# Form 604

**Corporations Act 2001**
**Section 671B**

# Notice of change of interests of substantial holder

To Company Name/Scheme: Danks Holdings Limited (**Danks**)

**ACN/ARSN**: ACN 004 295 532

**1. Details of substantial holder (1)**

Name: Carboxy Pty Ltd

ACN/ARSN (if applicable): ACN 138 990 584

There was a change in the interests of the substantial holder on: 14/09/2009

The previous notice was given to the company on: 02/09/2009

The previous notice was dated: 02/09/2009

**2. Previous and present 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 when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

| Class of securities (4) | Previous notice | | Present notice | |
|---|---|---|---|---|
| | Person's votes | Voting power (5) | Person's votes | Voting power (5) |
| Ordinary shares | Nil | Nil | 259,037 | 3.99% |

**3. Changes in relevant interests**

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

| Date of change | Person whose relevant interest changed | Nature of change (6) | Consideration given in relation to change (7) | Class and number of securities affected | Person's votes affected |
|---|---|---|---|---|---|
| 14/09/2009 | Carboxy Pty Ltd (**Carboxy**) | Acquisition of relevant interest in ordinary shares by virtue of section 608(8) of the Corporations Act 2001 (Cth) as a result of acceptances of Carboxy's off-market takeover offer for all of the ordinary shares in Danks, which offer is dated 7 September 2009 and contained in Carboxy's bidder's statement dated 2 September 2009 (a copy of which was given to ASX on 2 September 2009) (**Offer**). | 13.50 cash per Danks share | 259,037 ordinary shares | 259,037 |

| | | | | | |
|---|---|---|---|---|---|
| 14/09/2009 | Each of the companies listed in Annexure A (**Woolworths Entities**) | Acquisition of relevant interest in ordinary shares by virtue of section 608(3)(a) of the Corporations Act 2001 (Cth) insofar as each of the Woolworths Entities has over 20% of the voting power in Carboxy (and in the case of Woolworths Limited, section 608(3)(b) insofar as Woolworths Limited controls Carboxy). | Not applicable | 259,037 ordinary shares | 259,037 |
| 14/09/2009 | WDR Delaware II Corporation and Lowe's Companies, Inc. | Acquisition of relevant interest in ordinary shares by virtue of section 608(3) of the Corporations Act 2001 (Cth) insofar as WDR has over 20% of the voting power in Carboxy and Lowe's controls WDR. | Not applicable | 259,037 ordinary shares | 259,037 |

**4. Present relevant interests**

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

| Holder of relevant interest | Registered holder of securities | Person entitled to be registered as holder (8) | Nature of relevant interest (6) | Class and number of securities | Person's votes |
|---|---|---|---|---|---|
| Carboxy Pty Ltd | Those persons who have accepted the Offer. | Carboxy Pty Ltd | Relevant interest under section 608(8) of the Corporations Act 2001 (Cth) (see section 3 above) | 259,037 ordinary shares | 259,037 |
| Each of the Woolworths Entities | Those persons who have accepted the Offer. | Carboxy Pty Ltd | Relevant interest under section 608(3) of the Corporations Act 2001 (Cth) (see section 3 above) | 259,037 ordinary shares | 259,037 |
| WDR Delaware II Corporation and Lowe's Companies, Inc. | Those persons who have accepted the Offer. | Carboxy Pty Ltd | Relevant interest under section 608(3) of the Corporations Act 2001 (Cth) (see section 3 above) | 259,037 ordinary shares | 259,037 |



**5. Changes in association**

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

| Name and ACN/ARSN (if applicable) | Nature of association |
|---|---|
| Each of the Woolworths Entities | Carboxy is an associate of each of the Woolworths Entities under either section 12(2)(a)(ii) or (iii) of the Corporations Act (i.e. Carboxy is either controlled by a Woolworths Entity or a Woolworths Entity is controlled by the same Woolworths Entity that controls Carboxy). In addition, Woolworths Limited has entered into a joint bidding deed with Carboxy in relation to the Offer and so Carboxy is also an associate of Woolworths under sections 12(2)(b) and 12(2)(c) of the Corporations Act 2001 (Cth). A copy of the joint bidding deed is attached in Annexure B. |
| WDR Delaware II Corporation and Lowe's Companies, Inc. | Each of WDR and Lowe's has entered into a joint bidding deed with Carboxy (as attached in Annexure B) and each is therefore an associate of Woolworths under sections 12(2)(b) and 12(2)(c) of the Corporations Act 2001 (Cth). |

**6. Addresses**

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

| Name | Address |
|---|---|
| Carboxy Pty Ltd | 1 Woolworths Way, Bella Vista NSW 2153 Australia |
| Each of the Woolworths Entities | 1 Woolworths Way, Bella Vista NSW 2153 Australia |
| WDR Delaware II Corporation and Lowe's Companies, Inc. | 1000 Lowe's Boulevard, Mooresville, North Carolina 28117 USA |

## Signature

| | | | |
|---|---|---|---|
| print name | Peter Horton | capacity | Company Secretary |
| **sign here** | | date | 15/09/2009 |

**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 6 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 person's votes divided by the total votes in the body corporate or scheme multiplied by 100.

(6) Include details of:

(a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. 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.

(7) 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 on 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.

(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) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

# Annexure A

This is the Annexure A referred to in the Form 604 (Notice of change of interests of substantial holder) signed by me and dated 15 September 2009.

