borrower) all or part of the Lender's rights and benefits under this agreement to another person without having to obtain the consent, or to notify, the Borrower.

14.4 Lending Office

The Lender may change its Lending Office at any time. The Lender must promptly notify the Borrower of the change.

14.5 No increase in cost

If the Lender assigns or transfers any of its rights or obligations under a Transaction Document or changes its Lending Office, no Transaction Party is required to pay any net increase in the aggregate amount of costs, Taxes, fees or charges which:

- (a) are a direct consequence of the transfer or assignment or change of Lending Office; and
- (b) the Lender or its assignee or transferee was aware of, or ought reasonably to have been aware of, at the time of the transfer or assignment or change of Lending Office.

15 Saving provisions

15.1 No merger of security

- (a) Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects a Power, Encumbrance or indemnity in favour of the Lender.
- (b) No other Encumbrance or Transaction Document held by the Lender adversely affects any Power under this agreement.

15.2 Exclusion of moratorium

To the extent not excluded by law, a provision of any legislation which at any time directly or indirectly lessens or otherwise varies or affects in favour of a Transaction Party any obligations under this agreement or any Collateral Security, or stays, postpones or otherwise prevents or adversely affects the exercise by the Lender of any Power, is negated and excluded from this agreement and any Collateral Security and all relief and protection conferred on a Transaction Party by or under that legislation is also negated and excluded.

15.3 Powers

- (a) The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy.
- (b) Where a Power is inconsistent with a right, power, authority, discretion or remedy conferred by applicable law then, to the extent not prohibited by that law, those conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

15.4 Consents

Whenever the doing of any thing by a Transaction Party is dependent on the consent or approval of the Lender, the Lender may withhold its consent or approval or give its approval on conditions or unconditionally in its absolute discretion unless expressly stated otherwise in a Transaction Document. Any conditions must be complied with by a Transaction Party.

15.5 Principal obligations

This agreement and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to an Encumbrance (other than another Collateral Security) or other obligation however created; and
- (b) independent of, and unaffected by an Encumbrance or other obligation however created which the Lender may hold at any time in respect of the Secured Moneys.

15.6 Non-avoidance

If a payment by a Transaction Party to the Lender is at any time avoided for any reason including, but not limited to, a legal limitation, disability or incapacity of or affecting the Transaction Party, and whether or not:

- (a) a transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the Lender, each Transaction Party:
- (c) as an additional, separate and independent obligation, indemnifies the Lender against that avoided payment; and
- (d) acknowledges that the liability of a Transaction Party under the Transaction Documents and the Powers of the Lender are the same as if that payment had not been made.

15.7 Set-off authorised

If a Transaction Party does not pay any part of the Secured Moneys when due to the Lender, the Borrower authorises the Lender:

- (a) to apply the credit balance in any currency in any account of a Transaction Party (including, but not limited to, the Transaction Accounts) with a branch or office of the Lender towards satisfaction of that amount;
- (b) in the name of a Transaction Party or of the Lender, to do any act or thing including, but not limited to, executing documents or effecting currency conversions which may be required to make an application under clause 15.7(a).

15.8 Certificates of Lender

A certificate signed by an Officer of the Lender stating:

- (a) the amount of the Secured Moneys (whether currently due and payable or not) or an amount due and payable by a Transaction Party under a Transaction Document; or
- (b) the opinion or determination of the Lender as to any thing.

is, in the absence of manifest error, conclusive evidence of that amount or that opinion or determination (as the case requires) at the date stated on the certificate or failing that as at the date of that certificate.

15.9 No reliance or risk assumption

The Borrower acknowledges and confirms that:

- (a) it has not entered into a Transaction Document in reliance on a representation, warranty, promise or statement made by the Lender or a person on behalf of the Lender;
- (b) in respect of the transactions evidenced by the Transaction Documents, the Lender has no obligations other than those expressly set out in the Transaction Documents; and
- (c) in respect of interest rates or exchange rates, the Lender is not liable for:
 - (1) movements in interest rates or exchange rates; or
 - (2) information, advice or opinions provided by the Lender or a person on behalf of the Lender, even if:
 - (A) provided at the request of a Transaction Party (it being acknowledged by the Borrower that such matters are inherently speculative);
 - (B) relied on by a Transaction Party; or
 - (C) provided incorrectly or negligently.

15.10 Attorney

In consideration of the Lender agreeing to provide the accommodation referred to in this agreement and on the occurrence of a Default and while it is subsisting, the Lender and each of its Officers for the time being (each with a power to appoint a substitute or substitutes) is irrevocably appointed the attorney of a Transaction Party to:

- (a) execute and deliver all documents; and
- (b) do all things (including the signing and lodging of proofs of debt and similar claims in the bringing and enforcing of legal proceedings, the compromise of disputes, the enforcement of each Transaction Document or any of them),

which the attorney thinks requisite or desirable for giving effect to the provisions of each Transaction Document.

15.11 Opinion of the Lender

Where the Lender is required or entitled under this agreement to form or hold an opinion or view, this may be formed or held on its behalf by a person authorised by the Lender to act on its behalf in relation to this agreement or by its board of directors or by one or more Officers of the Lender.

16 General

16.1 Confidential information

- (a) Before the occurrence of a Default and subject to clause 16.1(b), the Lender may not disclose to a person any unpublished information or documents supplied by a Transaction Party in connection with a Transaction Document, or the assets, business or affairs of a Transaction Party, all of which are treated as confidential unless otherwise specified by that Transaction Party.
- (b) The Lender may disclose any confidential information or documents:
 - (1) in enforcing a Transaction Document or in legal or administrative proceedings arising out of or in connection with a Transaction Document or to the extent that disclosure is regarded by the Lender as necessary to protect its interests;
 - (2) if required under a binding order of a Governmental Agency or any procedure for discovery in any proceedings;
 - (3) if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law, the observance of which is in accordance with the practice of responsible bankers similarly situated;
 - (4) as required or permitted under a Transaction Document;
 - (5) to its legal advisers and its external consultants and agents;
 - (6) to any related entity of the Lender; or
 - (7) with the prior written consent of the Transaction Parties.
- (b) (c) On and after the occurrence of a Default, the Lender may, for the purpose of exercising a Power, disclose to a person documents or records of, or information about, a Transaction Document, or the assets, business or affairs of a Transaction Party, whether or not confidential and whether or not the disclosure would be in breach of a law or of a duty owed to a Transaction Party.

16.2 Performance by the Lender of obligations

If a Transaction Party defaults in fully and punctually performing an obligation contained or implied in a Transaction Document, the Lender may, without affecting any Power, do all things necessary or desirable, in the opinion of the Lender, to make good or attempt to make good that default to the satisfaction of the Lender.

16.3 Transaction Party to bear cost

Any thing which must be done by a Transaction Party under a Transaction Document, whether or not at the request of the Lender, must be done at the cost of that Transaction Party.

16.4 Notices

- (a) Any notice or other communication including, but not limited to, a request, demand, consent or approval, to or by a party to a Transaction Document must be in legible writing and in English addressed as follows:
- (1) if to the Borrower or another Transaction Party:
Address: Level 2, 16 Ord Street
West Perth, Western Australia 6005
Attention: Company Secretary
Facsimile: (618) 9476 5500
 - (2) if to the Lender:
Address: 1400 Sixteenth Street – Suite 200
Denver, Colorado, USA 80202
Attention: Managing Director
Facsimile: (720) 946-1450,
- or as specified to the sender by a party by notice;
- (b) must be signed by an Officer or under the common seal of the sender;
- (c) is regarded as being given by the sender and received by the addressee:
- (1) if by delivery in person, when delivered to the addressee;
 - (2) if by post, 2 Business Days (if posted within Australia) or 10 Business Days (if posted from one country to another) as the case may be, from and including the date of postage; or
 - (3) if by facsimile transmission, whether or not legibly received, on receipt of a transmission report confirming successful transmission, without error or omission,
- but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am (addressee's time) on the following Business Day; and
- (d) can be relied on by the addressee and the addressee is not liable to another person for the consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