Peter Horton
Company Secretary, Carboxy Pty Ltd
15 September 2009

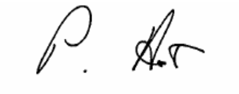
| Woolworths Entities | ACN or Company No | Place of Incorporation |
|---|---|---|
| Woolworths Limited | 000 014 675 | NSW |
| A.C.N. 001 259 301 Pty Limited | 001 259 301 | NSW |
| Advantage Supermarkets Pty Ltd | 009 312 056 | WA |
| Advantage Supermarkets WA Pty Ltd | 084 788 492 | WA |
| ALH Group Pty Ltd | 098 212 134 | VIC |
| Albion Charles Hotel (BMG) Pty Ltd | 110 901 730 | VIC |
| ALH Group Property Holdings Pty Limited | 114 682 969 | VIC |
| Australian Leisure and Hospitality Group Limited | 067 391 511 | VIC |
| ALH Group (No. 1) Pty Ltd | 010 657 888 | QLD |
| Balaclava Hotel (BMG) Pty Ltd | 110 901 810 | VIC |
| Chelsea Heights Hotel (BMG) Pty Ltd | 110 901 856 | VIC |
| Cherry Hill Tavern (BMG) Pty Ltd | 110 900957 | VIC |
| Courthouse Brunswick Hotel (BMG) Pty Ltd | 110 901 892 | VIC |
| Courthouse Hotel Footscray (BMG) Pty Ltd | 110 901 712 | VIC |
| Croxton Park Hotel (BMG) Pty Ltd | 110 901 687 | VIC |
| Daisey's Club Hotel (BMG) Pty Ltd | 110 901 669 | VIC |
| Excelsior Hotel (BMG) Pty Ltd | 110 901 650 | VIC |
| First and Last Hotel (BMG) Pty Ltd | 110 901 589 | VIC |
| Glengala Hotel (BMG) Pty Ltd | 110 901 552 | VIC |
| Lyndhurst Club Hotel (BMG) Pty Ltd | 110 901 534 | VIC |
| Manningham Hotel (BMG) Pty Ltd | 110 901 507 | VIC |
| MGW Hotels Pty Ltd | 098 214 129 | QLD |
| Aceridge Pty Limited | 010 790 771 | QLD |
| Chatswood Hills Tavern Pty. Ltd. | 010 875 939 | VIC |
| Dapara Pty Ltd | 003 085 907 | NSW |
| Stadform Developments Pty. Limited | 010 996 004 | QLD |
| Fenbridge Pty. Ltd. | 010 963 854 | QLD |
| Kawana Waters Tavern No. 3 Pty Ltd | 009 674 328 | QLD |
| Kawana Waters Tavern No. 1 Pty Ltd | 009 671 603 | QLD |
| Kawana Waters Tavern No. 2 Pty Ltd | 009 673 938 | QLD |
| Vicpoint Pty Ltd | 078 484 741 | QLD |
| Milanos Hotel (BMG) Pty Ltd | 110 901 481 | VIC |
| Monash Hotel (BMG) Pty Ltd | 110 900 751 | VIC |
| Moreland Hotel (BMG) Pty Ltd | 110 901 196 | VIC |
| Nu Hotel (BMG) Pty Ltd | 110 901 105 | VIC |
| Oakleigh Junction Hotel (BMG) Pty Ltd | 110 901 169 | VIC |
| Palace Hotel Hawthorn (BMG) Pty Ltd | 110 901 132 | VIC |
| Powel Hotel Footscray (BMG) Pty Ltd | 110 901 089 | VIC |
| Preston Hotel (BMG) Pty Ltd | 110 901 061 | VIC |
| Queensbridge Hotel (BMG) Pty Ltd | 110 709 996 | VIC |
| Racecourse Hotel (BMG) Pty Ltd | 110 901 034 | VIC |
| Shoppingtown Hotel (BMG) Pty Ltd | 111 719 870 | VIC |
| Taverner Hotel Group Pty. Ltd. | 086 956 890 | VIC |
| Amprok Pty. Ltd. | 007 011 798 | VIC |
| Auspubs Pty Ltd | 086 695 801 | VIC |
| Cooling Zephyr Pty Ltd | 089 193 859 | VIC |
| The Common Link Pty Ltd | 086 504 529 | VIC |
| E. G. Functions Pty. Ltd. | 073 488 052 | VIC |
| Elizabeth Tavern Pty. Ltd. | 008 019 922 | SA |
| FG Joint Venture Pty Ltd | 095 849 906 | VIC |
| Fountain Jade Pty. Ltd. | 007 396 063 | VIC |
| Hadwick Pty Ltd | 090 965 772 | SA |
| Markessa Pty. Ltd. | 006 644 382 | VIC |
| Playford Tavern Pty Ltd | 077 886 545 | SA |

| Woolworths Entities | ACN or Company No | Place of Incorporation |
|---|---|---|
| Seaford Hotel Pty. Limited | 063 024 591 | VIC |
| The Second P Pty Ltd | 089 313 146 | VIC |
| Kilrand Hotels (Hallam) Pty. Ltd. | 005 730 601 | VIC |
| Ashwick (Vic.) No.88 Pty. Ltd. | 006 327 206 | VIC |
| Warm Autumn Pty. Ltd. | 082 483 994 | VIC |
| Werribee Plaza Tavern Pty. Ltd. | 006 296 162 | VIC |
| Waltzing Matilda Hotel (BMG) Pty Ltd | 111 719 861 | VIC |
| Wheelers Hill Hotel (BMG) Pty Ltd | 111 719 923 | VIC |
| Andmist Pty. Limited | 095 618 929 | NSW |
| Australian Independent Retailers Pty Ltd | 004 678 675 | VIC |
| Australian Liquor and Grocery Wholesalers Pty Ltd | 009 592 925 | NT |
| Australian Safeway Stores Pty. Ltd. | 004 319 939 | VIC |
| Barjok Pty Ltd | 002 946 858 | NSW |
| Bergam Pty Limited | 109 333 208 | NSW |
| Calvartan Pty. Limited | 008 585 813 | ACT |
| Cenijade Pty. Limited | 085 854 495 | NSW |
| Charmtex Pty Ltd | 000 067 363 | NSW |
| DSE Holdings Pty Limited | 001 456 720 | NSW |
| Dick Smith (Wholesale) Pty Ltd | 000 445 956 | NSW |
| Dick Smith Management Pty Ltd | 001 585 735 | NSW |
| Dick Smith Electronics Franchising Pty Ltd | 054 295 733 | NSW |
| Dick Smith Electronics Pty Limited | 000 908 716 | NSW |
| Dick Smith Electronics Staff Superannuation Fund Pty Limited | 059 802 470 | NSW |
| DSE (NZ) Limited | 37602 | NZ |
| David Reid Electronics (1992) Limited | 540200 | NZ |
| Dick Smith Electronics Limited | 1694773 | UK |
| Intertan Australia Pty Ltd | 002 511 944 | NSW |
| Fabcot Pty Ltd | 002 960 983 | NSW |
| Kiaora Lands Pty Limited | 108 410 402 | NSW |
| Gembond Pty. Limited | 094 773 663 | NSW |
| GreenGrocer.com.au Pty Ltd | 079 889 044 | NSW |
| Grocery Wholesalers Pty Ltd | 000 013 758 | NSW |
| Highlands No.1 Nominees Pty Ltd | 137 904 048 | VIC |
| Hydrogen Nominees Pty Ltd | 137 689 224 | NSW |
| Hydrox Holdings Pty Ltd | 138 990 593 | VIC |
| Hydrox Nominees Pty Ltd | 139 262 123 | VIC |
| Jack Butler & Staff Pty. Ltd. | 009 957 171 | QLD |
| Josona Pty Ltd | 002 955 759 | NSW |
| Kiaora Lands Pty Limited | 108 410 402 | NSW |
| Langtons Pty Ltd | 133 179 656 | VIC |
| Leasehold Investments Pty Ltd | 009 237 932 | WA |
| Mac's Liquor Stores Pty Limited | 009 714 550 | QLD |
| Nalos Pty Ltd | 002 946 821 | NSW |
| Oxygen Nominees Pty Ltd | 135 263 473 | VIC |
| Philip Leong Stores Pty Limited | 009 718 941 | QLD |
| Progressive Enterprises Holdings Limited | 113 919 878 | VIC |
| Drumstar Pty Ltd | 085 415 032 | WA |
| PEH (NZ IP) Pty Ltd | 115 841 337 | VIC |
| Queensland Property Investments Pty Ltd | 009 661 027 | QLD |
| Shellbelt Pty. Limited | 066 891 307 | NSW |
| Universal Wholesalers Pty Limited | 002 213 185 | NSW |
| Vincentia Nominees Pty Ltd | 137 903 327 | VIC |
| Votraint No. 1622 Pty Limited | 120 875 309 | VIC |
| Woolies Liquor Stores Pty. Ltd. | 007 939 531 | SA |
| Woolstar Investments Limited | 495323 | NZ |
| Woolstar Pty. Limited | 008 444 513 | ACT |
| Woolworths (International) Pty Limited | 115 987 972 | VIC |
| Woolworths (HK) Sales Limited | 1009711 | HK |
| Woolworths (HK) Procurement Limited | 989515 | HK |
| Woolworths Wholesale (India) Private Limited | U51900MH2006PTC159768 | IN |
| Woolworths New Zealand Group Limited | 1686297 | NZ |
| BWS (2008) Limited | 1867748 | NZ |
| Progressive Enterprises Limited | 61262 | NZ |
| Caledonian Leasing Limited | 495309 | NZ |
| Countdown Foodmarkets Limited | 546006 | NZ |
| Foodtown Supermarkets Limited | 506065 | NZ |
| Fresh Zone Limited | 623627 | NZ |
| General Distributors Limited | 357961 | NZ |
| S R Brands Limited | 627616 | NZ |
| Supervalue/ Freshchoice Limited | 500474 | NZ |