16.5 Governing law and jurisdiction

- (a) This agreement is governed by the laws of Western Australia.
- (b) Each of the Lender and the Borrower irrevocably and unconditionally:
- (1) submits to and accepts the non-exclusive jurisdiction of the courts of Western Australia; and
 - (2) waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

16.6 Prohibition and enforceability

- (a) A provision of, or the application of a provision of, a Transaction Document or a Power which is prohibited in a jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) A provision of, or the application of any provision of, a Transaction Document which is void, illegal or unenforceable in a jurisdiction does not affect the validity, legality or enforceability of that provision in another jurisdiction or of the remaining provisions in that or another jurisdiction.

16.7 Waiver and variation

- (a) Waiver of a Power arising under, or a provision of, this agreement (including this clause), must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a Power (arising on the occurrence of a Default or otherwise) does not operate as a waiver of that Power or preclude another or further exercise of that or another Power.
- (c) The variation of a term of this agreement must be in writing and signed by the parties.

16.8 Further Security

Each Transaction Party must, whenever requested by the Lender, do or cause to be done anything which more satisfactorily secures the obligations of that Transaction Party to the Lender including, but not limited to, the execution of any mortgage over any of its assets and undertaking or the creation of such further security as the Lender may require.

16.9 Attorneys

Each of the attorneys executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

16.10 Counterparts

This agreement may be signed in any number of counterparts and all counterparts together constitute one and the same instrument.

17 Provisions relating to St Barbara Securities

17.1 Issue of St Barbara Shares in lieu of certain cash payments

- (a) The Lender agrees that the Borrower may make an election (*Share Election*) in accordance with clause 17.1(b) but subject to clause 17.1(c) to satisfy a payment obligation with respect to:
 - (1) interest under clause 5.1(a);
 - (2) the up front fee described in clause 12.1(a); and

(3) the standby fee described in clause 12.2(a),

by the issue of a number of St Barbara Shares calculated by applying the following formula:

$$x = p/y$$

where –

x is the number of St Barbara Shares to be issued to the Lender;

p is the amount of the payment obligation (but excluding any Gross Up Amounts); and

y is the Market Price of a St Barbara Share on the date the payment obligation falls due (discounted in the case of interest referred to in clause 5.1(c) by 10%) but if the up front fee described in clause 12.1(a) is payable in accordance with clauses 12.1(b)(1) and 12.1(b)(2), the Market Price of a St Barbara Share to be applied in both cases is the Market Price on the date the Borrower draws the first Funding Portion under this agreement.

- (b) The Borrower must give the Share Election by notice in writing to the Lender not less than 7 days before the date on which the payment obligation falls due. If the Borrower fails to make a Share Election within that period (or such other period as the Lender may agree) for a payment obligation, the payment must be made in accordance with clause 6.1. For the purposes of clause 17.1(a)(2), the Borrower makes the election to pay the up front fee by the issue of St Barbara Shares in accordance with the formula in clause 17.1(a) on the date of this agreement.
- (c) The Borrower cannot give a Share Election, and any Share Election given by it is of no force or effect if:
- (1) a Default or Potential Default is then current; or
 - (2) the Lender considers, acting reasonably, that an event has or may occur which has, or is likely to have, a Material Adverse Effect.
- (d) If the Borrower makes a Share Election in accordance with this clause, the Borrower must issue to the Lender the applicable number of St Barbara Shares in satisfaction of its obligation to make the payment then due to the Lender.
- (e) The Borrower must cause the Lender to be registered as the holder of the St Barbara Shares issued to it under clause 17.1(d) within 5 Business Days.
- (f) All St Barbara Shares issued under this clause 17 shall, from the date of issue, rank pari passu in all respects with St Barbara Shares that are listed for quotation on ASX.
- (g) The Borrower must make application for quotation of those shares on ASX within 10 Business Days after the date upon which the St Barbara Shares are issued and the Borrower agrees with the Lender that all St Barbara Shares issued to the Lender under this clause 17.1 will be listed

for quotation on ASX and freely tradeable on ASX by the Lender following quotation of those Shares on ASX.