| Woolworths Entities | ACN or Company No | Place of Incorporation |
|---|---|---|
| The Supplychain Limited | 590807 | NZ |
| Wholesale Services Limited | 537627 | NZ |
| Wholesale Distributors Limited | 550010 | NZ |
| Woolworths (New Zealand) Limited | 624323 | NZ |
| Woolworths (Project Finance) Pty. Limited | 095 449 782 | NSW |
| Woolworths (Publishing) Pty Ltd | 009 671 149 | QLD |
| Woolworths (Q'land) Pty Limited | 000 034 819 | NSW |
| Woolworths (R & D) Pty Limited | 066 891 245 | NSW |
| Woolworths (South Australia) Pty Limited | 007 873 118 | SA |
| Woolworths (Victoria) Pty Limited | 004 177 155 | VIC |
| Statewide Independent Wholesalers Limited | 009 519 546 | TAS |
| Woolworths (W.A.) Pty Limited | 008 668 148 | WA |
| Woolworths Australian Communities Foundation Pty Limited | 002 885 547 | NSW |
| Woolworths Custodian Pty Ltd | 002 940 445 | NSW |
| Woolworths Executive Superannuation Scheme Pty Limited | 009 973 586 | QLD |
| Woolworths Group Superannuation Scheme Pty Ltd | 010 009 382 | QLD |
| Woolworths Insurance Pte Limited | 198701430R | SING |
| Woolworths Management Pty Ltd | 116 463 355 | VIC |
| Woolworths Properties Pty Limited | 000 039 252 | NSW |
| Dentra Pty. Limited | 088 641 709 | ACT |
| Weetah Pty. Limited | 009 643 430 | NT |
| QFD Pty. Limited | 008 579 664 | ACT |
| Woolworths Townsville Nominee Pty Ltd | 113 597 434 | VIC |
| Woolworths Trust Management Pty Limited | 059 357 149 | NSW |
| Woolworths Trustee No. 2 Pty Limited | 059 357 327 | NSW |

## Annexure B

This is the Annexure B referred to in the Form 604 (Notice of change of interests of substantial holder) signed by me and dated 15 September 2009.



Peter Horton
Company Secretary, Carboxy Pty Ltd
15 September 2009

CLAYTON UTZ

# Joint bidding deed

## Woolworths Limited ABN 81 004 295 532
Woolworths

## WDR Delaware II Corporation.
Lowe's

## Lowe's Companies, Inc.
Guarantor

## Carboxy Pty Limited ACN 138 990 584
Carboxy

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
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Our reference 172/13637/80095206

SYI-26301v1

## Contents

## Joint bidding deed dated 25 August 2009

**Parties**

**Woolworths Limited ABN 88 000 014 675** of 1 Woolworths Way, Bella Vista NSW 2153 (**Woolworths**)

**WDR Delaware II Corporation.**, a company duly incorporated under the laws of Delaware, with its address at c/ Lowe's Companies, Inc., 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, United States of America, and a Wholly Owned Subsidiary of the Guarantor (**Lowe's**)

**Lowe's Companies, Inc.**, a company duly incorporated under the laws of North Carolina, with its address at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, United States of America (**Guarantor**)

**Carboxy Pty Limited ACN 138 990 584** of 1 Woolworths Way, Bella Vista NSW 2153 (**Carboxy**)

## Background

A. Woolworths and Lowe's have agreed to collaborate on an exclusive basis to facilitate the acquisition of Danks on the terms set out in this deed.

B. It is proposed that the acquisition itself will be made by Carboxy, a company established by Woolworths for the purpose of the Bid, which will be owned and funded partly by Woolworths and partly by Lowe's.

C. The parties have agreed to enter into this deed to regulate their relationship and the conduct of the Bid.

## Operative provisions

# 1. Definitions and interpretation

### 1.1 Definitions

In this deed, including in the Background:

**Acquisition Effective Date** means the last day of the Compulsory Acquisition Period.

**Announcement** means the announcement, in the form agreed between Woolworths and Lowe's, by Carboxy in relation to the Proposed Transaction.

**Announcement Date** means 25 August 2009.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the same meaning as given to that term for the purposes of Chapter 6 of the Corporations Act (as modified by ASIC from time to time).

**ASX** means ASX Limited ABN 98 008 624 691 or the securities market operated by ASX Limited ABN 98 008 624 691, as the context requires.

**Bid** means an off-market takeover offer to be made by Carboxy for all Danks Securities under Chapter 6 of the Corporations Act for cash consideration of $13.50 per Danks Security subject to the defeating conditions set out in the Conditions (and no other defeating conditions).

**Bid Consideration** means the consideration payable by Carboxy to Danks Securityholders for Danks Securities under the Bid, including consideration payable to Danks Securityholders whose Danks Securities are compulsorily acquired (if applicable).

**Bidder's Statement** means the bidder's statement and any supplementary bidder's statement to be prepared by Carboxy in connection with the Bid in accordance with Chapter 6 of the Corporations Act.

**Business Day** has the meaning given in the Listing Rules.

**Carboxy Board** means the board of directors of Carboxy.

**Carboxy Director** means a director of Carboxy.

**Carboxy Share** means a fully paid ordinary share in Carboxy.

**Competing Proposal** means a transaction or arrangement which is proposed by a Third Party pursuant to which the Third Party will, if the transaction or arrangement is entered into or completed substantially in accordance with its terms:

(a) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a significant part of the business of Danks;

(b) increases its relevant interest in Danks Securities from 20% or below to more than 20%;

(c) otherwise acquires control of Danks within the meaning of section 50AA of the Corporations Act; or

(d) otherwise directly or indirectly acquires, merges with, or acquires a significant or controlling shareholding or economic interest in Danks or its business, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back, sale or repurchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for Danks, or other synthetic merger or any other transaction or arrangement.

**Compulsory Acquisition Period** means the period beginning with the day the compulsory acquisition notice is lodged with ASIC by Carboxy under section 661B of the Corporations Act and ending at the time specified in section 666A(2) of the Corporations Act.

**Conditions** means the conditions set out in Schedule 1.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Danks** means Danks Holdings Limited ABN 81 004 295 532.

**Danks Security** means a fully paid ordinary share in Danks.

**Danks Security Register** means the registers of members of Danks maintained by or on behalf of Danks in accordance with the Corporations Act.

**Danks Securityholder** means a person who is registered in the Danks Security Register as a holder of Danks Securities.

**Exclusivity Deed** means the exclusivity deed dated 24 August 2009 between Danks and Woolworths.

**FIRB Condition** means the defeating condition to the Offer entitled "Foreign Investment Review Board" set out in paragraph 6 of Schedule 1.

**Funding Amount** means the total amount requested by Carboxy in a Funding Notice.

**Funding Completion Date** means the date 2 Business Days after a Funding Notice is issued by Carboxy under clause 7.2.

**Funding Notice** means a written notice given by Carboxy to Woolworths and Lowe's from time to time requesting funding for the payment of Joint Bid Expenses.

**Implementation Deed** means the deed dated 24 August 2009 between Danks, Woolworths and Carboxy in relation to the making and the conduct of the Bid.

**Joint Bid Expenses** means the Bid Consideration and any stamp duty payable in connection with the Bid and all other expenditure, fees or payments incurred by, or on behalf of, Carboxy in connection with the Bid including the costs of any technical, legal or other reports or documents and the technical, legal or other costs associated with:

(a) the incorporation of Carboxy;

(b) any arrangements involving Carboxy necessary to implement the Proposed Transaction;

(c) undertaking due diligence in relation to Danks;

(d) seeking advice from third parties in relation to the Bid;

(e) preparing and negotiating the Transaction Documents and any other documents entered into between the parties in connection with the Bid; and

(f) preparing, lodging, serving and filing of any documents necessary or desirable in connection with the Bid;

(g) responding to, assisting with, disputing, defending against and any other conduct associated with, any claim, application, review, inquiry, investigation, action, demand or proceedings instituted, commenced or pursued by a Third Party or a Public Authority in connection with the Bid, including proceedings brought in the Takeovers Panel or a court of competent jurisdiction;

(h) instituting, commencing or pursuing proceedings against a Third Party in the Takeovers Panel or a court of competent jurisdiction in connection with the Bid; and

and other expenditure approved by agreement between Woolworths and Lowe's in connection with the Bid.

**Listing Rules** means the official listing rules of ASX.

**Lowe's Information** means all information and statements contained in the Bidder's Statement regarding or attributed to Lowe's or any of its Related Entities and includes the statements relating to the intentions of Lowe's with respect to Danks.

**Lowe's Funding Amount** means an amount equal to the Lowe's Proportion multiplied by the Funding Amount, as shown in a Funding Notice.

**Lowe's Proportion** means 1/3 (one-third).

**Minimum Acceptance Condition** means the defeating condition to the Offer entitled "90% minimum acceptance" set out in paragraph 1 of Schedule 1.

**Offer** means the offer to be made by Carboxy to acquire all the Danks Securities under the Bid.

**Proposed Transaction** means participation by Woolworths and Lowe's in a joint acquisition of all Danks Securities by Carboxy under the Bid.

**Public Authority** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority tribunal, agency or entity and includes the Takeovers Panel, the Australian Competition & Consumer Commission, the Foreign Investment Review Board, ASIC and ASX.

**Regulatory Condition** means the defeating condition to the Offer entitled "No action by a Public Authority adversely affecting the Offer" set out in paragraph 2 of Schedule 1

**Related Entity** of a party means another entity which is:

(a) related to the first entity within the meaning of section 50 of the Corporations Act; or

(b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity.

**Representative** means, in respect of a person, each director, officer, employee, adviser, agent or representative of that person.

**Required Information** has the meaning given in clause 6.5.

**Start Date** means the date this deed is executed by each of the parties.

**Subscription Date** means 25 August 2009.

**Termination Date** means the date this deed terminates under clause 11.2.

**Third Party** means any person other than Woolworths, Lowe's and their respective Related Entities.

**Transaction Documents** means the Bidder's Statement, the initial public announcement of the Bid, any subsequent public announcement in relation to the Bid, any application made to the Commonwealth Treasurer under the Foreign Acquisitions and Takeovers Act 1975 (Cth) in connection with the Bid and any document to be provided by Woolworths to the Australian Competition and Consumer Commission in connection with its review of the potential acquisition by Carboxy of Danks.

**Woolworths Funding Amount** means an amount equal to the Woolworths Proportion multiplied by the Funding Amount, as shown in a Funding Notice.

**Woolworths Proportion** means 2/3 (two-thirds).

## 1.2 Interpretation

In this deed headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

(a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;

(b) the word **including** or any other form of that word is not a word of limitation;

(c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;

(e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;

(i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(j) a reference to $ or **dollar** or **cents** is to Australian currency; and

(k) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

# 2. Subscription

## 2.1 Subscription by Lowe's

On the Subscription Date, Lowe's must:

(a) subscribe for 1 Carboxy Share;

(b) deliver to Carboxy an application for 1 Share duly executed by Lowe's; and

(c) pay to Carboxy $1, being the subscription price for 1 Carboxy Share.

## 2.2 Issue of shares

On the Subscription Date, subject to Lowe's complying with its obligations under clause 2.1, Carboxy must:

(a) issue and allot 1 Carboxy Share in accordance with the relevant application and deliver to Lowe's a share certificate in respect of 1 Carboxy Share;

(b) enter Lowe's in the register of members of Carboxy in respect of 1 Carboxy Share; and

(c) procure that a meeting of the directors of Carboxy is duly convened and held at which the directors resolve to take the steps referred to in clauses 2.2(a) and 2.2(b).

## 2.3 Warranties

Woolworths represents and warrants to Lowe's, on the date of this deed that:

(a) Carboxy is a single purpose company formed for the purpose of effecting the Bid and it has not been engaged in any other commercial activity;

(b) there are 2 Carboxy Shares on issue and those shares are fully paid and legally and beneficially held by Woolworths (the **Woolworths' Shares**);

(c) other than the Woolworths' Shares, and shares issued to Lowes under this deed, Carboxy has not issued any other securities or any rights to subscribe for or convert into any securities of Carboxy;

(d) Carboxy is duly registered and validly existing under the laws of its place of incorporation; and

(e) the share issued to Lowes under clause 2.2 and under this deed are, and will, when issued, be validly issued.

# 3. Ownership and control of Carboxy

## 3.1 Prohibited actions

Subject to clause 3.2, until the Acquisition Effective Date, Woolworths must procure that, except with Lowe's prior written consent or as required by the acceptances of offers under the Bid, Carboxy will not:

(a) amend its constitution;

(b) contribute any additional capital to another entity;

(c) acquire any assets or properties;

(d) create any subsidiary;

(e) create or permit any lien, pledge, charge or mortgage or encumbrance to exist on any of its assets;

(f) raise or provide any financial accommodation;

(g) change its name;

(h) enter into any agreement with Woolworths or any of its Related Entities;

(i) commence or compromise any litigation or other similar procedure (including proceedings before the Takeovers Panel), which consent must not be unreasonably delayed or withheld.

## 3.2 Exceptions

Clauses 3.1(b) and 3.1(f) will have no application in the event that the Offer is declared free from the Minimum Acceptance Condition.

## 3.3 Information

Subject to any legal restrictions (including those under the Corporations Act and Trade Practices Act 1974 (Cth)), each party agrees to provide to the other, all written or otherwise material information received by it or any of its Representatives from Danks or any Representative of Danks after the date of this deed.

## 3.4 Operation of Carboxy

Woolworths must use its best endeavours to ensure the warranties in clause 2.3 remain true and correct as at the date and times given.

## 3.5 Exercise of Carboxy voting rights

Until the Acquisition Effective Date or in the event that the Offer closes in circumstances where Carboxy is not entitled to proceed to compulsory acquisition of outstanding Danks Securities, Woolworths must procure that Carboxy does not exercise the right to vote in respect of any Danks Securities which it owns unless the decision how to vote has been agreed by Lowes and Woolworths.

## 4. Relationship between Woolworths and Lowe's

### 4.1 No partnership

Except as expressly provided in this deed or by other express agreement between Woolworths and Lowe's:

(a) neither Woolworths nor Lowe's is to be taken to be a partner, agent or representative of the other by virtue of this deed, nor does this deed create any partnership or trust for any purpose; and

(b) neither Woolworths nor Lowe's may act as agent of, assume any obligation or responsibility of, or in any way bind or pledge the credit of, the other.