17.2 St Barbara Options

- (a) The Borrower must issue to the Lender on the last day of each month (*Determination Date*) during the currency of this agreement such number of St Barbara Options (*Option Entitlement*) as is determined in accordance with the following formula (which is to be applied separately to each Funding Portion drawn by the Borrower):

$$x = fp/mp \times 0.25 \times 1/365$$

where:

- x** is number of St Barbara Options to be issued on each Determination Date;
- fp** is the amount of the Funding Portion that remains outstanding on each day; and
- mp** is the Market Price as at the date of drawing of each Funding Portion save that in the case of the first A\$5,000,000 drawn under this agreement, the Market Price is the Market Price on the date of execution of this agreement.
- (b) The Option Entitlement accrues monthly.
- (c) The Borrower must issue certificates to the Lender for its Option Entitlement that have accrued upto each Determination Date within 5 Business Days from that date with the first Determination Date occurring on 31 January 2002.
- (d) The exercise price of each St Barbara Option issued to the Lender under this clause 17.2 (*Exercise Price*) is the Market Price as at the date of drawing of each Funding Portion save that in the case of the Option Entitlement that accrues with respect to the first A\$5,000,000 of Funding Portions drawn under this agreement, the Exercise Price of the St Barbara Options that are the subject of the Option Entitlement for those Funding Portions is the Market Price on the date of execution of this agreement.
- (e) The term of each St Barbara Option issued to the Lender under this agreement is 3 years from the date of issue (*Exercise Period*).
- (f) The Borrower must pay an amount (*Gross Up Amount*) to the Lender is interest withholding tax is payable on any issue of St Barbara Options under this clause.
- (g) The Gross Amount payable under sub-paragraph (f) is to be equal to the amount of withholding tax, if any, that is payable in respect of each issue of St Barbara Options and is to be paid at the time of issue of the options.

17.3 Exercise of St Barbara Options

If at any time, the Market Price is equal to or exceeds 100% of the Exercise Price of a St Barbara Option issued to the Lender under clause 17.2 for a period of not less than 10 consecutive Business Days and the St Barbara Shares to be issued

17.4 General Provisions relating to St Barbara Options

(1) In the event of a reorganisation or reconstruction of the share capital of the Borrower and subject to compliance by the Borrower with the ASX Listing Rules, the rights of the Lender will be changed to the extent necessary to ensure the rights of the Lender are not prejudiced by the reorganisation or reconstruction in accordance with the ASX Listing Rules applying to a reorganisation or reconstruction of capital at the time of the reorganisation or reconstruction.

(b)	Participation in new Issues
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(c) Changes to Exercise Price or Number of Shares Issues on Exercise

(2) If there is a bonus issue to the holders of St Barbara Shares, the number of St Barbara Shares to be issued upon exercise of St Barbara Options shall be increased by the number of St Barbara Shares which the Lender would have received if all St Barbara Options had been exercised before the record date for the bonus issue.

For the avoidance of doubt, it is acknowledged that the St Barbara Options issued under this agreement will not be listed for trading on ASX.

SCHEDULE 1 - FUNDING NOTICE

To: Resource Capital Fund II L.P. (Lender)

Attention: []

Reference is made to the agreement dated **[insert date]** (Facility Agreement).

Under clause 4 of the Facility Agreement we give you irrevocable notice that:

- (a) we wish to draw under the Facility;
- (b) the aggregate amount to be drawn is A\$.....];
- (c) the proceeds of the Funding Portion are to be used for (insert proposed usage). *[If the use relates to the purchase of shares, a copy of the Contract Note issued by Salomon Smith Barney Private Clients Pty Ltd must be annexed]*
- (d) We request that the proceeds be remitted to account number at []; *[If the use relates to the purchase of shares, a copy of the Contract Note issued by Salomon Smith Barney Private Clients Pty Ltd must be annexed]*.
- (e) We represent and warrant that:
 - (1) **[except as disclosed in paragraph (e)(3)]** each representation and warranty in the Facility Agreement is true, correct and not misleading as though it had been made at the date of this Funding Notice and the Funding Date specified above in respect of the facts and circumstances then subsisting; **[and]**
 - (2) **[(except as disclosed in paragraph (e)(3)]** no Default or Potential Default is subsisting or will result from the provision of a Funding Portion **[; and]**
 - (3) [details of the exceptions to paragraphs (e)(1) and (e)(2) are as follows:, and we[have taken/propose the following remedial action];]

Expressions defined in the Facility Agreement have the same meaning when used in this Funding Notice.