### 4.2 Several liability

The liability of each party under this deed and in relation to the Bid is several only.

### 4.3 Holding of joint and several liability

Clause 4.2 applies even if the parties are held to be jointly liable or jointly and severally liable regarding any matter arising out of the Bid and each party indemnifies each other accordingly.

### 4.4 Separate accounting and tax obligations

Each party is responsible for its own accounting records required by law and for its own management purposes and no party is responsible for another party's obligations under the income tax laws of any jurisdiction.

## 5. Governance

### 5.1 Directors

From the Start Date:

(a) the Carboxy Board must be comprised of at least 2 and not more than 3 directors;

(b) Woolworths has the right to appoint, remove and replace 2 Carboxy Directors; and

(c) Lowe's has the right to appoint, remove and replace 1 Carboxy Directors.

### 5.2 Shareholders' agreement

The parties will enter into a formal shareholders' agreement on the Acquisition Effective Date on terms to be agreed (but which are not inconsistent with the terms of this deed) to govern their respective relationships in relation to Carboxy, including as to general governance matters and as to how Carboxy will be owned, controlled and financed.

### 5.3 Immediate actions

Immediately following the signing of this deed, Lowe's and Woolworths will make the Announcement. Following the Announcement, Woolworths and Lowe's will make the disclosure required by, and in accordance with, Part 6C.1 of the Corporations Act and co-operate to ensure that any substantial holder obligations are discharged efficiently.

## 5.4 Implementing the Bid

Subject to clauses 3.1(i), 5.5, 5.6, 6.3 and 6.4(c) Woolworths is entitled to conduct all aspects related to the implementation of the Bid, including:

(a) the direction and control of any advisers to Woolworths and or Carboxy in relation to the Bid;

(b) co-ordinating communications with Danks and the media;

(c) co-ordinating and conducting negotiations with Danks regarding the Bid; and

(d) co-ordinating investigation into and making recommendations with respect to the optimal method of structuring the Bid having regard to financing, tax, stamp duty, regulatory, cost and execution considerations.

## 5.5 Lowe's rights

Notwithstanding clause 5.4 but subject to the law or Listing Rules, Woolworths must:

(a) discuss and consult with Lowe's in respect of any material matters relevant to the progress of the Bid, including without limitation, any material communications with Danks, or any Public Authority in relation to the Bid, this deed or the transactions contemplated by this deed or any material Danks Securityholder;

(b) discuss and consult with Lowe's in respect of any material communications sent or made available by Carboxy to Danks Securityholders in connection with the Bid (including the Bidder's Statement, and all material notices required to be issued by Carboxy under the Corporations Act in connection with the Bid);

(c) share with Lowe's all written or otherwise material advice and information provided to Carboxy by its external advisers in connection with the Bid;

(d) not make any announcement or permit Carboxy to make any announcement that makes reference to Lowe's or information regarding Lowe's (or any of its Related Entities) in connection with the Bid without first obtaining the prior written consent of Lowe's;

(e) provide Lowe's with details of any undertakings, orders, decrees, decisions or rulings which it proposes to give or it is informed that will, be made by any Public Authority, in respect of Danks or Danks' business (or the future conduct or likely conduct of that business) or the implementation and conduct of the Bid;

(f) not make any written communication to any Public Authority or permit Carboxy to make any written communication to any Public Authority that makes reference to Lowe's or information regarding Lowe's (or any of its Related Entities) in connection with the Bid without first obtaining the prior written consent of Lowe's, which consent must not be unreasonably delayed or withheld,

and must procure that Carboxy does the same.

## 5.6 Material Conditions

(a) Woolworths must procure that Carboxy does not waive the Minimum Acceptance Condition, FIRB Condition or Regulatory Condition without first obtaining Lowe's written consent.

(b) Carboxy must not waive the Minimum Acceptance Condition, FIRB Condition or Regulatory Condition without first obtaining Lowe's written consent.

## 5.7 Woolworths actions

In undertaking the role described in clause 5.4, Woolworths must not act to bind Lowe's without the express consent of Lowe's (which consent may be withheld by Lowe's in its absolute discretion) but Woolworths may act to bind Carboxy.

## 5.8 Lowe's obligations

(a) In the event that Woolworths or Carboxy requests Lowe's to give its consent in connection with a matter referred in clause 5.6 or 6.3(b), Lowe's must, having regard to the relevant circumstances, be given a reasonable opportunity to respond and must expeditiously both consider the matter and respond to Woolworths or Carboxy's request for consent (as applicable). For the avoidance of doubt, nothing in this clause or this deed requires Lowe's to give its consent to such a request.

(b) In the event that Woolworths or Carboxy requests Lowe's to give its consent in connection with a matter referred in clause 3.1(i), 5.5(f) or 6.4(c), Lowe's must, having regard to the relevant circumstances, be given a reasonable opportunity to respond and must expeditiously consider the matter and respond to Woolworths or Carboxy's request for consent (as applicable).

(c) If Lowe's does not, having regard to the circumstances, respond expeditiously to a request for consent referred to in clause 5.8(b) in respect of a particular matter, then notwithstanding any other provision of this deed, the relevant consent will be deemed to have been given, provided that Lowe's may withhold its consent to such request if it is reasonable for it to do so.

(d) Where a provision of this document requires Woolworths or Carboxy to discuss and consult with Lowe's in respect of a particular matter, Lowe's must, having regard to the relevant circumstances, promptly make itself or one of its Representatives available for such discussion and consultation.

(e) If Lowe's does not comply with clause 5.8(d) in respect of a particular matter, then notwithstanding any other provision of this deed, Woolworths' and Carboxy's obligation to discuss and consult with Lowe's in respect of that matter will be deemed to have been satisfied.

(f) Where a provision of this document requires Lowe's to provide information to Woolworths or Carboxy, Lowe's must, having regard to the relevant circumstances (including, where relevant, timing requirements in respect of the Bid referred to in the Implementation Deed), provide that information expeditiously.

## 5.9 Exclusivity and Implementation Deeds

Woolworths acknowledges and agrees that it holds the benefit of its rights under the Exclusivity Deed and the Implementation Deed on trust for Carboxy (including all payments received under such contracts) and will enforce the provisions of the Exclusivity Deed and the Implementation Deed as directed by Carboxy from time to time.

# 6. Bid process

## 6.1 Joint acquisition

Woolworths and Lowe's agree to do all things necessary or desirable to investigate, progress, negotiate, enter into and complete the Proposed Transaction subject to the terms of this deed.

## 6.2 Conditions

The Bid will be subject to the Conditions set out in Schedule 1.

## 6.3 Price and Bid Consideration

Woolworths and Lowe's agree that if the Bid proceeds:

(a) the Bid Consideration must not include securities in Carboxy; and

(b) the consideration to be paid by Carboxy for each Danks Security under the Bid will be $13.50 in cash ex a final dividend of up to 53 cents per Danks Security (the **Offer Price**). Woolworth must procure that Carboxy does not, and Carboxy must not, increase the Offer Price without Lowe's prior written consent.

## 6.4 Transaction Documents

(a) Carboxy must, and Woolworths will procure Carboxy to, prepare the Bidder's Statement and must take all reasonable steps to ensure that the Bidder's Statement (excluding the Lowe's Information included in the Bidder's Statement with the consent of Lowe's pursuant to Clause 6.4(c)) complies with the requirements of the Corporations Act, the Listing Rules and applicable ASIC Policy Statements and is not misleading or deceptive in any material respect (whether by omission or otherwise).

(b) Woolworths must, and must procure that Carboxy must, to the extent practicable, give Lowe's a reasonable opportunity to review one or more drafts (including the final draft of the Bidder's Statement, provided that, subject to clause 6.4(c) below, neither Woolworths nor the Company will be bound to take into account any comments made by Lowe's on the Bidder's Statement.

(c) Lowe's will be solely responsible for the Lowe's Information included in the Bidder's Statement with its consent and Woolworths must not make any amendments to the Lowe's Information provided by Lowe's for inclusion in the Bidder's Statement without Lowe's consent. Woolworths and Carboxy must obtain Lowe's consent (which shall not be unreasonably withheld) to the inclusion of the Lowe's Information provided by Lowe's for inclusion in the Bidder's Statement in the form and context in which it appears in the Bidder's Statement.

(d) Lowe's, to the extent permitted by law, hereby agrees to indemnify and keep indemnified Woolworths and Carboxy from and against any and all claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature which Woolworths or Carboxy suffers or incurs by reason of the Lowe's Information contained in the Bidder's Statement (with the consent of Lowe's pursuant to Clause 6.4(c)) failing to comply with the requirements of the Corporations Act, the Listing Rules and applicable ASIC Policy Statements, other than claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature incurred in connection with proceedings brought in the Takeovers Panel where such claims arise from the Bidder's Statement (other than the Lowe's Information included with the consent of Lowe's pursuant to Clause 6.4(c)) failing to comply with the requirements of the Corporations Act, the Listing Rules and applicable ASIC Policy Statements.

(e) Woolworths' and Carboxy will be solely responsible for the contents of the Bidder's Statement (other than the Lowe's Information included with the consent of Lowe's pursuant to Clause 6.4(c)). Woolworths, to the extent permitted by law, hereby agrees to indemnify and keep indemnified Lowe's from and against any and all claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature which Lowe's suffers or incurs by reason of a failure of the Bidder's Statement (other than the Lowe's Information included with the consent of Lowe's pursuant to Clause 6.4(c)) to comply with the requirements of the Corporations Act, the Listing Rules and applicable ASIC Policy Statements, other than :

(i) claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature incurred in connection with proceedings brought in the Takeovers Panel where such claims arise from the Lowe's Information included with the consent of Lowe's pursuant to Clause 6.4(c) failing to comply with the requirements of the Corporations Act, the Listing Rules and applicable ASIC Policy Statements; and

(ii) to the extent to which the claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature arises out of or in connection with a failure by Lowe's to reasonably give its consent under clause 3.1(i).

(f) The Bidder's Statement must include a statement that neither Lowe's nor any of its Related Entities will be responsible for the Bidder's Statement other than the Lowe's Information included with the consent of Lowe's pursuant to Clause 6.4(c).

(g) Except as set out in clause 5.5(d) and clause 6.4(c)

(i) Woolworths will be entitled to prepare each document that is required to be prepared by Carboxy in connection with the Bid (including the Transaction Documents), as well as any other document to be issued by Carboxy or on its behalf whose preparation is desirable in the context of, or necessary to give effect to, the Bid; and

(ii) Woolworths will consult with Lowe's in relation to the content of the Transaction Documents but the final form of the Transaction

Documents, subject to Lowe's rights set out in clauses 5.5(d) and 6.4(c), will be determined by Woolworths in its sole discretion.

## 6.5 Provision of information

Lowe's must provide Woolworths with information in relation to Lowe's or its Related Entities that is required to be included in the Bidder's Statement and all other material information in respect of it and its Related Entities which is necessary for inclusion in the Transaction Documents (the **Required Information**) as well as any other document to be issued by Carboxy or on its behalf whose preparation is necessary to give effect to the Bid.

## 6.6 Warranty

If Lowe's provides Woolworths with Required Information, Lowe's:

(a) warrants that the Required Information will be true and correct in all material respects, and will not be materially misleading or deceptive including by way of omission; and

(b) must promptly notify Woolworths if it becomes aware that any part of the Required Information is, or has become, materially misleading or deceptive or that information that should have been provided has been omitted from the Required Information, and must promptly provide all further information necessary to ensure that the Required Information is not materially misleading or deceptive or does not omit any such information (as applicable).

## 6.7 Reasonable endeavours

Each of Woolworths and Lowe's agree:

(a) that they will observe and perform each of their obligations and commitments under this deed;

(b) to take reasonable steps within their power and capacity (including executing all documents) to co-operate with each other to ensure the successful completion of the Bid;

(c) to consult in good faith in relation to those matters for which a consultation process is provided for in this deed.

## 6.8 Commercial interests

Despite the general obligations in clause 6.7, but subject to the express terms of this deed, Woolworths and Lowe's may act in their own commercial interests when making any commercial decision in connection with this deed and the Proposed Transaction.

## 6.9 Compulsory acquisition

As soon as practicable after the close of the Bid, Woolworths must procure Carboxy to proceed to, and Carboxy must proceed to, compulsory acquisition of outstanding Danks Securities if Carboxy is entitled to so proceed.

## 7. Financial contribution

### 7.1 Payment of Joint Bid Expenses

(a) To the extent practicable, Joint Bid Expenses must be paid by Carboxy..

(b) Woolworths and Carboxy must provide Lowe's with copies of all estimates and invoices received by them from Carboxy's advisers and receipts of all debts incurred by Carboxy in relation to the Joint Bid Expenses.

### 7.2 Funding of Carboxy

To enable it to pay Joint Bid Expenses, Carboxy may from time to time (and on more than one occasion) request funding from Woolworths and Lowe's by issuing a Funding Notice. Each Funding Notice must:

(a) be issued to each of Woolworths and Lowe's;

(b) specify the Woolworths Funding Amount and the Lowe's Funding Amount; and

(c) specify the manner in which payment is to be made to Carboxy.

### 7.3 Payment following a Funding Notice

On each Funding Completion Date:

(a) Woolworths must pay the Woolworths Funding Amount and deliver an application for 2 Carboxy Shares to Carboxy; and

(b) Lowe's must pay the Lowe's Funding Amount and deliver an application for 1 Carboxy Share to Carboxy.

### 7.4 Carboxy obligations following funding

On each Funding Completion Date, subject to, and in consideration of, Woolworths and Lowe's complying with their respective obligations under clauses 7.3(a) and 7.3(b) respectively, Carboxy must:

(a) issue and allot Carboxy Shares in accordance with the relevant applications and deliver to Woolworths and Lowe's relevant share certificates in respect of 2 Carboxy Shares and 1 Carboxy Share respectively;

(b) enter Woolworths and Lowe's in the register of members of Carboxy in respect of 2 Carboxy Shares and 1 Carboxy Share respectively; and

(c) procure that a meeting of the directors of Carboxy is duly convened and held at which the directors resolve to take the steps referred to in clauses 7.4(a) and 7.4(b).

### 7.5 Woolworths and Lowe's acknowledgements

Woolworths and Lowe's acknowledge and agree that:

(a) there are no conditions precedent to Carboxy's right to issue a Funding Notice under this deed; and

(b) there are no circumstances which would enable or permit Woolworths or Lowe's to avoid making payment to Carboxy under a Funding Notice.

### 7.6 Internal expenses

Each of Woolworths and Lowe's will bear its own internal costs associated with the Proposed Transaction at all times (unless such costs are Joint Bid Expenses).