Dated: [insert date]

Signed for and on behalf of
St Barbara Mines Limited

Officer's signature

Name (please print)

SCHEDULE 2 - PERMITTED ENCUMBRANCES

Fixed charge dated 2 March 2000 granted by Silkwest Holdings Pty Ltd in favour of Macquarie Bank Limited (ASIC registered charge number 738614)

Fixed and floating charge dated 2 March 2000 granted by Silkwest Holdings Pty Ltd in favour of Macquarie Bank Limited (ASIC registered charge number 738615)

Fixed and floating charge dated 2 March 2000 granted by St Barbara Pastoral Pty Ltd in favour of Macquarie Bank Limited (ASIC registered charge number 738612)

Fixed and floating charge dated 4 June 1991 granted by St Barbara Mines Limited in favour of Macquarie Bank Limited (ASIC registered charge number 292713)

Fixed charge dated 31 August 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 356827)

Fixed charge dated 11 September 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 357706)

Fixed charge dated 21 September 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 358859)

Fixed charge dated 20 October 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 363095)

Fixed charge dated 16 October 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 363097)

Fixed charge dated 7 December 1992 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 369958)

Fixed charge dated 15 January 1993 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 373556)

Fixed charge dated 15 January 1993 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 373557)

Fixed charge dated 5 March 1993 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 377265)

Fixed charge dated 20 October 1993 granted by St Barbara Mines Limited in favour of Caterpillar Financial Australia Limited (ASIC registered charge number 412385)

SCHEDULE 3 - SECURITIES

- 1 Deed of charge between the Borrower and the Lender
- 2 Deed of charge between each Guarantor and the Lender
- 3 Share mortgage between the Borrower and the Lender

EXECUTED AS AN AGREEMENT

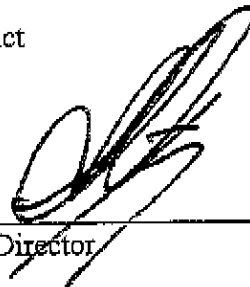
Executed by
St Barbara Mines Limited
in accordance with section 127(1) of the Corporations Act
in the presence of:



Secretary/Director

Peter McIntyre

Name (please print)



Director

STEPHEN W. MILLER

Name (please print)

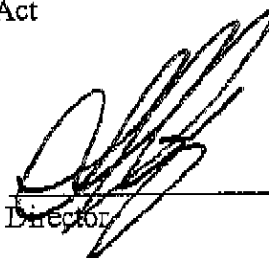
Executed by
Silkwest Holdings Ltd
in accordance with section 127(1) of the Corporations Act
in the presence of:



Secretary/Director

Peter McIntyre

Name (please print)



Director

STEPHEN W. MILLER

Name (please print)

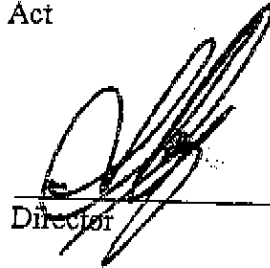
Executed by
St Barbara Pastoral Co Pty Ltd
in accordance with section 127(1) of the Corporations Act
in the presence of:



Secretary/Director

PETER MCINTYRE

Name (please print)



Director

STEVEN W. HUIER

Name (please print)

Signed for and on behalf of
Resource Capital Fund II L.P.
by its duly authorised attorney
in the presence of:

Susan Marshall

Witness

SUSAN MARSHALL

Name (please print)

M. Hills

Attorney

MASON HILLS
Barrister & Solicitor

Name (please print)