### 7.7 Break fee

To the extent that Danks pays Woolworths or Carboxy any break fee in connection with the Bid (including under the Implementation Deed), the amount of that break fee is to be applied to payment of Joint Bid Expenses. To the extent Woolworths receives any payments (whether or not break fees), damages or reimbursements from Danks under the Exclusivity Deed or the Implementation Deed, it will apply such sums exclusively towards the Joint Bid Expenses.

## 8. Dealings in Securities

### 8.1 No acquisitions etc.

During the term of this deed, each of Woolworths and Lowe's agrees that neither it nor any of its Related Entities or Representatives will acquire or dispose of any relevant interest or other interest in Danks Securities, agree or offer to do so, enter into an option or commitment to do so, or provide or agree to provide any consideration for a Danks Security under any purchase or agreement, other than as a result of the acquisition of Danks Securities by Carboxy under the Bid or through the compulsory acquisition provisions of the Corporations Act, or otherwise as agreed in writing between Woolworths and Lowe's.

### 8.2 Compliance with law

Each of Woolworths and Lowe's must ensure that they do not, and must procure that each of their Related Entities does not, act in a manner which breaches any law, or causes the other or any of its Related Entities to breach any law, including doing any act or thing which is prohibited by the Corporations Act.

### 8.3 No disposal of shares in Carboxy

Until the Acquisition Effective Date, or in the event that the Minimum Acceptance Condition is waived, the date on which the offer period (as that term is defined in the Corporations Act) ends, neither Lowe's nor Woolworths will sell or transfer their shares in Carboxy, without first obtaining the consent of the other.

## 9. Exclusivity

### 9.1 No solicitation of Competing Proposal

Each of Woolworths and Lowe's agrees that during the term of this deed, they must not, and must ensure that its Representatives and Related Entities and their Representatives do not, except with the prior written consent of the other, participate or be involved in any way in a Competing Proposal.

### 9.2 Notice of unsolicited approach

Each of Woolworths and Lowe's must notify the other immediately if it, or if it becomes aware that any of its Representatives or Related Entities and their Representatives, receives any approach from a Third Party with respect to:

(a) any Competing Proposal; or

(b) any transaction or proposal that may adversely affect or reduce the likelihood of the successful completion of the Bid,

and must disclose to the other the identity of the Third Parties involved, and the nature of the approach and the proposal.

## 10. Warranties

### 10.1 Mutual warranties

Each of Woolworths and Lowe's represents and warrants to and for the benefit of the other that:

(a) it is a validly existing corporation registered under the laws of its place of incorporation;

(b) the execution and delivery of this document by it has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to execute and deliver this document and to perform or cause to be performed its obligations under this document;

(c) this document constitutes legal, valid and binding obligations on it and this document does not conflict with or result in a breach of or default under its constitution; and

(d) neither it nor an Associate of it has provided, or agreed to provide any consideration for a Danks Security under any purchase or agreement during the 4 months before the date of this deed.

### 10.2 Interpretation

Each warranty given in clause 10.1:

(a) is a continuing warranty given on each day of the term of this deed; and

(b) is to be construed independently of the others and not limited by reference to any other warranty.

## 11. Term and termination

### 11.1 Term

This deed commences on the Start Date and ends on the Termination Date.

### 11.2 Termination of this deed

This deed terminates automatically on the earlier of:

(a) the next Business Day after the Acquisition Effective Date; and

(b) the date the Bid closes without Carboxy being entitled to proceed to compulsory acquisition, in circumstances where the Minimum Acceptance Condition is not waived.

### 11.3 Effect of termination

Upon termination of this deed:

(a) the provisions of this deed will cease to have effect except for the provisions of clauses 1, 3, 7, 12, 13, 14, 15 and this clause 11 which will survive termination; and

(b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination, including for Joint Bid Expenses incurred prior to its termination.

## 12. Notices

### 12.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

(a) may be given by personal service, post or facsimile;

(b) must be in writing;

(c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) if to Lowe's:

Attention: EVP - Business Development

Address: c/ Lowe's Companies, Inc., 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, United States of America

Fax number: +1 704-757-0544

with a copy to:

Lowe's Companies, Inc.
Office of the General Counsel
Mail Code: NB6LG
1000 Lowe's Boulevard
Mooresville, NC 28117 USA
Facsimile: + 1 (704) 757-0675

(ii) if to Guarantor:

Attention: EVP - Business Development

Address: 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, United States of America

Fax number: +1 704-757-0544

with a copy to:

Lowe's Companies, Inc.
Office of the General Counsel
Mail Code: NB6LG
1000 Lowe's Boulevard
Mooresville, NC 28117 USA
Facsimile: + 1 (704) 757-0675

(iii) if to Woolworths:

Attention: Peter Horton, Company Secretary/General Counsel

Address: 1 Woolworths Way, Bella Vista NSW 2153

Fax number: +61 2 8888 3680

(iv) if to Carboxy:

Attention: c/o Peter Horton, Company Secretary/General Counsel, Woolworths Limited

Address: 1 Woolworths Way, Bella Vista NSW 2153

Fax number: +61 2 8888 3680

(d) (in the case of personal service, post or facsimile) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(e) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, of the addressee, in accordance with clause 12.1(c).

### 12.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

(a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;

(c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

(d) (in the case of delivery by hand) on delivery;

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## 13. Entire agreement

This deed constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

## 14. General

### 14.1 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

## 14.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this deed without the prior consent of each other party.

## 14.3 Consents

Unless this deed expressly provides otherwise, a consent under this deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

## 14.4 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

## 14.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one deed.

## 14.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

## 14.7 No merger

A party's rights and obligations do not merge on completion of any transaction under this deed.

## 14.8 Severance

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## 14.9 Stamp duties

Any stamp duties and related fines and penalties in respect this deed, the performance of this deed and each transaction effected by or made under this deed will be considered a Joint Bid Expense.

## 14.10 Waivers

Without limiting any other provision of this deed, the parties agree that:

(a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed;

(b) a waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party; and

(c) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

# 15. Governing law and jurisdiction

## 15.1 Governing law

This deed is governed by the law applying in New South Wales.

## 15.2 Jurisdiction

Each party irrevocably:

(a) submits to the non exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and

(b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 15.2(a).

# 16. Guarantee

In consideration of the receipt of valuable consideration, the Guarantor unconditionally and irrevocably guarantees the due and punctual observance and performance by Lowe's of its obligations under this deed.

## Schedule 1 - Conditions

The Offer will be subject to conditions substantially as set out below.

1. **90% minimum acceptance**

   At the end of the Offer Period, Bidder and its Associates together have a Relevant Interest in at least 90% of the Danks shares on issue.

2. **No action by a Public Authority adversely affecting the Offer**

   Between the Announcement Date and the end of the Offer Period:

   (a) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority; and

   (b) no application is made to any Public Authority (other than by a member of the Woolworths Group), and no action or investigation is announced, threatened or commenced by a Public Authority,

   in consequence of, or in connection with, the Offer (other than a determination by ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which:

   (c) restrains or prohibits (or if granted could restrain or prohibit), or otherwise materially adversely impacts on, the making of the Offer or the completion of any transaction contemplated by the Offer (whether subject to conditions or not) or the rights of Bidder in respect of Danks and the Danks shares to be acquired under the Offer; or

   (d) requires divestiture by Bidder of any Danks shares, or the divestiture of any assets of the Danks Group, the Woolworths Group or otherwise.

3. **Prescribed Occurrences**

   Before the end of the Offer Period, no Prescribed Occurrence occurs.

4. **No material transactions or changes**

   Except as disclosed in any public announcement by Danks delivered to ASX prior to the Announcement Date, no member of the Danks Group has between the Announcement Date and the end of the Offer Period:

   (a) issued or agreed to issue, or authorised or proposed the issue of, any equity, debt or hybrid security (including any security convertible into shares of any class) or rights, warrants, performance rights or options to subscribe for or acquire any such securities;

   (b) recommended, declared, paid or made, or resolved to recommend, declare, pay or make any bonus, dividend or other distribution whether payable in cash, in specie or otherwise, other than the Final Dividend;

(c) issued or agreed to issue any debentures, or except in the ordinary course of business incurred or increased any indebtedness for a material amount in aggregate;

(d) implemented or entered into any scheme or arrangement or compromise (including one for a reconstruction or amalgamation of any members of the Danks Group), or a deed of company arrangement, or any analogous procedure, scheme or arrangement in any jurisdiction other than in the context of a Superior Proposal;

(e) entered into or renewed (in either case, other than in the ordinary course of business) or materially changed the terms of any Membership Agreement or made any representations inconsistent with, or not provided for by, the terms as at the Announcement Date of any Membership Agreement;

(f) publicly disclosed the existence of any matter described in paragraphs (a) to (e) above; or

(g) entered into any contract, commitment, arrangement or agreement, passed any resolution or made any offer (which remains open for acceptance) with respect to, or publicly announced an intention to, or proposal to, do anything described in paragraphs (a) to (e) above.

5. **Third party consents**

If any member of the Danks Group is a party to, is bound by, or is subject to, a material agreement, arrangement or understanding (other than any agreement, arrangement or understanding disclosed, or referred to, in the Due Diligence Material including but not limited to leases of real property, information technology contracts and Membership Agreements) that the Danks Board is aware of, or should have been aware of, which as a result of the acquisition of Danks shares by Bidder under the Offer or a change in control of Danks as a result of the Offer entitles a Third Party to exercise any rights (including termination rights or pre-emptive rights), and the exercise of those rights would have a material adverse impact on the business, assets, liabilities, financial or trading position, profitability or prospects of the Danks Group (taken as a whole), then before the end of the Offer Period the Third Party:

(a) does not exercise, purport to exercise, or state an intention or claim a right to exercise, those rights; and

(b) gives its unconditional and irrevocable consent to the acquisition of Danks shares by Bidder or otherwise waives unconditionally and irrevocably its entitlement to exercise rights as referred to above.

6. **Foreign Investment Review Board**

Before the end of the Offer Period:

(a) the Treasurer of the Commonwealth of Australia or a delegate of the Treasurer of the Commonwealth of Australia issues a notice stating that the Commonwealth Government does not object to the potential acquisition by Bidder of up to 100% of the shares in Danks and such notice is not subject to any conditions;

(b) the period provided under the FATA during which the Treasurer of the Commonwealth of Australia may make an order under section 18(2) of the FATA or an interim order under section 22 of the FATA in relation to the acquisition by Bidder of the shares in Danks expires without such an order being made; or

(c) if an interim order under section 22 of the FATA is made, the subsequent period for making a final order prohibiting the acquisition by Bidder of the shares in Danks lapses without a final order being made.

**Dictionary**

In this Schedule 1:

**Announcement Date** means 25 August 2009.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the same meaning as given to that term for the purposes of Chapter 6 of the Corporations Act (as modified by ASIC from time to time).

**ASX** means ASX Limited ACN 008 624 691 or the securities market operated by ASX Limited ABN 98 008 624 691, as the context requires.

**Bidder** means Carboxy Pty Limited ACN 138 990 584.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Danks** means Danks Holdings Limited ABN 81 004 295 532.

**Danks Group** means Danks and its Subsidiaries.

**FATA** means the Foreign Acquisitions and Takeovers Act 1975 (Cth).

**Final Dividend** means a dividend in respect of Danks shares of no more than 53 cents per Danks share.

**Membership Agreement** means an agreement between any member of the Danks Group and a Third Party pursuant to which a member of the Danks Group licences or otherwise provides to that Third Party the right to use any brand of the Danks Group including "Home Timber & Hardware", "Thrifty-Link Hardware" and "Plants Plus Garden Centres".

**Offer** means the offer to be made by Bidder to acquire all the ordinary shares in Danks.

**Offer Period** means the period during which the Offer will remain open for acceptance.

**Prescribed Occurrence** means any of the following events:

(a) Danks converts all or any of its shares into a larger or smaller number of shares;

(b) Danks or a Subsidiary of Danks resolves to reduce its capital in any way;

(c) Danks or a Subsidiary of Danks:

 (i) enters into a buy-back agreement; or

 (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;

(d) Danks or a Subsidiary of Danks issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option;

(e) Danks or a Subsidiary of Danks issues, or agrees to issue, convertible notes;

(f) Danks or a Subsidiary of Danks disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;

(g) Danks or a Subsidiary of Danks charges, or agrees to charge the whole, or a substantial part, of its business or property;

(h) Danks or a Subsidiary of Danks resolves to be wound up;

(i) a liquidator or provisional liquidator of Danks or of a Subsidiary of Danks is appointed;

(j) a court makes an order for the winding up of Danks or of a Subsidiary of Danks;

(k) an administrator of Danks or of a Subsidiary of Danks is appointed under section 436A, 436B or 436C of the Corporations Act;

(l) Danks or a Subsidiary of Danks executes a deed of company arrangement; or

(m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Danks or of a Subsidiary of Danks.

**Public Authority** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity and includes ASIC and ASX.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Subsidiary** has the meaning given to that term in section 9 of the Corporations Act.

**Third Party** means a person other than a member of the Woolworths Group.

**Woolworths** means Woolworths Limited ABN 88 000 014 675.

**Woolworths Group** means Woolworths and its Subsidiaries.

**Executed** as a deed

**Executed** by **Woolworths Limited ABN 88 000 014 675** by or in the presence of:

Signature of Secretary/ot~~her Director~~

Peter John Horton
Company Secretary

Name of Secretary/ot~~her Director~~ in full

Signature of Director or sole Director and sole Secretary

M. LUSCOMBE

Name of Director or sole Director and sole Secretary in full

**Executed** by **Carboxy Pty Limited ACN 138 990 584** by or in the presence of:

Signature of Secretary/ot~~her Director~~

Peter John Horton
Company Secretary

Name of Secretary/ot~~her Director~~ in full

Signature of Director or sole Director and sole Secretary

M. LUSCOMBE

Name of Director or sole Director and sole Secretary in full

**Executed** by **Lowe's Companies, Inc.** by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

**Executed** as a deed

**Executed** by **Woolworths Limited ABN 88 000 014 675** by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

**Executed** by **Carboxy Pty Limited ACN 138 990 584** by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

**Executed** by **Lowe's Companies, Inc.** by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Larry D. Stone, President

Name of Secretary/other Director in full

Gregory M. Bridgeford, EVP

Name of Director or sole Director and sole Secretary in full

**Executed** by **WDR Delaware II Corporation.** by or in the presence of:

Signature of Secretary/other Director

Larry D. Stone, Director

Name of Secretary/other Director in full

Signature of Director or sole Director ~~and sole~~ Secretary

GREGORY M. BRIDGEFORD

Name of Director or sole Director and sole Secretary in full